

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 8/10/04

TA 01/2002

Jagdish Prasad Sen s/o Shri Narain Lal Sen r/o Village & Post Ratiyapura via Masalpur, District Karauli.

... Applicant

Versus

1. Union of India through Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. Director, Postal Services, O/o CPMG, Jaipur.
3. Chief Postmaster General, Rajasthan Circle, Jaipur.
4. Supdt. of Post Offices, Sawai Madhopur.

... Respondents

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (J)

HON'BLE MR.A.K.BHANDARI, MEMBER (A)

For the Applicant

... Mr.S.K.Jain

For the Respondents

... Mr.D.P.Singh, proxy counsel for
Mr.N.C.Goyal

ORDER

PER HON'BLE MR.A.K.BHANDARI

This application was initially filed as SB Civil Writ Petition No.4110/98 before the Rajasthan High Court and was transferred to this Tribunal vide order dated 13.12.2001 and registered in the Tribunal as TA 01/2002. By way of this application, following relief has been sought by the petitioner/applicant :

- "i) by an appropriate writ, order or direction, the impugned orders dated 27/28.10.97 (Ann.6) and appellate order dated 23.4.98 (Ann.8) be quashed and set aside.
- ii) That the petitioner be declared to have been in service without any break with all consequential benefits."

2. Brief facts of the case are that the applicant working as EDMC from 9.1.85 on the basis of his educational qualification of 5th Class pass, was examined in connection with inquiry regarding allegation of giving bribe to SPO Sawai Madhopur for being appointed as EDBPM and in the inquiry, the applicant stated that he had passed 8th Class examination in the year 1993-94 and also submitted a copy of the marks-sheet to the

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inquiry officer. On the basis of this statement, the respondents charge-sheeted him alleging that on 5.8.92 the applicant had sent an application under own signature to Supdt. Post Offices, Sawai Madhopur, stating his educational qualification as 8th Class pass and requested for appointment as EDBPM. On the basis of this application he was selected on the post of EDBPM from 12.10.92 and was posted on 26.11.92 at Ratiyapura. That during inquiry by Sub Divisional Inspector, Karauli, on 11.6.94 (Ann.2) he filed a certificate of his being 8th Class pass, according to which it was clear that he had passed 8th Class examination on 16.5.94 as private student. Thus, applicant concealed his educational qualification of 5th Class pass but stated that he was 8th Class pass, thereby filed document/wrong facts and obtained the post of EDBPM, for which minimum educational qualification was not held by him. Thus, he violated Rule-17 of Rules, 1960. In support of this charge 7 documents and 3 witnesses were relied upon. The charge-sheet is annexed as Ann.3. It is stated that no reply was filed to the above charge-sheet by the applicant. Inquiry and Presenting Officers were appointed. Defence Assistant was also nominated and duly appointed. In course of inquiry on 8.2.97, applicant asked for additional documents and in view of inability on part of presenting officer to give/show the document annexed to the application dated 5.8.92, it was considered by the inquiry officer that no such document could be made available. The document which could not be supplied was application dated 5.8.92. During subsequent hearing, inquiry officer examined three witnesses and brought on record documents S-1 to S-6. No defence was presented by the applicant and vide order-sheet dated 17.3.97 it was decided to file written reports, which were accordingly filed on 20.3.97 and 29.3.97 by presenting officer and the applicant respectively. It is further stated that inquiry officer found the charge proved partially and held that allegation regarding narrating wrong facts has been proved but allegation of filing wrong documents has not been proved. Copy of this report was given to the applicant on 4.9.97 vide Ann.4. Comments thereupon were submitted by letter dated 13.9.97 (Ann.5). That

