

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**MUMBAI BENCH, MUMBAI**

**ORIGINAL APPLICATION No.09/2002**

**Dated this Wednesday the 4<sup>th</sup> day of October, 2017**

***CORAM: HON'BLE SHRI A.J. ROHEE, MEMBER (J)***  
***HON'BLE MS. B. BHAMATHI, MEMBER (A)***

Shri Sanjay Kumar Pal  
 Ex-Assistant Driver,  
 C. Railway, Bhusawal,  
 R/at Railway Quarter, RBII/415,  
 Rly. Colony, AJNI, Nagpur -  
 440 012.

... ***Applicant***

***(By Advocate Shri M.M. Bhokarikar)***

**Versus**

1. Union of India, through  
 The General Manager,  
 Central Railway, C.S.T.  
 Mumbai – 400 001.
2. The Additional Divisional Railway  
 Manager,  
 Central Railway, Bhusawal,  
 Dist. Jalgaon – 425 201.
3. Divisional Electrical Engineer (T.R.O.)  
 Central Railway, Divisional Office,  
 Bhusawal – 425 201.
4. Assistant Electrical Engineer (T.R.O.)  
 Central Railway, Divisional Office,  
 Bhusawal – 425 201.

... ***Respondents***

***(By Advocate Smt. H.P. Shah )***

**Reserved on : 22.08.2017.**

**Pronounced on : 04.10.2017.**

**ORDER**

*Per : Shri A.J. Rohee, Member (J)*

The Applicant former Assistant Driver,  
 Central Railway, Bhusawal Division working under

the respondents, approached this Tribunal under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

*“8.i Declare that the Departmental enquiry conducted by the respondents is vitiated and is bad in law in as much as no evidence at any point of time was adduced to prove that the H.S.C. Certificate of the Board of Secondary Education, Madhya Pradesh, Bhopal is false or fabricated and therefore resultant punishment is contrary to the D & A Rules, illegal and unconstitutional.*

*8.ii To set aside the dismissal order passed by the Disciplinary Authority vide L.No.BSL/P/DAR/TRO/142 dated 24.06.98; confirmed by the Appellate Authority and Revising Authorities vide their orders dated 23.11.98 and 03.03.99 respectively, and reinstate the applicant from the said date treating the service as continuous and consequential benefits.*

*8.iii Direct the respondents to pay all the wages and allowances and leave and other dues to the applicant as if he is in continues in service.*

*8.iv Pass such other further orders, as may be deemed just and proper in the interest of justice.*

*8.v Direct the respondents to pay the cost of this application.*

*The applicant says and submits that in the event of denial of justice as mentioned hereinabove great harm and injury would be caused to the future existence of the applicant.”*

**2.** The Applicant was selected as Apprentice Assistant Driver through the Railway Recruitment Board in pursuance of the Employment Notice No.01/1992 dated 25.06.1992. After undergoing the medical examination and the prescribed training, the applicant was appointed as Assistant Driver with the respondents vide order

dated 02.08.1994. While serving in the capacity as Assistant Driver, the applicant was served with the Charge Memorandum No.BSL/P/DAR/TRO/142 dated 15.10.1997 (Annexure A-5) issued by the Respondent No.4, the Disciplinary Authority on the allegations that while seeking employment, he has submitted a forged and fabricated document regarding his educational qualification in the form of a mark-sheet of Higher Secondary School Certificate Examination allegedly issued by H.S.S.C. Board, Bhopal (M.P.). Prior to initiation of the disciplinary proceedings, vigilance inquiry was conducted and thereafter the Charge Memorandum was served on the applicant. The applicant refuted the charge and hence Inquiry Officer was appointed on 04.11.1997. The applicant contested the inquiry and on its conclusion, submitted defence brief on 16.03.1998 (Annexure A-7). On conclusion of enquiry, the applicant was questioned generally by the Inquiry Officer about circumstances brought on record against him. The Inquiry Officer then submitted his report dated 26.03.1998 to the Disciplinary Authority, who served it on the applicant on 16.04.1998 calling upon him to submit a representation on it vide

communication Annexure A-8.

**3.** The Applicant submitted a representation in which he denied the finding recorded by the Inquiry Officer and claims that the charge is false and frivolous and that he should be exonerated. However, vide order dated 24.06.1998 (Annexure A-4) the Disciplinary Authority after considering the material on record imposed the penalty of dismissal from service from 29.06.1998. The Applicant has challenged the said order before the Appellate Authority (Respondent No.3) vide Appeal Memo dated 21.08.1998 (Annexure A-9). He was granted personal hearing without his Defence Assistant vide communication dated 30.09.1998 (Annexure A-9). After considering the material on record, the Appellate Authority vide order dated 23.11.1998 (Annexure A-3) dismissed the Appeal thereby confirming the order of dismissal from service passed by the Disciplinary Authority.

