

R.Harindrakumar Vs. Union of India and Others

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Court : Kerala

Decided On : Nov-24-2014

Judge : Honourable Mr.Justice Antony Dominic

Appellant : R.Harindrakumar

Respondent : Union of India and Others

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE
HONOURABLE MR.JUSTICE ANTONY DOMINIC & THE HONOURABLE MR.
JUSTICE ANIL K.NARENDRAN MONDAY,THE24H DAY OF
NOVEMBER20143RD AGRAHAYANA, 1936 WP(C).No. 12315 of 2009 (Z)
----- AGAINST THE

ORDER

/

JUDGMENT

IN OA7812005 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM
BENCH DATED3107-2008 & AGAINST THE

ORDER

/

JUDGMENT

IN RA522008 of CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH
DATED 23-12-2008 PETITIONER(S)/APPLICANT: -----

R. HARINDRAKUMAR S/O. SRI. N. R. RAMAKRISHNA PANICKER,
AGED 44 YEARS SENIOR CLERK, PERSONNEL BRANCH, SOUTHERN
RAILWAY PALAKKAD DIVISION (UNDER

ORDER

S OF COMPULSORY RETIREMENT) R/AT. 'SIVASAKTHI', PATHIRI, DHONI P.O.
PALAKKAD. BY ADVS. SRI. O. V. RADHAKRISHNAN (SR.) SMT. REKHA
VASUDEVAN SRI. ANIL PARATHARA RESPONDENT(S)/RESPONDENTS:

----- 1. UNION OF INDIA, REP. BY THE
GENERAL MANAGER, SOUTHERN RAILWAY HEAD QUARTERS OFFICE,
PARK TOWN P.O., CHENNAI-3.

2. CHIEF PERSONNEL OFFICER, SOUTHERN RAILWAY, HEAD QUARTERS
OFFICE, PARK TOWN POST CHENNAI-3.

3. SENIOR DIVISIONAL PERSONNEL OFFICER, SOUTHERN RAILWAY,
PALGHAT DIVISION, PALGHAT.

4. CHIEF VIGILANCE OFFICER, SOUTHERN RAILWAY, HEADQUARTERS,
PARK TOWN P.O. CHENNAI-3.

5. CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH, REP. BY ITS
REGISTRAR MANAPPATTIPARAMBU, KALOOR, ERNAKULAM KOCHI-682
017. BY ADV. SMT. SUMATHY DANDAPANI (SR.), SC, RAILWAYS BY
SRI. N. B. SUNIL NATH, SC, RAILWAYS THIS WRIT PETITION (CIVIL) HAVING
BEEN FINALLY HEARD ON 24-11-2014, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING: WP(C) NO. 12315/09 APPENDIX PETITIONER'S
EXHIBITS EXT.P1: PHOTOCOPY OF THE OA NO. 781/05 DT 31.10.05 ON THE
FILE OF THE 5TH RESPONDENT. EXT.P2: PHOTOCOPY OF THE REPLY
STATEMENT IN OA 781/05 DT 9.3.2006 OF THE RESPONDENTS. EXT.P3:
PHOTOCOPY OF THE REJOINDER STATEMENT OF THE APPLICANT IN
OA 781/05 DT 12.4.2006. EXT.P4: PHOTOCOPY OF THE

ORDER

DT19.06 IN OA NO.781/05 OF THE5H RESPONDENT. EXT.P5: PHOTOCOPY OF THE

JUDGMENT

DT181.2008 IN WPC NO.28090/06 OF THIS HON'BLE COURT. EXT.P6: PHOTOCOPY OF THE

ORDER

DT317.08 IN OA NO.781/05 OF THE5H RESPONDENT. EXT.P7: PHOTOCOPY OF THE REVIEW PETITION NO.52/08 IN OA78105 DT2511.2008 OF THE APPLICANT WITHOUT ANNEXURE RA-1. EXT.P8: PHOTOCOPY OF THE

ORDER

DT2312.2008 IN RP NO.22/2008 IN OA NO.781/2005 OF THE5H RESPONDENT. EXTS. OF R1 TO R4 EXT.R1(A): TRUE COPY OF STATEMENT DT306.2000 OF THE PETITIONER. EXT.R1(B): TRUE COPY OF LETTER DT212.2002 OF SURESHBABU, SPORTS RELATION OFFICER. EXT.R1(C): TRUE COPY OF LETTER DT293.2001 OF S.P.PILLAI. EXT.R1(D): TRUE COPY OF DEPOSITION OF SRI.SURESHBABU, SPORTS RELATION OFFICER. EXT.R1(E): TRUE COPY OF DEPOSITION OF S.P.PILLAI, EXT.R1(F): TRUE COPY OF DEPOSITION OF K.R.RAGHUNATHAN, CHIEF VIGILANCE INSPECTOR. //True Copy// PA to Judge Rp ANTONY DOMINIC & ANIL K. NARENDRAN, JJ.