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disciplinary authority thereafter imposed punishment of removal from service vide order dated 27/28.10.97 (Ann.6). Aggrieved by this decision, applicant filed an appeal before competent authority vide letter dated 22.7.97 (Ann.7). The Director Postal Services rejected this appeal by order dated 23.4.98 (Ann.8). It is further stated that notification dated 16.1.80 by Director General, P&T Department, procedure prescribed in Rule-14 of CCS (CCA) Rules, 1965 is required to be followed by the respondents for holding departmental inquiries but the same has not been done inasmuch as disciplinary authority is required to record oral defence of the charged officer or obtain it in writing, which was not done. That as per inquiry officer, the charge was only partially proved and the portion of the charge pertaining to producing false document has clearly been held to be not proved. In these circumstances, above punishment could not have been awarded. That due to non-production of document dated 5.8.92, with its annexures, for which the applicant had asked, adverse inference should be drawn against the respondents. That applicant has been charged with giving wrong fact in the application dated 5.8.92 because as per advertisement in this behalf he was required to give supporting documents for his application. Since according to respondents no such documents were filed as annexures to the above application, it is clear that no document was produced by the applicant in support of his contention that he had passed 8th Class examination. That being so, there is no basis to hold that applicant was having less qualifications for appointment on the post of EDBPM. The respondents were duty bound to ask for such supporting documents. According to Section-3 of the Method of Recruitment in the Service Rules for ED Staff in Swamy's Compilation 1991, applicant for the post of EDBPM should have passed 8th Class. In other words, before a person could be appointed, he should have given proof of his eligibility. Since no such proof is shown to have been given by the applicant, it could not be said that he was eligible for appointment on the post of EDBPM and respondents without satisfying themselves about this pre-requisite, the disciplinary authority i.e. SPO Sawai Madhopur issued the alleged

appointment to the applicant vide order dated 12.10.92 (Ann.A/10) for the reasons best known to him. It is further stated that letter dated 5.8.92 is not in the hand writing of the applicant and bears only his signature, which clearly shows some conspiracy against the applicant. The application dated 5.8.92 also does not bear any endorsement by the respondents on it and it is not clear whether it was presented personally or was sent by post and who received the same. In other words, it cannot be said with certainty that it was sent by the applicant. It is also stated that letter dated 12.10.92 is purported to be appointment letter. However, reading of it reveals that it is a letter for approval for appointment and not a letter of appointment. In its endorsement No.1 SDI Karauli has been directed to prepare appointment papers and submit the same. However, there is nothing on record to show that appointment letter was ever issued and it is now alleged that on the basis of application dated 5.8.92 the applicant managed to get the appointment vide order dated 12.10.92. Therefore, the charge that applicant secured appointment on the basis of document dated 5.8.92 cannot be said to be proved. That Ann.11, which is letter dated 13.8.93 from SDI (P) Karauli to applicant, asking him to produce certificate of health for the purpose of issuance of appointment letter, also shows that till 13.8.93 no appointment letter had been issued. Therefore, applicant asserts that no appointment letter was issued to him till that date and that he was only holding dual charge of EDBPM and EDMC w.e.f. 28.7.92. Thus, the charge was not properly prepared and applicant can not be punished on the basis of it. It is also alleged that SPO Sawai Madhopur, Shri Mala Ram Lamba, who issued letter dated 12.10.92 (Ann.10) in statement during inquiry did not term this letter as an appointment letter but simply called it a memorandum. He also called it as an approval letter and not an appointment letter. This statement is cited as Ann.12. That in above letter dated 12.10.92 no reference of application dated 5.8.92 is made. This clearly shows that letter dated 5.8.92 was not received before 12.10.92 and that it was issued in routine without any reference to any application. That disciplinary authority

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failed to notice these relevant points in the statement of Shri Mala Ram Lamba. During cross examination this witness had clearly stated that it is necessary to look into educational qualification before appointment letter is issued but he evaded the reply to query whether the same was done in this case. He went on to say that in absence of file no reply in this regard can be given, although in reply to question No.3 he asserted that only on the basis of application dated 5.8.92 approval of appointment was issued by him. If disciplinary Authority's observation that inquiry officer should not have divided the charge into two portions is his firm belief, he should have remanded the inquiry back to the inquiry officer, which he did not do and having not done the same, he cannot consider the entire charge proved. In other words, above finding of inquiry officer was not held to be wrong by the disciplinary authority but he has imposed punishment of removal from service, which shows prejudice in his mind against the applicant. It is also stated that if applicant had guilty conscious about stating wrong educational qualification in his application dated 5.8.92, he would not have presented the certificate of 8th Class during his statement in a different inquiry on 11.6.94. This clearly shows that he was not conscious about wrong fact stated in the application dated 5.8.92. Further, if the falsity of application dated 5.8.92 came to notice on 11.6.94, it is not understood why respondents did not charge-sheet the applicant immediately nor was he asked to relinquish the charge of EDBPM immediately. On the contrary, he continued to work till the date of his removal on 27/28.10.97. It is also alleged that applicant has been made a scapegoat to save the skin of SPO Sawai Madhopur who had in fact failed in his duty to verify educational qualification and approved the applicant for the post of EDBPM. For othis fault SPO Sawai Madhopur should have been held guilty and not the applicant. The appellate authority committed grave illegality in not ordering an inquiry against SPO Sawai Madhopur in spite of the fact that he suspected that there was a conspiracy or complicity between SDI (P) and the applicant. While approving the punishment, however, no action was taken by the appellate

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authority against the erring officials. Therefore, this OA.

