

V
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO.404 OF 2006
Cuttack this the 29th day of August, 2008

Jaya Narayan Sethi Applicant
Vrs.
Union of India and others Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be sent to the Principal Bench, CAT or not?

(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER

(K.THANKAPPAN)
JUDICIAL MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.404 OF 2006
Cuttack this the 29th day of August, 2008

CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND
HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

Jaya Narayan Sethi, aged about 55 years, Son of late Laxmi Narayan Sethi of
Olanda Sahi, PO-Barabati, Dist-Balasore

...Applicant

By the Advocates M/s.A.K.Mishra
J.Sengupta
D.K.Panda
G.Sinha
A.Mishra

-VERSUS-

1. Union of India represented through the Secretary to Government of India, Ministry of Defence, New Delhi
2. Director General, Research and Development, Defence research & Development Organization, Room No.232 'B' Wing, Sena Bhawan, New Delhi-110 011
3. Director, Proof and Experimental Establishment, Chandipur, Dist-Balasore

...Respondents

By the Advocates: Mr.S.B.Jena

O R D E R

SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

Challenging Annexure-A/16 removal order dated 31.5.2004 and order dated 6.10.2004(Annexure-A/18) passed by the Appellate Authority, the applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 with prayers to quash the impugned orders at Annexures-A/16 and A/18 and to direct the Respondent-Department

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to reinstate him in service with all service and financial benefits retrospectively.

2. The short facts those emerge for consideration are as follows:

The applicant, while working as ALS 'C' in Equipment Wing of the 3rd Respondents was served with a charge memo (Annexure-A/1) on the allegation that he had committed misconduct coming under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The allegation in the charge was that while entering into the Government service as Tradesman 'E', the applicant had produced a forged certificate in support of his age in order to secure that appointment. On the above charge, an enquiry had been conducted and as per the inquiry report, the applicant was found guilty of the charges leveled against him. On the basis of the enquiry report, as per order dated 31.5.2004 of the Disciplinary Authority, the applicant had been removed from service. Against the order of removal the applicant preferred an appeal. However, the Appellate Authority concurred with the penalty imposed by the Disciplinary Authority, vide Annexure-A/18 order. Aggrieved by both the orders of the Disciplinary Authority as well as the Appellate Authority, vide Annexures-A/16 and A/18 respectively, the applicant has filed this Original Application with prayers referred to above.

3. This Tribunal heard the learned counsel appearing on either sides and perused the documents adduced.

4. The learned counsel appearing for the applicant assailed the impugned orders firstly on the ground that the Inquiry Officer was biased against the

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applicant and the applicant had not been afforded sufficient opportunity to produce all relevant documents and records to defend his case, which is violative of the principles of natural justice. Even the Inquiry Officer had not given an opportunity to the applicant to put up his oral evidence to substantiate his defence. Secondly, the learned counsel submitted that both the Inquiry Officer and the Disciplinary Authority had actually appreciated the evidence and the facts of the case with preconceived notion as if the applicant had committed a forgery by producing Transfer Certificate No.46/1974 from the Christian High School, Balasore. Thirdly, the Inquiry Officer had relied only on oral evidence of the Inspector of Schools, Balasore, to come to a conclusion that the applicant was admitted in Barabati Lower Primary School, Balasore and at the same time, the Inquiry Officer did not examine any of the teachers or the Headmaster of Bibla Bari L.P.School where the applicant had actually joined for re-study. So the rejection of the case set up by the applicant in support of his defence statement that he had never been admitted into Barabati L.P.School, but he was only admitted into Bibla Bari L. P School has been left out of consideration without any evidence. If so, according to learned counsel for the applicant, the entire inquiry proceeding has been vitiated by mala fide. Fourthly, the learned counsel submitted that though the applicant had represented for examination of officers who were working at the time of his joining the service, the representation for production of documents in support of his defence was rejected without any justification and without considering the same in proper