===== WP(C) No. 12315 of 2009
===== Dated this the 24th day of November, 2014

JUDGMENT

Antony Dominic, J.

The applicant in OA No.781/05 and RA No.52/08 before the Central Administrative Tribunal, Ernakulam Bench is the petitioner herein. In this writ petition, he is challenging Exts.P6 and P8 whereby the Tribunal rejected the OA and also the Review Application filed by him.

2. Briefly stated, the facts of the case are that on 22/11/1984, the petitioner was appointed as a Junior Clerk in the Southern Railway Headquarters in the sports quota. This was in recognition of his alleged achievement of third place in 800 metres and 1500 metres in the National Senior Boys Section held at Palai in Kerala. He was promoted as Senior Clerk and while so, he sought an inter-divisional transfer to Palakkad Division. This was allowed and he was posted as Junior Clerk at the Divisional Personnel Office, Palakkad Division w.e.f. February, 1989. While continuing in Palakkad, he was promoted as Senior Clerk in 2000. WP(C) No.12315/09 :

2. :

3. At about that time, an enquiry was conducted by the Vigilance Department on receipt of an information, the source of which is not discernible from the records, to the effect that no national meet was held in 1979 at Palai and that therefore, the certificates, on the strength of which the petitioner secured appointment, were fraudulent.

4. During the course of the investigation, Ext.R1(A) statement of the petitioner was recorded. In this statement, in answer to the various questions that were put to him, he confirmed of having participated and won third place in the 800 and 1500 metres in the National Meet held in 1979 at Palai. He has also stated that he had produced the certificates at the time of his appointment. However, he has confirmed that he did not have any certificate whatsoever evidencing his participation in any sports items, and according to him, these were lost during shifting of his residences. His answers show that he appeared for SSLC examination held in March, 1979 and that during his school days, he did not participate in any athletic competitions. According to him, he started to practice for the event only after his SSLC examination and thereafter participated and won prizes in the National Meet held in October, 1979 at Palai. WP(C) No.12315/09 :

3. :

5. These led to the issuance of Annexure A3 memo of charges dated 24/1/2002, where it was alleged that he was appointed under Sports quota (Athletic

Discipline) in the year 1984 as Office Clerk based on his sports performance of taking third place in the National Games for Senior Boys held in Palai, Kerala during 1979, in two events, i.e., 800 and 1500 metres and that the Honorary Secretary of Kerala State Athletic Association had confirmed that National Games was not held during 1979 at Palai. On this basis, it was alleged that the appointment on sports account secured by the petitioner by producing fraudulent certificate of sports achievement was not in order and that he thus violated Rule 3 (1)(i), (ii) and (iii) of the Railway Services (Conduct) Rules, 1966. The statement of imputations enclosed as Annexure-II also reiterates these allegations.

6. On receipt of Annexure A3, memo of charges, petitioner submitted Annexure A4 explanation where he denied the charges, but confirmed that he had physically produced the certificates to the Sports Officer of HDQRS/P.Branch at the time of interview and that the appointment was made after the subjective satisfaction and proper application of mind by the competent authority. Thereafter, by Annexure A5, he was advised to produce WP(C) No.12315/09 :

4. : the acknowledgment of having handed over the original certificates as claimed by him in Annexure A4 to which he gave Annexure A6 reply stating that the certificates are not available since "it is not traceable after such a lengthy span of 18 years." 7. Subsequently, on 7/3/2002, Annexure A7 communication was issued informing the petitioner that Annexure A3 charge sheet is cancelled due to some error in the annexures and that the cancellation was without prejudice to taking further disciplinary proceedings against him. Later, he was issued Annexure A9 memo of charges which reads thus; "Shri R.Harindrakumar, Sr.Clerk/PR/PGT was appointed under Sports Quota (Athletic Discipline) in the year 1984 as Office Clerk with a starting pay of Rs.358/- in grade Rs.260-400/-. He was eligible for consideration for recruitment based on his Sports performance in taking 3rd place in the National Games for Senior boys held in Palai, Kerala, during 1979 in two events i.e. 800 and 1500 metres. The Honorary Secretary of Kerala State Athletic Association has now confirmed that there was no National Games held during 1979 at Palai. Thus, Shri. R.HarindraKumar had claimed to have achieved a position of merit in a tournament which was not conducted in the year WP(C) No.12315/09 :

5. :

1979. which in turn made him eligible to be called for appointment in the Railways. He thereby misdeclared the facts, which made him eligible for consideration and appointment, thus violated Rule No.3(1) (i) and (iii) of Railway Services (Conduct) Rules, 1966." This was accompanied by a statement of imputations and also list of seven documents by which the articles of charges framed against him were proposed to be proved.

