

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.160/1997

Date of order: 15.1.2003

Daleep Singh, S/o Bhanwar Lal, Ward No.13, Mohalla Nayakon ka Bissau, Distt.Jhunjhunu.

...Applicant.

Vs.

1. Union of India through Secretary, Deptt.of Post, Mini.of Communication, New Delhi.
2. Postmaster General, Rajasthan Western Region, Jodhpur.
3. Supdt.of Post Offices, Jhunjhunu Division, Jhunjhunu.
4. Inspector of Post Offices, Jhunjhunu.

...Respondents.

Mr.K.L.Thawani - Counsel for applicant.

Mr.Satish Sharma, proxy of Mr.N.C.Goyal, for respondents.

CORAM:

Hon'ble Mr.H.O.Gupta, Administrative Member

Hon'ble Mr.M.L.Chauhan, Judicial Member.

PER HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER.

The present application has been filed against the order dated 24.10.94 (Annx.A1) whereby the applicant was removed from service and order dated 12/16.1.95 issued by the Supdt.of Post Offices, Jhunjhunu, dismissing the appeal of the applicant and applicant has prayed for the following relief:

(i) 'the impugned order Annx.A1 & A2 be quashed being illegal, unconstitutional and capricious and violative of Articles 14, 16 and 311(2) of the Constitution and principles of natural justice.

(ii) the respondents be directed by an appropriate order or direction to reinstate the humble applicant in service with all consequential benefits as if the humble applicant was not removed from service.'

2. Facts of the case: The respondents vide their advertisement dated 15.2.82 (Annx.R1) invited applications for filling up the post of Extra Departmental Telegraph Messenger (EDTM), Bissau Post Office thereby specifying that the candidate possessing educational qualification of 8th Pass and who are not below the age of 18 years shall be eligible for the post. Pursuant to this advertisement, the applicant submitted his application dated 23.2.82 (Annx.R2) thereby enclosing two documents namely educational qualification 8th pass certificate and character certificate and the applicant was selected for the post of EDTM. As per the version of the respondents, the date of birth of the applicant as shown in the certificate was 5.9.1962. The applicant was initially appointed on temporary basis w.e.f. 11.4.82 and subsequently he was appointed on regular basis in the year 1984. It appears that while making regular appointment the department further asked certain documents and the applicant submitted the same vide his letter dated 2.8.84 namely (i) Health Certificate, (ii) Property Certificate, (iii) Character Certificate and (iv) Educational Qualification 10th fail mark sheet 1983 and in addition to the aforesaid documents he signed the declaration form and attestation form which was filled-in by the Mailoverseer. On receipt of these documents, the appointing authority appointed the applicant as EDTM, Bissau on regular basis in the year 1984. After lapse of about 12 years, a complaint was received and on enquiry into the alleged complaint it was found that the applicant submitted a fake certificate showing his date of birth as 5.9.62 whereas his actual date of birth was 5.9.65. A charge sheet under Rule 8 of the EDA (Service & Conduct) Rules, 1964 was issued and on enquiry the applicant was found guilty of the charges. On the basis of the enquiry report, the

Disciplinary authority issued the impugned order Annx.A1, removing the applicant from service. The applicant preferred an appeal to the Appellate Authority which was dismissed vide Annx.A2. The applicant also preferred a review petition on 19.10.95 (Annx.A6) but according to the applicant he has not received any reply so far. The applicant has filed the O.A on the following grounds: (i) that the actual date of birth of the applicant is 5.9.65 which was correctly mentioned in the 8th class pass certificate as well as the mark list for 10th class fail; (ii) that the applicant was engaged temporarily in 1982 and appointed on regular basis after obtaining fresh documents on 2.8.84 on which date the applicant was about 19 years of age; (iii) that in similar case of Tonk Division, the respondents have admitted that the period of below 18 years of age has been ignored and the appointment has been taken effective on completion of 18 years; (iv) that after 12 years some miscreant has played mischief and replaced the original certificate of Bissau School with that of faked certificate of Bagar School and then made the complaint; and (v) that the respondents deliberately did not produce Shri Dhanaram Sharma, Head Master, Govt Middle School Bagar, regarding correctness of the certificate.

