

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 291/122/2015

Order reserved on 21.09.2021

DATE OF ORDER: 05.10.2021

CORAM

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

Bajrang Lal son of Shri Maha Deva Ram, aged about 57 years, resident of Village & Post Pichanwa (Chirawa), District Jhunjhunu. Last employed as Gramin Dak Sevak (Extra Departmental) Branch Post Master Pichanwa (Chirawa) District Jhunjhunu (Removal from employment).

....Applicant

Shri C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through its Secretary to the Government of India, Department of Posts, Ministry of Communications and Information Technology, Dak Bhawan, New Delhi-110001.
2. Director, Postal Services, Rajasthan Western Region, Jodhpur-342001.
3. Superintendent of Post Offices, Jhunjhunu Postal Division, Jhunjhunu.

.... Respondents

Shri Rajendra Vaish, counsel for respondents.

ORDER**Per: Hina P. Shah, Judicial Member**

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- "i) That entire record relating to the case be called for and after perusing the and same memo dated 11/03/2014 with the memo dated 05/12/2012 (Annexure-A/1 & A/2) be quashed and set aside with all consequential benefits.
- (ii) That the charge memo dated 29/03/2010 (Annexure-A/11) with the enquiry proceedings and inquiry report at Annexure A/15 be quashed and set aside with all consequential benefits.
- (iii) That the respondents be further directed to reinstate the applicant on the post of Gramin Dak Sevak Branch Post Master Pichanwa (Chirawa), District Jhunjhunu with all consequential benefits.
- (iv) Any other order / directions of relief may be granted in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case.
- v) That the costs of this application may be awarded."

2. The brief facts of the case, as stated by the applicant, are that he was initially appointed as Extra Departmental Branch Post Master (EDBPM), Pichanwa (Chirawa), District Jhunjhunu now designated as Gramin Dak Sevak (GDS) in the year 1986 and since

then was satisfactorily performing his duties till the passing of punishment order of removal from service. As per Notification dated 22.10.1986 issued by respondent No. 3 for filling up the post, the qualification required was eighth standard pass and accordingly he was selected by respondent No. 3 vide letter dated 29.06.1987. His brother, Shri Badri Prasad, who served the department, had strained relations with him and he complained against the applicant that employment is obtained by the applicant on basis of forged documents. Acting on the basis of the said complaint and statement of applicant in preliminary enquiry, respondent No. 3 served a charge memo dated 29.03.2010 alleging the ground of employment on the basis of forged documents. Applicant denied the charges vide his reply dated 12.04.2010. Thereafter, Inquiry Officer as well as Presenting Officer were appointed and a regular inquiry was ordered and thereafter Inquiry Officer submitted his report on 04.08.2012 and the same was served upon the applicant vide letter dated 30.08.2012. Applicant thereafter submitted his representation on 24.09.2012 but the Disciplinary Authority i.e Respondent No. 3 relying on the inquiry

report imposed punishment of removal from service vide memo dated 05.12.2012. Thereafter, applicant submitted Appeal before Respondent No. 2 on 02.03.2013, but the said Appeal was rejected vide memo dated 11.03.2014 (Annexure A/1). Though applicant has served for 26 years and after such period, any action initiated by the respondents is arbitrary and unjustified and therefore being aggrieved by the action of the respondents, the applicant has filed the present Original Application for redressal of his grievance.

3. a) Respondents, after issue of notices, filed their reply and stated that the post of EDBPM now GDS Pichanwa BO became vacant due to acceptance of resignation of one Shri Phool Chand on 25.07.1986. During the said process, two applications from the following persons were received for the post of EDBPM, Pichanwa:-

- 1) Shri Bhanwar Singh Sharma – 9th Pass
- 2) Shri. Bajrang Lal - 10th Pass.

As regular selection of EDBPM was not possible as the appointment of regular EDBPM would take some time, therefore, as a stop gap arrangement, it

was decided to appoint a candidate. In the year 1986, educational qualification for the said post was VIII standard but preference was to be given to Secondary Pass candidate, therefore, on comparison, the applicant was found eligible for the post of EDBPM Pichanwa on the basis of qualification of Secondary pass, hence, the Inspector of Posts, Chirawa had directed to Mail Overseer Chirawa to hand over the charge of EDBPM Pichanwa to the applicant on 06.08.1986 vide charge report dated 06.08.1986.

