

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR

Date of order: 20-08-04

OA No.72/2003

Smt. Asha daughter of Shri Mana Ram Ji, aged about 29 years
r/o Sita Badi Harijan Basti, Kamani Road, Jhotwara, Jaipur.

.. Applicant

Versus

1. The Union of India through the Secretary to the Government, Govt. of India, Defence Department, South Block, New Delhi.
2. The Chief Engineer (Headquarters), Military Engineering Services, Jaipur Zone, Power House Road, Banipark, Jaipur.

.. Respondents

Mr. Dharmendra Jain, proxy counsel to Mr. Manish Bhandari,
counsel for the applicant

Mr. Vijay Singh, proxy counsel to Mr. Bhanwar Bagri, counsel
for the respondents

CORAM:

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

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

O R D E R

Per Hon'ble Mr. M.L.Chauhan.

The applicant has filed this Original Application thereby praying for quashing the impugned order dated 24.1.2003 (Ann.A1) which order was served upon the applicant on 5.2.2003 through the letter dated 31.1.2003 (Ann.A2) whereby the services of the applicant were terminated with immediate effect.

2. Facts of the case are that the applicant was given

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offer of appointment as Safaiwali pursuant to appointment letter issued by the Chief Engineer (Headquarters), Jaipur Zone, Jaipur dated 29th June, 2000 (Ann.A3). It was mentioned in the said letter that the appointment will be effective from the date of joining office of the Garrison Engineer, Jaipur and on reporting to that office the applicant should produce the original certificate in support of educational and technical qualifications, age and caste. One of the conditions mentioned in the offer of appointment was that in case any information given or declaration furnished by the applicant proves to be false or if the applicant found to have wilfully suppressed any material information, she will be liable to removal from service and such other action as deemed fit will be taken against the applicant. Pursuant to the said offer of appointment issued by the respondents, the applicant was appointed as Safaiwali w.e.f. 8th July, 2000. The appointment was offered to the applicant on furnishing a transfer certificate bearing No. 1927 dated 16.5.85 showing that the applicant is 5th class pass, which certificate was issued by Indira Shiksha Niketan, Jhotwara, Jaipur. On verification, it was found that the said transfer certificate from DEO, Madamik, Jaipur was fake, as such, a show cause notice dated 20th July, 2002 (Ann.A8) was issued to the applicant. The applicant vide letter dated 25.7.2002 (Ann.A9) submitted reply to the said show-cause notice and ultimately vide impugned order dated 24th January, 2003, the services of the applicant were terminated with immediate effect. It is against this order the applicant has filed this OA thereby praying for quashing the impugned order whereby her services have been terminated.

3. Notice of this application was given to the

respondents. The respondents have filed detailed reply. In the reply, it has been stated that a complaint dated 4.12.2001 from Shri Mahesh Kumar was received against the applicant for submitting fake certificate No.1927 dated 16.5.85 issued by the Indira Shiksha Niketan, Jhotwara, Jaipur at the time of appointment. Consequently, an enquiry regarding genuineness of the certificate was conducted. The Staff officer Gde II Planning who enquired into the matter submitted his report dated 19.10.2002 that Shri Ashok Kumar Sharma who has attested the subject certificate was not working in that office during 1990. Due to this, the transfer certificate countersigned in his name and stamp is illegal and not verified as correct. Since the applicant has obtained appointment by submitting a false certificate, as such in terms of para 2(o) of the appointment letter dated 29th June, 2000, the applicant was removed from service. With a view to give chance to defend herself, a show-cause notice dated 20th July, 2002 was also issued and action for removal of service in respect of the applicant was taken when it was established that the certificate produced by the applicant for obtaining the appointment was forged.

4. Reply to the OA was filed by the respondents on 3.6.2003. Thereafter number of opportunities were given to the applicant to file rejoinder. Despite repeated opportunities, rejoinder was not filed. Vide order dated 10.12.03, this Tribunal observed that the case has been lingering on the pretext of filing the rejoinder. It seems that the applicant is not serious to file rejoinder. In the facts and circumstances, the case was adjourned to 28.1.2004 for final hearing at the admission stage. When the matter was listed for hearing on 28.1.2004, none appeared on behalf of the applicant

and in the interest of justice, the matter was adjourned to 24.3.2004. It was also made clear that no further opportunity will be granted on that date. On 24.3.2004, the applicant appeared in person and on her request, the case was adjourned for hearing to 22.4.2004. On 22.4.2004, when the matter was taken up for hearing, the learned counsel for the applicant insisted that the documents furnished by the applicant at the time of her selection were genuine documents. Since the applicant has made this oral submission and had not controverted the stand taken by the respondents in the reply that the transfer certificate on the basis of which appointment was given to the applicant was not a genuine document, this Tribunal passed specific order on the prayer made by the learned counsel for the applicant that he will seek instructions from his client whether she is prepared for investigation of the matter by the police agency as according to the learned counsel for the applicant, the documents furnished are genuine and the matter was adjourned to 22.7.2004. On 22.7.2004, the matter was adjourned on the request of the learned counsel for the applicant for 18.8.2004. On 18.8.2004, when the matter was taken finally for hearing, the learned counsel for the applicant submitted that the rejoinder is ready and he may be permitted to file the same. When the attention of the learned counsel for the applicant was invited to the order dated 22.4.2004 where the applicant has controverted the fact that the document furnished by the applicant at the time of appointment was genuine document, the learned counsel for the applicant submitted that his client is not in a position to controvert the fact that the document submitted by her at the time of appointment was a genuine document. However, according to the learned counsel for the applicant, it is the school authoirty

