

30.11.2007

OA No. 45/2003

Mr. Ved Prakash, Counsel for applicant.
Ms. Kavita Khinchi, Proxy counsel for
Mr. T.P. Sharma, Counsel for respondents.

Learned counsel for the respondents submits that the record is not available. Learned counsel for the applicant also submits he also wants to produce certain additional documents. Let the additional documents be filed within three to four days on which the learned counsel for the respondents may file reply, if any, within three ~~weeks~~ ^{days} thereafter.

Let the matter be listed on 12.12.2007 on which date no further adjournment will be granted being a 2003 matter.

[Signature]
(T.P. SHUKLA)
MEMBER (A)

[Signature]
(M.L. CHACHAN)
MEMBER (A)

AHQ

12-12-07

Mr. Ved Prakash - Counsel for applicant -
Mr. T.P. Sharma - Counsel for respondents -

Heard the learned counsel for the parties. Order reserved

[Signature]
(TARSEM LAL)
Member (A)

[Signature]
(M.L. CHAUGHAN)
member (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Jaipur, the 14th day of December, 2007

ORIGINAL APPLICATION NO. 45/2003

CORAM:

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

HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER

Hardev Prasad son of Shri Rameshwar Prasad, by caste Yadav, aged about 40 years. Resident of Plot No. 42-A, Jagdamba Colony, Jaipur. Employed as Chowkidar in Military Hospital, Jaipur.

By Advocate: Mr. Ved Prakash

.....Applicant

Versus

1. Union of India through the Director General Medical Services (Army) Adjutant General's Branch, Army Headquarters, DHQ P.O. New Delhi.
2. The Assistant Director, Medical Services Headquarters, 61(Indep) Sub Srea, C/o 56 APO at Jaipur.
3. The Commanding Officer, Military Hospital, Jaipur.
4. Capt. Dalip Singh (the then Administrative Officer) Military Hospital, Jaipur.
5. Col. C.D. Gautam, (the then C.O.), Military Hospital, Jaipur.

By Advocate: Mr. T.P. Sharma

.....Respondents

ORDER

PER HON'BLE MR. TARSEM LAL

Mr. Hardev Prasad has filed OA No. 45/2003 and has asked for the following reliefs:-



- “(a) That your lordship may be pleased to allow this Original Application and set aside the entire proceedings and may further be pleased to order re-instatement of the applicant with all consequential benefits after setting aside the impugned order dated 30/01/2002 (Annexure A/1) and order of dismissal dated 19.08.2000 (Annexure A/12).
- (b) That any other order in the interest of justice as deemed fit and proper in the circumstances of the case may please be passed.”

2. The relevant facts in this case are that the applicant was appointed as Chowkidar in the Military Hospital, Jaipur on 13.03.1984 and had been working till 19.08.2000 when his services were dismissed. The applicant has pleaded that some court of inquiry was conducted to fix responsibility of some gross irregularities committed in the recruitment of candidates of BRO, Jhunjhunu in the Army in 1993. In this Court of Inquiry, the conduct of respondent nos. 4 & 5 was questionable as they had tampered with the documents. However, they were trying to make one Havildar/Nursing Assistant Bansidhar Shahu a scape goat. The said individual was tried by a District Court Martial (DCM) wherein he was acquitted and strictures were passed against respondent nos. 4 & 5. Respondent No. 4 tampered with official documents which were in his custody at main office of M.H. Jaipur. The same were called by the Court of

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Inquiry. Respondent No. 4 tried to destroy the same by setting his own office at fire on the night of 6th and 7th June, 1998.

3. The applicant was on duty as Chowkidar on that night and had seen respondent No. 4 while committing the act of setting his office on fire. Respondent No. 4 threatened the applicant not to state his name in connection with fire incident. Respondent No. 4 misused his office and tampered the witnesses and documents in the court of inquiry of the fire incident.

4. That the applicant on 04.02.1999 sworn an Affidavit before the Oath Commissioner at Jaipur, swearing therein all the true details of the fire incident and sent the same to higher authorities including the Chief of Army Staff. In these circumstances, the Court of Inquiry in respect of fire incident was ordered again. Respondent No. 4 got annoyed with the applicant and threatened him of dire consequences.

5. The applicant was placed under suspension vide order dated 06.06.1998 in contemplation of a Departmental Inquiry. The Disciplinary Authority issued a charge sheet and memorandum dated 22.10.1998 (Annexure A/C) containing only one charge

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against the applicant. On 12.02.2000, respondents issued a fresh memorandum and charge sheet dated 12.02.2000 (Annexure A/10). In the above charge sheet, apart from the previous charge no. 1, two more charges were added. Charge No. 1 is of incident relating to the period of 1964 relating to his initial recruitment in service when he had produced false certificates during the interview on 01.03.1964. Charge No. I was based on a statement made by the applicant on 10.08.1985 in the CBI court as a prosecution witness, which was right, legal and appropriate. Charge No. 2 was pertaining to failure to properly detain the said person in the office of Admn. Officer M/s Jajpur in the night of 03/07/1998 while he was on duty. Charge No. 3 was relating to the forwarding of false allegations against his superior officers, C.P.O., Dabney Singh, Admn. Officer and Others of M/s Jajpur.

