

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**JODHPUR BENCH**

...

**OA No.290/00121/2018**

**Pronounced on : 27.01.2020**  
**(Reserved on : 16.01.2020**

...

**CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)**  
**HON'BLE SMT. ARCHANA NIGAM, MEMBER (A)**

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Vikram Kumar Munjal son of Shri Gouri Shanker Munjal, aged about 34 years, resident of Jaitsar, Tehsil Sri Vijaynagar, District Sri Ganganagar. Ex-BPM working under respondent no.4.

**...APPLICANT**

BY ADVOCATE : Mr. N.L. Joshi.

**VERSUS**

1. Union of India, through Secretary, Ministry of Communication, Dak Bhawan, Dak Vibhag, New Delhi.
2. Post Master General, Rajasthan Western Region, Jodhpur.
3. Assistant Director, Postal Services, Rajasthan Western Zone, Jodhpur.
4. Superintendent of Post Office, Sri Ganganagar.

**RESPONDENTS**

BY ADVOCATE: Mr. K.S. Yadav for R1 to R4

**ORDER**

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**Hon'ble Smt. Archana Nigam, Member (A):-**

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant is seeking the following reliefs:

- "(A) That the impugned order dated 22.09.2017 (Annexure A1) and order dated 02.02.2018 (Annexure A2) may kindly be quashed and set aside.*
- (B) That the respondents may kindly be directed/ordered to appoint the applicant on the post of Branch Post Master with whole consequential benefits and also order to regularize the service from the day of selection.*
- (C) That any other direction/relief/order may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of the case."*

2. The brief facts of the present case as narrated by the applicant are that the applicant was appointed through regular process as Branch Post Master (BPM). In the year 2015, forty two candidates were selected in Sri Ganganagar Division. Thereafter, he discharged his duties to the entire satisfaction of his superiors and no complaint was made against him by any person. Thereafter, on having complaint against them it has come on record that marks sheet submitted by them are bogus. The department has conducted inquiry by the different committees from the concerned State Boards. After conducting the inquiry by the team No.1 from the concerned State Board of the mark sheet of the applicant, it was found that mark sheet submitted by the applicant is false. A copy of the inquiry team and the report marked as Annexure A4.

3. It is further stated that during the inquiry, the applicant submitted his reply and stated that due to ignorance, he submitted mark sheet of Class Xth otherwise it was not a requirement of the Rules as per departmental instructions. A person who have passed 8<sup>th</sup> standard can be appointed as EDBPM/EDSBPM. The copy of relevant departmental instructions marked as Annexure A5. During the inquiry, the applicant has also submitted a copy of Transfer Certificate of 9<sup>th</sup> Class, but the same was not considered by the inquiry authorities. While passing the

impugned orders, this fact has not been taken into consideration and passed the impugned orders by terminating the services of the applicant.

4. It is further stated in the OA that it is worthwhile to say that the applicant is a poor man and had no other source of livelihood except to this post. It is also stated that the services of the applicant could be continued on the basis of completion of 240 days in the department. In view of the qualification of the applicant, he could have been adjusted against any other lower post rather to terminate the services of the applicant. Hence this OA.

5. In the written statement filed on behalf of the respondents, the preliminary objection has been taken that the applicant was appointed and posted on the post of GDS BPM at 6 GB, BPO, Jetsar, Sub Post Office on 29.08.2008 on compassionate appointment basis. After verification of all due formalities, the applicant was appointed as GDS BPM. During the recruitment of GDS vacancies for the year 2016, a large number of candidates applied for the same on the basis of mark sheets obtained from the UP Board, Allahabad. In this regard, a complaint was received by the respondent department, which was constituted a committee to verify the mark sheets of all the concerned State Boards other than Rajasthan Board, Ajmer. In this process, the mark sheet of the applicant was also got verified by the committee from the Addl. Secretary, Secondary Education Counsel, UP, Regional Office, Varanasi who in turn informed vide letter no.3012 dated 19.10.2016 stating therein that the Roll No.25312230 for the year 2000 in the name of Shri Vikram Munjal S/o Sh. Gaurishankar i.e. the applicant, has not been issued.

6. It is further stated that the respondent department has placed the applicant under suspension with effect from 03.02.2007 vide memo dated 31.01.2017 and thereafter served a charge sheet vide memo dated 21.02.2017. Thereafter an inquiry was conducted into the charges leveled against the applicant and the same were proved in the inquiry report. The applicant has submitted his representation against the inquiry report. In the said representation, the applicant did not dispute the finding recorded by IO but oriented his defence on the premises that **such mark sheet was mistakably produced by him** as otherwise on the basis of 8<sup>th</sup> pass certificate, he was entitled for compassionate appointment. After considering the representation of the applicant and material available on record, disciplinary authority has imposed the penalty of "Removal from Service" upon the applicant vide memo dated 22.09.2017.