8. On receipt of Annexure A9, petitioner submitted Annexure A12 reply reiterating that "as a matter of fact, I have submitted the relevant certificates of my achievements. A practical test was conducted by the sports officer to cross check the timings I clocked when I was allowed to run along with Railway Athletic team." The explanation submitted by the petitioner was not accepted and an enquiry officer was appointed. Before the enquiry officer, apart from the Vigilance Officer who conducted the preliminary investigation, two other witnesses were examined and documents were also marked. Though the petitioner was represented by a defence representative, he did not mount the box or adduce any evidence. Finally, the enquiry WP(C) No.12315/09 :

6. : officer submitted report dated 31/7/03 concluding that the charges were not proved.

9. On receipt of the enquiry report, the disciplinary authority considered the matter and issued Annexure A18 communication dated 3/11/2003 informing the petitioner that for the reasons contained in the enclosure to the letter, he was proposing to disagree with the conclusions of the enquiry officer. Along with this communication, report of the enquiry officer was also enclosed. By this communication, disciplinary authority directed the petitioner that in case he wishes to make any representation against the proposed disagreement with the findings of the enquiry officer, he may do so in writing and forward the same within 15 days.

10. On receipt of Annexure A18 and its enclosures, petitioner submitted his representation, a copy of which is Annexure A19, where, each of the reasons

stated by the disciplinary authority proposing to disagree with the conclusions of the enquiry officer were contradicted. After receipt of Annexure A19, disciplinary authority considered the matter and finally issued Annexure A1 order, rejecting the contentions of the petitioner and holding that the charges were proved and serious WP(C) No.12315/09 :

7. : in nature and warranted exemplary punishment, rendering the petitioner unfit to be retained in Railway service. However, taking note of the fact that he served the Railways for more than 20 years, he was imposed a punishment of compulsory retirement from service with immediate effect.

11. Aggrieved by Annexure A1, petitioner filed a departmental appeal which was rejected by the General Manager/Appellate Authority by Annexure A2 order. Challenging these orders, petitioner filed OA No.781/05 before the Central Administrative Tribunal, Ernakulam Bench. By Ext.P4 order dated 1st September, 2006, the OA was allowed on the basis that the authority which imposed the punishment was incompetent to pass such an order. This order was challenged by the Railways before this Court in WP(C) No.28090/2006. By Ext.P5 judgment dated 18th of January, 2008, this court set aside Ext.P4 order of the Tribunal and remitted the matter back to the Tribunal to consider the OA on merits. Accordingly, the matter was considered afresh and by Ext.P6 order, the Tribunal dismissed the OA. Petitioner thereupon filed RA No.52/08, a copy of which is Ext.P7, seeking review of Ext.P6 order. That was also rejected by the Tribunal by Ext.P8. It is in these circumstances, the writ petition is filed. WP(C) No.12315/09 :

8. :

12. We heard the learned senior counsel for the petitioner and also the learned standing counsel appearing for the respondents. Various contentions were raised by the learned senior counsel for the petitioner. We shall deal with them one by one.

13. It was contended that in the memo of charges that was issued, there was no allegation that the petitioner secured appointment on the strength of the certificates allegedly produced by him and that there was no proof that he had

secured appointment on that basis. Therefore, according to him, the very charge did not disclose any misconduct.

14. This contention has to be answered in the light of Annexure A9 memo of charges, on the basis of which the enquiry in question was initiated against the petitioner. A reading of Annexure A9 shows that it was alleged that the petitioner was appointed under sports quota and that he was eligible for consideration for recruitment based on his sports performance in the National Games for Senior boys held in Palai, Kerala during 1979. This was the very same allegation in Annexure A3 as well. In both Annexures A4 and 12, the replies submitted by the petitioner to Annexures A3 and A9, he admitted of having WP(C) No.12315/09 :

9. : produced the certificates at the time of his interview and according to him, these certificates were verified by the competent authority with due application of mind.

15. Therefore, the charge contained a specific allegation that his appointment was in the sports quota and that his eligibility was dependent upon the certificates produced by him evidencing his participation and achievements in the National Games for Senior Boys held in Palai during 1979. In such a factual situation, it cannot be argued by the petitioner that there was no allegation of proof that he secured appointment on the strength of the certificates produced by him or that the memo of charges did not disclose any misconduct.

