



CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

O.A.N0.060/00830/2019 etc.
(Reserved on: 20.11.2020)
pronounced on: 28.11.2020

Published on: 28.11.2020

**HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. ANAND MATHUR, MEMBER (A)**

(I) 060/00830/2019

Prem Sagar son of Sh. Brij Lal, aged 53 years, resident of House No. 216/8, Mahavir Street Samana Mandi, District Patiala-147001 (Group-C).

..... **Applicant**

Versus

1. Union of India through Revenue Secretary to Government of India, Ministry of Finance, North Block, New Delhi-110001.
2. The Principal Chief Commissioner of Income Tax, north West Region, Ayakar Bhawan, Sector 17, Chandigarh-160017.
3. The Principal Commissioner of Income Tax-I, Ludhiana Aayakar Bhawan, Rishi Nagar, Ludhiana-141057.
4. The Joint Commissioner, Income Tax, Range-III, Ludhiana-141057.

... Respondents

**(PRESENT: MR. D.R. SHARMA, ADVOCATE,
FOR APPLICANT.
MR. SANJAY GOYAL, ADVOCATE,
FOR THE RESPONDENTS.)**

(II) O.A.NO.060/00898/2019

Anil Rishi son of Shri Bal Krishan, aged 49 years, Ex-inspector, Income Tax, Resident of House No. 166-E, B.R.S. Nagar, Ludhiana-141001 (Group-C).

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Applicant

Versus

1. Union of India through Revenue Secretary to Government of India, Ministry of Finance, North Block, New Delhi-110001.
2. The Principal Chief Commissioner of Income Tax, North West Region, Ayakar Bhawan, Sector 17, Chaniogarh-160017.
3. The Principal Commissioner of Income Tax-I, Ludhiana Aayakar Bhawan, Rishi Nagar, Ludhiana-141057.

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Respondents

**(PRESENT: MR. D.R. SHARMA, ADVOCATE,
FOR APPLICANT.
MR. SANJAY GOYAL, ADVOCATE
FOR THE RESPONDENTS.)**

(III) O.A.NO.060/01018/2019

Ripan Kumar Bansal aged about 52 years son of Shri Inderjit Bansal, resident of House No. 617, Kanugo Street, Near Cinema, Samana, District Patiala (Category-C).

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Applicant

Versus

1. Union of India through Revenue Secretary to Govt. of India, Ministry of Finance, North Block, New Delhi-110001.
2. The Principal Chief Commissioner of Income Tax, north West Region, Ayakar Bhawan, Sector 17-E, Chandigarh-160017.
3. Director of Income Tax (Inv), Ludhiana (141057).

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Respondents

**(PRESENT: MS. PUJA CHOPRA, ADVOCATE,
FOR APPLICANT.
MR. SANJAY GOYAL, ADVOCATE, FOR THE
RESPONDENTS.)**

(IV) O.A.NO.060/01117/2019

Prinder Pal Singh, aged 52 years, (Group C Employee) son of Sh. Shamsher Singh, resident of House No. 122, Vidhya Nagar, Sector 32, Ambala Cantt-133001.

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Applicant

**(BY: MR. D.S. PATWALIA, SR. ADVOCATE WITH
MR. GAURAV RANA, ADVOCATE)**

VERSUS

1. Union of India through Revenue Secretary to Government of India, Ministry of Finance, North Block, New Delhi-110001.
2. Chairman, CBDT, Ministry of Finance, North Block, New Delhi-110001.
3. Principal Chief Commissioner of Income Tax (CCA) NWR, Sector 17, Chandigarh-160017.
4. Principal Commissioner of Income Tax-II, Sector 17, Chandigarh-160017.

(BY: MR. SANJAY GOYAL, ADVOCATE)

Respondents

(V) O.A.NO.060/00161/2020

Veer Singh, aged about 51 years son of Shri Sewa Singh, resident of House No.7-D, Majithia Enclave, Near 24 No. Phatak, Patiala (Category-C).

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Applicant

Versus

1. Union of India through Revenue Secretary to Government of India, Ministry of Finance, North Block, New Delhi-110001.
2. The Principal Chief Commissioner of Income Tax, North West Region, Ayakar Bhawan, Sector 17-E, Chandigarh (160017).
3. Director of Income Tax (Inv), Ludhiana (141057).

...

Respondents



**(PRESENT: MS. PUJA CHOPRA, ADVOCATE,
FOR APPLICANT.
MR. SANJAY GOYAL, SR. CGSC, FOR THE
RESPONDENTS.)**

(VI) O.A.NO.060/00529/2020

1. Narinder Singh Thind, aged about 53 years (UDC), son of Jaswant Singh, resident of House No. 400, Anand Nagar-A, Shiv Mandir Street Tripuri Town, Patiala-147001.
2. Navtej Singh, aged 54 years (UDC), son of Mohinder Singh, resident of House No. 306, Aman Bagh Colony, Opposite Bye pass, Sirhind Road, Patiala-147001.
3. Avtar Singh, aged 52 years (UDC), son of Sh. Harnek Singh, resident of village Budhanpur, UP.O., Bahadurgarh, District Patiala-147002.
4. Inderjit Singh, aged about 52 years (UDC), son of Gurdev Singh, resident of VPO Badouchhi Kalan, Tehsil and District Sri Fatehgarh Sahib-140407.
5. Harjinder Singh, aged 49 years (Stenographer-III), son of Harnek Singh, resident of House No., 45, General Harbaksh Enclave, Opp. Punjabi University, Patiala-147001.
6. Manjit Singh, aged 56 years (Stenographer Grade-III), son of Sh. Bhajan Singh, resident of Sant Hazara Singh, Patiala Road, Sanaur, District Patiala-147001.
7. Dapinder Singh, aged 50 years (LDC) son of Teja Singh, resident of Village Hardaspur, Tehsil and District Patiala-147001.
8. Pardeep Singh, aged 52 years (Inspector), son of Darbara Singh, resident of Village Bathoi Kalan, P.O. Dakala, Tehsil and District Patiala-147001.
9. Bhupinder Singh, aged 54 years (Inspector), son of Harbans Singh, resident of 423, Ajait Nagar, Patiala-147001.
10. Paramjit Singh, aged 51 years (Inspector), son of Bachan Singh, resident of Village Rampur Parta, P.O. Badshahpur, Tehsil Patran, District Patiala-147001.
11. Rakesh Kumar Garg, aged 52 years (inspector), son of Ram Murti, resident of Nagar, Street No.3, Gaushala Road, near P.N.B., Sangrur-148001.
12. Baljinder Singh Chahal, aged 55 years (Inspector) son of Gurdev Singh, resident of House No. 7-C, City Centre, Patiala-147001.



13. Naveen Kumar Sharma, aged 51 years (LDC), son of Shyam Lal Sharma, resident of Tower-3, Ground Floor, 003 BPTP Park Floor 2, Sector 76, Faridabad-121004.
14. Reena Kumari, aged 48 years (Stenographer), W/o Ashwani Malhotra, resident of House No., 2183-A, Sector 66, Mohali-160062.

All applicants are Group C employees.

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Applicants

**(BY: MR. D.S. PATWALIA, SR. ADVOCATE WITH
MR. GAURAV RANA, ADVOCATE)**

Versus

1. Union of India through Revenue Secretary, Government of India, Ministry of Finance, North Block, New Delhi-110001.
2. Chairman, CBDT, Ministry of Finance, North Block, New Delhi-110001.
3. Principal Chief Commissioner of Income Tax (9CCA), NWR, Sector 17, Chandigarh-160017.
4. Principal Commissioner of Income Tax, Patiala-147001.
5. Chief Commissioner of Income Tax, Ludhiana-151001.
6. Chief Commissioner of Income Tax, Amritsar-143001.
7. Chief Commissioner of Income Tax, Panchkula-134107.
8. Director General of Income Tax (Inv), Chandigarh-160017.
9. Principal Commissioner of Income tax, Gurgaon-110038.
10. Principal Commissioner of Income Tax-I, Sector 17, Chandigarh-160017.
11. Joint Commissioner of Income Tax, Patiala Range, Patiala-147001.
12. Principal Commissioner of Income Tax, Bathinda-151001.
13. Principal Commissioner of Income Tax, Amritsar-143001.
14. Director Income Tax (9Inv), Ludhiana-141001.
15. Joint Commissioner of Income Tax, Gurugram-122016.
16. Joint Commissioner of Income Tax Range-I, Chandigarh-160017.