perspective. Hence, the entire findings arrived at by the Inquiry Officer are vitiated. Finally, the learned counsel submitted that even the Disciplinary Authority and the Appellate Authority did not consider the case of the applicant that he never studied in Barabati Lower Primary School, as alleged in the charge memo. In this context, according to learned counsel for the applicant, non-examination of the Headmaster, who is the real custodian of records of Barabati Lower Primary School and also any of the teachers and/or the Headmaster either from Bibla Bari Lower Primary School or the Christian High School, Balasore, would also cast doubts that all the evidences relied on by the Inquiry Officer were with a view to holding the charges proved against the applicant.

5. Replying to the above contentions, Shri S.B.Jena, the learned Additional Standing Counsel, relying on the counter affidavit filed for and on behalf of the Respondents, submitted that the specific charge framed against the applicant was that he had produced a forged or bogus transfer certificate from the Christian High School bearing No.46/1974 dated 28.6.1974 in support of his date of birth with a view to securing an appointment. Subsequently, it came to light that the applicant had prosecuted his study in Barabati Lower Primary School, on the basis of the report submitted by the Inspector of Schools, Balasore and thus, it is proved that the applicant had studied in Barabati Lower Primary School during 1951-52 and his date of birth as recorded in the Admission Register of that School was 25.12.1945, whereas the Transfer Certificate No.46/1974 produced by the applicant would

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show that his date of birth was 10.6.1960. If so, according to learned counsel for the respondents, the charge against the applicant is in consistence with the evidence now adduced before the Inquiry Officer. Further, the learned counsel for the Respondents submitted that as per the Transfer Certificate No.46/1974 issued by the Christian High School dated 28.6.1974 was a bogus and forged one and this is proved from the evidence of the charge-sheet witness, viz., Inspector of Schools, who produced the photocopies of the Admission Register for the year 1951-52 of Barbati L.P.School that the applicant was admitted into the said School on 4.4.1951 in Class-I and his date of birth as recorded in that School Admission Register was 25.12.1945. According to learned counsel for the Respondents, even though the Headmaster of Barbati Lower Primary School was cited as an witness, he could not be examined by the I.O. However, the Inspector of Schools, who is competent to produce the School records had given evidence before the Inquiry Officer with regard to admission and age or date of birth of the applicant and hence, the evidence accepted by the Inquiry Officer is in accordance with the procedures prescribed for the disciplinary enquiry. Further, the learned counsel submitted that even though the applicant had filed certain representations for production of certain documents showing his entry into service in the establishment and also the officers or officials, who were in service during his regular appointment in 3rd Respondent's office, as there was no proper explanation or reason assigned for supply of those documents and get those witness examined, the request of the applicant had

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been rightly rejected by the Inquiry Officer. Hence, it is no violation of the principles of natural justice as alleged by the applicant. The learned counsel further submitted that the stand taken by the applicant that he never studied in Barbati Lower Primary School whereas he had studied and/or had been admitted into only in Bibla Bari Lower Primary School had not been proved by the applicant by adducing any corroborative evidence. If that contention of the applicant is correct, he ought to have produced documentary evidence to that effect by examining either the teachers or the Headmaster of that School. In this context, the learned counsel appearing for the Respondents submitted that as Transfer Certificate No.46/1974 was relied on by the applicant to prove his date of birth and/or his admission into Christian High School, Balasore, he ought to have taken steps to prove his case for which he had been given sufficient opportunity by the Inquiry Officer. It is further submitted by the learned counsel that even if Annexure-R/1, the Transfer Certificate had been produced by the brother of the applicant, his having studied in Christian High School had not been proved by the applicant to prove his case. In the above circumstances, the counsel for the Respondents submitted that the action taken against the applicant by the Disciplinary Authority and confirmed by the Appellate Authority is tenable in law and should not be interfered with by the Tribunal. Further, the learned counsel for the Respondents placed his reliance on the Government of India instructions regarding action to be taken against the incumbents who are found later on ineligible or unqualified for their initial appointments. In this

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respect, he invited attention of this Tribunal to a judgment reported in 1990(4) SLR 237, *District Collector, Vijianagaram vs. M.Tripura Sundari Devi*. With the above submissions, the learned counsel for the Respondents submitted that the Original Application being devoid of merit is liable to be rejected.