16. Learned senior counsel contended that the respondents cancelled Annexure A3 memo of charges and issued Annexure A9. Counsel pointed out that the reason mentioned in Annexure A7 for cancelling Annexure A3 memo of charges was the error in the annexures. It is stated that thereafter when Annexure A9 was issued, apart from modifying the memo of charges, respondents did not have a case that there was any error in the annexures. According to him, cancellation of WP(C) No.12315/09 :

10. : Annexure A3 memo of charges, issuance of Annexure A9 and the continuance of the enquiry on that basis was totally illegal.

17. First of all, in so far as this case is concerned, initially Annexure A3 memo of charges was issued to the petitioner. On receipt of Annexure A3, he submitted Annexure A4 reply. While matters stood thus, by Annexure A7, memo of charges was cancelled and it was thereafter that Annexure A9 was issued.

18. When a disciplinary proceedings is initiated against a delinquent, the disciplinary authority is entitled to add, modify or substitute the memo of charges issued and the only requirement of law is that the delinquent should be given an adequate opportunity to defend the charges. Therefore, the fact that on the issuance of Annexure A3, the same was cancelled and fresh memo of charges was issued, does not, in the absence of any case for the delinquent that he was not afforded an opportunity to defend the charges or that it has prejudiced him in any manner, infer any illegality on the part of the disciplinary authority. Further, all these were on the commencement of the enquiry and not any time thereafter.

19. Apart from that, Annexure A8, the circular issued by the Railways itself show that the disciplinary authority is entitled WP(C) No.12315/09 :

11. : to withdraw or cancel the memo of charges issued to a delinquent and the only requirement prescribed therein is that if action is proposed to be continued, the order recalling the memo of charges should specifically state that the withdrawal is without prejudice to the further action that is proposed to be initiated. Reading of Annexure A7 shows that it has been clarified in the said document that cancellation of Annexure A3 was without prejudice to the right of the disciplinary authority to continue further proceedings against the delinquent.

20. Further, we also note that the legality of the cancellation of Annexure A3 was not raised by the delinquent at the stage of Annexure A7 or in Annexure A12 reply to Annexure A9 or in Annexure A17 written argument note in the enquiry or Annexure A19 representation against the findings of the enquiry officer or before the Central Administrative Tribunal. Therefore, this belated wisdom dawned on the delinquent does not merit acceptance.

21. Learned senior counsel then contended that the charges were vague and for that reason itself, the proceedings should fail. In support of this contention,

counsel placed reliance on the Supreme Court judgment in *Surath Chandra v. State of WP(C) No.12315/09* :

12. : *West Bengal (AIR 1971 SC752 and Transport Commissioner v. A.Radha K.Moorthy [(1995) 1 SCC332*. The law requires that the charge sheet should specifically set out the charge which a delinquent is called upon to show cause against and should also state all relevant particulars without which he cannot defend himself. The object of this requirement is that the delinquent must know what he is charged with and should have the amplest opportunity to defend himself by giving a proper explanation, after knowing the nature of the offence with which he is charged. Otherwise, it will amount to his being condemned unheard. The legal requirement being as above, the contention whether Annexure A9 charge is vague as contended should be answered with reference to the contents of Annexure A9 itself.

22. In sum and substance, the charge alleged against the petitioner was that he secured appointment under sports quota producing certificates evidencing his participation and achievements in the National Games for senior boys held in Palai, Kerala during 1979 and that the Honorary Secretary of the Kerala State Athletic Association had confirmed that no National Games was held during 1979 at Palai. This being the substance of the allegation against the petitioner, reading of Annexure A9 shows WP(C) No.12315/09 :

13. : that it contained the aforesaid allegation with all particulars and clarity enabling the petitioner to know the charges and to defend himself effectively.

23. We are also inclined to take the view that if a delinquent has a case that the charge is vague and that therefore, he is prejudiced in the enquiry, the delinquent is required to take that plea at the first available opportunity. In so far as this case is concerned, neither in Annexure A12 explanation submitted by him nor at any stage of enquiry or even in the Tribunal, did he raise such a contention. Therefore, both for the reason that the charge satisfied the requirements of law and that the delinquent having participated in the enquiry fully knowing the contents of the charge and without any compliant in that behalf, we are unable to accept the contention now raised by the learned senior counsel.