.. Respondents

(BY: MR. SANJAY GOYAL, ADVOCATE)



ORDER
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

All these cases involve identical questions of facts and law and as such, with the consent of learned counsel for the parties, these have been taken up for disposal by a common order. For facility of reference, facts are being taken from O.A.No.060/01117/2019 titled **PRINDER PAL SINGH VS. UNION OF INDIA & OTHERS.**

2. The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, seeking quashing of the order dated 22.8.2001 (Annexure A-8), vide which his services as Inspector, Income Tax, were terminated; order dated 10.11.2003 (Annexure A-11) vide which the order dated 22.8.2001 (Annexure A-8) was upheld and for quashing of order dated 17.7.2019 (Annexure A-26), vide which appeal filed by the applicant was rejected and for issuance of direction to the respondents to reinstate him into service w.e.f. 22.8.2001 with all the consequential benefits including arrears of pay, seniority etc.

2. Before touching upon the issues raised in these cases, let us have a bird's eye view of the relevant facts culled out from the pleadings of the parties. The applicant, who is a Graduate, applied for the post of Inspector, Central Excise and Income Tax, against an advertisement issued by the Staff Selection Commission (SSC), New Delhi. He was allotted Roll No. 1513971. After written examination, eligible candidates were



required to appear in interview. The applicant appeared in interview at Chandigarh and on being successful, his name was recommended for appointment to the post of Inspector (Income Tax) vide nomination letter dated 28.1.1992 by the SSC. In the list, the name of applicant is mentioned at Sr. No.3. Selection letter dated 4.2.1992 was also issued. It is submitted that Nomination Letter No.52115 is stamped/authenticated and shows that applicant had participated in the Examination with Roll No. 1513971 and secured Rank No. SLD/020. The nomination bears proper serial number at the footnote which indicates that it was printed in a Government Printing Press.

3. Applicant joined his duties as Inspector on 9.4.1992 at Chandigarh. His position in seniority in the cadre was also fixed at Sr. No. 300/0347 vide order dated 1.8.1997. He passed Departmental Inspector Examination on 26.12.1999 (Annexure A-4). However, all of a sudden he was served with a charge sheet dated 29.11.2000 (Annexure A-6), on the allegations that appointment to the post of Inspector has been secured by him on the basis of a forged nomination. Simultaneously, an FIR No. RC 9(A)/1999 dated 26.2.1999 was also registered by CBI at New Delhi. However, a fresh FIR was registered by CBI being R.C. CHD/2000/A/0027 dated 10.10.2000 at Chandigarh (Annexure A-7). The services of applicant were terminated vide order dated 22.8.2001 (Annexure A-8) on the ground that SSC had informed vide letter dated 24.5.1999 that name of applicant does not figure in the result, therefore, no nomination paper recommending his appointment was issued.



4. The applicant approached this Tribunal with O.A.No.1259/PB/2001 along with other O.As. All the Original Applications were disposed of with direction to the respondents on 29.4.2003 (Annexure A-10), to hold an enquiry with regard to genuineness of the nomination letters and if it is found that letters are not forged, fictitious or bogus, in that even the impugned orders of termination shall stand set aside and applicants shall be reinstated in service ignoring the termination orders with all the consequential benefits. However, if the outcome is otherwise, the impugned termination orders shall hold good and O.As shall stand dismissed. But, without conducting any proper enquiry in terms of the directions issued by this Tribunal, the respondents passed order dated 10.11.2003 (Annexure A-11) reiterating the earlier order dated 22.8.2001. This order was challenged in **O.A.No.740-HR-2005** and other O.As were also filed. The O.As were, however, dismissed vide order dated 31.10.2006 (Annexure A-12).

5. S/Shri **Bhupinder Singh & Others** filed CWP No. 14719 of 2009 in the Jurisdictional High Court and the Court set aside the order dated 31.10.2006, vide order dated 27.3.2009 (Annexure A-13). The applicant herein had also challenged order dated 31.10.2006 in CWP No. 18923 of 2007 titled **PRINDER PAL SINGH VS. UOI ETC.** In any case, O.As remanded back by Hon'ble High Court were again dismissed vide orders dated 14.7.2009 and 27.8.2009 by this Tribunal. However, orders were challenged in the High Court, which set aside the orders dated 14.7.2009 and 27.8.2009 vide order dated 23.3.2010 (Annexure



A-14). The CWP No. 18923 of 2007 regarding applicant was also disposed of in same terms on 23.3.2010 (Annexure A-15). When the matters came up for consideration on 4.4.2011 (Annexure A-16), this Tribunal, adjourned the case to await the final outcome of order to be passed by learned Special Court, CBI, Patiala. The Learned Special Court, CBI, Patiala, vide its judgement dated 16.5.2011 acquitted the applicant as well as other accused under Section 468 IPC. However, it convicted them under Sections 420, 471 and 120 B IPC vide judgement dated 16.5.2011 (Annexure A-17). This O.A. was, thus, dismissed as withdrawn vide order dated 27.9.2011 with liberty to file a fresh O.A. on same cause of action, if favourable order is passed by Hon'ble High Court against conviction in criminal case, after exhausting all the statutory remedies etc. available to him.

6. The applicant approached High Court with Criminal Appeal No. CRA-S-1510-SB-2011 titled **NAVEEN KUMAR SHARMA & OTHERS VS. CBI** with two other appeals. These appeals came up for consideration on 10.5.2016 (Annexure A-19) and on a consideration of the issue, the Court found that the employees cannot be faulted and, therefore, order of CBI Court was set aside. A conscious decision has been taken not to challenge this decision by DoPT, as per opinion of learned A.G. of India (Annexure A-20). The applicant submitted a representation / appeal dated 29.8.2016 (Annexure A-21) that since he has been acquitted of all the criminal charges, so he may be reinstated in service w.e.f. 22.8.2001. Finding no response, he submitted reminders during 2018 to 2019 [Annexure A-22 (coolly)].



Respondent No.3 informed vide letter dated 26.7.2017 (Annexure A-23), that no disciplinary proceedings or any other case was pending against the applicant. The applicant has also placed on record information obtained by him under RTI Act as Annexure A-24, to prove that it is admitted by departmental authorities that there has been violation of Article 311 of the Constitution of India in termination of his services. The CBI had convicted them and pursuant to such conviction, the termination orders were passed. Thus the Cadre Controlling Authority was advised to take a decision qua reinstatement of the applicant vide letter, Annexure A-25.

7. The Appellate Authority, however, passed order dated 17.7.2019 (Annexure A-26) dismissing the appeal/representations filed by the applicant on the premise that setting aside of conviction of applicant by High court does not lead to automatic inference that he was nominated by SSC, especially in view of specific denial by SSC and that this Tribunal had already concluded that enquiry as held by CCIT, NWR, was sufficient compliance and therefore, it was conducted that applicant never qualified relevant examination on the basis of which the alleged appointment was made. Thus, it was concluded that no new document or evidence has been brought on record to show that nomination letter was genuine. Thus, it is pleaded that since very basis of termination of services of applicant has become non-existence by virtue of his acquittal in criminal case, so the applicant is entitled to reinstatement in service from due date with all the consequential benefits.



