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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 1580/2004

New Delhi this the 26th day of April, 2005

Hon'ble Mrs. Meera Chhibber, Member (J)
Hon'ble Shri S.K.Malhotra, Member (A)

Inder Pal Singh
S/O Shri Raghbir Singh,
R/O RZ-F3, Raj Nagar-II,
Palam Colony, Delhi-110045

..Applicant

(By Advocate Shri George Paracken)

VERSUS

1. Union of India,
through its Secretary,
Ministry of Environment and Forest,
CGO Complex, Lodhi Road,
New Delhi.
2. Director,
Ministry of Environment and Forest,
Parivaran Bhawan,
CGO Complex, Lodhi Road,
New Delhi.

..Respondents

(By Advocate Shri K.R. Sachdeva)

O R D E R

(Hon'ble Mrs. Meera Chhibber, Member (J)

By this OA, applicant has sought the following reliefs:

“(i) Call for the relevant records of the Enquiry proceedings held against the applicant from the respondents.

(ii) Quash and set aside the impugned ex-party inquiry report dated 28.6.2002 and order dated 31.7.2003 by which the disciplinary authority removed him from



service and further by order dated 5.4.2004 his appeal was rejected by the appellate authority.

(iii) Direct the respondents to reinstate the applicant in service forthwith with all consequential benefits such as past service and back wages with continuity in service.

(iv) Pass any further order/orders as this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case and in the interest of justice".

2. It is submitted by the applicant that he was initially appointed as daily wager Peon in the Ministry of Environment and Forest in the year 1986. Later on, he was confirmed in Group 'D' post w.e.f. 11.5.1992. He was served with chargesheet dated 18.3.1993 under Rule 14 for submitting bogus certificate but the enquiry officer submitted his findings holding therein that the charge has not been proved by observing that the genuineness of 2nd certificate should have been looked into and thereafter he was issued 2nd chargesheet on 31.5.1999 on which nothing was done and yet another chargesheet was given to him on 21.6.2000 but no list of witnesses were given along with the charge sheet as provided under Rule 14 (3) of the CCS (CCA) Rules. The enquiry officer gave his finding holding the charges as proved against the applicant but the enquiry officer deviated from the laid down procedure inasmuch as he himself wrote letter to the witnesses calling upon them to appear before him, that too without any intimation to the applicant. Applicant has thus submitted that the enquiry officer exceeded his jurisdiction as he had no right to call the witnesses. It is further submitted by the applicant that all these facts clearly show that enquiry officer has not acted in a fair manner. Being aggrieved with the findings given by the Enquiry officer, applicant gave his representation on the basis of which disciplinary authority passed the order dated 28.9.2001 directing the enquiry officer to hold further enquiry under Rule 15 (1) once



again. It is submitted by the applicant that he was not given full opportunity to defend himself even at this stage as the said prosecution witnesses were examined in his absence, without putting him to any notice, which is evident from the fact that the enquiry was adjourned for 28.3.2002 on which date no enquiry took place. Thereafter, the enquiry officer fixed the date for further hearing on 22.4.2002 without informing the applicant about it and proceeded with examining the prosecution witnesses which according to him again shows that enquiry officer acted in an arbitrary manner and which itself vitiates the whole enquiry. It is submitted by the counsel for the applicant that in spite of directions given by the disciplinary authority the prosecution witnesses were not examined in his presence nor he was given chance to cross examine them. Therefore, the orders passed by the disciplinary authority as well as the appellate authority on the basis of such an enquiry may be quashed and set aside. It is further submitted by the applicant that disciplinary authority removed him from service on 31.7.2003 without dealing with the objection raised by the applicant. Being aggrieved he filed his appeal which too was rejected vide order dated 5.4.2004. He, therefore, had no other option but to file the present OA.

3. Respondents have opposed this OA by submitting that he was appointed on regular basis as Peon on 7.12.1988 and confirmed in the same post w.e.f. 20.4.1992 on the basis of 8th class pass certificate reportedly issued by K.L.Intermediate College, Sisoli, Meerut as the minimum qualification required for the post of Peon is 8th class pass. However, one Shri Babu Lal, Craft Inspector, BCT Pusa had given a complaint on 7.5.1992 stating therein that Shri Inder Pal Singh was being appointed on a fake 8th class pass certificate. Therefore the said certificate was verified from the concerned authority



and when the District School Inspector, Meerut informed vide their letter dated 1.12.1992 that there is no such school, namely, K.L.Intermediate College, Sisoli in that Janpad, the applicant was called to give his explanation. In reply to the said explanation the applicant stated in his letter dated 28.12.1992 that he never got education in the said school but had passed 8th class from Vedic Vidya Mandir, Junior High School, Sisoli, Muzaffarnagar and submitted a photocopy thereof and transfer certificate bearing No. 1082 to the Administration. He was thus issued charge sheet under Rule 14 of CCS(CCA) Rules, 1965. However, charge was not established but enquiry officer opined that the genuineness or otherwise of the second certificate should have been verified in 1992.