3. The respondents have controverted the allegations levelled by the applicant by filing reply affidavit. It has been specifically submitted that the applicant with his application pursuant to the advertisement has submitted the certificate thereby mentioning his date of birth as 5.9.62 and this certificate on enquiry was found to be a bogus one and the applicant managed to obtain the 8th pass certificate only for getting him employment. If he could have submitted the correct certificate then he will not be eligible for the post as it was

clearly indicated that the the candidate should possess the minimum age of 18 years. But the applicant deliberately and intentionally submitted the fake certificate. It is further submitted that the photo copy given to the Mailoverseer contains the applicant's date of birth as 5.9.1961 whereas in previously submitted education certificate it was 5.9.62. The declaration form and attestation form although filled up by the Mailoverseer but it is admitted that the applicant has signed the same and the applicant being an 8th pass is supposed to read the form. It is submitted that 10th fail mark sheet produced by the applicant is in the capacity of a private student. It is further submitted that the applicant submitted a false certificate which was proved with the statement of the Sub Postmaster Sh.Aladeen Khan on 19.2.94 which was further proved by him before the Enquiry Officer. Copy of the statement has also been placed as Annex.R5. It is further submitted that the respondents have never received any review petition (Annex.A6) and this document has been annexed with a view to coverup the delay in filing the O.A. It is further submitted that the charge against the applicant was fully proved, therefore, the applicant has no case on merits. Regarding non-examination of Sh.Danaram, Headmaster, it has been stated that the said witness was dropped due to nonresponse to the summon issued to him. Further, there is a letter written by the Headmaster, Govt Upper Primary School, Bagar, dated 21.2.94 which mentioned that the educationa certificate allegedly issued by the school is a fake one and not at all issued by the Headmaster. This letter has been proved by the witness during the course of enquiry and as such the charge stand proved. The respondents have also placed on record the gradation list dated 24.8.87, 1.9.88 and 1.5.91 (Annex.R9, R10 & R11) respectively to

show that in all the gradation list the date of birth of the applicant was shown as 5.9.61 on the basis of the mark-sheet of the year 1983 (Annex.R8).

4. We have heard the learned counsel for the parties and gone through the record. We have also perused the enquiry record which was made available for our perusal.

5. The main question which requires our consideration is whether any prejudice has been caused to the applicant by not examining Shri Danaram, Headmaster and as to whether it is a case of no evidence where the prosecution has failed to establish the charge against the applicant.

6. At the outset it may be mentioned that the applicant was not eligible for appointment as EDTM, pursuant to the advertisement dated 15.2.82 as he was not of the age of 18 years when he submitted his application and also when appointed as EDTM on 11.4.82. It is an admitted case of the applicant that his date of birth is 5.9.65. As per the transfer certificate of 8th pass which was allegedly submitted by the applicant vide letter dated 23.2.82 (Annex.R2) recorded his date of birth as 5.9.62. According to applicant, this certificate being relied by the respondents which recorded the date of birth as 5.9.62 was never submitted by him and he submitted the certificate which recorded the date of birth as 5.9.65. On the admitted fact that date of birth of the applicant is 5.9.65, even if we ignore the fact as to whether the transfer certificate of class 8 (Annex.R2) which has been exhibited during the course of enquiry has been replaced and the applicant submitted a certificate which recorded his date of birth as 5.9.65, the fact remains that on 23.2.82, when the applicant submitted his application for the post of EDTM and on 11.4.82 when he was given appointment to the said post, the

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applicant was less than 18 years of age and he could not have been appointed pursuant to the conditions stipulated in the advertisement dated 15.2.82 (Annex.R1). That apart, factum of annexing the certificate of 8th class with the application (Annex.R2), recording the date of birth as 5.9.62 has been proved on the basis of statement made during the course of enquiry and on the basis of the finding given by the Enquiry Officer, where it has been established that the certificate produced by the applicant alongwith his application dated 23.2.82 was the same certificate and this fact has been proved by the statement of Sh.Aladeen Khan on 19.2.94 which has been placed on record as Annex.R5 and also from the statement of Sh.K.D.Swamy, who had issued the appointment letter thereby stating that the applicant was given appointment on the basis of the said certificate. Thus there is some evidence to prove the charge and it cannot be said to be a case of no evidence so as to interfere with the finding given by the Enquiry Officer and the impugned order passed by the authorities concerned. The contention put forth by the counsel for the applicant that the certificate Annex.R2 was replaced by some miscreant with that of a fake certificate of Bagar School and then made a complaint about production of false certificate cannot be accepted. We have seen the original transfer certificate of 8th class wherein the date of birth recorded as 5.9.62. From the perusal of this document, only inference which can be drawn is that it is only the applicant who was to be benefitted from this document as he could have been given appointment as EDTM in the year 1982 if he was of the age of 18 years, as per the advertisement. Had the applicant submitted his certificate showing his date of birth as 5.9.65, at the relevant time he was about 16½ years of age and thus he was not eligible for