8. The respondents have filed a reply. They submit that SSC conducts examinations for filling direct recruitment vacancies and persons passing this examination are, then recommended for appointment, which recommendation is conveyed through nomination letter issued by SSC. The applicant was also issued appointment letters on the basis of purported nomination by SSC. Later on, during enquiries made by authorities, the SSC informed vide letter that 24.5.1999, that a number of persons including applicant did not figure in the result of the examination conducted by the Commission and no nomination letter recommending their names had been issued by Commission. It was mentioned that persons named in the letter were not qualified candidates of the respective examinations and had not been nominated by the SSC. In view of stand taken by SSC, applicant did not fulfil the essential requirement for being appointed against direct recruitment vacancies which was qualification of relevant examination conducted by SSC. Accordingly, Disciplinary Authority finding that since very basis on which appointment was given does not exist, thus, terminated services of the applicant. The respondents conducted enquiry on indicated lines by this Tribunal in order dated 29.4.2003. On enquiry it was found that name of applicant did not figure in result or in nomination letters and as such termination order dated 22.8.2001 was reiterated vide order dated 10.11.2003.

9. We have heard Mr. D.S. Patwalia, Sr. Advocate, with Mr. Gaurav Rana, Advocate, Ms. Puja Chopra, Advocate and Mr. D.R. Sharma, Advocate, the learned counsel for applicants and



Mr. Sanjay Goyal, Sr. CGSC, for the respondents at length and examined the pleadings on file with their able assistance.

10. The learned counsels for the applicants vehemently argued that the very basis for termination of services of the applicants was the criminal charge relating to forgery in getting appointment launched by the CBI in which the applicants have been acquitted by the Hon'ble High Court and that being the position, the applicants are entitled to be reinstated in service more so when the findings given by Hon'ble High Court have not even been considered by the respondents, who are harping time and again only on one thing that the SSC had clarified that nomination was forged one which has been brushed aside by High Court on the basis of evidence on record. On the other hand, Mr. Goyal, learned counsel for the respondents vehemently submitted that once the fact stands clarified by the SSC that the nomination was forged, the applicants cannot be granted any benefit even if they have been acquitted by the Hon'ble High Court in criminal charges.

11. We have considered the submissions made by both sides minutely.

12. First of all, let us examine the charges in the departmental as well as in criminal case levelled against the applicant. The State of Article of Charge levelled against the applicant in the charge-sheet dated 29.11.2000 (Annexure A-6) was as under:-

“Artice-I



That Sh. Prinder pal Singh, obtained employment in this Department as Inspector on the basis of information received from the office of Staff Selection Commission regarding the veracity of nomination letter pertaining to Sh. Prinder Pal Singh, an enquiry was made from the office of Staff Selection Commission, New Delhi by Sh. K.M. Bali, Assistant Commission of Income Tax, N.W. Region, Sector 17-E, Chandigarh vide letter No. Con/BCCC/CHD/98-99/920 dated 18.02.1999 informed that the purported nomination letter, on the basis of which Sh. Prinder Pal Singh had obtained the employment was not issued by the office of Staff Selection Commission, and that the name of Sh. Prinder Pal Singh does not figure in the result then declared by the Staff Selection Commission.

Thus, Sh. Prinder Pal Singh, is alleged to have secured employment in this department on the basis of forged documents, which is a criminal offence, and which, therefore, automatically amounts to misconduct. Besides, the appointment secured by Sh. Prinder Pal Singh in the above said manner is void ab initio, being based on forged documents.

Article-II

That Sh. Prinder Pal Singh, while knowing fully well that he was not entitled to the appointment as Inspector in this Department because he had secured employment on the basis of forged documents, still continued to enjoy the benefit and privileges of the employment, and thereby he failed to maintain absolute integrity at all times as a Govt. Servant, which amounted to misconduct under Rule 3 (1)(1) of the Central Civil Services (Conduct) Rules, 1964".

13. Now let us see the charge levelled by the CBI against the applicant in the Charge-Sheet dated 10.10.2000 which is as under:-

"A reliable information has been received to the effect that Staff Selection Commission had nominated certain candidates for appointment as Lower Division Clerk in North West Region of Income Tax, vide their letter dated 13.02.90 addressed to Sh. P.K. Chopra, Dy. Commissioner o/o the Chief Commissioner of Income Tax (Admn) N.W. Region, Patiala, on the basis of Clerk Grade Examination, 1988. Subsequently, another letter dated 07.03.91 was received on 19.3.91 in the office of Chief Commissioner of Income Tax, Patiala have been issued by the Staff Selection Commission forwarding the nominations of 5 candidates allegedly on the basis of Clerk Grade Examination, 1988. On the basis of said letter dated 7.3.91 all the five candidates whose nominations were forwarded were given appointment in NW Region of Income Tax. However, during 1997 while fixing seniority of the Lower Division Clerks, selected and appointed on the basis of Clerks Grade Examination, it was noticed by the Asstt. Commissioner of Income Tax, Chandigarh that the rankings given to four candidates out of 5 vide letter dated 7.3.91 were the same as given to 4 candidates in letter dated 13.2.90 i.e. they were placed at Sl. No. 12, 16, 23 & 25. Hence a clarification was sought by the Asstt. Commissioner of Income Tax from the Staff Selection Commission, New Delhi upon which it was revealed that letter dated 7.3.91 of SSC to N.W. Region of Income Tax is a forged one.



The aforesaid facts disclosed that S/Shri Naveen Kumar Sharma, Sanjeev Kumar, Depinder Singh, Harish Chandra and Avtar Singh had dishonestly and fraudulently obtained appointment on the basis of forged nomination letter of Staff Selection Commission in connivance with some unknown officials of S.S.C as well as some unknown officials of N.W. Region of Income Tax, Chandigarh. The said persons were not even applicant for the Clerks Grade Examination 1988. It has been further learned that S/Shri Bhupinder Singh and Veer Singh who were not even the applicants of Inspector of Income Tax Examination 1989 conducted by SSC (NR) Delhi and were never nominated for the post by Staff Selection Commission has also dishonestly and fraudulently obtained appointment to the post of Income Tax Inspector in NW Region of Income Tax in a similar Fashion.

The aforesaid facts disclose commission of offence punishable u/s 120-B r/w 468/471 IPC and Section 13(2) r/w 13(1)(d) of PC Act, 1988. A regular case is, therefore, registered against the above named persons and the investigation is entrusted to Sh. Vivek Dhir, Inspector.

During the course of investigation, a further list of 21 officials was furnished by the office of Chief Commissioner of Income Tax, North West Region, Chandigarh, who have also secured appointment in the above said office as UDC, Steno and Inspectors on the basis of fake and forged Nomination letters purported to have been sent/issued by the Staff Selection Commission, New Delhi during 1991 onwards."

13. A comparative analysis of charges levelled against the applicant in departmental case as well as on criminal side would disclose that the same relate to forgery of nomination letter. A perusal of the impugned order dated 22.8.2001, Annexure A-8, also shows that the respondents while terminating the services of the applicant have clearly mentioned that name of applicant did not figure in the result declared by the SSC and they had not issued any nomination papers recommending his appointment and as such very basis of his appointment does not exist and, therefore, his services were terminated. It is also mentioned in the letter dated 21.8.2001 (Annexure A-9), that the draft order was duly approved by the Standing Counsel for termination of services of the applicant.



