

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 7.08.2003

OA No.499/2000

Prabhu Lal Verma s/o Shri Ram Jeewan Verma, r/o Village and Post Kishanpura Takia (Kota Junction) and Ex-EDBFM Kishanpura Takia FDEO (removed from service.)

.. Applicant

Versus

1. Union of India through Secretary, Govt. of India, Department of Posts, Ministry of Communications, Dak Bhawan, New Delhi.
2. Director Postal Services, Rajasthan Southern Region, Ajmer.
3. Senior Superintendent of Post Offices, Kota Postal Division, Kota.

.. Respondents

Mr. C.B.Sharma - counsel for the applicant

Mr. Manu Bhargava - counsel for the respondents.

CORAM:

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

HON'BLE MR. A.F.BHANDARI, MEMBER (ADMINISTRATIVE)

O R D E R

Per Hon'ble Mr. M.L.Chaudhary

The applicant has filed the present application against the order of removal from service dated 23.4.99 (Ann.A2) passed by the Disciplinary Authority and the order dated 15.11.99 (Ann.A1) passed by the Appellate Authority whereby the punishment of removal from service has been affirmed. In relief he has prayed for the following reliefs:-

"i) That the order of appellate authority dated 25.11.99 (Annexure A/1) with the Punishment order

dated 23.4.99 (Annexure A/2) be quashed with all consequential benefits.

- (ii) That the charge memo dated 15.6.98 (Annexure A/7) be quashed, as the same is not justified on the ground of delay and as per facts of the case.
- iii) That the respondents be further directed to reinstate the applicant on the post of E.D.B.P.M. Fishanpura Takia E.D.B.O. with all consequential benefits.
- iv) Any other orders/directions/relief may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of the case.
- v) That the costs of this application may be awarded to the applicant."

2. Admitted facts of the case are that the applicant was engaged as Extra Departmental Branch Post Master (hereinafter referred to as EDPFM) on 8.8.1980. No formal order was issued by the competent authority. Later on, he was asked to produce the original educational certificate for considering his case of issuance of appointment order. He submitted original certificate dated 30th June, 1980 showing 8th passed, as per version of the respondents. However, according to the applicant he submitted transfer certificate in support of his qualification in 1980 showing that he has left the institution while studying in 8th class with date of birth as 4.7.1956.

2.1 It is further averred by the applicant that respondent No.3 while examining his case found that another transfer certificate is also available in which he has been shown as passed in 8th standard by correcting

'studying in 8th class' so the applicant was interrogated and his statement was obtained on 13.10.92. The applicant again submitted duplicate Transfer Certificate on 8.11.92 (Ann.A5) showing that he left the school while studying in the 8th class. The matter was got enquired by the respondents and it was found that he passed only 7th class, hence a chargesheet dated 15.6.93 under rule 8 of the Extra Departmental Agents (Conduct Rules) was served on the applicant. After regular enquiry, the Enquiry Officer found the applicant guilty of the charge. The charge against the applicant was that during the appointment to the post of EDBPM, he produced 8th pass certificate. On verification, it was found that he has only passed 7th standard and left the school when he was studying in 8th standard and he has made cutting in the Transfer Certificate by changing 'studying in 8th class' to '8th passed' and, therefore, done fraud for procuring employment to the post of EDBPM and as such violated rule 17 of the EDA (Conduct) Rules, 1964. Therefre, he was punished with the penalty of removal from service. Feeling aggrieved by the said action of the respondents, the applicant has filed the present OA praying for the aforesaid reliefs.

3. The respondents have filed reply. In the reply, it has been stated that the applicant was engaged as EDEPM on 8.8.80 by the SDI(P), Kota East, Sub-Division temporarily. No formal order was issued by the competent authority. Later on, he was asked to produce the original certificate for issuing of appointment order. He submitted the original certificate showing 8th pass. On verification through SDI(P), it was found that he passed only 7th class

and hence he was chargesheeted vide memo dated 15.6.98 under rule 8 of the FDI (Conduct) Rules. A regular enquiry was held. In his statement dated 13.10.92 recorded during the course of preliminary enquiry, he has stated that his son changed the word '8th passed' instead of 'reading in 8th' and he did not pass the 8th standard. It is also admitted by the applicant that in the original certificate the word '8th pass' was interpolated. The applicant secured the appointment in the year 1980 by submitting a forged certificate showing the minimum educational qualification as 8th pass which in fact he did not possess. The fact remains that he has committed a fraud and he does not have the minimum educational qualification and as such his appointment is illegal and he has obtained appointment on the basis of fraud till he was removed by the competent authority. It is further submitted that though the respondents were not bound to hold enquiry as his appointment was void ab-initio in view of the law laid down by the Apex Court in the case of G. Sudarsan vs. Union of India, 1996 SC page 668 and the Rajasthan High Court in a case reported in RLW 1980 397 has held that if initial appointment is illegal and services has been terminated, the High Court will not issue directions because it will perpetuate illegality and, therefore, the applicant was rightly removed from service.