3. The respondents have submitted a detailed reply. They have raised preliminary objection regarding maintainability because the applicant at first instance filed Writ Petition before the High Court to challenge the impugned orders even though he being Central Government employee the jurisdiction for service matters lies in the CAT. In this regard, L.Chander Kumar's case, decided by Supreme Court, has been quoted. In detailed reply to facts of the case, it is stated that Ratiapura Branch Post Office is a double handed EDAS. The applicant was working as EDMC from 12.9.84 and one Shri Ram Dayal Meena was EDBPM. On latter's elevation as Postman on 23.1.92 he joined at Jaipur and as per existing instructions applicant was ordered to work as EDBPM in addition to his work as EDMC from 27.7.92 (AN) and he worked in that capacity upto 26.11.92. In the meantime, the process for selection of EDBPM Ratiapura was initiated and advertisement No.AH 336/PF dated 5.5.92 was issued inviting applications from open market. Apart from others, applicant also applied for this post by his application dated 5.8.92. In this he clearly mentioned his educational qualification as 8th Class pass. By this, he deceived the answering respondent No.4 by submitting false information regarding his educational qualification. On the basis of this false information he got his name approved for the post of EDBPM, Ratiapura, vide memo dated 12.10.92 and started functioning on regular basis as EDBPM w.e.f. 26.11.92 (AM). It is clear that the applicant did not possess 8th standard educational qualification as on the date of submission of application dated 5.8.92 nor on the date of his selection and on the date when he started functioning as regular EDBPM Ratiapura i.e. 26.11.92 but he had passed 8th Class as a private candidate during academic session 1993-94 and produced marks-sheet alongwith transfer certificate issued by Headmaster Ratiapura dated 16.6.94. Thus, the applicant acquired educational qualification of 8th Class on 16.6.94 and not on the date of application nor when he started functioning as regular EDBPM. Therefore,

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he deceived the respondents and sought his selection on the post of EDBPM by unfair and illegal means contrary to norms of educational qualification fixed for the post of EDBPM. Accordingly, disciplinary inquiry under Rule-8 was held. In this inquiry full opportunity was given to the applicant to present his case. After receipt of inquiry report, copy of the same was given to him and after obtaining written defence the case was finally decided by memo dated 27/28.10.97, by which he was ordered to be removed from EDS's service which will have no future effect for further employment. The applicant preferred an appeal against this order which was duly considered and rejected by the appellate authority. The applicant after this did not avail alternative departmental remedy of filing review petition, but filed this writ petition/TA, whereas being a Central Government employee he should have approached the CAT which is the court of first instance.

4. While giving parawise reply, Ann.2 being applicant's statement given in course of inquiry is cited in which he has himself admitted that he had actually passed 8th Class in 1993-94 and that at the time of submission of application and taking over dual charge and even at the time of selection as EDBPM he was not possessing the minimum requisite educational qualification of 8th Class pass. Further, it is emphasised that the charge-sheet was in fact based on hard facts. It is denied that applicant was denied perusal of particular document namely applicant's application dated 5.8.92, for which he had requested during inquiry on 8.2.97 as an additional document. Regarding this it is stated that the applicant in his application dated 5.8.92 to the Supdt. of Post Offices, Sawai Madhopur, though mentioning "DA-3" on it thereby meaning that three documents had been attached with it but in fact nothing was attached to this application. Inquiry Officer has therefore stated that although he gave out wrong facts (about educational qualification), submitting of any false document was not proved. Thus, there is no basic difference in the allegation levelled and found proved against the applicant. The allegation