14. In the earlier round of litigation before this Tribunal, O.As were disposed of on 29.4.2003 holding clearly that the department had not come to its own independent conclusion that the nomination letters produced by the applicants were forged and fictitious and opinion was formed merely on the basis of the letter written by the Commission. It did not hold any enquiry into the matter and has based the termination order on the letter of the Commission. As to what enquiries were made by the Commission and what was the mode of the enquiry remains hidden in the penumbral zone away from judicial scrutiny their services could not be terminated after such long years without conducting an enquiry. Thus, it was an eminently suited case where a full dressed enquiry was required with active participation of the applicants. Ultimately, the O.As were disposed of with the following directions:-

"The Chief Commissioner of Income Tax, N.W. Region, Chandigarh, shall himself hold an enquiry with regard to the genuineness or otherwise of the nomination letters produced by the applicants purported to have been issued by the Commission on the basis of which the applicants were appointed after issuing notice to all the applicants, requiring them to submit, inter-alia, the following information on affidavit within the period to be specified by him:-

- I. Whether they had applied for recruitment/selection/appointment to the post of LDC/UDC/Stenographer Gr. D/Inspector pursuant to the advertisement/notification made by the Staff Selection Commission, New Delhi?
- II. Whether they had appeared for the examination conducted by the Staff Selection commission in the year 1998/1990 and if so, their application no/roll no. Allotted to them or the admission card issued to them and date of examination and place of centre where the examination was given by the concerned applicants;
- III. What was their residential address given in the application form;
- IV. What was their actual date of birth and the date of birth given by them in the applications submitted to the Staff Selection Commission;
- V. Copy of the nomination letter delivered to them by the Commission, if any, retained by them; or
- VI. Any other material information which may be relevant and germane to the enquiry in hand."



After taking into consideration the objection and the information submitted by the individual applicant and scrutinizing the record available with the Staff Selection Commission which shall be made available by the Secretary to the Commission, Respondent No.4 appropriate speaking orders shall be passed. This exercise must be concluded within a period of six months from the date a certified copy of the order is produced before the Chief Commissioner of Income Tax, N.W. Region, Chandigarh."

15. The Court further ordered that if it is established that nomination letters produced by the applicants and received by the Department on the basis of which the applicants were issued appointment letters were not forged, fictitious or bogus, but were genuine, termination orders shall stand set aside else the same shall hold good. The respondents passed a fresh order dated 10.11.2003 (Annexure A-11) reiterating the order dated 22.8.2001 on the premise that the SSC has confirmed that the nomination letter was not found in their record. A fresh bout of litigation followed leading case being O.A.No.352-CH-2005 titled **GURMEET SINGH ETC. ETC. VS. UOI ETC. ETC.** which were dismissed vide order dated 31.10.2006, by accepting that in view of fact finding enquiry conducted by respondents, nothing more was to be done by the department.

16. However, when the issue cropped up in the Hon'ble High Court in CWP No.14719 of 2009 – **BHUPINDER SINGH & OTHERS VS. UOI** on 23.3.2010, learned counsel for the petitioners submitted that only one opportunity was granted to them and judgement was reserved thereby denying them effective opportunity to lead evidence or to submit documents to argue their case on the basis of documents. However, the impugned orders dated 14.7.2009 and 27.8.2009 were quashed and case was remanded back to this Tribunal for fresh decision. Similar order



was passed in this case as well on 23.3.2010. Since the issue was pending before the CBI Special Court, Patiala, as such a Division Bench of this Tribunal thought it fit to adjourn the cases sine die with liberty to either of the parties to inform this Court of final outcome of criminal case pending in CBI Court to revive this case at appropriate time.

17. The learned CBI Court vide judgement dated 16.5.2011, has held that charge under section 468 IPC against applicant has not been proved by the prosecution. However, they were held guilty of charges under sections 120B, 471 and 420 IPC. This order was challenged in a bunch of CRA-S, leading one being CRA-S No.1508-SB of 2011 titled **AVTAR SINGH & OTHERS VS. CENTRAL BUREAU OF INVESTIGATION ETC.** vide which the judgement of conviction by court below as set aside vide order dated 10.5.2016 (Annexure A-19). The order of the Hon'ble High Court is detailed one and thrashes out the issues involved therein relating to charges levelled against the applicant, the relevant portion of the same is reproduced as under:-

“The second leg of submissions that has been advanced on behalf of the appellants by their respective counsels revolves around the very averments that it was the same set of evidence of the prosecution which has been believed against one set of accused/present appellants/convicts and which in the case of the co accused, who have since been acquitted, stands disbelieved certainly needs to be taken with a pinch of salt. It needs to be reiterated here that assuming that these dossiers/ letters of appointment/nomination letters had originated from the confidential branch of Income Tax Department, Head Quarter at Patiala but as is abundantly reflected from the records of the case, neither the Income Tax Officer, Mr. O.P. Sood who was holding the post responsible for processing of these documents and issuance of these appointments was ever examined as a prosecution witness nor was arrayed as an accused and the accused Suresh Chand Sharma and Satnam Singh, officials of the said office, stood acquitted are matters which undermine completely the case of the prosecution as to how these officials on such set of evidence stood acquitted when that is the very axis on which the prosecution story revolves (though out of them, one P.C. Chhatwal has died during



the trial). If such an evidence as to forgery and fabrication of the nomination letters is not established qua these persons, how come the convict appellants could be held responsible for the same when the allegation of the prosecution at the very inception of the FIR that the initial conspiracy was between Satnam Singh UDC, P.C. Chhatwal Income Tax Officer and Suresh Chand Sharma Tax Assistant who all were posted in the Confidential Branch of the office of Chief Commissioner Income Tax, Patiala. Since these so "initiators" of this crime have been let off the hook, it would be too preposterous to hold the other persons, who have merely joined on the basis of these documents in the offices, to be solely responsible.

By exonerating these officials, the very "originators" of this crime, how could there be an element of criminal conspiracy qua the convict appellants, who at the relevant time were pure candidates aspiring for these posts? It is highly unbelievable as has been contended on behalf of the appellants which the counsel for the CBI failed to rebut that these private persons could manage to get appointments by their own acts when it is a matter of common knowledge that selection process as well as appointment procedure has to go through various channels and hierarchy till a candidate is finally made to join on a particular post, drew salaries, perks, attained seniority and where they had continued for almost more than a decade. Even none from the office of SSC has been associated as an accused to emphasize and highlight the very origin of these selections.

The biased role of Income Tax Officer, Mr. O.P. Sood is well elicited even from the very cross-examination of PW22 Smt. Shally Kwatra who is the main pillar of the prosecution story and who at the relevant time was working in this Income Tax Office at Patiala and who in no uncertain terms admits and has given the procedure of dealing with such dossiers which are received in closed envelopes and accepts that the first person supposed to open up as per her confrontation with Ex.PW9/1 (the nomination letter), shows she admits that it was first got endorsed by O.P. Sood at the Income Tax Office, Head Quarter, Patiala and in spite of this duty having undergone by him he had not mentioned any objection, irregularity or omission in the same, rather to the mind of this Court erodes the very stand of the prosecution that these nomination letters/dossiers were forged and fabricated and if they were so how this official who was supposed to deal with such communications has been let off is anybody's guess. Similarly questions put to this witness PW22 Smt. Shally Kwatra bear out that she admits having processed these nomination letters at the first instance and has accepted that she has processed them taking them to be in order and admits further that as per office order she was In-charge of the matter relating to direct recruitments along with roster to assist the Inspectors in maintenance of ACRs. It is her own admission that accused P.C. Chhatwal was the head of the Establishment Branch at the relevant time, thus leaves many questions unanswered in the investigations.