6. An ex-parte inquiry was conducted by the Inquiry Officer and order dated 19.09.2000 (Annexure A/12) for dismissal of applicant from service was passed by respondents No. 2. The applicant submitted a reply dated against the said order of dismissal, which had been decided vide order dated 20.01.2002 (Annexure A/14).

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7. The applicant alleged that the allegation of the year 1984 are being proceeding against the applicant in 1999 after a delay of more than 15 years. Therefore, the allegation are belated and suffer from bias as held by the Hon'ble Supreme Court time and again that the delay in issuance of charge sheet is fatal to department.

8. The matter was investigated by the CBI and the applicant was made a prosecution witness in case No. 10/86 - Government vs. Shri B.D. Bhargava. The applicant was used as an approver by the prosecuting agencies. Now the statement made by the applicant as prosecution witnesses in the criminal court cannot be used against him in a Departmental Inquiry, which is against the provisions of Indian Evidence Act, Cr. P.C. and natural justice. The applicant has worked for more than 16 years satisfactorily which gives him a right to him to continue on the post of Chowkidar.

9. On the other hand, respondents have filed a detailed reply to the OA and have not agreed to the relief asked for by the applicant. The respondents stated that applicant was dismissed from

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service on 15.08.2000 by the Appointing Authority. They submit that tampering of medical documents were taken in Military Hospital, Jaipur during March 1998, which was reported by BRC, Thunghana. Staff court of inquiry was ordered and finding of the Court of Inquiry were based on the facts. The Office of respondent No. 4 was set on fire in the night of 03/07, June, 1998. Court of inquiry was ordered in which applicant was on duty as Chowkidar and has been blamed for negligence on duty as he had failed to find out the cause of fire.

10. The applicant has given statement in the court of inquiry of incidence of fire without any duress and hence the statement of applicant that he was compelled to make statement in favour of respondent no. 4 is false and full of malice.

11. The court of inquiry in respect of the incident had been ordered much before the retirement of the applicant by HQ 81(I) Sub Area Headquarters Jaipur dated 05.08.2000.

12. Respondent No. 4 had given show cause notice to the applicant in connection with laxity on duty as he was blamed by court of inquiry in respect of fire incident. Secondly, he had

been issued with a show cause notice for production of false documents at the time of enrollment, which he has accepted before the Hon'ble Court of ACJM, Jaipur in case NO. 10/86. The applicant had been placed under suspension for production of false documents at the time of enrollment such as School Leaving Certificate, Character Certificate, Employment Sponsored Nominal Roll etc. which he had accepted in Case No. 10/86 i.e. D.D. Bhargava vs. Union of India in the court of Additional Chief Judicial Magistrate (CBI Cases) Jaipur decided on 19.03.1998 as a prosecution witness.

13. The Disciplinary authority issued charge sheet dated 22.10.1999. The charge sheet dated 22.10.1999 was cancelled by the Appointing Authority/Disciplinary Authority and a fresh charge sheet was issued on 12.02.2000 containing three charges. Respondents have explained that charge no. 1 is directly connected with the applicant as he was enrolled on basis of false documents. Secondly, he has accepted in Hon'ble ACJM Court, Jaipur in case No. 10/86 as a prosecution witness that he had not studied up to 8th class and he was also charge-sheeted relating to the incidence of fire in Adm. Block in which he failed to detect in time being Chowkidar on night duty as concluded by

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the Court of Inquiry. Charge No. 3 is based on various facts which are available in the official record of the Hospital.

14. The Disciplinary proceedings had been started by the Appointing/Disciplinary Authority under CCS(CCA) Rules, 1965 and the Inquiry Officer was appointed vide order dated 06.03.2000 and the applicant was advised to appear before the Inquiry Officer which he had failed to appear even on repeated reminders. Dismissal orders were issued on 19.08.2000 after the applicant was informed of the finding of the Court of Inquiry vide Sub Area letter dated 27.07.2000.

15. The applicant had appealed to the Controlling Authority i.e. respondent No. 1 vide his appeal dated 22.09.2000 and the same has been disposed of by respondent no. 1 vide his order dated 30.01.2002 (Annexure A/1) and held that the appeal filed by the applicant has no legal force. Therefore, the same is devoid of merit and hence rejected.