4. After receiving this finding applicant's second certificate issued by Vedic Mandir Junior High School, Sisoli, Muzaffarnager was sent to District School Inspector, Muzaffarnagar and the Principal, Vedic Vidya Mandir, Junior High School, Sisoli. Muzaffarnagar for verification of its genuineness vide letter dated 13.1.1999 on which Shri Udayraj, District Basic Education Officer, Muzzafarnagar informed on verification that admission at Sl.No. 1082 does not bear the name of Shri Inderpal Singh. Hence the certificate bearing the name of Shri Inderpal Singh's date of birth is totally fake. Accordingly applicant was chargesheeted on 31.5.1999 for having submitted fake certificate reportedly issued by Vedic Vidya Mandir Junior High School, Sisoli, Muzaffarnagar.

5. In response to the said chargesheet, applicant gave his statement of defence requesting therein to reverify the genuineness of his 8th pass certificate. Accordingly the matter was reverified. The said Udayraj, DBEO once again informed vide letter dated 13.7.1999 that the T.C. submitted reportedly issued by the Principal Vedic Vidya Mandir,



Muzaffarnagar is fake as the admission at Sl. No. 1082 does not bear the name of Shri Inderpal Singh. This fact was informed to the applicant by memorandum dated 30.7.1999 (Annexure R-10) At this stage applicant submitted duplicate 8th pass certificate along with a corrigendum letter submitted by the Principal, Vedic Vidya Mandir, Junior High School, Sisoli, Muzaffarnagar stating that S.No.1083 was mistakenly written as 1082 and also requested to accept the same. Once again Shri Udayraj, DBEO Muzaffarnagar was requested to verify the genuineness of the aforesaid duplicate certificate and corrigendum vide letter dated 27.9.1999. Shri Udayraj, DBEO vide his letter dated 4.12.1999 (Annexure R-13) informed as follows:-

'I) Corrigendum letter has not been issued by the Principal, Vedic Vidya Mandir, Junior High School, Sisoli, Muzaffarnagar. In this regard a copy of the written statement of the Principal has also been furnished.

ii) passing year has been shown as 1980-81 in the TC under question whereas the school was not recognized in that year. The school was recognized in 1984-85.

iii) Entries on the T.C. are fake. In this regard Sh. Shiv Kumar, Additional School Inspector has also given his written statement stating that this certificate has not been certified by him".

It was in view of this development, that applicant had been issued fresh charge sheet dated 21.6.2000 on the charge of submission of another fake certificate of having passed 8th class and fake corrigendum letter.

6. Applicant denied the charges. Shri U.P.Mathur, Director (Retired) and Shri Baldev Raj, S.O. were appointed as Inquiring Authority and Presenting Officer respectively to inquire into the charges levelled against applicant. After conducting



the inquiry Shri U.P.Mathur submitted the inquiry report vide letter dated 14.6.2001 which reads as under:-

“Despite being given sufficient opportunity, Shri Singh, the CO failed to produce any witness/evidence in his defence and prove the report of School Inspector, Muzaffarnagar as baseless. Hence, I believe and am of the view beyond any doubt that Shri Singh, Peon and the CO has violated Rule 3(1) of CCS (Conduct) Rules, 1964 by submitting a fake certificate to the Ministry in support of his claim of having passed 8th class from Vedic Vidya Mandir, Sisoli, Muzaffarnagar”.

A copy of the said inquiry report was forwarded to the applicant with instruction to submit his representation, if any, on the enquiry report within 15 days. Applicant sought extension of time for giving the representation which was allowed. He submitted a representation on 3.8.2001 stating therein that he was not given a chance to examine/cross examine the officers concerned whose reports had been relied upon.