24. Counsel then contended that there is a long and inordinate delay in initiating the disciplinary action. Learned senior counsel pointed out that the delinquent was appointed in the Railways on 22/11/1984 and that Annexure A3, first memo of charges, was issued only on 24/1/2002, which was followed by Annexure A9 memo of charges dated 9/4/2002. It is contended WP(C) No.12315/09 :

14. : that the disciplinary action initiated almost after 18 years of entry into service was highly belated and for that reason itself, the enquiry should be invalidated. In support of this contention, learned senior counsel placed reliance on State of M.P. v. Bani Singh (1990 (Supp) SCC738, Pratap Singh v. State of Haryana [(2002) 7 SCC484 and Kamal Nayan Mishra v. State of M.P. [(2010) 2 SCC169.

25. It is true that if there is long and inordinate delay that will vitiate the proceedings initiated. Among the judgments cited before us, the judgment in Bani Singh's case (supra) shows that despite the knowledge of the misconduct, there was a delay of 12 years in initiating action. Similarly Kamal Nayan Mishra's case (supra) was a case where also despite knowledge, proceedings were initiated after a delay of 7 years. We do not think that the judgment in Pratap Singh's case (supra) has any relevance in the context of this case because that case did not arise out of disciplinary proceedings.

26. Though it is a fact that in this case, the petitioner joined service in November, 1984 and that the disciplinary action commenced only in 2002, the disciplinary proceedings can be invalidated on the ground of delay only if the delinquent succeeds WP(C) No.12315/09 :

15. : in showing that the delay has occurred despite the respondents' knowledge of the misconduct. In other words, delay can be put forward by the delinquent to resist the memo of charges only if he can prove that the disciplinary authority had knowledge about the misconduct and that despite such knowledge, delay has occurred. This is question of fact, which the delinquent has to prove and the burden thereof is entirely on him.

27. We have already mentioned that, in this case, the delinquent did not adduce any evidence and the case was decided only on the basis of the evidence

adduced by the Railways. Among the three witnesses who were examined before the Enquiry Officer, SW3 is the Vigilance Officer who conducted the preliminary investigation. Though he was cross examined in detail about the source of information based on which the proceedings were initiated, we do not see that any question about the point of time when the information was received, was put to this witness. There is also no evidence whatsoever in the enquiry proceedings or before this Court to infer that the fraud allegedly committed by the petitioner was within the knowledge of the railways at any time prior to 2000 when the investigation was WP(C) No.12315/09 :

16. : conducted by the Vigilance Officer or that it was in spite of this knowledge, the delay has occurred.

28. There is yet another aspect which has to be taken note of. Apart from contending that there was delay, the petitioner has not pleaded or proved that as a result of delay, any prejudice was caused to him. Therefore, though disciplinary proceedings initiated were after about 18 years of the petitioner's entry into service, in the absence of any evidence to prove that such delay has occurred despite knowledge of the alleged misconduct, we are not prepared to invalidate the proceedings on the assumed ground of delay.

29. In this context, we should also refer to the two judgments that were cited before us. The first one is Union of India v. M.Bhaskaran (1995 Supp (4) SCC100, where the Supreme Court has held thus in para 6; "6. It is not necessary for us to express any opinion on the applicability of Rule 3(1)(i) and (iii) on the facts of the present cases for the simple reason that in our view the railway employees concerned, respondents herein, have admittedly snatched employment in railway service, maybe of a casual nature, by relying upon forged or bogus casual labourer service cards. The WP(C) No.12315/09 :

17. : unauthenticity of the service cards on the basis of which they got employment is clearly established on record of the departmental enquiry held against the employees concerned. Consequently, it has to be held that the respondents were guilty of misrepresentation and fraud perpetrated on the appellant-employer while getting employed in railway service and had snatched such employment which

would not have been made available to them if they were not armed with such bogus and forged labourer service cards. Learned counsel for the respondents submitted that for getting service in railway as casual labourers, it was strictly not necessary for the respondents to rely upon such casual service cards. If that was so there was no occasion for them to produce such bogus certificates/service cards for getting employed in railway service. Therefore, it is too late in the day for the respondents to submit that production of such bogus or forged service cards had not played its role in getting employed in railway service. It was clearly a case of fraud on the appellant-employer. If once such fraud is detected, the appointment orders themselves which were found to be tainted and vitiated by fraud and acts of cheating on the part of employees, were liable to be recalled and were at least voidable at the option of the employer WP(C) No.12315/09 :

18. : concerned. This is precisely what has happened in the present case. Once the fraud of the respondents in getting such employment was detected, the respondents were proceeded against in departmental enquiries and were called upon to have their say and thereafter have been removed from service. Such orders of removal would amount to recalling of fraudulently obtained erroneous appointment orders which were avoided by the employer- appellant after following the due procedure of law and complying with the principles of natural justice. Therefore, even independently of Rule 3 (1)(i) and (iii) of the Rules, such fraudulently obtained appointment orders could be legitimately treated as voidable at the option of the employer and could be recalled by the employer and in such cases merely because the respondent-employees have continued in service for a number of years on the basis of such fraudulently obtained employment orders cannot create any equity in their favour or any estoppel against the employer. In this connection we may usefully refer to a decision of this Court in Distt. Collector & Chairman, Vizianagaram, Social Welfare Residential School Society v. M.Tripura Sundari Devi. [(1990) 3 SCC655. In that case Sawant, J.