What further strengthens the belief of this Court into this partisan investigation which apparently is misdirected as it is the procedure so admitted even by learned counsel representing CBI that all nomination letters received from SSC for the recruitments in Income Tax Department are received in the office of Income Tax, Head Quarter, Patiala and which are opened and processed leading to the final verification and joining of the candidates so detailed therein. Undisputedly it was there in the instructions of the SSC so is in these nomination letters that whenever there is absence of embossing of seal, rubber stamp or photographs are not embossed, the nomination letters are to be returned back to SSC and are not to be entertained. All the nomination letters being addressed to the Income Tax Officer, Head Quarter at Patiala which were confidential



documents and in the letters of the SSC it was laid down that the dossiers and the nomination letters would be taken to be authentic only if the photograph of the candidate on the enclosed dossier and each page of the nomination letter was embossed with special stamp of the Commission and that each page of the annexure to that and the last page of the nomination letter were duly embossed and in case of any discrepancy were to be referred back to the SSC without delay and which as is sufficiently proved on the records from the testimonies of PW2, PW8, PW10, PW13 and PW22, states they were never returned back with such an objection, that too when the alleged forged and fake nomination letters were issued way back in the year 1991 whereas for 11 continuous long years these persons worked on these posts, drawn salaries and it was only at the juncture of fixation of seniority between the various constituents of the Department as has been contended by the appellant side a dispute had arisen which has led to this false implication of the accused, thus in the light of which necessitates and impels this Court to have a deep peep into the dark alleys of these wrongdoings.

As has been the submissions of appellants' counsel, the testimony of PW13 R.K. Dhingra Retired Manager, Govt. of India Press, Faridabad, who has been sought to be examined to prove that the nomination letters were never printed by the Printing Press, Nilokheri. But his testimony does not come to the rescue of the prosecution as in his cross-examination he admits that these nomination letters/forms carried the printed letters 'M.G.I.P.F.-869S.S.C./88-30.3.89-25000' and has elaborated that the same indicates that these forms have been printed at Govt. of India Press at Faridabad but none from the said Press has been examined to establish it so comprehensively beyond any doubt that it was never printed at the said Press, rather in the light of arguments that have been advanced by the appellant side by their counsels, it emerges that this witness states in his cross-examination that there are about 22 Printing Presses of Govt. of India all over the country and the Printing Press at Nilokheri is one of them. Thus, in that eventuality he does not completely rule out the possibility that these nomination letters/forms were forged and fabricated one and rather has stated that possibility cannot be ruled out about printing of such forms which were there in the present case at some other Printing Press of Government of India.

The other two important witnesses around which the prosecution story revolves is the deposition of PW10 and PW11. PW10 Harparsad Kain is one of the persons who at the relevant time of these selections/appointments was Divisional Director, Northern Region, SSC, New Delhi and has sought to bring about evidence as to fabrication and forgery of these dossiers/nomination letters by reiterating missing essentialities on these documents as well as his signatures on the letters. He has categorically admitted that his specimen signatures were only obtained at the office of CBI Chandigarh and there was no one else and therefore, invariably rules out any semblance of credibility to these so called admitted signatures. In his cross-examination he admits that whenever any requisition is received from any office located in the region, the same is entered in the registers maintained by the Commission and the same is complied with by sending nomination letter along with dossiers and which is received in the recruitment Section. He further admits that whenever a nomination letter is signed, the same is put up along with requisition letter and other documents. The most essential admission by this witness as has been pointed out in the arguments of the counsel is to the effect that he admits that it is correct that in all the nomination letters which he alleged to be forged in his examination in chief, bear the particulars of the requisition made by different Departments and admits that he had



not checked up from the Recruitment Section as to whether such requisition mentioned in the disputed nomination letters had in fact been received in the Commission or not. He accepts the fact that on receipt of nomination letters along with dossiers, the appointment letters are issued by the concerned Department which has sent the requisition to the Commission. The most material admission by him is to the effect that in Ex.PW3/D2 and Ex.PW8/2 as per the Clause VI it is required that copy of appointment letter be sent to the SSC by the concerned Department and thus, illustrates that there has been a definite procedure leading to issuance of the appointment letters to the candidates in these Departments. Furthermore, the witness admits that there is no separate record maintained in the office of SSC regarding the number of documents on which the stamp/embossing of seal of the office has to be affixed and that the despatch register regarding such nomination letters/dossiers is maintained and when confronted he was unable to account for the said despatch register which would have been a material evidence to corroborate the fact of this fabrication and forgery so claimed to have been undertaken by the prosecution and which does not form part of the prosecution evidence and above all, to a very particular question this witness admits that a candidate has no role in preparation of the nomination letter, are matters which certainly bear out that there is something more than what is brought before the Court in the evidence of the prosecution which has been kept away for a purposeful motive.

The other important witness PW11 K.C. Katoch who at the relevant time remained posted as Regional Director, Northern Region, SSC, New Delhi and has sought to further the case of the prosecution to term certain documents to be false and fictitious and when confronted admits that he has not seen the result sheets for the relevant period regarding which he was testifying in the Court. He has admitted the procedure as per which the master index is prepared on the basis of valid applications of the eligible candidates and that it is the Computer Department of the SSC which prepares the same and accepts that he has not compared the entries in the master index register with the application forms, are matters which do have a definite bearing on the outcome of the prosecution version. This witness further accepts that it is the duty of the officer concerned to verify correctness and genuineness of the nomination letters received by him and further admits that no such query or clarification was ever sought during his tenure in SSC. Thus, from this overall evidence it clearly points out that there has been yawning gaps in the prosecution story and that the very chain of events so sought to be completed is materially broken at vital places.

Furthermore, assuming for the sake of arguments as has been contended on behalf of the CBI by their counsel that there is only circumstantial evidence which has remained unrebutted and is well reflected from the absence of embossing of seals/rubber stamps, photographs being not embossed and that the name of the Printing Press on the proformas forming the dossiers is in itself suggestive of the falsity of the same. Even by that analogy how the concerned officials of the Income Tax Office, Head Quarter, Patiala where the office of Chief Commissioner Income Tax is located and who were supposed to deal with such appointments in the Department in spite of there being specific mention in the letters that in case any of these features are missing or are discrepant the letters of nomination may be returned back to the originator office but however, the same were never returned back and rather were acted upon further strengthens the belief of the Court that all was not well either in the working of the Department concerned much less in the investigations. It is duly conceded by learned counsel for the CBI



that during the investigations no original records of selections have been taken into possession and what is sought to be the main plank is that all the records stood destroyed furthers the suspicion as to the role of the concerned office of the Income Tax as all these appellants who are from the ministerial staff pertain to that very Department only. It is a matter of common knowledge and is rightly conceded by the two sides that prior to the selection, advertisements are given to which prospective candidates respond by moving appropriate applications which are processed and after the applicants are found to qualify the minimum qualification so laid, are issued admit cards leading to their appearance in the examination and thereafter alpha lists which depict the results of the examination are prepared and on the basis of the same, nomination letters are sent to the department by the SSC and thereafter appointment letters are issued however, none of these records in original have come up before the Court. The alleged so called select list Ex.PB/1 is the photostat copy of a computer generated document and thus in the absence of the originals or the proof of the loss of originals and without leading of secondary evidence, the same has been allowed to be exhibited. While dealing with all these processes during the course of despatch and receipt of various letters pertaining to these selection processes, relevant entries certainly are made in the diary/despatch register which too have never been brought about by any means. Even to the mind of this Court the person who in the SSC used to prepare such dossiers has not been examined either in the investigations or at the trial to bring forth the stand of the prosecution that such dossiers during the relevant period were never prepared by him nor were processed by SSC for such a purpose. Since there is complete failure of the prosecution and in the absence of original documents or lack of legitimate proof thereof. As has been laid down in '**Budh Ram v. State of Haryana**' 2010(2) RCR(Criminal) 352 relied upon by the appellants' counsel the offence of forgery can only be committed in relation to the original documents and not with respect to the copies thereof, certainly negates the conclusions that have been sought to be drawn by the learned trial Court. Therefore, it ensues that the Court below has recorded these findings contrary to this settled proposition of law as the originals were never brought before the Court nor established by any means.