of not following the procedure prescribed in Rule-14 of CCS (CCA) Rules is also denied by stating that applicant has not pointed out any specific procedural lapse. In fact procedure under said rule has been scrupulously followed by the respondents. Similarly, violation of sub rule-16 and 17 is also denied. In this regard it is stated that the disciplinary authority on finding a mistake on part of inquiry officer had in fact ordered de-novo proceeding vide his order No.AH/336/PF II dated 21.5.97 from the stage after closure of the case after disciplinary authority, after which applicant had submitted his written defence. In this regard, photo-copy of order dated 21.5.97 and copy of written defence dated 2.7.97 are annexed as Ann.R/1 and R/2 respectively. Order-sheet in this regard dated 2.7.97 is also annexed as Ann.R/3. That after submitting written defence no further defence was to be stated or no evidence was to be produced by the applicant even on asking for the same by inquiry officer. Thus, compliance of sub rule-17 of Rule 14 of CCS (CCA) Rules is also made. Though opportunity was given, applicant did not produce any defence witnesses. Contention that disciplinary authority cannot impose penalty on charge being partially proved by inquiry officer, is denied. In this case submission of false fact in the application rendered this document (application) false. In view of the seriousness of the charge penalty of removal from service is not wrong. The application dated 5.8.92 marked as Ann.S-2 was addressed to respondent No.4. In this applicant had mentioned his educational qualification as 8th Class and also stated that he has a house to run the Post Office in, that his agriculture income is Rs.5000/- per annum and that he has full knowledge of the work of BPM and that due to these reasons he is fit for his appointment as EDBPM and signed the application. However, no document was attached to the application although "DA-3" was stated on it to deceive the respondents. Thus, instead of explaining why no document was attached, the applicant is now asking for the same documents to be produced by the respondents. During inquiry when this matter was under consideration the applicant was given an opportunity to produce the documents, which he intended to enclose with

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the application dated 5.8.92, but he failed to do so. This confirmed that he had deliberately mentioned documents in order to mislead the respondents. Thus, the plea taken by him regarding non-production of document is clearly ill founded. It is also obvious that he adopted unfair means to get the job of EDBPM due to which the charge-sheet was rightly given. The allegation of conspiracy is totally denied and it is stated that if at all there was one, the applicant himself was the initiator of it. It is also denied that applicant did not send the application but he was merely asked to come and sign it. It is stated that application dated 5.8.92 was sent by him vide registered letter dated 6.8.92 which was booked from Post Office Masalpur vide No.111 dated 6.8.92. This fact finds mention in Ann.III at page-7 of the charge memo dated 13.8.96. It is also stressed that applicant did not raise any dispute over this issue during the departmental inquiry nor in his appeal due to which it can be rejected outright in this OA. It is further explained that the competent authority vide letter dated 12.10.92 (Ann.10) approved the appointment of the applicant as EDBPM and pursuant to such approval he took over as EDBPM Ratiapura on 26.11.92 (AN), in proof of which charge report and copy of letter dated 12.4.99 of Postmaster Hindaun City are enclosed as Ann.R/4 and R/5 respectively. He started drawing allowance as admissible to EDBPM from 26.11.92 because prior to that he was holding his original charge of EDMC in addition to EDMC cum EDDA with additional charge of EDBPM. Thus, the assertion that he was only working in dual capacity as EDBPM is denied. In elaboration of this point it is further stated that normally formal orders are to be issued on completion of certain formalities like verification of documents, antecedents and character, certification of health/medical examination etc. But the fact that the applicant did not possess adequate educational qualification was realised and he had sought the appointment by deceiting/concealment of facts, due to this reason the appointment order was not issued. The letter dated 13.8.93 written by SDI (P) Karauli (Ann.11) by which he asked the applicant to submit medical fitness certificate has also to be seen in

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the light of above circumstances. However, applicant started functioning as EDBPM from 26.11.92 (AN) and record proves that he was drawing the allowance admissible for the said post. In light of these facts, there is no infirmity in the charge-sheet just because of no formal order of appointment was issued. Regarding role of Shri Mala Ram, SPO Sawai Madhopur, it is stated that he approved the appointment only on the basis of application dated 5.8.92. That prior verification of the educational qualification was got done. These facts have been stated by Shri Mala Ram as witness No.1 in the DE. The respondents have also reiterated that letter dated 12.10.92 was endorsed to the applicant and everything was done in a transparent manner. And having received the same he cannot now deny the fact that he was functioning as EDBPM even though formal orders had not been issued. The allegation of prejudice or premeditation on part of disciplinary authority is denied because illegality and acts of omission or commission were really committed by the applicants himself and not the respondents. The applicant having not disowned the application dated 5.8.92 at any stage during the disciplinary inquiry, it is wrong on his part now to state that if he had guilty conscious he would not have come forth with the information that he passed 8th Class examination in 1993-94. It is stated that other facts mentioned in the application regarding immovable property and other income of Rs.5000/- per annum etc. were also relevant for getting him the job of EDBPM due to which he could not deny the fact that he had himself consciously written this application. Therefore, it has to be believed that having mentioned the fact of passing 8th Class in application dated 5.8.92, he decided to obtain 8th Class qualification as a private candidate which cannot be an unconscious act. He had to disclose the true fact in the statement given by him on 11.6.94 (Ann.2) because this inquiry was in pursuance of a specific complaint against him about non-passing of 8th Class and the same was inquired into by SDI (P) Karauli. If the inquiry officer was to conclude that he was not 8th Class pass, the applicant would have lost his job on this count. The respondents have also denied that SDI (P) Karauli

