

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O. A. No.60/793/2016

...
(Reserved on: 05.02.2018)

Date of decision: 12.03.2018.

...
**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. P. GOPINATH, MEMBER (A).**

...

Bhag Singh aged 63 years, S/o Late Sh. Joginder Singh, Ex-Hospital Attendant, Laundry Plant, Postgraduate Institute of Medical Education and Research, Chandigarh, R/o Village-Kheri, P.O. Bajeri, Tehsil Kharar, District-Mohali (Pb.). Group-D.

... APPLICANT

VERSUS

1. Postgraduate Institute of Medical Education & Research, Sector-12, Chandigarh through its Director.
2. President, Postgraduate Institute of Medical Education & Research, Sector-12, Chandigarh cum Appellate Authority, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi.
3. Sh. Haqiqat Singh, Ex-Technical Assistant, House No.8, Gali No.1, Village Mohali, District-Mohali (Pb.).
4. Prof. Yogesh Chawla, Head, Department of Hepatology, PGIMER, Chandigarh.

... RESPONDENTS

PRESENT: Sh. Karan Singla, counsel for the applicant.
Sh. Vikrant Sharma, counsel for the respondents No.1 and 2.

ORDER (Oral)

...
SANJEEV KAUSHIK, MEMBER (J):-

1. The applicant assails order of removal from service dated 22.05.2012 (Annexure A-15), appellate order dated 07.04.2014 (Annexure A-20) and order in revision dated 27.02.2016 (Annexure A-22).
2. Undisputed facts which led to filing of this O.A. are that the applicant joined his service with respondent Post Graduate Institute of Medical Education and Research (for short PGIMER) as Ward Servant w.e.f. 27.02.1988. The said post was re-designated as Hospital Attendant

w.e.f. 01.03.1992. While the applicant was in service, he was served with charge sheet on 24.09.2011 under Rule 14 of CCS (CCA) Rules, 1965 (for short 1965 Rules). After complying with the procedure laid down under 1965 Rules, Disciplinary Authority while agreeing with the findings recorded by Inquiry Officer passed impugned order dated 22.05.2012 of removal from service. Aggrieved against that order, applicant filed statutory appeal which was rejected vide order dated 07.04.2014. Still aggrieved against that order of Appellate Authority, he filed revision petition which was also dismissed vide order dated 23.02.2016. Hence this O.A.

3. When the matter came up for preliminary hearing, learned counsel appearing on behalf of the applicant suffice a statement and after noticing contention, this Court issued notice to respondents on the limited quest that reads as under:-

“1. Heard.

2. Counsel for the applicant contended that instead of ordering removal from service, lesser punishment of compulsory retirement should have been imposed on the applicant, because he had already rendered more than 24 years of service, when the impugned removal order was passed.

3. Notice be issued to respondents no.1 & 2 only.

4. List on 28.09.2016.”

4. The respondents resisted the claim of the applicant by filing detailed written statement wherein they did not dispute factual accuracy of above noted facts. However, they submitted that applicant secured appointment by playing fraud on the respondent department. When this fact came to notice that applicant was not eligible on the date of appointment as he was over-age and also did not possess requisite qualification, therefore, after following the procedure laid down

under 1965 Rules i.e. by issuing charge-sheet and after having completed inquiry according to the rules inflicted punishment of removal from service. Thus, it is submitted that applicant does not deserve any sympathy as fraud unveil everything. The respondents have also relied upon various judicial pronouncements on the issue as such employee is not entitled to any employment even on equitable grounds.

5. We have heard learned counsel for respective parties.
6. Sh. Singla, learned counsel for the applicant who vehemently argued that the impugned order of removal from service is harsh and liable to be set aside as having been passed without application of mind. To substantiate his claim, he submitted that while passing impugned order, respondents have not taken into account unblemished service of 24 years and have inflicted harsh punishment of removal from service instead of considering his case sympathetically. To buttress his claim, he placed reliance on judgment in the case of **Sukhwant Singh vs. Central Administrative Tribunal** 2013 (1) PLR 781.
7. Per contra, Sh. Vikrant Sharma appearing on behalf of the respondents opposed prayer of the applicant for setting aside the impugned order on the ground of disproportionate penalty. He urged that once it is proved on record that applicant has played fraud while securing appointment, this Court will not become an authority to the proceedings by directing the respondents to inflict lesser punishment by exercising its power against a person who played fraud with the respondent department. He argued that if order is bad since its inception, it does not get sanctified at a later stage, a right in law exists only when it has a lawful origin.