7. Once again his request was accepted and further enquiry was ordered from the stage of examination/cross examination of the officers whose reports had been relied upon vide letter dated 28.9.2001. However, the applicant was given sufficient opportunity by the Inquiring Authority to defend himself but he failed to do so. Inquiry Authority gave his report holding in clear terms that applicant has submitted a fake certificate of having passed 8th class in connection with his appointment as Peon in the Ministry. Once again copy of the Inquiry Report was forwarded to the applicant to submit his representation. After considering his representation in which he had enumerated the same reasons that have already been taken into consideration during the enquiry. Keeping in view all the facts and circumstances, the major penalty of removal from Govt. service was imposed against him vide order dated 31.7.2003 (Annexure R-21). His appeal was considered by the appellate authority but since the appellate authority did not find any new points which could warrant any modification in the penalty imposed on the



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applicant, accordingly, the said penalty of removal from service was confirmed by issuing a speaking order dated 5.4.2004 (Annexure R-23). Counsel for the respondents relied on following judgements.

(i) AISLJ 2004 page 1

(ii) 1994 SLR 237 and a detailed judgment dated 8.12.2004 passed in OA 568/2004 along with OA 1207/2004.

We have heard both the counsel and perused the pleadings as well. Counsel for the applicant had raised an objection that on 22.4.2002 enquiry had been conducted without informing the applicant and by referring to page 92 of the OA to show that on all other dates applicant had put his initial in the order sheets but on 22.4.2002 his signatures were not available which clearly shows that he was not informed about the listing of the enquiry on 22.4.2002. He had also submitted that on 1.3.2002 hearing was adjourned to 28.3.2002 on which date no hearing took place. Therefore, he was not aware of the hearing to be held on 22.4.2002 as a result applicant has been deprived of his right to participate in the enquiry and to defend himself in spite of directions given by the disciplinary authority on 28.9.2001. We wanted to ensure that no injustice is done to the applicant therefore, we called for the original records of enquiry proceedings to satisfy ourselves. On perusal of the departmental enquiry file, it is seen that 1.3.2002 was fixed for examination/cross examination of PWs S/Shri Udajraj, Shiv Kumar and Shri Mahipal Singh who had been given the intimation by Regd. letter but the PWs informed the Enquiry Officer that they were not given TA and DA, therefore, it was not possible for them to join the enquiry. Therefore, none of the PWs appeared on 1.3.2002 in spite of intimation by Regd. letters dated 19.10.2001, 8.11.2001, 3.12.2001 and 4.1.2002. It was in these circumstances that the Enquiry



Officer requested the Ministry to arrange the presence of above said witnesses on 28.3.2002 at 11.30 AM, Room No. 530, Paryavaran Bhawan, New Delhi so that enquiry could be completed. They were also requested to solve the problem of TA/ DA for the PWs. However, it is seen that on 28.3.2002 no proceedings took place. Accordingly a letter was issued to the Secretary, Department of Education, Govt. of Uttar Pradesh Sachivalaya, Lucknow to ensure the presence of PWs on 22.4.2002 at 11.30 AM Room No. 530, 5th Floor, Ministry of Forest and Environment, Paryavaran Bhawan, CGO Complex, Lodi Road, New Delhi. On 22.4.2002, Shri Udayraj, Deputy Secretary, Basic Education Board, UP, Allahabad was examined who stated that letter dated 17.5.1999 being exhibit P-5 has been signed by him and he is fully satisfied with the contents thereof. Letter dated 4.12.1999, exhibit P-6 has been signed by him and has been written after requisite enquiry. Exhibit P-4 enclosed with his letter dated 4.12.1999, original of which is in his official record. As per records, Shri Inder Pal Singh has not passed 8th class examination from Vidya Mandir, Sisoli, Muzzaffarnagar. He thus confirmed the above statements. Similarly, Shri Shiv Kumar, Sub Deputy Inspector, Basic Education Department, Muzzaffarnagar also stated that he was Sub Deputy Inspector, Basic Education Department since 23.7.1997 till date. Exhibit P-7 contains the certificate given by him in Hindi stating that as per records of the school, TC of Shri Inder Pal Singh S/o Shri Raghbir Singh is not there and hence it is false. As per records of the school, Shri Inder Pal Singh was never a student of Vedic Vidya Mandir Junior High School, Sisoli. Exhibit P-8 is reconfirmation by him that TC of Shri Inder Pal Singh is false. Similarly, Shri Mahipal Singh, Principal, Vedic Vidya Mandir, Junior High School, Sisauli, Muzaffarnagar stated that he was the Principal of the above school since 1.1.1984. The