It is well enunciated law reliance of which can be taken note of the ratios laid down in '**Sait Tarajee Khimchand and others v. Yelamarti Satyam and others**' 1971 AIR (SC) 1865; '**Karnail Singh v. M/s Kalra Brothers, Sirsa**' 2009(2) RCR(Civil) 380; '**LIC of India & another v. Ram Pal Singh Bisen**' 2010(4) SCC 491; and '**Muddoru Rajappa Tipanna v. State of Karnataka**' 2015(4) RCR(Criminal) 485, where their Lordships have held that to prove a document the party is supposed to lead tangible evidence either by primary evidence or through secondary evidence by secondary means and which is totally missing in the present case and thus, mere exhibiting of documents in such a manner for lack of due proof as has been laid down in these ratios does not dispenses with their proof. Since it was the prosecution which was supposed to prove its case beyond reasonable doubt thus, such an irregular and illegitimate way of exhibiting the documents which are mere photostat copies contrary to the provisions of Section 65 of the Indian Evidence Act, 1872 impels this Court to hold that there has been non compliance of the prerequisites of the Evidence Act. It is admitted stand of the prosecution that the originals of these documents have never been brought on the records and the ones that are there are only Photostat copies. Section 63 of the Evidence Act deals with secondary evidence and which means and includes certified copies given under the provisions of the Evidence Act, copies made from the originals by mechanical processes which in itself assures the accuracy of the copy and copies compared with



such copies, copies made from or compared with the originals, counterparts of documents as against the parties who did not execute them and oral accounts of the contents of a document given by some person who has himself seen it. Thus, in the present case, none of these essentialities have been established on record by the prosecution. There is no attempt by the prosecution to lead secondary evidence to prove such documents in terms of Section 65 of the Evidence Act.

With the advent of electronics system, amendments have been introduced to the Indian Evidence Act by way of Sections 65A and 65B emphasizing how the contents of the electronic records may be proved and where none of the requirements so laid down have ever been fulfilled to bestow upon these documents creditworthiness of being considered as a legal and legitimate piece of evidence. The Hon'ble Supreme Court of India in '**Anvar P.V. vs. P.K. Basheer and others**' 2014(4) RCR(Civil) 504; '**Tomaso Bruno and another v. State of U.P.**' 2015(1) RCR(Criminal) 678; and '**Kaliya vs. State of Madhya Pradesh**' 2013(3) RCR(Criminal) 958 has considered at length the manner pertaining to the electronic record and how the same is permissible to be exhibited and therefore, lays emphasis on due compliance of the provisions of Sections 65A and 65B of the Indian Evidence Act, 1872. Thus, in the totality and the failure of the prosecution to satisfy the Court on the very legitimacy of these documents which are the sole evidence brought on the record during the investigations and trial certainly undermines the case of the prosecution.

As has been highlighted in the contentions of learned counsel for the appellants, the very testimony of PW21 M.L. Sharma certainly needs to be taken with a pinch of salt who has sought to prove through his statement having examined the signatures on the documents of PW10 Harparsad Kain and PW11 K.C. Katoch and it is rightly contended by learned counsel for the appellants that this witness in his cross-examination has admitted that he was not having any qualification/degree in Forensic Science or any diploma and that he has not undergone specialized training including identification of the writing and signatures, admitting further that he has never studied Forensic Science and has never undergone any comparison of Forensic Science. How the Investigation Officer considered him to be worth of an Expert or what prompted the trial Court to take his evidence on the face of it in the absence of any qualification possessed by him in this specialized field. Merely because he has orally stated of having appeared as a witness in a number of cases or has expressed opinions earlier that too orally does not bestow upon him the skills and qualifications of a Handwriting Expert. More so, there is nothing tangible proved on the record that specimen signatures of these two witnesses PW10 and PW11 were obtained before the Court or a Magistrate and thereafter were sent for their comparison with the disputed signatures, certainly is a serious remiss and affects the very authenticity of the so called admitted specimen signatures of these PWs which this witness details were fictitious. Reliance has been placed on '**Chamkaur Singh v. Mithu Singh**' 2014(1) RCR(Civil) 303 by the appellant side to hammer home the point firstly to bring forth the submissions that the Courts are not bound by the opinion of the Experts. Interpreting the provisions of Sections 45 and 47 of the Evidence Act, the Hon'ble Supreme Court in **Chamkaur Singh's case (ibid)** has held that the Expert whose opinion is sought on a questioned document needs to be an Expert/skilled person in the field concerned and thus to the mind of this Court in the absence of any such worthwhile qualification, his testimony qua this is certainly dubious. Since there is no tangible proof of signatures of such witnesses PW10 and PW11 or their handwriting which the prosecution claims to have been made by them thus, in terms of



Sections 45 and 67 of the Evidence Act since the very execution of these documents has not been established through the admitted handwriting/signatures of the concerned witnesses therefore, the ones on the questioned documents cannot be accepted by such a feeble evidence of the prosecution.

The trial Court merely on the assumption that the names of private accused were not reflected there in the alpha list/results therefore there was some sort of deceit and fraud and rather the learned trial Court has reversed the onus of proof and has thrown it upon the accused holding that on account of their failure to prove that they were genuinely and bona fide selected has drawn the conclusions that it was the accused who have been instrumental in the same and who were held to be at fault and thus, undermines the very sanctity of the criminal jurisprudence.

In the light of contentions of the two sides, since *the entire evidence of the prosecution revolves around the very element of circumstantial evidence* and as has been laid down by Hon'ble the Apex Court in '**Alamgir v. State (NCT, Delhi)**' 2002(4) RCR(Criminal) 834 that in cases based on circumstantial evidence, circumstances from which the conclusion of guilt is to be drawn should be fully established on the facts and which should be consistent with the hypothesis of guilt of the accused and that the chain of evidence needs to be so complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused. Further it was held that the same needs to be such that with all human probability the act must have been done by the accused. Their Lordships have stressed on the fact that there should not be missing links in the chain of events so far as the prosecution is concerned and that if the circumstances proved are consistent either with the innocence of the accused or with his guilt then the accused is entitled to the benefit of doubt, whereas in the present case the chain of events has never been completed in entirety and there are innumerable missing links in this chain which certainly goes to the detriment of the prosecution story and therefore creating a doubt in its veracity and truthfulness.

Thus, from this all it is evident that the learned trial Court has run into an error in interpreting the evidence. As is reflected from the statements of the accused recorded under Section 313 Cr.P.C. much of the material evidence which was essential to be put to the accused to call for their explanations enabling the Court to consider the same in the light of stand of the defence have never been put to them and therefore, has certainly resulted in immense prejudice to the case of the accused and thus, these important circumstances which were relied upon by the learned trial Court holding the accused to be guilty having not been put to the accused individually in their statements taken under Section 313 Cr.P.C., certainly has rendered these essential prerequisites an empty formality undermining the very case of the prosecution and therefore, as has been held by their Lordships in '**Asraf Ali v. State of Assam**' 2008(3) RCR(Criminal) 835 certainly vitiates the trial.

The learned trial Court as is reflected from the impugned findings has drawn this presumption from the fact that the lists purported to have been prepared by the SSC and that particulars of some of the genuine nomination letters were not correlated with the lists in question. The trial Court has jumped to this conclusion and has run into an error holding that it was for the defence to have confronted the witnesses with these lists and facts when it was the onerous duty of the prosecution to establish its case beyond reasonable doubt. The mere fact as has been concluded by the learned trial Court that there was no oral or documentary evidence on record to support the assertion of the prosecution version that the



officials/accused ever took any bribe and thus the allegations attributed to P.C. Chhatwal and Suresh Chand Sharma could not be established by any means and that they were only advising the subordinate officials in preparing these lists, and has thus absolved them of these charges. When there is nothing even suggestive that it was the accused/appellants who were instrumental in preparing of these dossiers/nomination lists then it would be too preposterous to hold them guilty. Since the very recommendations have been received from the concerned office of the Department of Income Tax and it was on the basis of these requisitions these dossiers/nomination letters were sent by the SSC to the Income Tax Office at Patiala, this Court is unable to accept that the private accused who were the prospective candidates to these posts could be in a position to influence and fabricate such a large amount of processes enabling them to get the appointment letters in the absence of connivance of the officials of the concerned Department.