6. Considering the rival contentions raised by the learned counsel appearing on either side and on perusal of the records produced in connection with this Original Application, the question to be decided by the Tribunal is whether the Respondents are justified in taking action against the applicant which culminated in issuing the impugned order of dismissal or not.

7. Admittedly, the applicant had joined service under the 3rd Respondent during 1989. It is also admitted that the applicant was selected for the post of Tradesman 'E' in PXE, Chandipur, Balasore, through interview/test conducted sometimes prior to 1989. At the time of joining PXE as Tradesman 'E' on 18.8.1989, the applicant had produced Transfer Certificate from Christian High School, Balasore, bearing No.46 dated 28.6.1974 in support of his age, qualification and date of birth, etc. Without doubting the veracity and/or genuineness of the certificate so submitted by the applicant, the Respondents allowed him to join the service. In the year 2001, the applicant was served with a charge memo on an allegation that the T.C. bearing No.46/1974 dated 28.6.1974, as submitted by him at the time of joining in service, was a bogus and forged one. On the above charge, an enquiry had been conducted under the provisions of CCS(CCA) Rules. The

I.O. submitted the inquiry report holding that the charge framed against the applicant had been proved.

8. The point to be considered in the light of the arguments of the learned counsel appearing for the applicant is whether the enquiry held by the I.O. was in accordance with the procedures for conducting the enquiry into the charge as per Rule 14 of the Central Civil Services(CCA) Rules or not.

9. The main thrust of contentions of the learned counsel for the applicant is that applicant had not been given sufficient opportunity to defend his case. In this context, it is to be noted that on his appointment the Inquiry Officer had given an opportunity to the applicant to submit his defence statement. This is proved from Annexure-A/3. Further, the applicant had filed Annexures A/4 and A/5 representations to the Inquiry Officer for providing certain documents and summoning some of the witnesses to establish his defence. However, after going through the representations, the I.O. had rejected the prayer on the grounds the same were not connected with any of the charges levelled against him. In this context, it has to be noted that as per Annexures-A/3 and A/4 representations, the applicant wanted to produce certain documents. We have gone through those representations and seen that the documents, which the applicant required, had actually no connection with the charge or were rather not enough testimony to prove his defence at all. In this context, the defence statement furnished by the applicant has to be perused. In his defence statement, it was the specific stand taken by the applicant that while he joined as Casual Labourer in JCO Mess Carpenter



Shop in Range Wing of Proof & Experimental Establishment, Chandipur, prior to his regular appointment and thereafter, he was appointed on the age relaxation based on the orders issued by the Department of Personnel & Training, Government of India. The further stand taken by the applicant was that he had never produced any such certificate for securing service, which was produced by his brother. It is also the case of the applicant that he had never been admitted into Barabati Lower Primary School but was admitted into Bibla Bari LP School in Barabati Village. It has come out in evidence during the course of examination of the Circle Inspector of Schools, Balasore that Bibla Bari LP School was established in 1859 and that the school was no more in existence and the same had now been merged with the Barabati L.P. school. The records show that this school had been established in 1951-52. The evidence adduced by the Circle Inspector of Schools of Balasore would show that he had perused all the records relating to the Bibla Bari L.P. school as well as Barabati L.P. school in Balasore. In this context, the contention of the learned counsel for the applicant was that although the T.C. produced by him was issued by the Christian High School, Balasore, but no person, who was authorized to swear or give evidence that the T.C. produced by the applicant was bogus or not, has been examined. However, it has to be noted that the applicant had not been given any chance of producing evidence or cross-examining any person to prove that he had studied only in Bibla Bari L.P. School and the certificate produced by him had actually been issued by the Christian High School, Balasore. In this context, a perusal of Annexure-





