

OA 263/94

OA 377/93

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, 'GULESTAN' BUILDING No.6  
PRESCOT ROAD, MUMBAI 400001

ORDER IN O.A.Nos. 377/93;  
262/94;  
263/94 AND  
287/94.

DATED : THIS 26<sup>th</sup> DAY OF MARCH, 1998

CORAM : HON. SHRI JUSTICE R.G. VAIDYANATHA, V.C.  
HON. SHRI M.R. KOLHATKAR, MEMBER(A)

O.A.No. 377/93:

B.B. SINGH  
Ex-Labourer  
Fitter No. 57325  
C.No. 76  
Residing at Room No.8  
Jawahar Nagar  
Khar (East)  
Mumbai 400051  
(By Adv. Mr. D V Gangal)

..Applicant

V/s.

1. The Union of India  
through the Chief of Naval Staff  
Naval Head Quarters  
South Block  
New Delhi 110001

2. The Admiral Superintendent  
Naval Dockyard  
Mumbai 400023  
(By Adv. Mr. V.S. Masurkar  
Central Govt. Senior Standing  
Counsel)

..Respondents

O.A. No. 262/94:

B G Panda  
Residing at  
C/o. Leela Export Garment House  
Brahmadeshwar Mandir Marg  
Indira Sahakar Nagar  
Opp. Gala Nagar, Nehru Road  
Mulund (W)  
Mumbai-400080  
(By Adv. Mr. D V Gangal)

..Applicant

V/s.

1. The Union of India through  
Flag Officer Commanding in Chief

.2.

Western Naval Command  
Shahid Bhagat Road  
Fort, Mumbai 400023

2. The Admiral Superintendent  
Naval Dockyard  
Shahid Bhagat Singh Marg  
Fort  
Mumbai 400023  
(By Adv. Mr. V.S. Masurkar  
Central Govt. Senior Standing  
Counsel)

..Respondents

O.A.No. 263/94:  
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Shri B M Sakpal  
Residing at Village Jhakade  
PO. Moragiri  
Tlq. Paltan  
Dist. Satara  
(By Adv. Mr. D V Gangal)

..Applicant

V/s.

1. The Union of India  
through the Vice Admiral  
Chief of Naval Staff  
Naval Head Quarters  
New Delhi
2. Flag Officer Commanding in Chief  
Western Naval Command  
Shahid Bhagat Road  
Fort, Mumbai 400023
3. The Admiral Superintendent  
Naval Dockyard  
Shahid Bhagat Singh Marg  
Fort  
Mumbai 400023  
(By Adv. Mr. V.S. Masurkar  
Central Govt. Senior Standing  
Counsel)

..Respondents

O.A.No. 287/94:  
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B R Manda  
residing at  
C/o. B B Kapur  
Room No. 3/5/5 Shivaji Nagar  
Govandi  
Mumbai 400043  
(By Adv. Mr. D V Gangal)

..Applicant

V/s.

.3.

1. The Union of India  
through the Vice Admiral  
Chief of Naval Staff  
Naval Head Quarters  
New Delhi
2. Flag Officer Commanding in Chief  
Western Naval Command  
Shahid Bhagat Road  
Fort, Mumbai 400023
3. The Admiral Superintendent  
Naval Dockyard  
Shahid Bhagat Singh Marg  
Fort  
Mumbai 400023  
(By Adv. Mr. V.S. Masurkar  
Central Govt. Senior Standing  
Counsel)

..Respondents

ORDER

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[PER: R.G.VAIDYANATHA, VICE CHAIRMAN]

These are four cases filed under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. We have heard the learned counsel appearing on both the sides.

2. Few facts which are necessary for the disposal of these four applications are as follows:

The applicants came to be appointed as Unskilled Casual laborers in the Naval Dockyard at Mumbai. The minimum qualification was only literacy. However, the desired qualification was VIIIth standard. It appears these applicants names were sponsored by the Employment Exchange. The School Leaving Certificate given by the applicants, for showing pass in VIIIth standard, was

submitted to the Appointing Authority. Then the applicants came to be appointed as Casual laborers in the Unskilled category.