No doubt, as has been concluded by the learned trial Court that conspiracy is hatched in secrecy and it is impossible to adduce direct evidence but at the same time the Court cannot lose sight of the fact that there needs to be a semblance of cogent and reliable evidence pointing to the guilt of the accused and which is totally amiss in the present case and it is even accepted by the learned trial Court that the prosecution has not led any evidence to prove as to the forgery of dossiers and the nomination letters. More so, since the learned trial Court has already acquitted the accused under Section 468 IPC on account of lack of evidence and due proof of allegations as to the forgery for the purpose of cheating, and how the learned trial Court came to the conclusion in the absence of any tangible evidence that it was the accused, the present appellants who have been convicted, who have fraudulently and dishonestly used as genuine such dossiers/nomination lists to procure such an employment in the Government Department and when even the very question of the power to take cognizance after the period of limitation of such an offence under Section 471 IPC which provides imprisonment upto 3 years has already elapsed, in the light of the fact that the alleged occurrence having taken place in the year 1991 and the prosecution has been lodged after almost 10 years, certainly makes this cognizance of the offence to be undesirable and illegitimate one.

In view of the foregoing discussion and the reasons detailed above, the findings of learned trial Court have certainly run into an error necessitating intervention by this Court by way of acceptance of these appeals and thereby setting aside the judgment of conviction by the Court below. Records be sent back."

17. A perusal of the findings recorded by the Hon'ble High Court, which have attained finality as the Government has taken a conscious decision not to challenge it in the higher fora, goes to indicate that court has considered the issue threadbare and has recorded findings in favour of the applicants. The observations show as to how could there be an element of criminal conspiracy qua the applicants, who at the relevant time were pure candidates aspiring



for these posts. It was highly unbelievable that they could manage to get appointments by their own acts when it is a matter of common knowledge that selection process as well as appointment procedure has to go through various channels and hierarchy till a candidate is finally made to join on a particular post, drew salaries, perks, attained seniority and where they had continued for almost more than a decade. Even none from the office of SSC has been associated as an accused to emphasize and highlight the very origin of these selections. The stand taken by witnesses erodes the very stand of the prosecution that the nomination letters/dossiers were forged and fabricated and if they were so how this official who was supposed to deal with such communications has been let off is anybody's guess. A candidate has no role in preparation of the nomination letter, are matters which certainly bear out that there is something more than what is brought before the Court in the evidence of the prosecution which has been kept away for a purposeful motive. The Department never returned back with an objection qua forgery and fake nomination letters were issued way back in the year 1991 whereas for 11 continuous long years these persons worked on these posts, draw salaries and it was only at the juncture of fixation of seniority between the various constituents of the Department a dispute had arisen which has led to this false implication of the accused. Thus, Court recorded that it has to have a deep peep into the dark alleys of these wrongdoings. Thus, from overall evidence court pointed out that there has been yawning gaps in the prosecution story and that the very chain of events so sought to be completed is materially broken at vital places The person who in the SSC used to prepare such dossiers has not been examined



either in the investigations or at the trial to bring forth the stand of the prosecution that such dossiers during the relevant period were never prepared by him nor were processed by SSC for such a purpose. Since there is complete failure of the prosecution and in the absence of original documents or lack of legitimate proof thereof. The Court below has recorded findings contrary to the settled proposition of law as the originals were never brought before the Court nor established by any means. How the Investigation Officer believed a person who had no qualification in specialized field. Merely because he has orally stated of having appeared as a witness in a number of cases or has expressed opinions earlier that too orally does not bestow upon him the skills and qualifications of a Handwriting Expert. There is nothing tangible proved on the record that specimen signatures of these two witnesses were obtained before the Court or a Magistrate and thereafter were sent for their comparison with the disputed signatures, certainly is a serious remiss and affects the very authenticity of the so called admitted specimen signatures of the PWs which this witness details were fictitious. The fact is that there should not be missing links in the chain of events so far as the prosecution is concerned and that if the circumstances proved are consistent either with the innocence of the accused or with his guilt then the accused is entitled to the benefit of doubt, whereas in the present case the chain of events has never been completed in entirety and there are innumerable missing links in this chain which certainly goes to the detriment of the prosecution story and therefore creating a doubt in its veracity and truthfulness. When there is nothing even suggestive that it was the accused/appellants who were instrumental in preparing of these dossiers/nomination lists



then it would be too preposterous to hold them guilty. Since the very recommendations have been received from the concerned office of the Department of Income Tax and it was on the basis of these requisitions these dossiers/nomination letters were sent by the SSC to the Income Tax Office at Patiala, the Court was unable to accept that the applicants who were the prospective candidates to these posts could be in a position to influence and fabricate such a large amount of processes enabling them to get the appointment letters in the absence of connivance of the officials of the concerned Department. Though court recorded that no doubt, as has been concluded by the learned trial Court that conspiracy is hatched in secrecy and it is impossible to adduce direct evidence but at the same time the Court cannot lose sight of the fact that there needs to be a semblance of cogent and reliable evidence pointing to the guilt of the accused and which is totally amiss in the present case and it is even accepted by the learned trial Court that the prosecution has not led any evidence to prove as to the forgery of dossiers and the nomination letters. More so, since the learned trial Court has already acquitted the accused under Section 468 IPC on account of lack of evidence and due proof of allegations as to the forgery for the purpose of cheating, and how the learned trial Court came to the conclusion in the absence of any tangible evidence that it was the applicants who have been convicted, who have fraudulently and dishonestly used as genuine such dossiers/nomination lists to procure such an employment in the Government Department and when even the very question of the power to take cognizance after the period of limitation of such an offence under Section 471 IPC.



18. Now we are in a position where on the one hand there are findings in the impugned orders passed by the authorities and on the other hand we have the benefit of findings recorded by the Hon'ble jurisdictional High Court. It is not in dispute that these cases were adjourned only to await the findings of the Hon'ble High Court and after that decision, these cases have been taken up for disposal. It is not in dispute that in earlier litigation disposed of on 31.10.2006 (Annexure A-12), a Division Bench of this Tribunal had upheld the action of the respondents in dispensing with the services of the applicant and procedure adopted by them. However, that order was challenged CWP No.1300 of 2007 – **BHUPINDER SINGH VS. UIOI ETC.** That case came up for hearing on 27.3.2009 and learned counsel for the petitioner (therein) stated that he had instructions to withdraw the Writ Petition with liberty approach the Tribunal once again so as to enable him to lead evidence to establish the claim of the petitioner, subject to the condition that “respondents have no objection to the instant prayer made on behalf of the petitioner”. Upon this, learned counsel for the respondents stated therein that “she has no objection to the course of action sought to be adopted at the hand of the petitioner”. Thus, the High Court was pleased to approve that course of action and to ensure that there is no hindrance, the order dated 31.10.2006 of this Tribunal was quashed and matter was remanded to this Tribunal. Thus, respondents cannot take benefit of order dated 31.10.2006 pleading that their action stood approved of by that order as that order was admittedly quashed and set aside on 27.3.2009 (Annexure A-13).



19. The learned counsels for applicants argued that in view of findings of Hon'ble High Court nothing remains against the applicants and the findings recorded by departmental authorities based on conjectures and surmises only are honest in the eyes of law and as such findings recorded in impugned orders have to go more so when same were not recorded after conducting proper enquiry as prescribed under the CCS (CCA) Rules, 1965 by leading any oral or documentary evidence.