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and SPO Sawai Madhopur were aware of the fact that applicant had really not been 8th Class pass at the time of his application and that they were a part of conspiracy in obtaining 8th Class pass certificate by fair or foul means. The alleged delay in serving the charge-sheet is denied by stating that only after thorough preliminary inquiry and examination of full facts of the case the charge-sheet was issued and this delay in any case has not caused any prejudice to the applicant. Even if SDI (P) Karauli and SPO Sawai Madhopur were at fault for having not verified applicant's educational qualification before issuing letter dated 12.10.92, this does not absolve the applicant of his own responsibility for submitting wrong facts for seeking the job of EDBPM. The allegation of arbitrariness by appellate authority is also denied because he had carefully considered all aspects of the case before holding the applicant responsible for illegalities and upheld the punishment order.

5. The applicant has submitted a detailed rejoinder too. In it, the preliminary objection regarding the applicant having gone to High Court instead of approaching the CAT, has been denied by stating that in 1998 the CAT Bench at Jaipur was not functioning because of non-availability of Division Bench in absence of proper coram and he had to approach the High Court. The High Court ordered transfer of the case to the Tribunal when the Division Bench was formed in CAT. As such, there is no illegality and the preliminary objection deserves to be over ruled. While admitting the fact that he was given additional charge of EDBPM on 27.7.92, it is denied that he submitted false document and thereby deceived the respondents. That respondents did not ask for any proof of educational qualification, they also did not see the personal file of the applicant in which qualification was never stated to be 8th Class pass. In fact, the respondents assumed the applicant as 8th Class pass, failed to scrutinise the application which applicant had submitted as an open market candidate and are now trying to pass the responsibility for their mistake on him. Thus, there is no deception on part of applicant but the respondents

themselves committed the illegality for which they cannot blame the applicant. It is also stated that the applicant had in fact annexed three documents with the application dated 5.8.92 in which one of the documents was regarding his educational qualification and the same was not for 8th Class pass. It was the duty of the concerned authorities to demand the proof of educational qualification, which they did not do. That applicant had only signed and not written the application in his own handwriting. This fact is corroborated by Ann.R/2, which is the statement of the applicant even on 13.6.94 in course of inquiry by SDI (P) Karauli, under his persuasion. A copy of the above inquiry report is annexed as Ann.13. It is also reiterated in the rejoinder that merely writing educational qualification in the application does not mean that he wanted to deceive the respondents/department specially when it was the duty of the department to obtain the proof of educational qualification from the applicant and approve the appointment only thereafter. The failure of the respondents is sought to be proved by citing statement of SDI (P) Karauli during disciplinary inquiry, annexed as Ann.14, in which evasive replies have been given regarding educational qualification of the applicant as per record (as he was already working as EDMC) and non-scrutiny of the application and related papers by him before approving the appointment. It is also reiterated that as he was never appointed as EDBPM, therefore, the charge framed against him is wrong and on the basis of it punishment cannot be awarded.

