

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 399 of 2003
Original Application No. 446 of 2004

Bilaspur, this the 10th day of May, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

1. **Original Application No. 399 of 2003 :**

Ram Prakash Sharma, S/o. Shri Ram Gopal
Sharma, Aged 42 years, Occupation – Unemployed
R/o. Balaji Bihar Colony, Gada Gudi Ka Naka,
Lashkar, Gwalior. Applicant

(By Advocate – U.P. S. Chouhan)

V e r s u s

1. Accountant General (Accounts & Entitlement)-I,
Madhya Pradesh and Chhattisgarh, New Building,
Jhansi Road, Gwalior.
2. Senior Deputy Accountant General (Administration)
and Disciplinary Authority, A-G Office, Madhya
Pradesh and Chhattisgarh, New Building, Jhansi
Road, Gwalior.
3. Principal Accountant General and Appellate Authority,
A-G Office, Madhya Pradesh and Chhattisgarh, New
Building, Jhansi Road, Gwalior. Respondents

(By Advocate – Shri M. Rao)

2. **Original Application No. 446 of 2004 :**

Dwarka Prasad Pal, S/o. Shri Nahar Singh Pal,
Aged 42 years 4 months, Occupation – Unemployed,
R/o. Behind D.R.P. Line, Near Narayan Seth's Shop,
Ramgarah, Ghosipura, Gwalior (MP). Applicant

(By Advocate – Shri S.C. Sharma)

V e r s u s

1. Union of India, through : The Comptroller & Auditor General of India, Bahadur Shah Jafar Marg, New Delhi.
2. Principal Accountant General (A&E) of M.P., Chhattisgarh, New Building, Jhansi Road, Gwalior M.P.
3. Dy. Accountant General (A&E), New Building, Jhansi road, Gwalior M.P.

.... Respondents

(By Advocate – Shri M. Rao)

O R D E R (Common)

By Madan Mohan, Judicial Member –

As the issue involved in all the aforementioned cases is common and the facts and grounds raised are identical, for the sake of convenience these Original Applications are being disposed of by this Common order.

2. By filing these Original Applications the applicants have claimed the following main reliefs :

OA No. 399/2003 :

“(I) the order of punishment of dismissal from Government service dated 26.3.2002 contained in Annexure A-5 and the appellate order dated 19.6.2002 contained in Annexure A-7 may kindly be declared as illegal and the same may kindly be quashed,

(II) the respondents may kindly be further directed to reinstate the applicant with consequential benefits on the post of Account Clerk.”

OA No. 446/2004 :

“1-) the order of penalty vide No. Admn./CC/III/STR-I/1522 dated 7.2.2002 contained in Annexure A/36, the order of appellate authority vide No. Admn./CC/D-434 dated 6.6.2002 contained in Annexure A/38 and the order of revisioning authority order dated 27.8.2003 which was communicated letter No. Admn./CC/D-631




dated 23.9.2003 contained in Annexure A/40 may kindly be quashed,

2) the whole proceedings of enquiry be quashed,

3) the respondents be directed to reinstate the applicant on his post of Chowkidar with back wages and directed them to treat applicant on duty w.e.f. the date of dismissal."

3. The brief facts of the case in OA No. 399 of 2003 are that the applicant was initially engaged as casual labourer in the year 1986, and he was shown as muster roll employee w.e.f. 2.2.1987. After more than 3 years on daily wages, the applicant was given regular appointment on the post of Chowkidar w.e.f. 11.7.1990. Subsequently, the applicant was promoted on the post of Peon and further as Account Clerk w.e.f. 21.12.1994. A charge sheet was issued to him vide memo dated 22.2.1999 alleging that at the time of appointment in the year 1990 the applicant submitted a wrong certificate mentioning the date of birth as 6.4.1964 instead of 6.4.1961. He submitted his reply against it. The enquiry was conducted and the enquiry officer without following the mandatory provisions of enquiry and without giving proper opportunity of hearing to the applicant concluded the enquiry against the applicant. The applicant submitted his representation on 3.5.2002 and the respondent No. 2 without considering the representation of the applicant passed an order dated 26.3.2002 imposing the penalty of dismissal from Government service. The applicant preferred an appeal to the appellate authority which was also rejected vide order dated 19.6.2002. Hence, this Original Application is filed.


4. The brief facts of the case in OA No. 446 of 2004 are that the applicant was appointed on the post of Chowkidar vide order dated 24.9.1982. Vide order dated 6.1.1998 a charge sheet was issued to the applicant under Rule 14 of the CCS (CCA) Rules, 1965 and vide order dated 7.1.1998 the applicant was placed under suspension. The applicant submitted an application for supplying the relevant documents but the said



documents were not supplied to him. The enquiry conducted by the enquiry officer was not in accordance with law and mandatory provisions of law. The disciplinary authority without deciding the representation of the applicant passed the order dated 7.2.2002 inflicting the penalty of dismissal from Government service. The applicant filed an appeal to the appellate authority but the appellate authority rejected the appeal of the applicant vide order dated 6.6.2002. Thereafter, the applicant preferred a revision petition to the revisional authority but the revisional authority also rejected the revision petition of the applicant vide order dated 27.8.2003. The whole action of the respondents is illegal and arbitrary. Hence, this Original Application is filed.