**4.** The Applicant then challenged both the aforesaid orders before the Respondent No.2 by way of revision dated 02.02.1999 (Annexure A-10). However, vide impugned order dated 03.03.1999 (Annexure A-2), the Revisional Authority dismissed the revision thereby

confirming the orders passed by the Disciplinary Authority and the Appellate Authority.

**5.** Again vide communication dated 12.07.1999 the applicant submitted Mercy petition to the Divisional Railway Manager, Bhusawal. Vide communication dated 21.07.1999 (Annexure A-11) the applicant was advised to submit the Mercy Appeal to Chief Electrical Engineer for his fresh appointment as Assistant Driver. Accordingly, in pursuance of the above advice, the applicant submitted Mercy Appeal dated 06.10.1999 (Annexure A-12) to the Chief Electrical Engineer, CST, Mumbai. Since nothing was heard on it for couple of months, the applicant submitted Mercy Appeal to the General Manager, Central Railway, Mumbai for considering him for fresh appointment vide communication dated 14.01.200 (Annexure A-13).

**6.** In pursuance thereof, the Division Railway Manager (P), Bhusawal vide communication dated 10.08.2000 called upon the applicant to submit mark-sheet of having passed the HSSC Examination. However, vide order dated 05.12.2000 (Annexure A-1), the General Manager, Central Railway, CST, Mumbai turned down the request of the applicant. He, therefore,

approached this Tribunal in the present OA on 19.11.2001.

7. When the OA was called out for admission, this Tribunal vide order dated 08.01.2002 dismissed the OA in *limine* on the ground that it is highly belated from the date of the order passed by the Revisional Authority and the delay of about two years was not condoned since no indulgence in this behalf can be granted in a case when the applicant did not approach this forum in time as mentioned in para 3 of the said order.

8. In para nos. 4 and 5 of the said order, this Tribunal has held as under;

*“4. There is another reason due to which we are not inclined to condone delay. The learned counsel for applicant has argued that the applicant was advised to mover mercy petition. Mercy petition itself was filed after exhausting all remedies which a person (here applicant) exhausts and considers no further remedy is to be availed. Once the applicant has taken recourse to mercy petition, which was dismissed, no question for entertaining the belated OA arise against such applicant. However, as we are also of the opinion that applicant could have approached this Tribunal within a reasonable time even after expiry of limitation of one year, which he did not do, there appears no sufficient cause for condoning the delay. Thus application for condonation of delay is rejected.*

*5. As the application for condonation of delay is rejected, the OA is barred by limitation and hence it is dismissed, with no order as to costs.”*

9. Record shows that the applicant has

challenged the aforesaid order dated 08.01.2002 before the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad in WP No.6222/2004. After hearing both the parties, the Hon'ble High Court vide order dated 07.10.2015 allowed the said WP by making the rule absolute. The relevant para nos.3, 7 & 8 of the said order read as under;

*“3. The question before the Tribunal was whether the reasons mentioned in the application amount to sufficient cause, as contemplated by Section 21 of the Act. The impugned order says that the Tribunal would not show indulgence for condoning delay because the applicant did not approach the said forum in time.*

4. XXXXX XXXXX XXXXX XXXXX  
 5. XXXXX XXXXX XXXXX XXXXX  
 6. XXXXX XXXXX XXXXX XXXXX

*7. In this case, as mentioned above, we found that the explanation offered by the petitioner was sufficient and convincing. On the other hand, we expressed our opinion that the Tribunal brushed aside such explanation rather casually.*

*8. This Writ Petition, therefore, should succeed. We allow this Writ Petition by setting aside the impugned order. We condone the delay in filing the Original Application. The Central Administrative Tribunal is requested to decide the Original Application on merits as early as possible. Record be sent to the Tribunal. The parties shall appear before the Central Administrative Tribunal on 16.11.2015”.*

**10.** It is thus obvious that the delay in approaching this Tribunal for challenging the order of dismissal has been condoned by the Hon'ble High Court in the WP and a direction was

issued to this Tribunal to decide the OA on merit.