7. Thereafter, the applicant preferred an appeal against the order of penalty passed by the disciplinary authority. His appeal was sympathetically considered by the appellate authority and rejected on merits vide memo dated 02.02.2018. Thereafter, the applicant has filed the present OA against the memo dated 22.09.2017 and 02.02.2018. Mainly the contention of the applicant is that *"he was certainly 8<sup>th</sup> passed which is apparent from certificate of 9<sup>th</sup> class thus eligible to be appointed as GDS thus mistakably producing the fake mark sheet of 10<sup>th</sup> class be ignored"*. Such plea taken by the applicant is denied in toto. It is also stated that the applicant was charge sheeted for production of fake mark sheet and such charge is not even disputed by the applicant. In this process, question of having eligibility by another way does not arise at all. Thus, disciplinary authority as well as

appellate authority have correctly considered and decided the matter and impugned orders does not require any interference by this Tribunal by acting as authority under the CCA Rules, while exercising the jurisdiction of judicial review, especially in the circumstances, when the applicant has not disputed the charges leveled against him but admitted that the fake mark sheet was produced by him. Thus, in the absence of any lacuna or shortcoming in the disciplinary proceedings taken up against the applicant, instant OA is liable to be dismissed.

8. It is also further stated that as per Annexure A5, the educational qualification for the post of ED Delivery and ED Stamp vendors "VIII Standard. Preference may be given to the candidates with Matriculation qualification". The sentence *Preference may be given to the candidates with Matriculation qualification* made the applicant to get the forged/fake mark sheet of matriculation and thus he could succeed in his motto but unfortunately due the above verification, his illegal act has been came into light and accordingly he has been penalized. The applicant cannot be continued, on the logic of completion of 240 days in the department because he committed misconduct of getting the appointment by using illegal and unfair method of producing forged/fake mark sheet. Therefore, the present OA is liable to be dismissed.

9. Heard Shri N.L. Joshi, learned counsel for the applicant and Shri K.S. Yadav, learned counsel for respondents no.1 to 4 and perused the material available on record.

10. The applicant during the course of final hearing and based on pleadings claimed relief of being adjusted against any lower post as he has service record of a considerably long duration having been

appointed as EDBPM on 18.08.2008. His primary relief sought is that he, having been selected in terms of prescribed rules on compassionate grounds deserves to be permitted to continue rather than for his services to be terminated. He also submitted during hearing that he was not provided a copy of the enquiry report; As such the impugned orders passed by the authority are illegal and liable to be quashed and set aside. The ground on which the applicant seeks to be adjusted is that he has submitted a transfer certificate of 9<sup>th</sup> class. On the basis of this, he could be adjusted against any lower post for continued on the same post as the minimum requirement for the post of EDBPM is 8<sup>th</sup> standard only.

11. Per contra, learned counsel for the respondents submitted during final hearing that it had been established beyond a shadow of doubt that the applicant cannot claim any benefit as he had committed fraud and misconduct of getting the appointment by using illegal and unfair method of producing forged/fake marks sheet.

12. Learned counsel for the respondents submitted that after appointment to the Branch Post Office on compassionate appointment basis the marks sheet of the 10<sup>th</sup> class submitted by the applicant was got verified through post. Based on the verification report received from Superintendent Post Offices, Sri Ganganagar and on completion of other formalities applicant was appointed to the post of GDSBPM.

13. However, in the year 2016 it was observed during appointment of GDS vacancies that a very large number of candidates had applied for the post on the basis of marks sheets obtained from UP Allahabad. In view of the complaint received, a Committee was set up to verify the mark sheet personally from different State Boards concerned. During

this process, marks sheet of the applicant was also verified. It was established that the no mark sheet has been issued by the said Education Board in the name of applicant. This clearly established fraud perpetrated by the applicant and he was placed under suspension. On denial of charges, enquiry was also conducted as per prescribed procedure; opportunity was also provided to the applicant to represent against the enquiry report if he so desired. As submitted by the learned counsel for the respondents, the applicant does not dispute the finding recorded by the enquiry officer but merely stated repeatedly that he had committed an error and reiterated that he should be entitled for compassionate appointment even otherwise on the basis of 8<sup>th</sup> pass certificate.

14. In view of the fact of production fake certificate as stated above which has not been disputed by the applicant it becomes apparent that the certificate was indeed fake. The very act of providing a fake certificate reflects upon the conduct of the applicant as a Govt. servant. He was accordingly removed from service. Appeal preferred by the applicant against the order of penalty was also sympathetically considered and rejected.