16. The respondents have further submitted that it is incorrect to say that respondents no. 4 was bias against the applicant. The actions taken by the respondents are legal and within the time.

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The matter was investigated by the CBI and a prosecution case was filed. No violation of the provisions of Indian Evidence Act and the provisions of Cr. PC has been committed. The applicant was not in possession of requisite qualification as per rules. Disciplinary Authority had dropped charge nos. 2 & 3 and has passed order on the basis of charge no. 1 which was on the basis of statement made by the applicant. Respondent No. 1 had passed the order after application of mind and after considering the entire material available on record. The respondents pleaded that the action taken by them is very fair and proper and, therefore, the OA may be dismissed.

17. Learned counsel for the parties have been heard. Learned counsel for the applicant repeated the arguments given in his OA. He made us to travel ^{se} through various documents on record. He also wanted the Court to take note of the document relating to submission of the prosecutor before the Hon'ble District Court Martial for trial of NA Banshidhar Shahu of M.H. Jaipur and the extract of statement of Mr. Hardev Prasad as a witness in the above District Court Martial. He particularly laid emphasis on the statement made by Major S.S. Pathania, Prosecutor, which is as under:-

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"Enough of evidence has come on records which inescapably leads to point out that it is a fact that tampering has been done and it has not been done by the accused and positively it is done by Capt. Dalsep Singh and the complicity of the Commanding Officer, Col. C.D. Gautam, cannot be ruled out. Therefore, I, in the interest of justice and larger public interest, strongly recommend to this Hon'ble Court to further recommend to the Confirming Authority to initiate appropriate action in terms of AR-150 read in conjunction with RA Para 475."

18. He also referred to the statement made by Hardev Prasad before the District Court Martial. He particularly emphasized that as the applicant exposed Cap. Dalip Singh (the then Administrative Officer) and Col. C.D. Gautam (the then Commanding Officer, Military Hospital, Jaipur, and they were having inimical intention towards the applicant. Consequently, the services of the applicant were dismissed in 2000 after the period of 15 years. Thus he concluded that applicant has put more than 15 years of service and it is not proper that he is dismissed from service after such a long period.

19. Learned counsel for the respondents explained that this is not a case of production of certificate for lower qualification but the employment has been obtained on the basis of forged documents i.e. School Leaving Certificate, Character Certificate

and Employed Sponsored Nominal Roll including the name of the applicant. The applicant has himself admitted in a statement made before the Hon'ble Additional Chief Judicial Magistrate in case No. 10/86.

20. Learned counsel for the respondents produced a photocopy of the statement dated 10.08.1985 made by the applicant where he has accepted that his school leaving certificate, Employed Sponsored Nominal Roll etc. was manipulated by one Shri B.D. Bhargava, working in the Military Hospital, Jaipur after payment of illegal gratification. The above statement of the applicant has been recorded before the Chief Judicial Magistrate in case No. 10/86 at Para No. 8 (Page Nos. 8 to 9) wherein he has clearly recorded that the above documents were forged on the basis of which he obtained employment after payment of illegal gratification.

21. Learned counsel for the respondents further pleaded that although the applicant has been working for a long period on the job, but with the passage of time his claim does not become legal as the employment has been procured on the basis of forged documents by payment of illegal gratification. He further

pleaded that an independent inquiry was held in which applicant did not participate. A copy of the Inquiry report was sent to him. The Disciplinary Authority has imposed the penalty of dismissal against Charge No. 1 relating to production of forged/false documents at the time of his enrolment as Chowkidar in the Military Hospital. Other charges relating to fire incidence and making false allegations against the superior authorities were dropped by the Disciplinary authority. The appeal dated 19.08.2000 made by the applicant has been found devoid of merit and hence was rejected. Learned counsel for the respondents concluded that the OA may be dismissed with costs.

22. We have examined this carefully and perused the documents placed on record. It is seen that the charge sheet dated 12.02.2000 was issued for three charges and an independent inquiry was held in which applicant did not participate. Therefore, the inquiry was held ex-parte. The applicant has been held guilty for production of false/forged documents and obtaining employment by payment of illegal gratification on the basis of statement made by him on 10.08.1985. The above statement has also been recorded in the Court of the Additional Chief Judicial Magistrate in case No.

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10/86 at Para NO. 8. The other articles of charges were dropped by the Disciplinary Authority.

23. It is quite clear from the statement made by the applicant before the Additional Chief Judicial Magistrate in case No. 10/86 that the applicant has obtained employment on the basis of forged documents by payment of illegal gratification.

24. The applicant had not given his statement dated 10.03.1905 before Addl. Chief Judicial Magistrate as it is stated. He was produced before the Court as a witness and, therefore, his statement was given as witness and not as an approver and the same can, therefore, be relied as an evidence under the law.