It appears that the department was able to find out that there was some racket going on in the department with the collusion of some officers, concerned clerks and the candidates about the procuring forged or fabricated school leaving certificates for getting employment. Then letters were sent to the concerned schools for verifying the genuineness of the school leaving certificates. The Head Master of the concerned school sent a reply that all these school certificates were forged or fabricated certificates and not issued by the School. Then the department issued chargesheets against number of employees including the present applicants alleging that they have committed misconduct in procuring the employment by producing a fake or forged certificate. It appears almost all the employees who were charged including the present applicants pleaded guilty to the charges and prayed for a lenient view be taken regarding punishment. It appears the administration took a tough stand and passed an order of removal of service to many such employees. In some cases where the Disciplinary Authority imposed a lesser punishment of stoppage of increments for 3 years or so, but in those cases the Reviewing Authority revised the punishment and imposed

the penalty of removal from service. Many of those employees including the present applicants approached this Tribunal challenging the order of termination.

3. In O.A.No.377/93, the applicant B B Singh was initially appointed on 20.2.80. Charge sheet was issued against him on 20.6.86. The inquiry officer gave a report dated 30.6.87. The Disciplinary Authority by order dated 23.5.88 imposed the penalty of removal from service. Applicant did not file any appeal. But after a long lapse of time he submitted a Revision Application to the concerned authority. Since he did not receive any reply, he approached this Tribunal by filing the previous case i.e., O.A.No.600/92. This Tribunal allowed that O.A. vide order dated 28.7.92 and directed the concerned authority to dispose of the Revision Application with a time limit. Then the Revisional Authority passed an order dismissing the application by order dated 2.2.93. Therefore this applicant is now challenging the orders of the Disciplinary Authority and Revisional Authority. This O.A. was filed on 22.4.1993.

4. O.A.No. 262/94 was filed on 3.2.94 by the applicant B G Panda. He was initially appointed on 3.6.80, charge sheet was served against him on 14.12.85, the Inquiry Officer submitted his report in June 1986, the Disciplinary Authority passed the order of removal from

service on 23.5.1988. An appeal was preferred which came to be dismissed on 17.5.89. Then the applicant approached this Tribunal by filing O.A.No. 156/89. This Tribunal vide order dated 3.9.91 quashed the order of Appellate Authority only on the ground that it is a non-speaking order and directed the Appellate Authority to pass a fresh order giving reasons and accordingly the Appellate Authority by a speaking order dated 21.4.93 dismissed the appeal. The applicant is now challenging the order of the Disciplinary and the Appellate Authority in the present O.A.

5. O.A.No. 263/94 is filed on 2.2.94 by applicant Sakpal. He was originally appointed by the Navy on 20.8.79. A charge sheet dated 22.7.85 was issued against him. An inquiry officer was appointed who gave a report that the charges are proved. The disciplinary authority by order dated 23.5.88 accepted the report of the Inquiry Officer and imposed the penalty of removal from service. No appeal was preferred. However, after a long lapse of time the applicant sent a representation to the Revisional Authority for which he received no reply. He therefore approached this Tribunal by filing the previous case ie., O.A.No. 563/92. This Tribunal by order dated 29.9.92 allowed that O.A. and directed the concerned authority to dispose of the Revision Application within a particular time. Then subsequently the Revisional Authority rejected the revision application by order

dated 18.3.93. Hence the present applicant has approached the Tribunal challenging the order of the disciplinary authority and the revisional authority.

6. O.A.No. 287/94 was filed on 3.1.94 by the applicant B.R. Manda. He was originally appointed on 17.8.79. Charge sheet dated 17.9.84 was issued against him and inquiry officer was appointed to conduct an inquiry and he submitted a report. The disciplinary authority accepted the inquiry report and imposed the penalty of removal from service on the applicant by his order dated 12.6.86. No appeal was preferred against that order. But after a long lapse of time the applicant sent a revision application to the concerned authority. No reply was received. Then the applicant approached this Tribunal by filing O.A.No.561/92. The Tribunal by order dated 2.9.92 allowed the O.A with a direction to the revisional authority to dispose of the review application within six months. Then the revisional authority passed the order dated 18.3.93 rejecting the review application. Hence the applicant has approached this Tribunal challenging the orders of the disciplinary authority and the revisional authority.

7. In these cases the respondents have filed reply opposing the applications. They have stated that all the applications are barred by limitation. On merits it is stated that all the applicants have pleaded guilty and

they have admitted the charge and the competent authority has imposed penalty of removal from service which does not call for interference by this Tribunal.