15. Upon enquiry by the Tribunal, the learned counsel for the applicant was unable to show from the record the Certificate of having passed the 8<sup>th</sup> Class which the applicant claim, There is in fact, no Certificate placed in records to prove that applicant has passed 8<sup>th</sup> class. Surprisingly, applicant has made a submission to be considered for the lower post on the basis of his submission that:

*"He was certainly 8<sup>th</sup> passed which is apparent from certificate of 9<sup>th</sup> class thus eligible to be appointed as GDS thus mistakably producing the fake mark sheet of 10<sup>th</sup> class be ignored".*

16. There is a catena of Judgments of Hon'ble High Courts and Hon'ble Apex Court on this matter. In a judgement of Madras High Court, in the case of K. Jeganathan vs Union of India, decided on 21 April, 2008, the high court has relied upon various judgments some of which are reproduced below:

*The Supreme Court in many of its decisions, had answered the issue as to whether leniency can be shown by Courts in cases of persons who gave fake forged educational certificates at the time of appointment and securing employment by fraud or deceit. Some of the decisions were also rendered in the context of persons gaining entry with false Community Certificates.*

7.1. In *Bank of India v. Avinash D. Mandivikar* [(2005) 7 SCC 690], the Supreme has held in paragraphs 11 and 12 as follows:

*Para 11: ".... Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. This Court in *Bhaurao Dagdu Paralkar v. State of Maharashtra* dealt with the effect of fraud. It was held as follows in the said judgment: (2005 (7) SCC pp. 613-14, paras 12-16) :*

*12. ◀ Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. ↗ \* \* \**

*13. This aspect of the matter has been considered by this Court in *Roshan Deen v. Preeti Lal* (2002 (1) SCC 100), *Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education* (2003 (8) SCC 311), *Ram Chandra Singh case* (2003 (8) SCC 319) and *Ashok Leyland Ltd. v. State of T.N.* (2004 (3) SCC 1).*

*14. Suppression of a material document would also amount to a fraud on the court. (See *Gowrishankar v. Joshi Amba Shankar Family Trust* (1996 (3) SCC 1) and *S.P. Chengalvaraya Naidu case* (1994 (1) SCC 1).)*

*15. ◀ Fraud ↗ is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in *Ram Preeti Yadav case*.*



16. In *Lazarus Estates Ltd. v. Beasley* Lord Denning observed at QB pp. 712 and 713 : (All ER p. 345-C) (1956) 1 QB 702).

◀ No judgment of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.↑ In the same judgment Lord Parker, L.J. observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. (p. 722) [19]. These aspects were recently highlighted in *State of A.P. v. T. Suryachandra Rao* (2005 (6) SCC 149).

Therefore, mere delayed reference when the foundation for the same is alleged fraud does not in any way affect the legality of the reference.

Para 12: "Looked at from any angle the High Court↑s judgment holding that Respondent 1 employee was to be reinstated in the same post as originally held is clearly untenable. The order of termination does not suffer from any infirmity and the High Court should not have interfered with it. By giving protection for even a limited period, the result would be that a person who has a legitimate claim shall be deprived the benefits. On the other hand, a person who has obtained it by illegitimate means would continue to enjoy it notwithstanding the clear finding that he does not even have a shadow of right even to be considered for appointment."

7.2. The Supreme Court in the decision in *Ram Saran v. IG of Police, CRPF* [(2006) 2 SCC 541] observed in paragraphs 9 to 11 as follows:

Para 9: "In *R. Vishwanatha Pillai v. State of Kerala* it was observed as follows: (SCC pp. 116-17, para 19):

19. It was then contended by Shri Ranjit Kumar, learned Senior Counsel for the appellant that since the appellant has rendered about 27 years of service, the order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensionary benefits of the appellant. We do not find any substance in this submission as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of the law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a

*false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled Caste candidate of appointment to that post, does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud.*

*Para 10: Though the case related to a false [caste] certificate, the logic indicated clearly applies to the present case.*

*Para 11: This is a case which does not deserve any leniency otherwise it would be giving premium to a person who admittedly committed forgery. In the instruction (GO No. 29 of 1993), it has been provided that whenever it is found that a government servant who was not qualified or eligible in terms of the recruitment rules, etc. for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment should not be retained in service. After inquiry as provided in Rule 14 of the CCS(CCA) Rules, 1965 if the charges are proved, the government servant should be removed or dismissed from service and under no circumstances any other penalty should be imposed."*

17. His appointment to the post was void and non est in the eyes of the law. A person who entered the service by producing a false certificate and obtained appointment for the post , thus depriving a genuine candidate of appointment to that post, does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the

case of a person who got the appointment on the basis of a false certificate by playing a fraud.

18. For all the aforesaid reasons, we see no ground to interfere with the impugned orders. This Original Application is liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

**(ARCHANA NIGAM)**  
**MEMBER (A)**

**(HINA P. SHAH)**  
**MEMBER (J)**

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