25. That apart, we are also of the view that in this case the provisions of Article 311 are not attracted as the applicant procured appointment by submitting forged documents, certificate. The Apex court in number of cases has stated that where appointment has been procured,

a person on the basis of false certification cannot be said to be a person holding civil post within the meaning of Article 311. Such appointment is no appointment in the eyes of law, hence dismissal of such person so appointed held does not attract Article 311. At this stage, it will be useful to quote decision of the Apex Court in the case of *P. Vishwanatha Pillai vs. State of Kerala*, 2004 SCC (L2S) 350 whereby the Apex Court has also relied upon another decision of the Apex Court in the case of *Kishan Madhuri Patil vs. Adm. Commr. Tribal Development* (1994) 6 SCC 241. In *Madhuri Patil* case admission was taken by two sisters in two professional courses on the basis of false caste certificate produced by them which were scrutinized after report submitted by the verification committee. The Apex Court held that the person who obtained admission or got appointment on the basis of false caste certificate thereby usurping the seat/post reserved for the SC/ST were required to be weeded out by prompt action. In para 13 it was held that:-

"13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Caste or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to officer or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to

dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinized at the earliest and with utmost expedition and promptitude."

26. The question whether person who has obtained employment against a post meant for reserved category on the basis of false certificate is a person who does not hold the civil post within the meaning of Article 311, the Apex Court in the case of Vishwanatha Pillai (supra) has held that where appointment in a service has been secured by practicing forgery or deceit such appointment is no appointment in law and Article 311 is not attracted. At this stage, it will be useful to quote para 15, 16, 17 and 18 which thus reads:-

"15. This apart, the appellant obtained the appointment in the service on the basis that he belonged to a Scheduled Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. His appointment was no appointment in the eyes of law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India. Finding recorded by the Scrutiny Committee that the appellant got the appointment on the

basis of a false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Caste. In view of the finding recorded by the Scrutiny Committee and upheld up to this Court, he had disqualified himself to hold the post. The appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India. As the appellant had obtained the appointment by playing a fraud, he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practising fraud or deceit, such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all.

15. In *Iskwar Dayal Sah v. State of Bihar* the Division Bench of the Patna High Court examined the point as to whether a person who obtained the appointment on the basis of a false caste certificate was entitled to the protection of Article 311 of the Constitution. In the said case the employee had obtained appointment by producing a caste certificate that he belonged to a Scheduled Caste community which later on was found to be false. His appointment was cancelled. It was contended by the employee that the cancellation of his appointment amounted to removal from service within the meaning of Article 311 of the Constitution and was therefore void. It was contended that he could not be terminated from service without holding departmental inquiry, as provided under the Rules. Dealing with the above contention, the High Court held that if the very appointment to the civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 of the Constitution can possibly flow. It was held (Lab 10 pp 524-25, para 22)

If the very appointment to civil post is vitiated by fraud, forgery or crime or illegality, it would

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necessarily follow that no constitutional rights under Article 311 can possibly flow from such a tainted force. In such a situation, the question is whether the person concerned is at all a civil servant of the Union or the State and if he is not validly so, then the issue remains outside the purview of Article 311. If the very entry or the crossing of the threshold into the arena of the civil service of the State or the Union is put in issue and the door is barred against him, the cloak of protection under Article 311 is not attracted.

17. The point was again examined by a Full Bench of the Patna High Court in *Rita Mishra v. Director, Primary Education, Bihar*. The question posed before the Full Bench was whether a public servant was entitled to payment of salary to him for the work done despite the fact that his letter of appointment was forged, fraudulent or illegal. The Full Bench held: (AIR p.32, para 15)

"13. It is manifest from the above that the rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights, including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and non est in the eye of the law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In particular, if the very appointment is rested on forgery, no statutory right can flow from it."

27. We agree with the view taken by the Patna High Court in the aforesaid cases."

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28. The law as laid down by the Apex Court in the case of R.Vishwanatha Pillai (supra) as reproduced above, is squarely applicable in the facts and circumstances of the case. In the present case also the applicants have secured appointment in service by practicing fraud, as such, the appointment is no appointment in the eyes of law and in such a situation Article 311 is not attracted at all."

29. In this case, the employee has worked for a period more than 15 years but he was appointed on the basis of forged document by payment of illegal gratification, which has been admitted by him before the court of law. It is considered that the appointment of the applicant was void ab-initio. In view of the above, this court would not like to interfere with the order passed by the respondents.

30. Accordingly, the OA is disallowed with no order as to costs.

Tarsen Lal
(TARSEN LAL)
MEMBER (A)

M.L. Chauhan
(M.L. CHAUHAN)
MEMBER (B)

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