R/1 T.C. No.46/74 would show that the applicant was then reading in Class-IX of that High School and the date of birth was recorded as 10.6.1960. Further, it has to be noted that the reasons for leaving School as recorded in Transfer Certificate is 'for service'. If the applicant actually was born on 6.10.1960, by 1974, he would be at the age of 14, and if so, Annexure-R/1 cannot be considered as a genuine one. At the same time, it has to be noted that when the applicant joined service under the 3rd Respondent, even according to his own statement that he was given the age relaxation as he, at the time of joining, was aged 44 years. If so, in 1989, when he joined as Tradesman 'E', he was 29 years old. Therefore, there was no reason for any relaxation being sought. Apart from this, we have already seen that as per representation given by the applicant to the Disciplinary Authority for summoning some of the records and witnesses, the matter was again referred to the I.O. and thereafter the applicant had not taken any step either to produce any document or to get any of the witnesses examined, which he so wanted to establish his case. In this context, the I.O. had categorically held that even if the applicant had been given a chance for production of any document, he had not used it. If so, the contention of the counsel appearing for the applicant that the applicant had not been given sufficient opportunity to adduce the evidence to establish his case holds no water.

10. The next question which comes up for consideration is whether the I.O. had violated all the principles of natural justice by not allowing the applicant to give evidence to establish his case. But as we have held earlier, there is no

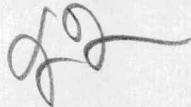


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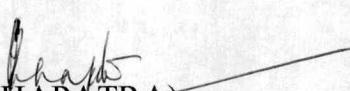
record to show that the applicant had actually wanted to adduce any evidence in support of his claim to the effect that he had not been admitted into Barbati L.P. School but was admitted into Bibla Bari L.P. School. In this context, it has to be noted that the Inspector of Schools, Balasore, was not the custodian of the records which he had produced to prove that the applicant was admitted in Barbati Primary School during 1951-52, the non examination of any of the teachers or for that matter the Headmaster of Christian High School is not a ground to leave aside the evidence adduced by the Inspector of Schools regarding the admission of the applicant in Barabati L.P. School. It was the duty of the applicant to prove that the T.C. produced by him is a genuine to brush aside the charge leveled against him. In this context, the counsel for the applicant contended that the source of information that the applicant had produced fake certificate was not revealed to him before serving the charge sheet. It is not necessary to give any such opportunity to the applicant calling upon him to show cause as to why the charge should not be framed against him on receipt of such complaint, inasmuch as it is the trite law that when an employee secures an appointment on production of a certificate in support of his age, caste, qualification, date of birth, etc., the same having been found later on forged or fake one, the Government or the employer is empowered to frame charge sheet against such employee and proceed against him as per law. In this context, in the guidelines issued by the Govt. of India, Ministry of Home Affairs O.M.No.39/1/67-Estt(A) dated 21.2.1967 in harmony with judgment reported in 1990(4)SLR 27 (District

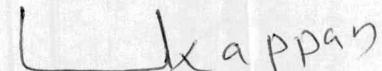
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Collector, Vizianagaram vs.M.Tripura Sundari Devi), it is stated that "it amounts a fraud on public to appoint a person with inferior qualifications in such circumstances unless it is clearly stated that qualifications are relaxable. No Court should be a party to the perpetuation of fraudulent practice".

11. In view of the foregoing discussions, we are of the view that when a Government servant, who was not qualified and/or eligible for appointment in terms of the recruitment rules, had secured the appointment by perpetrating fraud on public, in the instant case the applicant, should not be retained any more in service. The O.A. being devoid of merit stands dismissed. No costs.


 (C.R.MOHAPATRA)
 ADMINISTRATIVE MEMBER


 (K.THANKAPPAN)
 JUDICIAL MEMBER