20. So, the question is as to whether if a person is tried for a charge in a criminal proceeding and in departmental proceedings and in criminal trial he is acquitted honourably and not on the basis of any doubt etc and charges in both the proceedings are same or identical, his acquittal on criminal side would automatically lead to his acquittal in the departmental case as well. This issue is no longer res integra and stands settled by a Division Bench of this Tribunal at Delhi in the case of **CONSTABLE MANGAL SINGH VS. GOVT. OF NCT OF DELHI & OTHERS**, 2020(2) (CAT) 1, in favour of the employee/applicant (therein), holding that indeed such honourable acquittal would result in exoneration of the employee in departmental case as well. The view taken by Court is reproduced as under :-

“17. We are of the view that the law laid by the Hon'ble Supreme Court in **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & another**, JT 1999 (2) 456 applies to the facts and circumstances of the case, and since the allegations made against the applicant in the disciplinary proceedings on the one hand and criminal case on the other hand are identical, the acquittal in the criminal case must lead to the setting aside of the



order of punishment. Though an opportunity of revisiting the same was given to the Disciplinary Authority, it made that exercise a perfunctory one and has just reiterated its earlier order.”

21. A faint suggestion came to the made by learned counsel for the respondents that the department can be given a liberty to proceed ahead once again by conducting a proper enquiry under the CCS (CCA) Rules, 1965. This was resisted by learned Senior Advocate, appearing for the respondents on the ground that about 30 years have already gone by and even 2-3 applicants have also died and no purpose is likely to be served by opening the matter once again more so when we already have the benefit of a judicial pronouncement on the issue by Hon'ble High Court based on evidence exonerating the applicants from the charge of forgery. The learned counsel for the applicants further placed reliance on a number of judicial pronouncements. In the case of **STATE OF A.P. VS. N. RADHAKISHAN**, 1984 (4) SCC 154, it was held that if there is delay in the initiation of disciplinary proceedings, and there is no explanation given by the department, then such proceedings would stand vitiated more so when there is no part on the part of delinquent in delay. The charge memo was quashed on ground of delay. In the case of **STATE OF M. P. V. BANI SINGH**, 1990(2) SLR 798, it was held that departmental enquiry initiated after 12 years was delayed and without explanation as such it was quashed and set aside. In the case of **GOVT. OF ANDHRA PRADESH VS. E. VEDVYAS & ANOTHER**, 1991(2) SCALES 1452, challenge was to the charge sheet and



disciplinary proceedings on ground of delay. The Tribunal quashed the proceedings. Held, there was gross delay on the part of Government to complete the disciplinary proceedings, in spite of the time given, thus, order of Tribunal was upheld. In the case of **JAGIR SINGH VS. STATE OF PUNJAB**, 1993 (2) SCT 128, it was held that departmental proceedings initiated against employee should be finalised expeditiously and time line fixed by Government should be followed. Finding that there was inordinate delay in completion of departmental proceedings, the same were quashed and set aside. In the case of **J.S. SANGHERA VS. STATE OF PUNJAB**, 1994 (3) SCT 628, there was delay in departmental proceedings of more than 15 years from the date of alleged misconduct, as such charge sheet was quashed and set aside. In the case of **P.V. MAHADEVAN VS. M.D. TAMIL NADU HOUSING BOARD**, 2005 (4) SCT 60, it was held that protracted disciplinary enquiry against government employee should be avoided not only in interest of employee and public but also in interest of inspiring confidence in minds of Government employees. For mistakes committee by department, an employee should not be made to suffer. The charge memo was quashed in that case. In the case of **RANJEET SINGH VS. STATE OF HARYANA & OTHERS**, 2008 (3) CTC 781, it was held that in view of unexplained delay of nine years, Trial court was justified in holding that the entire enquiry was vitiated and in declaring that the order of punishment to be null and void. In **BALKRISHNA NAMDEO KATKADE VS. STATE OF MAHARASHTRA**, 2008(11) SCT 162, it was held that it was held that if there is



inordinate and unexplained delay in serving the charge-sheet upon delinquent officer, then charge sheet is not maintainable.

22. In the case of **G.M. TAK VS. STATE OF GUJRAT & ANOTHER**, 2006 (3) SCT 252, delinquent officer was charged for an offence punishable Under Section 5(1)(e) read with Section 5(2) of the PC Act, 1988. He was honourably acquitted by the criminal court as the prosecution failed to prove the charge. Thereafter, a Departmental Inquiry was conducted and he was dismissed from service. The order of dismissal was upheld by the High Court. In the Appeal filed by the delinquent officer, this Court was of the opinion that the departmental proceedings and criminal case were based on identical and similar set of facts. The evidence before the Criminal Court and the departmental proceedings being exactly the same, this Court held that the acquittal of the employee by a Criminal Court has to be given due weight by the Disciplinary Authority. On the basis that the evidence in both the criminal trial and Departmental Inquiry are the same, the order of dismissal of the Appellant therein was set aside. Similarly, In the case of **PAWAN KUMAR VS. STATE OF HARYANA (P&H)**, 2015(2) SCT 838, it was held that Trial could had acquitted the petitioner on account of lack of evidence. Once allegation could not be established by evidence, it cannot be said that acquittal of petitioner was on technical ground. Acquittal in a criminal case for want of evidence is an acquittal on merit. Thus, impugned order was quashed and respondents were directed to issue appointment letter to the petitioner to the post of Constable. In the case of **VIJAY PAL AND OTHERS VS. STATE OF**



HARYANA & OTHERS, 2017 (2) SCT 479, the delinquent was involved in departmental as well as in criminal proceedings on the same set of charges. It was held that if the charge and evidence in both the proceedings is the same, inquiry officer cannot overwrite the depositions already recorded by the Court. Findings of D.A. to the contrary would be unjust, unfair and oppressive and order of dismissal from service would not be sustainable. The impugned order of dismissal was quashed and set aside with all the consequential benefit of reinstatement in service. In the case of **SATISH KUMAR GOEL VS. STATE OF HARYANA**, 2018(1) SCT 801, employee was dismissed from service. However, he was acquitted in criminal case. The question was, whether employee after acquittal in appeal in a criminal case would become entitled to grant of all benefits. Held, if criminal court recorded finding that there was no evidence to prove charge of corruption against employee, notwithstanding observations as to acquittal by benefit of doubt, it will be considered honourable acquittal. The learned counsel for the respondents was not able to show any law to the contrary.

23. It would be seen in this case that the charge of fraud was alleged against the applicant in the departmental as well as in criminal proceedings. On the basis of evidence on record the Hon'ble High Court has come to the conclusion that the charge is not proved against the applicants and they were acquitted accordingly. In the face of this, the finding recorded on departmental side based on circumstantial evidence only, that too without conducting any proper enquiry as envisaged under CCS



(CCA) Rules, 1965, cannot be sustained and have to be quashed and set aside more so in view of dictum of a Bench of this Tribunal in the case of Constable Mangal Singh (supra) as the charges in this case in departmental case as well as on criminal side were same and identical. Secondly, the acquittal of the applicant in criminal case is on merit based on evidence and not by giving benefit of doubt. The findings recorded by Hon'ble High Court, based on evidence, would have to be preferred over the opinion formed by the respondents in an half hearted enquiry which too is not in accordance with procedure laid down in the CCS (CCA) Rules, 1965.

24. In view of the above discussion, this O.A. is partly allowed. The impugned orders are quashed and set aside. The respondents are directed to reinstate the applicants in service. However, it is made clear that the applicants would be entitled to only notional benefits and actual benefit would start from the date they join back their duties. The needful be done within a period of two months from the date of receipt of a certified copy of this order. The parties are, however, left to bear their own costs.

**(SANJEEV KAUSHIK)
MEMBER (J)**

**(ANAND MATHUR)
MEMBER (A)**

Place: Chandigarh
Dated: 28.11.2020

HC*