Therefore, continuation of a person wrongly appointed on post does not create any right in his favour. He further urged that a candidate who has suppressed material information and gave wrong information has no right to continue in service and his employer has a right to terminate his service secured by ill will methods which are not known to service jurisprudence. To buttress his contention, he placed reliance on following judgments:-

- a. State of Orissa v. Mamta Mohanty 2011 (3) SCC 436.
- b. Jainendra Singh vs. State of U.P. Tr. Principal Secretary Home 2012 (8) SCC 74.
- c. Union of India vs. M. Bhaskaran AIR 1996 SC 686.
- d. Union of India vs. Amar Singh 2007 (12) SCC 621.
- e. District Collector, Vizianagaram vs. M. Tripura Sundari Devi 1990 (4) SLR 237.
- f. Managing Director, ECIL, Hyderabad vs. B. Karunakar AIR 1904 SC 1074.
- g. Oriental Insurance Co. Ltd. Vs. S. Balakrishnan AIR 2001 SC 2400.
- h. State of Manipur vs. Y. Toekn Singh 2007 (5) SCC 85.

8. Having completed all the formalities, having heard learned counsel for the parties, having gone through the pleadings on board and legal provisions with their valuable assistance.
9. It is to be noted here that though, through present petition, the applicant has assailed the order of punishment of removal from service but at the time of issuing notice of motion, learned counsel for the applicant suffered a statement that his alternative plea of disproportionate punishment to gravity of the misconduct be considered only. In the light of the above noted facts, we proceed to consider the facts in the light of judicial precedents.

10. Conjunctive perusal of pleadings makes it clear that the initial appointment of the applicant was a result of fraud. He was neither eligible in terms of qualification nor was within age prescribed under the relevant rule. By concealing these material facts, he secured appointment and had continued for 24 years. This fact has not been disputed by the applicant; rather there is admission by the applicant. After unveil of this fact, while rectifying their mistake, respondents by adopting procedure envisaged under 1965 Rule passed order of punishment of removal from service. Thus, it is submitted that once there is admission by the applicant that his appointment was as a result of fraud then he cannot claim equity as fraud vitiates everything.
11. First of all, we consider whether in the given facts this Court can interfere with the order of punishment. It is now settled that only disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are vested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The Court, while exercising the power cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof. Reference in this behalf in **B.C.**

Chaturvedi vs. Union of India and others (1995 (6) SCC 749), **Union of India versus P.Gunasekaran** (2015 (4) SLR 244). Thus, it is clear that court has to record a finding based upon the facts and evidence that the punishment so imposed is harsh and oppressive, thus shocks the conscience of the Court. In the present case, appointment was as a result of fraud played upon the respondents.

12. It is settled proposition of law that where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent authority, such order cannot be sustained in the eyes of law. "Fraud avoids all judicial acts ecclesiastical or temporal." (Vide **S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. & Ors** 1956 All. E.R. 341), the Court observed without equivocation that "no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."
13. In Andhra **Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills & Anr.** AIR 1994 SC 2151; and **State of Maharashtra & Ors. Vs. Prabhu** (1994) 2 SCC 481, the lordships have observed that a writ Court, while exercising its equitable jurisdiction, should not act as to prevent perpetration of a legal fraud as the courts are obliged to do justice by promotion of good faith. "Equity is, also, known to prevent the law from the crafty evasions and sub-letties invented to evade law."
14. In **United India Insurance Co. Ltd. Vs. Rajendra Singh & Ors.** AIR 2000 SC 1165, Court observed that "Fraud and justice never dwell together" (fraus et jus nunquam cohabitant) and it is a pristine maxim which has never lost its temper over all these centuries.

15. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud. (See District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram & Anr. Vs. M. Tripura Sundari Devi (1990) 3 SCC 655; Union of India & Ors. Vs. M. Bhaskaran (1995) Suppl. 4 SCC 100; Vice Chairman, Kendriya Vidyalaya Sangathan & Anr. Vs. Girdharilal Yadav (2004) 6 SCC 325; State of Maharashtra v. Ravi Prakash Babulalsing Parmar (2007) 1 SCC 80; Himadri Chemicals Industries Ltd. Vs. Coal Tar Refining Company AIR 2007 SC 2798; and Mohammed Ibrahim & Ors. Vs. State of Bihar & Anr. (2009) 8 SCC 751)
16. Having deeply considered the crux of the pleaded grounds and in the light of the aforesaid prismatic reasons that, appointment of the applicant was as a result of fraud, which is also proved beyond reasonable doubt as admitted by the applicant. Thus, we find no reason to interfere with impugned order of punishment of removal, so instant original application is hereby dismissed.
17. No order as to cost.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 12.03.2018.
Place: Chandigarh.

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