b) Vacancy of EDBPM Pichanwa was notified on 22.10.1986 and nomination from Employment Exchange, Jhunjunu were called for. List of nine candidates were received from Employment Exchange and applications were called from candidates on 17.10.1986 upto 05.11.1986. Except application of applicant, no application was received, who had submitted only his application form stating that his prior application with the documents earlier submitted by him i.e. Character certificate dated 06.08.1986 and property certificate dated 06.08.1986 may be considered. Due to non receipt of other applications, comparative statement was prepared on 25.06.1987 and after receipt of report from Inspector Post

Chirawa about satisfactory work of the Applicant and having qualification of secondary pass, he was selected on the post of EDBPM Pichanwa and he was given preference over Shri Bhanwar Singh Sharma who was IX Pass. Thereafter, Applicant was appointed as EDBPM vide memo dated 08.09.1987 w.e.f. 06.08.1986 (AN) and since then the applicant is working till his removal from service.

c) On 30.05.2008, a complaint was received from Shri Jagdish Prasad regarding non-delivery of registered mail and in the complaint it was also alleged that the educational certificate of the Applicant are fake one and inquiry in this aspect was requested. On receipt of the complaint, the Inspector Post Chirawa was addressed to conduct an inquiry vide letter dated 04.06.2008 and the Inspector Post Chirawa had submitted original Mark Sheet and certificate of Secondary School Examination 1972 of the Applicant vide letter dated 17.06.2008. On receipt of documents, the same were sent to the Secretary, Rajasthan Secondary Education Board, Ajmer on 06.11.2008. As no report was received from Rajasthan Secondary Education Board, Ajmer upto 16.02.2009, hence, Shri R.K. Jakhalia, ASP (OD) Jhunjhunu was

deputed vide letter dated 17.02.2009 to obtain verification report from Rajasthan Secondary Education Board, Ajmer. Shri Jakhalia obtained verification report of Board dated 04.03.2009 and submitted his report dated 06.03.2009. In both the reports, it was mentioned that the educational certificates of the applicant are fake. After consideration of relevant records, a preliminary inquiry was conducted and FIR No. 215/09 was lodged against the applicant on 16.06.2009 and case was challaned in CJM Court, Jhunjhunu under Case No. 194/2009, which is under trial.

d) Disciplinary proceedings under Rule 10 of Gramin Dak Sevak (Conduct and Employment) Rules, 2001 was initiated vide memo dated 29.03.2010. In the disciplinary case, IO and PO were appointed and Inquiry was conducted as per rules and Inquiry report was submitted on 21.08.2012, which was sent to the applicant on 30.08.2012 and his representation against the report was received on 26.09.2012. In the inquiry, all the charges levelled against the applicant were proved, hence, punishment of removal from service was awarded to the applicant vide memo dated 05.12.2012 (Annexure A/2). Being aggrieved by

the punishment order, Applicant submitted his Appeal dated 02.03.2013 and the said Appeal was rejected by the Appellate Authority vide memo dated 11.03.2014 (Annexure A/1). Thus, being aggrieved by the action of the respondents, the applicant has challenged the said orders by way of filing the present O.A. But as these orders are just and legal, the O.A. filed by the applicant deserves to be dismissed.

4. Applicant has not filed any rejoinder denying the contentions raised by the respondents.

5. Heard learned counsels for the parties at length and examined the pleadings brought on record.

6. The applicant and respondents have reiterated their stand as taken earlier.

7. After hearing the parties and perusing the pleadings, the factual matrix of the case is that Applicant was appointed as EDBPM Pichanwa (Chirawa) after notification being issued on 22.10.1986 and after nomination from Employment Exchange, nine applications were received. But none

other than the applicant applied and he submitted his application and accordingly he was selected. He did not submit his educational qualification certificate and stated that in earlier stop gap arrangement documents submitted to be considered. On complaint about his educational certificate being fake, reports were called from and Inspector Posts Chirawa was asked to conduct inquiry vide letter No. CR-3A/08-09 dated 04.06.2008 and said Inspector had submitted documents of Applicant i.e. Original Marks Sheet and Certificate of Secondary School Examination 1972 vide letter No. CR/General/07-08 dated 17.06.2008. The said documents were sent to Rajasthan Secondary Education Board, Ajmer vide letter No. H-16/PF/Pichanwa/08 for verification but since no report was received till 16.02.2009, an officer was deputed being ASP (OD) Jhunjhunu to obtain report from Rajasthan Secondary Education Board, Ajmer. The said Officer obtained verification report of Board letter No. Secondary Education Board/E.X.54/Exam-II/SPL-58 dated 04.03.2009 and he also submitted his report No. General/Misc/08-09 dated 06.03.09 and both the reports mentioned that the educational certificates were fake. Then a preliminary inquiry was conducted

and an FIR was lodged and criminal case was registered.