8. Though in the pleadings it is mentioned that the applicants pleaded guilty due to assurance held out by the department about minor penalty etc., no such arguments were addressed before us and further there is no material on record to substantiate the allegation that the applicants pleaded guilty due to any such assurance or promise. The report of the Inquiry Officer clearly shows that there is not only written plea of guilt by the applicants but he has also recorded oral guilt when he questioned each applicant separately. That fact that though the orders for dismissal were passed in 1986 in one case and in 1988 in other three cases none of the applicants challenged the same for about 3 to 4 years though they have been relieved from their posts. In our view there is no material on record to show that the applicants pleaded guilty without understanding the charges or they have pleaded guilty due to any promise or assurance held out by the department.

9. The learned counsel for the applicants at one stage contended that the applicants were not provided legal assistance to defend themselves in the inquiry. On the face of it the argument has no merit and has to be rejected summarily. In departmental inquiry the question



of legal assistance does not arise at all. When the applicants have pleaded guilty there is no question of defending the proceedings. There is a reply of the Headmaster stating that all the certificates are forged certificates and that his institution has not issued the certificates. The applicants nowhere alleged that in the lengthy O.A. or before us at the time of argument that these were genuine certificates. In fact the trend of the argument of the learned counsel for the applicant is that though forged or fake <sup>certificate</sup> was produced it is not a case for imposing extreme penalty of removal from service. His argument is that since 8th standard was a minimum qualification there was no necessity for the applicants to produce such 8th standard pass certificate and hence even if it is a forged certificate the department should not have imposed the penalty of removal from service and they should have imposed some minor penalty. In our view this argument has no merit.

10. The 8th standard pass is not a minimum qualification for the post in question and according to the rules 8th standard pass is a desirable qualification. The applicants cannot give a forged certificate to show that they have passed 8th standard. Once it is shown as a desirable qualification as per rules, the authority may prefer these applicants since they have higher qualification of 8th standard, though it was not minimum qualification. Therefore, the authority has been

persuaded to give appointment to the applicants since they have the desirable qualification of 8th standard. When the department sent requisition to the Employment Exchange they asked for candidates with 8th standard qualification. Therefore, though the rule was regarding desirable qualification, what the department wanted was list of candidates who have 8th standard qualification. The Employment Exchange sponsored the names of those applicants who have given false certificates to show that they have passed 8th standard. This we can gather from the stand of the respondents which was taken in one of the previous cases, vide order dated 20.8.1990 in OA 896/89 [D.S. PANDA & 16 ORS. Vs. U.O.I. & ORS.]. That is an identical case in which some of the applicants like the present applicants came to be charge sheeted for the identical misconduct and their services were also terminated which was challenged before this Tribunal. In para 5 of that order it is mentioned that though 8th standard was a desirable qualification the requisition sent to the Employment Exchange was for candidates with 8th standard as minimum qualification. Therefore, the applicants must have given that information to the Employment Exchange that they have passed 8th standard and produced the fake certificates.

11. In our view the question that 8th standard was minimum qualification or desirable qualification or not is of no relevance here and candidate who has obtained

appointment by producing a fake or forged certificate. It shows that he has committed misconduct in obtaining employment on the basis of a fake certificate. It does not lie in his mouth to say that as per rules 8th standard was not a minimum qualification and hence he should have been let off with a minor penalty. The management may think that here is a person who has committed such a grave mistake of seeking employment on the basis of a fake certificate and how can he be trusted in the working of the administration. Hence it cannot be said producing a fake certificate regarding qualification which was not a minimum qualification and is a minor lapse which requires minor penalty and not a major penalty. We are not impressed by this argument. As already stated in the said O.A. 896/89, this Tribunal upheld the removal of 17 officials on identical grounds.

12. The learned counsel for the applicant has referred to some authorities. In 1992(19) ATC 292(SC) [H.C.PUTTASWAMY & ORS Vs. THE HON'BLE CHIEF JUSTICE OF KARNATAKA HIGH COURT, BANGALORE & ORS] it was a case of validation of an irregular appointment which was not according to rules. It was not a case of misconduct on the part of the employee, but there is some irregularity in the appointment which was condoned by the Supreme Court on humanitarian grounds. It has no relevance when we are considering the case of the applicants who had admittedly committed misconduct of producing forged or fake certificates to get appointments.