6. The arguments were heard at length and on request of the applicant vide order dated 20.5.2004 respondents were directed to bring certain documents on record. The same was complied with by respondents through MA 527/2004 dated 5.7.2004, after which the arguments were concluded and for the convenience of the Bench learned counsel for the applicant submitted synopsis of his pleadings which were kept on file. Briefly, the punch of the arguments of the applicant is that in absence of appointment order which should have been issued in pursuance of Ann.10 and 11 the charge

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that applicant managed his appointment as EDBPM is wrong and punishment awarded for it deserves to be quashed. Secondly, since he was holding only additional charge of EDBPM his services should not be dispensed with but continued on his substantive post of EDMC, appointment to which post is without any infirmity. Since Ann.10 dated 12.10.92 issued by SPO Sawai Madhopur is only approval of appointment and vide endoresment on this letter SDI (P) Karauli was asked to issue appointment order after concluding some formalities. Also othat Ann.11 dated 13.8.93 is letter from SDI (P) Karauli to the applicant asking him to produce medical certificate, on receipt of which the appointment would be given. This also proves that appointment order was not issued till this date. Thus, the question of obtaining an appointment by him as EDBPM does not arise. Thirdly, the respondents themselves failed in discharging their duties of examining applicant's educational qualification and are now holding the applicant responsible for their failure. The ED Rules clearly lay down that approval/appointment should be given after proper verification which was never done by them and only when applicant himself in good faith disclosed in the interest of department to avoid bad publicity that he had passed 8th Class examination in 1993-94. The charge-sheet was issued to him on 13.8.96 which is also very belated and only to cover the mistakes committed by the respondents themselves. Fourthly, these facts in detail were mentioned in the memo of appeal. That in the appellate authority's order dated 23.4.98 (Ann.8) it is clearly stated that the question whether action of SPO Sawai Madhpur was in accordance with rules or not needs to be viewed separately, but no further action has been taken against him whereas severe penalty has been awarded to the applicant, which cannot be sustained in eye of law. Fifthly, there is no relinquishing of charge report of the post of EDMC by the applicant, the respondents have also not filed pay fixation order or service sneet to prove that his pay was fixed for the higher post of EDBPM. All these go to prove that he was never appointed as EDBPM as alleged by the respondents. Sixthly, learned counsel for the applicant reiterated his pleadings regarding non-

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compliance of Rule-14 of the CCS (CCA) Rules and cited Supreme Court's decision in Civil Appeal No.3091/95, Ministry of Finance and Anr. v. S.B.Ramesh, in which it was held that this infirmity is fatal for any departmental inquiry. Seventhly, reacting to the document submitted by the respondents by additional affidavit dated 5.7.2004, it was argued that in spite of clear instructions respondents have not put up the appointment order and have in fact annexed the letter dated 12.10.92 as Ann.MAR/2 which is only an approval of appointment and not appointment order, and copy of the same had already been filed by the applicant as Ann.10. This amply prove that applicant was never appointed as EDBPM. Respondents have also annexed advertisement dated 5.5.92 issued for filling the post of EDBPM Ratiapura from open market candidates as Ann.MAR/3 to substantiate their claim that passing 8th Class was basic qualification for this job, which he did not possess on the date of the application. Reacting on this, learned counsel for the applicant has pleaded that respondents are shirking responsibility for non-examination of documents and making a scapegoat out of the applicant. Lastly, Ann.MAR/4 filed by the respondents is appointment order of one Radhey Shyam Saini and not of applicant, as such it is a clear attempt on their part to mislead because the name of the applicant is Jagdish Prasad Saini. Similarly, the date of the order is 8.5.98 by which appointment made on 19.5.93 is sought to be regularised. In light of these facts it is concluded that the respondents have no case for punishing the applicant and the TA deserves to be allowed.

7. Learned counsel for the respondents, on the contrary, repeated the pleadings on record and stressed that but for wrong facts stated in the application that he was 8th Class pass, the applicant would not have been appointed as EDBPM and for this reason the charge is correctly framed. The inquiry was concluded scrupulously following the rules, ample opportunity of defence was granted to the applicant during inquiry, he cross examined all the witnesses, the defence statement submitted by him was carefully

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considered by the disciplinary authority before awarding punishment and appellate authority's orders are also detailed and speaking on all points raised in the memo of appeal. Therefore, the punishment has been awarded as per rules and there is no ground for allowing the application.