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such appointment. The respondents have discharged their burden of establishing the transfer certificate of 8th class (Annex.R2) was not a genuine certificate by examining the witnesses Sh. Aladeen Khan and Sh. K. D. Swamy and also by proving letter dated 21.2.94 written by the Headmaster, Govt Upper Primary School, Bagar (Annex.R4) in which it has been recorded that certificate No. 412 dated 4.2.82 was never issued by the School and at the relevant time Hari Singh was not the Headmaster who purportedly signed the certificate. On the basis of such finding, it was incumbent upon the applicant to adduce some evidence to show that the certificate annexed by him alongwith his application Annex.R2, recorded the date of birth as 5.9.65 and the certificate which is being relied by the respondents has been replaced by some one. The applicant has failed to discharge this burden. As such it can safely be concluded that the certificate annexed by the applicant with his original application (Annex.R2) was the same certificate which recorded the date of birth as 5.9.62 and on the basis of this certificate the applicant was given the appointment of EDTM as he was of 18 years of age at the relevant time. Such a certificate was never replaced by any one as it is the applicant who was to be benefitted from such alleged forged certificate, otherwise he could not be appointed being below 18 years of age. Further, according to us, nonexamination of Danaram, Headmaster, by the prosecution side does not make it a case of no evidence and in case the prosecution side has not examined the said witness, it was open for the applicant to site him as defence witness and examine him regarding the genuineness of the certificate. The applicant has failed to discharge this burden. We are, further of the view that in order to prove a fraud it is not necessary that direct

Therefore, it is too late in the day for the respondents to submit that production of such bogus or forged service cards had not played its role in getting employed in railway service. It was clearly a case of fraud on the appellant-employer. If once such fraud is detected, the appointment orders themselves which were found to be tainted and vitiated by fraud and acts of cheating on the part of employees, were liable to be recalled and were at least voidable at the option of the employer concerned. This is precisely what has happened in the present case. Once the respondents were proceeded against in departmental enquiries and were called upon to have their say and thereafter have been removed from service. Such orders of removal would amount to recalling of fraudulently obtain erroneous appointment orders which were avoided by the employer appellant after following the due procedure of law and complying with the principles of natural justice. Therefore, even independently of Rule 3(1)(i) and (iii) of the rules, such fraudulently obtained appointment orders could be legitimately treated as voidable at the option of the employer and could be recalled by the employer and in such cases merely because the respondent employees have continued in service for a number of years on the basis of such fraudulently obtained employment orders cannot create any equity in their favour or any estoppel against the employer.

In Dist. Collector & Chairman, Vizianagram Vs. M. Tripura Sundari Devi (1990) 3 SCC 655, persons who were not having qualifications as per the employment notification/advertisement were appointed ignoring the claims of those who were qualified. A contention was

such appointment. The respondents have discharged their burden of establishing the transfer certificate of 8th class (Annx.R2) was not a genuine certificate by examining the witnesses Sh.Aladeen Khan and Sh.K.D.Swamy and also by proving letter dated 21.2.94 written by the Headmaster, Govt Upper Primary School, Bagar (Annx.R4) in which it has been recorded that certificate No.412 dated 4.2.82 was never issued by the School and at the relevant time Hari Singh was not the Headmaster who purportedly signed the certificate. On the basis of such finding, it was incumbent upon the applicant to adduce some evidence to show that the certificate annexed by him alongwith his application Annx.R2, recorded the date of birth as 5.9.65 and the certificate which is being relied by the respondents has been replaced by some one. The applicant has failed to discharge this burden. As such it can safely be concluded that the certificate annexed by the applicant with his original application (Annx.R2) was the same certificate which recorded the date of birth as 5.9.62 and on the basis of this certificate the applicant was given the appointment of EDTM as he was of 18 years of age at the relevant time. Such a certificate was never replaced by any one as it is the applicant who was to be benefitted from such alleged forged certificate, otherwise he could not be appointed being below 18 years of age. Further, according to us, nonexamination of Danaram, Headmaster, by the prosecution side does not make it a case of no evidence and in case the prosecution side has not examined the said witness, it was open for the applicant to site him as defence witness and examine him regarding the genuiness of the certificate. The applicant has failed to discharge this burden. We are, further of the view that in order to prove a fraud it is not necessary that direct

affirmative/positive proof of fraud has to be given. It can also be inferred if there is a proof of substantial part of misrepresentation, the burden of proof is on the person who demurs fraud and who has to prove that he had not made any misrepresentation. In the instant case, the applicant initially submitted his transfer certificate of 8th class pass showing his date of birth as 5.9.62 and subsequently at the time of regularisation he submitted 10th class fail certificate showing his date of birth as 5.9.61. On the basis of the subsequent document, the respondent had issued 3 gradation list (Annex.R9, R10 & R11) showing his date of birth as 5.9.61. The applicant never objected to this date of birth. Thus, from these facts, it is quite evident that the applicant was making false representation regarding his date of birth.