4. The applicant has filed rejoinder. In the rejoinder the applicant has stated that even if he was not middle pass, he could have been appointed to a lower post taking into consideration his educational qualification and it was not open for the competent authority demanding the educational certificate after a lapse of 12 years. The

applicant has not submitted a forged document and as can be seen from Ann.A3, submitted during the time of employment, the applicant has clearly mentioned against item no. 5 as studying in 8th class.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

5.1 It is not disputed that educational qualification for the post of EDBPM was 8th standard (matriculation or higher qualification may be preferred). The applicant on his own saying does not possess this qualification. According to the respondents, at the time of engagement he was asked to produce the original educational certification for considering his case for issuance of appointment order and he submitted original certificate dated 30.6.80 showing 8th pass. It is further stated that on verification through SDI (F) it was found that he possesses qualification of only 7th class and he was chargesheeted. It is not the case of the applicant that he fulfils the requisite qualification. During the course of preliminary enquiry his statement was recorded. A copy of the statement dated 13.10.92 has been placed on record as Ann.A6. In his statement the applicant has admitted that entry in the original certificate to the effect that he is '8th pass' instead of 'studying in 8th' has been changed by his son and he has not passed the 8th standard. It is further admitted by him that in the original certificate the word 8th pass was interpolated. This statement form part of the chargesheet and the enquiry officer after relying on the statement of the applicant as well as on the basis of the other documents and statement of the Headmaster, Rajkiya Secondary School, Bheem Mandi, Kota

held the charge as proved against the applicant. The Disciplinary Authority on the basis of the enquiry report and relying on the statement of the applicant as well as independent witness held the applicant guilty of the charge and awarded the punishment of removal from service. The Appellate Authority also affirmed the order passed by the Disciplinary Authority. Thus, no infirmity can be found in the impugned order as the appointment of the applicant was de-hors the rules and he did not possess the requisite educational qualification meant for the post of EDRPM as such his appointment is illegal and nullity; (Even if it is presumed that the charge against the applicant was not proved though) we are of the view that on the basis of material placed on record only conclusion which can be drawn is that the charge stands fully proved. Further, it is the applicant who was to be benefitted from producing the false certificate of his educational qualification and explanation given by him that he did not suppress his educational qualification at the time of initial appointment cannot be accepted.

5.2 Now let us notice the contentions raised by the learned counsel for the applicant. The learned counsel for the applicant submitted that action of the respondents is not proper and valid inasmuch as he has been removed from service after a lapse of 18 years and at the most in case he was not qualified, he should have been given appointment in a lower post where the educational qualification is less than 8th standard. He has further argued that the chargesheet was submitted after 10 years and as such in view of the law laid down in the case of Rajnikant Chaudhary Vs. Union of India, 1998 (2) SLJ 242, the chargesheet was required to be quashed. Lastly, the learned counsel for the applicant argued that as per DG,

P&T letter dated 13th August, 88 and 7.12.88, the educational qualification can be relaxed if suitable qualified person cannot be found in a particular case, a person with less qualification can be appointed only in exceptional cases and that too with the personal approval of DPS/Additional Postmaster General but the matter has not been examined by the respondents in the light of these instructions.

5.3 We have considered the submissions made by the learned counsel for the applicant. According to us, the sole question which requires our consideration is whether the applicant who does not possess the requisite qualification can be allowed to continue de-hors the rules and whether the applicant can be allowed to take benefit of fraud/mis-representation simply because he is allowed to continue for about 17 years. At this stage it will be useful to quote the decision of the Apex Court which are relevant to the issue involved in this case.

5.3.1 In Union of India Vs. M.Bhaskaran, 1996 SCC (L&S) 162, 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 relevant part of para 6 of the judgment which reads:-

".....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 fraud of respondents in getting such employment was detected, 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 obtained 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...."

5.3.2 In Dist. Collector and 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

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."

5.4 Further in the case of State of M.P. vs. Shyam Pardhi, AIR 1996 SC 2219, the Apex Court has held that where the initial order of appointment itself was per-se illegal for want of requisite qualifications, failure to give opportunity of hearing is not violative of principle of natural justice.