school was recognized from 9.7.1985 by Zila Basic Shikha Adhikari. He also filed a requisition letter and marked as 'A'. He further stated that exhibit P-1 is the TC and it does not bear his signature as Principal of the School and hence it is a false certificate. Similarly exhibit P-2 and P-3 have not been signed by him and these are false documents. However, exhibit P-4 bears his signature, the original of the letter is with office of District Basic Education officer. Shri Inder Pal Singh has have been a student of their school. He confirmed the above statements and put his signatures with rubber stamp of that School. The order sheet of 22.4.2002 written by the Enquiry Officer shows that Shri Inder Pal Singh was present and Shri Mahipal Singh, Shiv Kumar and Udayraj have been examined in chief. Their cross examination could not be done due to non availability of the defence assistant of the Charged officer. Therefore, he fixed the date on 21.5.2002 for their cross examination at 11.30AM, Ministry of Environment and Forest, Room No. 530, 5th Floor, Lodi Road, New Delhi. On 21.5.2002 Charged officer did not appear but sent his medical certificate along with his letter dated 20.5.2002 which shows that applicant was fully aware about the hearing of enquiry to be held on 21.5.2002. The Enquiry Officer had recorded on 21.5.2002 that defence assistant was also not present and he had not even appeared earlier on 21.4.2001, 23.3.2001 and 10.4.2001. He sent his medical certificate on the last date. Therefore, Charged officer did not cross examine the prosecution witnesses on the ground that defence assistant is not available accordingly next date was fixed on the request of the charged officer so that defence assistant could have cross examined the PWs. Therefore, even if charged officer was not present defence assistant could have been present. It was in these circumstances it was recorded by the I.O. that Charged officer/defence assistant were not interested in



cross examining and are delaying the enquiry deliberately. Charged officer also refused to sign the daily order sheet on 22.4.2002 which is contrary to the rules. He was informed by letter dated 6.5.2002 to remain present on 21.5.2002 which was duly served on the applicant on 9.5.2002 yet in the interest of justice one last opportunity was given to the charged officer because it was not possible to call the PWs every time because they were State Govt. employees. Accordingly, the next date for hearing was fixed on 12.6.2002 and it was made clear that if charged officer or defence assistant did not appear on that date, enquiry would be completed ex parte. The intimation about the fixing of the enquiry on 12.6.2002 was duly sent to the applicant by speed post as well as Regd. post vide letter dated 23.5.2002 but inspite of that neither the charged officer nor his defence assistant was present on 12.6.2002. Therefore, the enquiry officer observed on 12.6.2002 that there is nothing ~~to~~ stated by the Charged officer in his defence nor any purpose would be served by keeping the enquiry pending. Accordingly, enquiry officer concluded enquiry ex parte on 12.6.2002. Thereafter vide order dated 4.7.2004 a copy of the enquiry officer's ex parte report dated 12.6.2002 was sent to applicant by regd. post so that charged officer could make his representation.

9. From the details as mentioned above, it is clear that full opportunity was given to the applicant to defend himself by cross examining the prosecution witnesses but he did not avail the opportunity. At this juncture, it would be relevant to quote the judgement of the Hon'ble Supreme Court in the case of Ranjan Kumar Mitra Vs. Andrew Yule and Co. Ltd. and Ors reported in 1997 (10) SCC 386) wherein it was held that if termination of service is ordered pursuant to enquiry in which the employee has chosen not to participate, the appellant cannot assail his termination on merits. Similar view was



reiterated in the case of **Nagar Palika, Nataur Vs. UP Public Services Tribunal, Lucknow and Ors.** reported in 1998 (2) SCC 400 by observing that where opportunity was afforded but not availed he cannot challenge the order passed on the conclusion of the enquiry. In the said case delinquent despite repeated reminders neither submitted his reply nor appeared before the enquiry officer.

10. The same position is available in the case before us as well because in this case, it is seen that full opportunity was given to the applicant to remain present either in person or to send his defence assistant for cross examination of PWs who are employees of the State by making it clear that it would not be possible for the State employees to be called again and again and if the charged officer is not present on the next date enquiry would be concluded ex-parte. Inspite of all these neither the charged officer appeared himself nor his defence assistant appeared before the Enquiry Officer either on 21.5.2002 or 12.6.2002. Therefore, it is not open to him to say that he was not afforded opportunity to cross examine the prosecution witnesses.

11. As far as the applicant's contention that he was not aware of the proceedings on 22.4.2002, we have seen that applicant had himself written in his appeal that he refused to sign the proceeding sheet when he was telephonically called on 22.4.2002 as no proceeding took place in his presence. Since examination in chief was recorded when neither he nor his defence assistant was present and as such he refused to sign the proceeding sheet. This clearly shows that applicant was indeed called on 22.4.2002. He was thus aware of the proceedings on 22.4.2002 but and he had refused to sign the proceeding sheets. The reason may be different but the fact remains that he refused to sign the proceeding sheet on 22.4.2002 which has been recorded by the Enquiry Officer.