7. Now, the next question which raise for our consideration is whether the applicant can be allowed to reap the benefit of fraud/misrepresentation because he has been allowed to continue for about 12 years and also whether the applicant who was less than 18 years of age at the time of appointment was rightly terminated from service. At this stage it will be useful to note the decision of the Apex Court which are relevant to the issue involved in this case.

"In Union of India Vs. M.Bhaskaran 1995 Supp(4) SCC 100, 1996 Lab IC 581, the respondents produced bogus and forged casual labour service cards and obtained employment in railway service. The Supreme Court observed that they were guilty of misrepresentation and fraud perpetrated on the employer while getting employment in railway service and that once fraud was detected, it was open for the employer to remove those who obtained employment by playing fraud. It is necessary to extract the following:



Therefore, it is too late in the day for the respondents to submit that production of such bogus or forged service cards had not played its role in getting employed in railway service. It was clearly a case of fraud on the appellant-employer. If once such fraud is detected, the appointment orders themselves which were found to be tainted and vitiated by fraud and acts of cheating on the part of employees, were liable to be recalled and were at least voidable at the option of the employer concerned. This is precisely what has happened in the present case. Once the respondents were proceeded against in departmental enquiries and were called upon to have their say and thereafter have been removed from service. Such orders of removal would amount to recalling of fraudulently obtain erroneous appointment orders which were avoided by the employer appellant after following the due procedure of law and complying with the principles of natural justice. Therefore, even independently of Rule 3(1)(i) and (iii) of the rules, such fraudulently obtained appointment orders could be legitimately treated as voidable at the option of the employer and could be recalled by the employer and in such cases merely because the respondent employees have continued in service for a number of years on the basis of such fraudulently obtained employment orders cannot create any equity in their favour or any estoppel against the employer.

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raised that the appointing authority can disregard the qualifications in the advertisement and make appointment. While rejecting the same, the Supreme Court observed that appointing of an unqualified person amounts to fraud on public and the Court should not be a party to the perpetuation of fraudulent practice. It was observed:

It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No Court should be a party to the perpetuation of the fraudulent practice."

From the decision of the Apex Court, it is quite evident that an order obtained by fraud or misrepresentation cannot be allowed to stand.

8. At this stage, it will also be useful to note another decision of Punjab & Haryana High Court rendered in the case of Naveen Kumar Vs. State of Punjab & Ors, 2002(3) ATJ 550 whereby the petitioner who was less than 18 years of age at the time of appointment was terminated from service even without following the principles of natural justice. The High Court held that the very appointment of public servant is void, *ab initio*, in such a situation, the principles of natural justice are not required

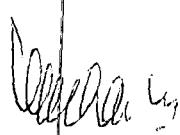
to be fulfilled. In this way, the petitioner virtually becomes a usurper and order of termination was upheld.

9. The learned counsel for the applicant placing reliance on the decision of this Bench dated 4.7.94 in O.A No.377/93 argued that it has been the practice of the department to engage/appoint a person who has not completed 18 years of age and as such the service of the applicant could not have been removed from service on this ground alone. We do not agree with the submission of learned counsel for the applicant. In the judgment relied upon by the applicant, the issue was regarding seniority as the respondent authorities have counted the service of one Ratan Lal Verma w.e.f. 17.2.65 even prior to attaining the age of 18 years whereas such benefit was denied to the applicant therein and seniority was assigned from the date when he attained the age of 18 years of age though engaged in the service on earlier occasion. It was on these facts the Tribunal held that the Sh.Rattan Lal Verma cannot be said to be senior and it is open for the respondents to revise the seniority. In the present case, the issue is entirely different. In this case the applicant procured service on the basis of forged document and obtained appointment contrary to the conditions mentioned in the advertisement which stipulated that persons who had attained the age of 18 years and fulfills the requisite qualification shall be eligible for appointment as EDTM. The learned counsel for the applicant has failed to bring to our notice any rule or instruction which stipulates that a person below the age of 18 years could also have been appointed as EDTM. In the absence of such material, it cannot be said that the action of the respondents is arbitrary and not in conformit with law while removing him from service. Even if the respondents were giving in certain cases appointment to

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persons who were below 18 years of age, this will not afford any cause to the applicant to regularise his appointment made by fraud or misrepresentation and contrary to rules. Thus, the learned counsel for the applicant cannot draw any assistance from this judgment.

10. On the basis of the ratio as laid down by the Apex Court and also drawing guidance from the decision of the Punjab & Haryana High Court, as noticed above, we are not inclined to interfere in this matter and the application is accordingly dismissed.


(M.L.Chauhan)

Member(J)


(H.O.Gupta)

Member(A).