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who can say about the genuineness of the document as the said document was given to her by the school authoirty. Since the applicant was not prepared to controvert the specific stand taken by the respondents in the reply that the transfer certificate issued by the school concerned on the basis of which appointment letter was issued to the applicant, was a forged document, we proceeded to hear on the basis of the material placed on record. However, in the interest of justice the pleas taken in the rejoinder, which was shown by the applicant to us was also taken into consideration and the learned counsel for the applicant was allowed to make submission based on averment made in the rejoinder.

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

5.1 The fact that the applicant was given offer of appointment vide letter dated 29th June, 2000 (Ann.A3) is not disputed. In order to appreciate the respective contentions advanced on either side, it is necessary and useful to notice the terms and conditions of the offer of appointment. Para 2(g) of the offer of appointment is to the following effect:-

"On reporting to that office you should produce original certificate in support of your educational and technical qualifications, age and caste. Acceptance of joining report will further be subject to production of above original certificate."

Para 2(o) of the letter of appointment is in the following terms:-

"(o) If any information given or declaration furnished by you proves to be false or if you are found to have willfully suppressed any material information, you will be liable for removal from service and such other action as deemed fit will be taken against you."

5.2 It is also not in dispute that at the time of offer of appointment, the applicant submitted her transfer certificate bearing No. 1927 dated 16.5.85 showing 5th class pass issued by the Indira Shiksha Niketan, Middle School,

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Jaipur and based on the said certificate the applicant was appointed as Safaiwali on which post she joined duty on 8th July, 2002 at Garrison Engineer, Jaipur. It is also not in dispute that subsequently an enquiry was conducted and on enquiry it was found that the transfer certificate was attested by one Shri Ashok Kumar Sharma who was not working in that office during the said period and as such the transfer certificate countersigned in his name and stamp is illegal and it is on the basis of this forged certificate the applicant was shown 5th class pass and appointment letter was issued to the applicant. It is also not in dispute that before terminating the services of the applicant, show cause notice (Ann.A8) was issued. At this stage, it will be useful to quote the said show-cause notice in extenso, which thus reads:-

"1. You were appointed as S/Wala wef 08 July, 2000 in this office under the authority of appointment letter issued by HQ Chief Engineer Jaipur Zone, Jaipur vide their No.15005/LRS-99/Gp-D/331/EIB(R) dated 29 June 2000. The documents submitted by you at the time of your appointment have been verified. On verification of Educational Certificate for Class Vth issued by Indira Shiksha Niketan Middle School, Jhotwara, Jaipur, which was countersigned by District Education Officer, Jaipur that the said certificate is fake. The countersignature of DEO Div II Shri Ashok Kumar are forged signature and the said certificate is false.

2. Thus you have committed a great lapse on your part in getting your appointment by producing false education certificate which is not tenable to become a Govt. servant as per rule 14 and 3(iii) of CCS (CCS&A) Conduct Rules 1964 and relevant rules.

3. Please, therefore, explain as to why your services are not terminated for the above lapse. Your explanation should reach this office by 31 Jul, 2002 failing which this office will take ex-parte decision for termination of your services."

5.3 The applicant filed reply to the said show-cause

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notice vide letter dated 25.7.2002 whereby factum regarding issuance of false certificate was denied. Regarding allegation of countersignature by the DEO, it was stated that the document in question was given to the applicant by the school authorities after due authentication by them and under the seal of the DEO alongwith his signature though submission of certificate with counter-signature by the DEO was not a pre-condition for employment. In fact, in the reply, the applicant has put blame on the education department as according to the applicant such signature of the DEO was not put at the instance of the applicant but was already existing in the document when the same was given to the applicant by the school authorities. In reply to show-cause notice, it was also stated that the services cannot be terminated without following the service rules and procedure as contemplated in the CCS (CCA) Rules.

5.4 The respondents vide impugned order dated 24th January, 2003 removed the applicant from service with immediate effect in terms of para 2(o) of the appointment letter Ann.A3. Thus, the sole question which requires our consideration is whether the applicant who has submitted a forged transfer certificate and procured appointment on the basis of such document can be removed from service in terms of conditions stipulated in offer of appointment i.e. para 2(o) without taking recourse to regular enquiry as contemplated under CCS (CCA) Rules.

5.5 In order to examine this question it will be useful to quote various decisions of the Apex Court which will be relevant with the issues involved in this case.

5.5.1 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

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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 the 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 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....."