8. As seen, simultaneously, disciplinary proceedings under Rule 10 of Gramin Dak Sevak (Conduct and Employment) Rules 2001 was initiated vide Memo No. H-16/PF/Pichanwa/09-10 dated 29.03.2010. As per rules and procedure, IO and PO were appointed and inquiry was conducted giving every opportunity to the Applicant to put his submission. Examination and cross examination were carried out and the Inquiry Officer submitted his report on 21.08.2012 which was sent to the Applicant on 30.08.2012. Applicant made his representation on the same which was received on 26.09.2012. All the charges levelled against the Applicant were proved in the inquiry. Thereafter, after consideration of all the relevant records, Inquiry Report, briefs & representation, etc., punishment of removal from service was imposed upon the applicant vide Memo No. H-16/PF/Pichanwa/11-12 dated 05.12.2012 (Annexure A/2). Thereafter, Appeal dated 02.03.2013 was submitted which was rejected by the Appellate Authority after considering all the grounds raised in the Appeal by the Post Master General,

Rajasthan Western Region, Jodhpur vide Memo No. STA/W.R/44-A/22/2013 dated 11.03.2014 (Annexure A/1). Thus, being aggrieved by the charge memo dated 29.03.2010, (Annexure A/11) with enquiry proceedings and inquiry report (Annexure A/15), punishment order dated 05.12.2012, (Annexure A/2, appellate order dated 11.03.2014 (Annexure A/1), applicant has approached this Tribunal for quashing and setting aside the same.

9. Coming to the major grounds raised by the Applicant that during enquiry, request of Applicant was not duly considered and provisions of Articles 14, 16 and 21 of the Constitution of India were not followed, whole enquiry proceedings were based on the statement of prosecution witness Shri R.K. Jakhaliya, material witness was dropped, inquiry officer relied upon documents which were not testified, provisions of Rule 14(18) were not followed, 26 years of satisfactory service was not considered, Appellate Authority did not consider the matter as per facts and circumstances and rejected the Appeal. On the other hand, we have noticed that the Applicant was not able to produce any single document to show that the said

procedure was violated. Mere making averments in the Application do not suffice nor any document was produced before us to show that he had raised the said plea before the officer concerned or during inquiry. Therefore, none of the grounds are sustainable and the same do not hold good. We have also noted that the proper procedure was followed and the said inquiry was conducted as per rules. No principles of natural justice are violated. Orders are passed by competent authorities after taking into consideration entire material pertaining to the said matter and rules in that aspect.

10. We are in agreement with the judgment of the Hon'ble Supreme Court in the case of **Ex. Sig. Man Kanhaiya Kumar vs. Union of India & Ors.**, reported in (2018) 2 Supreme Court Cases (L&S) 664, relied by the learned counsel for the respondents, wherein the Hon'ble Court has dismissed the Appeal after taking into consideration several judgments relied wherein it is observed that if an employment is obtained by committing fraud, the same cannot be countenanced by a court of law as the employment secured by fraud renders it voidable at

the option of the employer. Also in a similar case, services were terminated 27 years after joining the service, on grounds of using fake birth certificate, such a termination was held to be valid in law. In one of the relied judgments, it is observed that a person who seeks equity must come with clean hands and he must act in a fair and equitable manner. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud.

11. On the other hand, the applicant has tried to justify his stand that in criminal proceedings, he has been acquitted but on going through the said judgment and order dated 26.04.2019, it is clear that on the basis of benefit of doubt, the applicant has been acquitted and the said acquittal cannot be said to be a clean acquittal.

12. In the light of the observations made herein above, we, therefore have no hesitation to observe that the impugned order dated 11.03.2014, (Annexure A/1) and Memo dated 05.12.2012 (Annexure A/2) and

OA No. 291/122/2015

charge memo dated 29.03.2010, (Annexure A/11) along with enquiry proceedings and inquiry report (Annexure A/15) deserve no interference as the same are just and proper and the present Original Application deserves to be dismissed. Accordingly, the Original Application is dismissed with no order as to costs.

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

**(DINESH SHARMA)
ADMINISTRATIVE MEMBER**

/nlk/