In 1990(13) ATC 577 [SHAINDA HASAN Vs. STATE OF UTTAR PRADESH AND OTHERS] it was again a irregular appointment of a candidate who did not have the minimum qualification of 5 years experience. It was not a case of misconduct on the part of the candidate.

The two cases in AIR 1980 SC 1457 [UMA SHANKAR SHARMA Vs. THE UNION OF INDIA & ORS] and 1983 SLR 722 [K.T.SEBASTIAN, POLICE CONSTABLE Vs. THE STATE OF KERLA AND OTHERS] are again cases of irregular appointment for want of particular qualification. Even these cases do not pertain to misconduct on the part of the candidates.

In 1984(1) SLR 238 [S.R. PATEL Vs. THE STATE OF GUJARAT] it was no doubt a case of some misleading statement by the candidate in getting the appointment. There was some misleading statement regarding qualification and what the High Court observed was that it was not a case of simplicitor termination, but by way of punishment on the misconduct and therefore Article 311 of the Constitution of India is attracted and the termination is bad since it was by way of punishment and it cannot be done without holding proper inquiry. That decision has no bearing on the facts of the present case since in the present case it is a case of termination of service on the ground of misconduct after holding a full fledged inquiry according to the rules and this is a case where the applicants have admitted the misconduct.

Hence in our view none of the above decisions has any bearing on the point under consideration.

13. The only other decision which is cited by the learned counsel for the applicant is one reported in 1992(19) ATC 31 [NEERA MATHUR (Mrs.) Vs. LIFE INSURANCE CORPORATION OF INDIA AND ANOTHER] which has some bearing. That was a case where the candidate was appointed as an Assistant in the Life Insurance Corporation of India after she passed the necessary test. At the time of joining service as per rules a declaration was taken where she had made incorrect statements regarding her period of menstruation and pregnancy. In view of these two wrong statements made in the declaration form her services came to be terminated and it was challenged before the High Court by filing a Writ Petition and the matter was carried up to the Supreme Court. The Supreme Court observed that those two clauses in the declaration form regarding menstruation period or pregnancy were solely irrelevant and uncalled for and unwarranted and therefore on the basis of answers to those questions the candidate's appointment cannot be quashed. The Supreme Court pointed out that the questions were embarrassing questions and should not have been put and modesty and self respect may perhaps preclude the disclosure of answers to such questions. It is in that context the Supreme Court observed that the order of termination is bad and is liable to be struck down. But it has no

bearing on the point under consideration since we are concerned with a case where the applicants have procured job by producing false or fake certificates showing that they have passed 8th standard which was within their knowledge.

14. As rightly argued by the learned counsel for the respondents, this Tribunal has limited jurisdiction in the form of judicial review in respect of cases pertaining to departmental inquiry. This Tribunal cannot sit in appeal over the findings recorded by the Inquiry Officer, the Disciplinary Authority and the Appellate Authority or the Revisional Authority.

15. We have found that the applicants appointments are made on the basis of forged school certificates and since they have pleaded guilty and further the misconduct was proved during the inquiry, the disciplinary authority has held that the charge is proved and imposed the penalty of removal from service. We do not find any illegality or infirmity in the finding of guilt or in the penalty imposed by the disciplinary authority. As already stated, this Tribunal cannot interfere in a matter like this as it has very limited powers. The argument of the learned counsel for the applicants that some minor penalty should have been imposed on the applicants and not the major penalty of removal from service. This again is in the realm and discretion of the

disciplinary authority. When the misconduct is one of obtaining appointment by producing a fake or forged school certificate it cannot be said that the penalty or removal from service is not called for. The disciplinary authority has thought it fit to impose the penalty of removal from service and we cannot substitute our discretion regarding penalty in the place of discretion exercised by the competent authority.

16. Apart from opposing the applications on merits the learned counsel for the respondents also contended that all the applications are barred by limitation, delay and laches.

17. We have already noted that in three cases the orders were passed in May 1988 and in one case in 1986, but the present applications are filed in 1994. No doubt there is undue delay in approaching this Tribunal for challenging the impugned orders. However, we need not go into this question in detail since on merits we find that the applicants have no case.

18. In the result all the four applications are hereby dismissed. But in the circumstances of the case there would be no order as to costs.

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(M.R. Kolhatkar)  
Member(A)

(R.G.Vaidyanatha)  
Vice Chairman

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(J)