speaking for this Court held that when an advertisement mentions a particular WP(C) No.12315/09 :

19. : qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the concerned appointee. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. It is of course true as noted by the Tribunal that the facts of the case in the aforesaid decision were different from the facts of the present case. And it is also true that in that case pending the service which was continued pursuant to the order of the Tribunal the candidate concerned acquired the requisite qualification and hence his appointment was not disturbed by this Court. But that is neither here nor there. As laid down in the aforesaid decision, if by committing fraud any employment is obtained, such a fraudulent practice cannot be permitted to be countenanced by a court of law. Consequently, it must be held that the Tribunal had committed a patent error of law in directing reinstatement of the respondent-workmen with WP(C) No.12315/09 :

20. : all consequential benefits. The removal orders could not have been faulted by the Tribunal as they were the result of a sharp and fraudulent practice on the part of the respondents. Learned counsel for the respondents, however, submitted that these illiterate respondents were employed as casual labourers years back in 1983 and subsequently they have been given temporary status and, therefore, after passage of such a long time they should not be thrown out of employment. It is difficult to agree with this contention. By mere passage of time a fraudulent practice would not get any sanctity. The appellant authorities having come to know about the fraud of the respondents in obtaining employment as casual labourers, started departmental proceedings years back in 1987 and these proceedings have dragged on for a number of years. Earlier, removal orders of the respondents were set aside by the Central Administrative Tribunal, Madras Bench and proceedings were remanded and after remand, fresh removal orders were passed by the appellant which have been set aside by the Central Administrative Tribunal, Ernakulam Bench and which are the subject matter of the present proceedings.

Therefore, it cannot be said that the appellants are estopped from recalling such fraudulently obtained employment orders of WP(C) No.12315/09 :

21. : the respondents subject of course to following due procedure of law and in due compliance with the principles of natural justice, on which aspect there is no dispute between the parties. If any lenient view is taken on the facts of the present case in favour of the respondents, then it would amount to putting premium on dishonesty and sharp practice which on the facts of the present cases cannot be permitted." 30. Again in *State of Punjab v. Chaman Lal Goyal* [(1995) 2 SCC570, the Supreme Court has held that wherever delay is put forward as a ground for quashing the charges, the Court has to weigh all factors, both for and against the delinquent officer and come to a conclusion which is just and proper in the circumstances. Subsequently, in *Secretary, Ministry of Defence and others v. Prabhash Chandra Mirdha* [(2012) 11 SCC565, the Apex Court held that the proceedings are not liable to be quashed on the ground that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay created prejudice to the delinquent employee and that the gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings. (vide para 12). For all these reasons, this contention WP(C) No.12315/09 :

22. : raised by the learned counsel for the petitioner deserves to be rejected and we do so.

31. Learned counsel contended that the misconduct alleged is under Rule 3(1)(i) and (iii) of the Railway Services (Conduct) Rules, 1966. Rule 3(1)(i) and (iii) provide that every railway servant shall at all times maintain absolute integrity and do nothing which is unbecoming of a Railway or Government servant. Relying on the Division Bench judgment of this Court in *Post Master v. Usha* (1987 (2) KLT705 rendered in the context of Rule 6 of the P. & T. Extra Departmental Agents Conduct and Service Rules, counsel contended that rule can have application only in respect of the conduct of an employee subsequent to his appointment in service.

32. It is true that examining the provisions of Rule 6 of the Rules mentioned above, which provide that the service of an employee who has not already rendered more than three years of continuous service from the date of his appointment shall be liable for termination by the appointing authority at any time without notice for generally unsatisfactory work, or on any administrative ground unconnected with his conduct, the Division Bench held thus; WP(C) No.12315/09 :

23. : "We shall therefore examine as to whether the reason put forward, namely, non-compliance with the procedure prescribed and issuance of the order in a Form other than the prescribed Form can be regarded as an administrative ground contemplated by R.6 justifying termination of service without notice. Termination on any administrative ground unconnected with the conduct of the respondent is that administrative ground or reason which has come into existence or which has arisen after appointment. It does not contemplate irregularities if any conducted in the process of selection itself or in the matter of appointment. R.6 contemplates termination of service of an employee who has not already rendered more than three years' continuous service which pre-supposes that the appointment has been made properly and that a situation has arisen which is purely of an administrative character which requires termination of an employee who is otherwise properly appointed. Hence we have no hesitation in taking the view that the termination of service on any administrative ground contemplated by R.6 is a ground or reason that arises after the appointment and that on grounds that have arisen before or in regard to the appointment, termination cannot be done under R.6. As it is not the case of the WP(C) No.12315/09 :