5.5 At this stage it will be appropriate to refer to the decision of the Apex Court in the case of Dharmarathmakara Faizahadur Arcot Ramaswamy Mudaliar

Educational Institution Vs. The Educational Appellate Tribunal and anr. AIR 1999 SC 3219 whereby the Apex Court in para 8 held as under:-

"8.....Giving of opportunity of an enquiry of course is a check and balance concept that no one's right be taken away without giving him/her opportunity or without enquiry in a given case or where statute require. But this cannot be in a case where allegation and charges are admitted and no possible defence is placed before the authority concerned. What enquiry is to be made when one admits violations ? When she admitted she did not join M.Phil course, she did not report back to her duty which is against her condition of leave and contrary to her affidavit which is the charge, what enquiry was to be made ? In a case where facts are almost admitted, the case reveals itself and is apparent on the face of record, and in spite of opportunity no worthwhile explanation is forthcoming as in the present case, it would not be a fit case to interfere with termination order."

5.6 Further, the Apex Court in the case of Dr. Friti Singh vs. S.K. Mangal, 1992 (5) SLF 79, has held that if a person was not eligible for appointment in terms of prescribed qualification on the date he was appointed by the Managing Committee subject to the approval of the Vice Chancellor, then later he cannot become eligible after the qualification for the post were amended.

From the decision of the Apex Court as reproduced

above, it is quite evident that where the initial order of appointment was per-se illegal for want of requisite qualification, services can be terminated even without following the principles of natural justice. The Apex Court has further held that if once a fraud is detected, the appointment orders itself which were void ab-initio by fraud on the part of the employee were liable to be recalled and were atleast voidable at the option of the employer concerned. The Apex Court has further held that appointing of unqualified persons amount to fraud on public and the Court should not be a party to the perpetuation of fraudulent practice. It amount to fraud to the public to appoint a person with any inferior qualification unless it is clearly stated that qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice.

5.7 In the instant case, admittedly the applicant is not qualified. It is not the case of the applicant that he was appointed in relaxation of rules and there was a stipulation in the advertisement that in case qualified persons are not available, the persons with less qualification can be appointed. Thus, the fact remains that the applicant does ~~not~~ possess the requisite qualification of being 8th standard which was pre-requisite qualification for the post of EDBPM. As such initial appointment is void ab-initio and nullity. That apart, it has come on record, even admitted by the applicant that the original certificate was tampered by his son showing the qualification as '8th pass' instead of 'studying in 8th class' does not improve the case of the applicant. It is the applicant who was benefitted from such tampering in the original certificate and when the

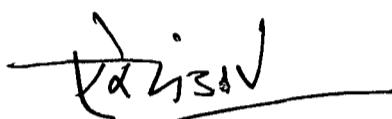
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fact regarding submitting of false educational certificate came to the notice of the respondents, enquiry was held and the charge against the applicant stood proved. Thus, in the instance case the respondents have also held regular enquiry in which the applicant was associated. It was only thereafter that his services were terminated whereas the decision of the Apex Court as stated above clearly indicates that on the basis of admission made by the applicant it was not necessary to hold regular enquiry and where the person does not possess the requisite qualification, his services can be terminated straightforward and there is no violation of the principles of natural justice. For the reasons stated above, there is no force in the contention raised by the applicant. Further, the contention of the applicant that he has served for 17 years, his service should not be terminated, is without any substance inasmuch as where the appointment of a person is in violation of the rules, such appointment is void ab-initio and simply because he has served the department for long period on the basis of forged certificate does not render the applicant liable for grant of relief as prayed for in view of law laid down by the Apex Court in the case of M.Bhaskaran (supra). Similarly, the contention of the applicant that the chargesheet has been served after a lapse of 10 years and in view of the decision of the Apex Court in Rajnikant Chaudhary (supra) the chargesheet is liable to be quashed, is also without any substance. The decision relied upon by the applicant is not applicable in the facts and circumstances of this case. Further, the submission of the applicant that he should have been offered a lower post where the educational qualification is less than middle standard

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cannot be accepted in as much as the applicant was appointed against the post of EDBPM and his case cannot be considered against any other post, as the post under public employment has to be filled in after advertising the same and considering the claim of other similarly situated persons. Further, appointment to such post also depends on the availability of the post.

6. For the foregoing reasons, the present OA is dismissed with no order as to costs.



(A.P. BHANDARI)

Member (Administrative)



(M.L. CHAUHAN)

Member (Judicial)