5.5.2 In Dist. Collector and Chairman, Vizianagaram 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

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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 end and the Court should not be a party to the perpetuation of fraudulent practice. It was observed that:-

"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 releasable. No Court should be a party to the perpetuation of the fraudulent practice."

5.5.3 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 .4 At this stage it will be appropriate to refer to the decision of the Apex Court in the case of Dharamarathmakara Raibahadur Arcot Ramaswamy Mudaliar Educational Institution vs. The Education 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 viging 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."

5.5.5 Further, the Apex Court in the case of Dr. Priti Singh vs. S.K.Mangal, 1992 (5) SLR 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.

5.5.6 Yet in another case R.Vishwanatha Pilai vs. State of Kerala and others, 2004 SCC (L&S) 350, the Apex court has held that a person who has been illegally appointed cannot be said to be a holder of civil post, as such appointment procured on the basis of false certificate is no appointment in the eyes of law. Hence, dismissal of person so appointed does not attract Article 311. In the case before the Apex Court, the applicant has procured appointment on a post meant for reserved category candidate. Subsequently, it was found that the applicant does not belong to reserved category, as such the applicant was dismissed from service after rendering about 30 years of service. The submission^{was} made before the Apex court that the order of dismissal should be substituted to that of compulsory retirement to protect pensionary benefits of the appellants therein. The Apex Court did not find any substance in the submission so made and it was observed that the right of salary, pension and other service benefits are entirely

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statutory in nature in public service, the appellant obtained the appointment against a post meant for reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eyes of law. The right to salary or pension after retirement flows from a valid and legal appointment. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate.

5.6 In the instant case, admittedly, the applicant has procured appointment on the basis of transfer certificate bearing No.1927 dated 16.5.85 showing the applicant as 5th class pass which certificate was issued by the Indira Shiksha Niketan Middle School, Jaipur. On enquiry, such certificate was not found genuine as the said certificate was countersigned by a person who was not working in the office at the relevant time. The applicant was given opportunity to put forth her case and it is only thereafter that the order of termination was passed in terms of para 2(o) of the appointment letter. At this stage, we may also notice that the applicant in this OA has annexed a copy of the duplicate marksheet dated 3.4.2000 (Ann.A10). It is not understood why the applicant has not tendered this document at the time of her appointment when the said marksheet was available instead of tendering a transfer certificate No.1927 dated 16.5.85 showing 5th class pass issued by Indira Shiksha Niketan Middle School, Jhotwara, Jaipur which according to us was a relevant document in order to show the qualification of the applicant. We refrain to comment on this marksheet dated 30.4.2000 (Ann.A10) which is also a duplicate certificate. The respondents in the reply have specifically stated that the matter was also examined in the light of the marksheet (Ann.A10) produced by the applicant subsequently on the asking

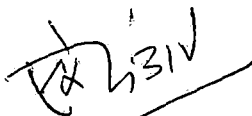
of the respondents and on the basis of the report submitted by the enquiry officer and also that DEO Jaipur has also denied the genuineness of the certificate, the applicant was removed from service. We see no infirmity in the order passed by the respondents. From the decision of the Apex Court as reproduced above, it is quite evident that if the appointment is secured by way of fraudulent means and if once the fraud is detected the appointment order itself is void ab-initio which was found to be tainted and vitiated 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 perpetuation of fraudulent practice. The Apex Court further held that a person procuring appointment on the basis of false certificate is not holding a civil post within the meaning of Article 311, such appointment is not appointment in the eyes of law and dismissal of a person so appointed does not attract Article 311 and thus no regular enquiry is contemplated before terminating the services of such candidate. Thus, the contention of the applicant that the service of the applicant should not have been terminated without holding the regular enquiry, cannot be accepted. Similarly, the contention of the learned counsel for the applicant that since the so called false certificate was issued by the school authorities and she believing the same as genuine submitted to the respondents for the purpose of procuring appointment, cannot be accepted as it is the applicant who is beneficiary to such forged document and it cannot be accepted that such a forged document has been issued by the school authorities without the connivance of the applicant in case the same was issued by the school authorities.

5.7 Be that as it may, the fact remains that the



applicant procured appointment on the basis of forged document. The appointment so procured is void ab-initio in view of the law laid down by the Apex Court that the court should not be a party to the perpetuation of such fraudulent practice. Further, the Apex Court in the case of Kendriya Vidyalaya Sangathan and Ors. vs. Ram Ratan Yadav, 2003 SCC (L&S) 306 has held that where a person accepts the officer of appointment subject to terms and conditions mentioned therein with his eyes open, his services can be terminated in terms of conditions incorporated therein, in case the person has suppressed the material information. According to the Hon'ble Apex Court, suppression of material information and making false statement has a clear bearing on the character and antecedent of the person in relation to his continuance in service.

6. In view of what has been stated above, the OA is bereft of merit and is therefore, dismissed with no order as to costs.



(A.K.BHANDARI)

Member (A)



(M.L.CHAUHAN)

Member (J)