24. : appellants that there was any administrative ground or reason which has arisen after the appointment of the respondent, we have no hesitation in taking the view that R.6 could not have been pressed into service by the appellants." 33. However, similar question has been considered by the Apex Court in the context of Rule 3 of the Railway Services (Conduct) Rules, 1966 in Bhaskaran's case (supra). From para 6 of the judgment, extracted above, it is evident that it has been held that the Railways were entitled to initiate action against such a delinquent and in the light of the said principles, the Division Bench judgment in Usha's case (supra) cannot be relied on. Therefore, this contention raised by the

counsel also cannot be accepted.

34. Learned senior counsel contended that the disciplinary authority illegally disagreed with the conclusions of the enquiry officer. According to him, the enquiry officer has considered the evidence both oral and documentary and came to the correct conclusion that the charges were not proved. It is stated that without any valid reason, the disciplinary authority disagreed with WP(C) No.12315/09 :

25. : the findings of the enquiry officer and proceeded to impose the punishment of compulsory retirement on the delinquent.

35. The status of an enquiry officer, who has been appointed to conduct an enquiry against the delinquent employee has been held to be that of a delegate of the disciplinary authority. After the report is received, the disciplinary authority is entitled to consider the report and on such consideration, the disciplinary authority may agree with the conclusions of the enquiry officer or may differ, either wholly or partially, from the conclusions recorded by the enquiry officer. If the report contains findings in favour of the delinquent and the disciplinary authority disagrees with such findings and holds that the charges framed against the delinquent are prima facie proved, the only requirement is that the disciplinary authority should record his reasons for disagreement on a tentative basis, communicate the same to the delinquent and give him an opportunity to make his representations against the tentative conclusions of the disciplinary authority. Once the representation is made by the delinquent, the disciplinary authority is bound to consider the matter in its totality and should arrive at his conclusions, which, of course, should be consistent with the materials on record. WP(C) No.12315/09 :

26. :

36. In so far as this case is concerned, on receipt of the enquiry report with the conclusion that the charges are not proved, the disciplinary authority recorded his tentative reasons for his disagreement. This was communicated to the delinquent under cover of Annexure A18 letter. The delinquent was also given an opportunity to make his representations against the tentative conclusions. Accordingly, the

delinquent submitted Annexure A19 reply. It was thereafter that the disciplinary authority passed Annexure A1 order imposing the penalty of compulsory retirement of the delinquent. Such a procedure adopted by the disciplinary authority, duly complying with the principles of natural justice, is perfectly legal. Therefore, the disciplinary authority cannot be faulted for disagreeing with the enquiry officer, who, as we have stated, was only his delegate entrusted with the task of recording evidence adduced by both sides and making his report to the disciplinary authority for enabling him to take the ultimate action, which he is entitled to.

37. It was contended by the learned counsel for the petitioner that the primary evidence was not produced in the enquiry. This contention is raised on the basis that while appointing the petitioner under sports quota, he was called upon WP(C) No.12315/09 :

27. : to produce his certificates of achievements, which he produced. It is stated that those certificates were retained by the Railways and were not produced in the enquiry. According to counsel, this, being the primary evidence, has been withheld in the enquiry.

38. It is true that the certificates were not produced and the reason, according to the Railways, is that the certificates are missing from their files. It is the admitted case of the parties and it is evident from Annexures A3 and A9, memo of charges, A4 and A12 replies of the delinquent, Ext.R1(A) statement given by the delinquent to the Vigilance Officer and other proceedings, that the petitioner got employment in the sports quota and that at that time, even according to him, he had produced certificates evidencing his participation and achievements in the 800 and 1500 metre in the National Games for Senior Boys held at Pala, Kerala during 1979.

39. When the charge is that the National Meet as claimed by the petitioner was not held during 1979 at Palai, the production or non production of the certificates produced by the petitioner, was inconsequential because the fact to be decided in the enquiry was whether, the National Meet was held at Palai in 1979 or not and if it was not held, the misconduct of securing WP(C) No.12315/09 :

28. : employment on the basis of such fraudulent certificates, is established. Therefore, even if those certificates were produced or not produced, that could not have had any impact on the disciplinary action against the petitioner.