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This itself shows the criminal bent of mind of the applicant as he is capable of manipulating the document as well because on page 92 which he annexed with the OA, he has scored off the remarks of I.O. even though in the original file I.O. had recorded against Charged Officer (refused to sign). Moreover on subsequent dates on 21.5.2002 and 12.6.2002 due notice was given to the applicant which is evident from the enquiry proceedings file and since applicant chose not to appear before the Enquiry Officer for cross examination of PWs himself it does not lie in his mouth now to state that he has been deprived of his right to cross examine the PWs. The said contention is therefore, rejected.

12. With regard to the contention of the applicant's counsel that enquiry officer had not acted in a fair manner as he called the witnesses on his own. We only have to refer to rule 14(15) which is an enabling clause and wherein the Inquiring Authority has been given the power to allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the enquiry for three days before the production of such the inquiry is adjourned. The Inquiring Authority shall give the Government servant inspecting of documents before they are taken on record. A perusal of Rule 14 (15) thus clearly shows that the Inquiring Authority on behalf of the disciplinary authority can call for new witnesses even if they are not attached with the chargesheet if he deems it necessary. Of course he has to intimate the charged officer about it. At this juncture it would be relevant to mention that when letter dated 19.10.2000 was issued to S/Shri Udayraj,

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Mahipal Singh and Shri Shiv Kumar calling upon them to appear in the enquiry on 8.11.2001, copy of this letter was duly endorsed to the charged officer, namely, Shri Inder Pal Singh (pages 51 and 52). Thus the conditions laid down in sub rule 15 of Rule 14 were duly complied with. In view of this position, the contention of the counsel for the applicant that enquiry officer has no power to call the witnesses or not supplying the list of witnesses is not sustainable in law. The same is accordingly rejected.

13. As far as the list of documents is concerned, perusal of page 38 shows that list of documents was indeed given to the applicant along with chargesheet. Therefore, there is no merit in the contention raised by the applicant.

14. Last but not the least, the contention raised by the counsel for the applicant that applicant could not have been removed from service has to be rejected outright in view of the fact that here is a case where applicant secured appointment in Govt. service by submitting a fake certificate. Not only he gave fake certificate but he compounded the offence by submitting another letter to place on record corrigendum purported to have been issued by the Principal whereas the Principal of the school before the Enquiry Officer stated in unequivocal terms that the certificate/corrigendum stated to have been signed by him is fake document as he had not signed the said corrigendum or the TC. It has also come on record that applicant was not even a student of Vedic Vidya Mandir, Junior High School, Sisoli, Muzaffarnagar whereas he had secured the employment as Peon in Govt. by submitting the certificate from Principal Vedic Vidya Mandir Junior High School, Sisoli, Muzaffarnagar to show that he was 8th class pass which was the requirement as per the Recruitment Rules. Thus it is clear that he had secured employment in Govt. on the basis of fake documents which cannot be permitted at any costs.

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15. At this juncture, it would be relevant to quote from the judgement of Hon'ble Supreme Court in the case of **R.Vishwanatha Pillai Vs. State of Kerala and Ors** reported in AISLJ 2004 (2) wherein it was held that appointment de hors the rules is null and void in the eyes of law. In the said case Sh.Pillai was appointed as an SC candidate and was promoted to IPS and had put in 27 years of service. On a complaint, his status was investigated by a Special Committee and Scrutiny Committee found that he does not belong to SC community. Accordingly his services were terminated. It was held by Hon'ble Supreme Court that no sympathy and equitable consideration can come to his rescue. Where an appointment in a service has been acquired by practicing fraud or deceit, such an appointment is no appointment in law, and in such a situation Article 311 of the Constitution is not attracted at all. Similar view was taken by the Tribunal in OA 568/2004 along with OA 1207/2004.

16. We respectfully agree with the decisions as referred to above and since we are satisfied that applicant gave forged and fake certificate to secure employment in Govt. service and he was also given full opportunity to defend himself in the enquiry in which he did not appear, he cannot now be allowed to say that he has been denied the right to cross examination. Prosecution witnesses have specifically stated in the enquiry that they did not sign the certificates nor issued the documents on the basis of which applicant



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secured employment and the documents are fake, therefore, applicant has rightly been removed from service.

17. In view of the above discussion, OA is devoid of any merit. The same is accordingly dismissed with no order as to costs.

Om all
(S.K.Malhotra)

Member (A)


26/4/05
(Mrs. Meera Chhibber)
Member (J)

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