5. Heard the learned counsel for the parties and carefully perused the pleadings and records.

6. The learned counsel for the applicants argued that the applicant has neither concealed nor misrepresented any fact and they have not manipulated anything in the mark sheet in which their date of birth is mentioned by the Education Department. The learned counsel for the applicants has drawn our attention towards the mark sheet Annexure R-3 filed in OA No. 399/2003 issued by the Board of Secondary Education and in which the applicant's date of birth is shown as 6.4.1964 and his date of birth is also mentioned in words also. In OA No. 446/2004 also the respondents have filed the mark sheet issued which is said to be fraud issued by the Education Board and in this also the date of birth of the applicant is written both in figures and words as 20.6.1962. There is no cut or overwriting on these documents and the respondents have also not said anything about the applicants that they have fabricated these documents. Hence if any error or mistake is committed, that is committed on the part of the Education Department and not on the part of the applicants. Hence, both the Original Applications deserves to be allowed.




7. In reply, the learned counsel for the respondents argued that the applicants have stated their date of birth as 6.4.1964 and 20.6.1962 respectively in the verification forms. On receiving some complaints in the year 1994 mentioning that the mark sheets of the applicants are bogus, the matter was enquired from the Board of Secondary Education, Bhopal and the Board in their reply stated that the date of birth of the applicants as per the official records is not the same as is mentioned in the mark sheets. Hence, the mark sheets were said to be bogus and fraud. The applicants were given due opportunity of hearing and after considering all the facts and circumstances of the cases, the respondents have passed the impugned orders which are perfectly in accordance with the law and they have not committed any irregularity or illegality.

8. After hearing the learned counsel for both parties and perusing the records, we find that the applicant before joining duty had submitted his bio data in the prescribed format Annexure R2, in which he has mentioned his date of birth as 6th April 1964. The respondents received the complaint during 1994 mentioning therein that the mark sheet filed by the applicant is forged in so far as his date of birth is concerned. The respondents enquired into this matter from the Board of Secondary Education, Bhopal, who vide their letter dated 8th July 1999, reported that the date of birth of the applicant as per the official record is 6th April 1961 (Annexure R4). On the basis of this fact, the respondents had issued the charge sheet against the applicant and a departmental enquiry was conducted. We have perused Annexure R4 dated 8th July 1999 in which it is clearly mentioned that the date of birth of the applicant is 6th April 1961. This report was submitted by the respondents after perusal of the relevant records available in their office. The applicant has not filed any rejoinder controverting this fact. The mere contention of the applicant that he has not concealed nor misrepresented any fact, seems to be not sufficient and satisfactory. The charges levelled against the applicant are proved and



established during the departmental enquiry proceedings. He was given an opportunity of hearing.

9. In the case of Dwaraka Prasad, the applicant in OA 446/04, he had submitted a photocopy of the mark sheet of Roll No.8757 of the year 1981 in support of the statement. A complaint was received during 1984 by the respondents stating therein that the mark sheet is forged. The respondents got verified this fact from the Deputy Director of Education, Gwalior, who reported vide his letter dated 19th June 1997 that the applicant did not appear in the said examination and the alleged mark sheet is a forged document. Hence the respondents issued a charge sheet against the applicant and a departmental enquiry was conducted. The mere contention of the applicant that he has not concealed any fact and he has submitted his mark sheet which was issued by the Education Department, does not seem to be sufficient or satisfactory. According to the letter dated 19th June 1997 (Annexure R5) issued from the Assistant Director of Education, the applicant Dwaraka Prasad did not appear in the alleged examination and the alleged mark sheet is mentioned as a forged document. The applicant has not submitted any other document against the aforesaid letter of the Education Department while it was his duty to secure the valid document to satisfy the respondents about the questioned document, which he failed to do. Copies of all relevant documents were furnished to both the applicants as the documents in question were only their mark sheets which were found to be forged on verification by the respondents. Due opportunity of hearing was given to the applicants. R.P.Sharma, the applicant in OA 399/03, had preferred an appeal against the order of the disciplinary authority and Dwaraka Prasad, the applicant in OA No.446/04 had preferred an appeal and also a revision against the order passed by the appellate authority. The charges levelled against the applicants are proved and established. The Tribunal cannot re-apprise the evidence. The charges levelled against the applicant are serious in nature. The Hon'ble



Supreme Court has in 2004 SCC L&S 350 in the case of R.Viswanathan Pillai Vs. State of Kerala and ors., decided on 7.1.2004 held that “ a person illegally appointed – held – is not a person holding a civil post” and further held that “Where the delinquent official was dismissed for procuring appointment in the post reserved for SC candidate by producing false caste certificate – the plea to substitute order of dismissal by an order of compulsory retirement to protect his pensionary benefits, as he had rendered service for a long period – is rejected and further held that such a person having obtained appointment by committing fraud-held-not entitled to equity jurisdiction of the Supreme Court to claim such a relief”. The Hon’ble Supreme Court has not even considered the prayer of the applicant even after rendering 27 years of service on the ground of producing false ~~mark sheets~~ ^{certificate}. Hence, according to the principles laid down by the Hon’ble Supreme Court in the aforesaid ruling, the applicants do not deserve any leniency in the punishment also.

10. Considering all facts and circumstances of the case, we are of the considered opinion that ^{both} the OA ~~has~~ no merit. Accordingly, the OAs ^{are} dismissed. No costs.

Sd/-

(Madan Mohan)
Judicial Member

Sd/-

(M.P. Singh)
Vice Charman