40. Learned senior counsel referred us to Annexures A13, A14, A15 and A16 requests made by the delinquent for furnishing documents and according to the learned counsel, these documents were not made available. The necessity to make available the documents called for by a delinquent in a disciplinary action was explained by the learned senior counsel with reference to the judgment of the Apex Court in *State of M.P. v. Chintaman* (AIR 1961 SC1623 and according to him, for non supply of these documents, enquiry should fail.

41. Though it is true that certain documents which were requested by the delinquent were not made available, the reason thereof was the non availability of the document itself. When according to the Railways, the documents were not available, they cannot be faulted for non supply of those documents. Even if it is assumed that the documents were not made available to sustain a contention that the enquiry is vitiated for that reason, the delinquent is required to prove before the Tribunal and this WP(C) No.12315/09 :

29. : Court, that such non supply has resulted in prejudice to him. In this case, apart from complaining that certain documents were not supplied, we have not been shown that any prejudice was caused to the delinquent. Therefore, this contention also does not merit acceptance.

42. Learned counsel then contended that Ext.R1(A) the statement allegedly recorded by SW3, the Vigilance Officer, which was made use of in the domestic enquiry, did not contain his signature. According to him, it being an unauthenticated document, should not have been relied on against him. We have gone through Ext.R1(A), which is referred to in the enquiry report as S4. Not only that this document contains his signature and date, when the delinquent himself is admitting that Ext.R1(A) is a statement given to the Vigilance Officer, it was upto him to have cross examined the Vigilance Officer, if he had any dispute regarding its genuineness. We notice from the evidence of SW3 that not even a question was put into disputing the genuineness of Ext.R1(A) statement. Therefore, having

not challenged the genuineness of the documents at the time of the enquiry, it is not open to the delinquent to now turn around and contend that the statement in question could not have been relied on. WP(C) No.12315/09 :

30. :

43. In sum and substance, the misconduct against the petitioner was that he produced the certificates evidencing that National Games for Senior Boys was held in Palai, Kerala during 1979 and that he participated in 800 and 1500 metres and won third place. It was alleged that no National Games was held in 1979 at Palai and that on that basis, he secured employment in sports quota. Therefore, the only question necessary to be proved in the enquiry was whether the National Games was held in Palai as claimed by the petitioner. The fact that National Games was not held in Palai in 1979 was confirmed by SWs 1 and 2, whose depositions are Annexure A16 (R1D) and R1(E). Sri.Suresh Babu, whose deposition is Annexure A16, and Sri.S.P.Pillai, the witnesses, have confirmed this fact in Exts.R1(B) and R1(C) letters issued by them. These documents also show that Sri.Suresh Babu at the relevant time was a Sports Relation Officer of Kerala Sports Council and Sri.S.P.Pillai was the Honorary Secretary of Kerala State Athletic Association. Further evidence of Sri.Suresh Babu shows that he attended the 1979 National Games, which was held in Hyderabad. These witnesses have deposed in clear terms before the enquiry officer that no such national meet was held in Palai and that the national meet was held that year in Hyderabad. WP(C) No.12315/09 :

31. :

44. It is true that their deposition was based on the memory of these witnesses. Their evidence does not cast any doubt about the genuineness of the evidence adduced by them. This is in spite of the fact that these witnesses were subjected to a lengthy and searching cross examination by an experienced defence assistant, representing the petitioner. It was despite these that the enquiry officer has strangely chosen to brush aside the evidence adduced by these two witnesses describing the same to be based on surmises. It appears that the enquiry officer has forgotten the basic principle that in a domestic enquiry

endeavour is to find out the truth of the allegations and evidence tendered from memory is as acceptable as any other evidence, so long as it inspires confidence of the enquiry officer and the disciplinary authority. Enquiry officer has also forgotten the fact that though the delinquent has participated in the enquiry with the help of a defence assistant, he chose not to tender any evidence by himself. In such circumstances, we do not see any reason to hold that finding of misconduct is a perverse one.

45. The disciplinary authority has found that the misconduct proved to have been committed by the delinquent rendered him unfit to be retained in service. The misconduct WP(C) No.12315/09 :

32. : proved against the petitioner, in our view, deserved a punishment of nothing other than dismissal. Still, the disciplinary authority has taken a lenient view and imposed a punishment only of compulsory retirement.

46. Considering the gravity of the misconduct proved, the punishment imposed cannot be said to be disproportionate by any standards. For all these reasons, we do not find any merit in this writ petition. Writ petition is accordingly dismissed. Sd/- ANTONY DOMINIC JUDGE Sd/- ANIL K. NARENDRAN JUDGE Rp //True Copy// PA to Judge

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