8. We have carefully considered all facts and pleadings. The admitted facts of the case are that applicant was already working as EDMC when the post of EDBPM fell vacant. As is prevalent, he was given additional charge of the post of EDBPM and during this period he made application dated 5.8.92 in response to advertisement dated 5.5.92. Disagreement between the parties begins hereafter. Whereas applicant pleads that he did not write this application but only signed it on persuasion by the respondents and that he was not mindful of the fact that educational qualification stated in this application was 8th Class pass, on the other hand, respondents say that as an educated person already discharging the duties of EDBPM he was aware of the fact that being only 5th Class pass on the date of application he could not apply for the job and should not have signed it even if for arguments sake it is believed that he had not written the application himself. But respondents insist that the application was written and sent by him by registered post and this fact is mentioned in the charge-sheet itself and although applicant has denied it in the OA he has not given any evidence to the contrary. Besides, the application has not been disowned by him during inquiry and appeal and as per CAT rules and procedure he cannot be allowed to raise this new contention at this late stage. Secondly, all other facts stated in the application namely immovable property ownership, annual income of Rs.5000/- and that he is conversant with the work of EDBPM are correct and are of advantage to the applicant for getting job of EDBPM, which are not denied by him. We tend to agree with this objection and contention of the respondents. Even if for the sake of argument it is believed that what applicant says is correct, being aware of the fact that he was not 8th Class pass he should have refused to work as EDBPM basic qualification for

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which is 8th Class pass. We also notice that the appellate authority has considered these facts in detail while deciding the appeal. He has even conceded that SPO Sawai Madhopur and SDI (P) Karauli have erred in not scrutinising the papers properly before approving his appointment but this mistake on their part does not absolve the applicant of his responsibility, and we agree with him on this conclusion. Regarding contention of the applicant that inquiry officer found the charge only partially proved, we believe that the charge very clearly states that applicant submitted wrong fact/document which is proved by his own admission and corroborated by Postmaster's evidence. It is not mentioned in the charge-sheet that he submitted false certificate. Therefore, disciplinary authority's observation that there was not need to split the charge by inquiry officer is quite legitimate and that charge has been correctly found to be prove. Objection of the applicant regarding non-observance of Rule-14 of the CCS (CCA) Rules does not stand because it has been clearly explained by the respondents that the compliance of this rule had been scrupulously made. It is clear that reasonable opportunity was given to the applicant at all stages of inquiry, and applicant has utilised these opportunities too, due to which no infirmity is observed by us in abidance of the procedure. Allegation raised in the rejoinder that applicant signed the application dated 5.8.92 under persuasion cannot be considered because no evidence to substantiate this allegation has been putforth. Similarly, the allegation of conspiracy was also considered by us carefully but due to the fact that even if the theory of conspiracy is believed, the beneficiary of the same is the applicant. Therefore, allegation that the conspiracy was hatched by SPO Sawai Madhopur and SDI (P) Karauli cannot be accepted. Lastly, while deciding this OA we are conscious of the fact that the degree of proof to be adduced in a departmental inquiry is to the extent of preponderance of probability and not the high degree of proof, learned counsel for the applicant is demanding in the matter. When it was clearly proved that application dated 5.8.92 wrongly states that he is 8th Class pass, because he passed


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that examination much later, the charge is found proved.

8. Yet for another reason the present TA is liable to be dismissed. Admittedly, the applicant does not fulfil the requisite qualification of having 8th Class pass, which was necessary for seeking appointment for the post of EDBPM. As per his own version, the applicant has obtained this qualification only in the year 1994. The applicant in his application dated 5.8.92 has specifically mentioned that he has passed 8th Class examination and it was on the basis of this application that he has secured appointment by placing wrong information as to his eligibility and in case the respondents have cancelled the appointment of the applicant, no infirmity can be found on this account. The matter is squarely covered by the decision of Apex Court in the case of Jammu & Kashmir Public Service Commission -v.- Farhat Rasool & Ors., 1996 (1) ATJ 280. In that case also the respondent therein while applying for the post of Assistant Engineer (Elect) submitted an application dated 13.2.98 whereby he has stated that he has passed the examination in question by securing 5608 marks out of 8000. However, the respondent therein actually qualified the examination on 31.3.88 securing 5569 marks. The High Court took the view that respondent fulfilled the eligibility condition, result of the applicant was withheld on account of incomplete registration and in any case the applicant fulfils the requisite qualification of possessing BE Degree before declaration of the result. The decision of the High Court was set aside by the Apex Court and it was held that; "the present is a case where almost a fraud was sought to be played by the respondent by giving wrong information as to his eligibility, benefit of which fraud cannot be allotment (allowed) to the respondent".

9. Viewing the matter from any angle, we see no infirmity in the order dated 27/28.10.97 (Ann.A/6) passed by the disciplinary authority and order dated 23.4.98 (Ann.A/8) passed by the appellate authority. Accordingly, the TA is dismissed with no order as to costs.


(A.K. BHANDARI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)