**11.** Thereafter, the parties appeared before this Tribunal. The applicant then applied for amendment of the OA for making submissions in respect of the HSSC Certificate/mark-sheet. His request was allowed after hearing both the parties and the pleadings were amended accordingly. The respondents filed additional reply to the OA on 27.03.2017 and denied the amended pleadings. According to the applicant, he was declared failed in April, 1988 examination of HSSC, since he scored 272 marks only out of 800. He thereafter applied to the HSSC Board Bhopal for verification and re-checking of the answer-sheets, on the basis of which a revised mark-sheet was issued by the Board on 29.08.1988 in which he secured 330 marks and was declared pass. According to applicant, he has submitted the said revised mark-sheet at the time of seeking employment and there is nothing to show that the said mark-sheet is forged or fabricated. It is stated that in the disciplinary proceedings, the authorities, however, considered the previous mark-sheet in which it is shown that the applicant has secured



272 marks and failed in the examination. It is also stated that during preliminary inquiry by the Vigilance, no opportunity was granted to him to submit his explanation. It is also stated that for verification and re-checking of the answer-sheets the applicant has submitted the original mark-sheet showing 272 marks to the Board and hence he could not produce the same in the inquiry and has produced the duplicate/revised mark-sheet dated 29.08.1988 issued on verification/checking of the answer-sheets.

**12.** In the OA, the applicant has not sought any relief against the order by which his request for re-appointment is rejected and the orders of dismissal from service only are challenged.

**13.** The reliefs sought in the OA are based on the following grounds as mentioned in para 5 of the OA. The same are reproduced here for ready reference;

*“5.1. The Applicant says and submits that none of the authorities right from Enquiry Officer to the General Manager has not heeded the plea of the Applicant to make a reference taking into consideration of the submissions made by the Applicant, that consequent to the declaration of the result the Applicant has got the marks re-counted by paying the required fee vide Receipt No. 923 dated 18-07-88 (Annexure A-6) and the result of such re-counting i.e. Obtaining the marks corrected to 330. The Original*

*report given by the educational authorities is based on the result before recounting and correcting by the Authorities. The Applicant submits that his pleadings were never recorded by the Enquiry Officer in the respective record.*

5.2. *The Applicant says and submits that the Enquiry Officer from the Vigilance Department who conducted the enquiry, and was prejudiced has been appointed as Enquiry Officer. Thus, he only ratified his pre-determined conclusions. This is against natural justice.*

5.3. *The Applicant says and submits that there is no evidence to show that he has fabricated or indulged in making false certificate. It is pertinent to point out that the said certificate was issued by the educational authorities of Secondary Board, Bhopal and it has not been cancelled or certified as not genuine. Then as to how the Applicant can be held responsible.*

5.4. *The Applicant says and submits that all the authorities right from the Disciplinary Authority to Revision Authority did not apply their mind and only guided by the vigilance causing harm and injury to the future of the Applicant.*

5.5. *The Applicant says and submits that all the authorities have failed and neglected to pass speaking and reasoned orders, therefore whole proceeding is vitiated.*

5.6. *The Applicant says and submits that the Applicant being a member of Scheduled Tribe Community being quite unaware of Rules is being exploited to his ruination.*

5.7. *The Applicant says and submits that every stage of enquiry, investigation, he was threatened by the Respondents and under duress had to agree and sign whatever they have stated and even the ARE has also turned hostile.*

5.8. *The Applicant says and submits that the Enquiry is vitiated as the Enquiry Officer did not examine the official of the Secondary Education Board, Bhopal about the genuineness of the certificate produced by the Applicant.*

5.9. *The Applicant says and submits that the Enquiry Officer did not record the pleadings of the Applicant about his passing of H.S.C. Examination by re-checking of the marks.*

*5.10. The Applicant says and submits that the Respondents have failed and neglected to follow the D & A procedure about issue of show cause Notice to him before passing order of dismissal from service. In other words, the Disciplinary Authority failed to provide an opportunity to the Applicant to make his representation as to why the proposed punishment of dismissal from service should not be inflicted upon him, this being envisaged by provisions under Article 311 of the Constitution of India. It is a Constitutional safeguard and its provision cannot be defeated by making any rule of law. Thus reasonable opportunity under Article 311 of the Constitution analogous to the principle of Natural Justice has been denied to the Applicant. Therefore whole disciplinary proceeding is required to be set aside.*

*5.11. The Applicant submits that the Appellate Authority has denied the Applicant for personal hearing accompanied by his A.R.E. It is submitted that as per provisions of under the Railway Establishment code charged Employee has a right of a personal hearing in appeal duly accompanied by his A.R.E., as such the whole D.A.R. Proceeding is vitiated & required to be set aside. It is further submitted that affording a personal hearing is a point of the reasonal opportunity guaranteed under the Constitution of India”.*

**14.** The Respondents by a common reply dated 12.07.2016 resisted the OA by denying all the adverse averments, contentions and grounds raised therein. Although it is not disputed that the applicant was initially appointed as Apprentice Assistant Driver and thereafter as Assistant Driver after undergoing medical test and prescribed training, it is stated that he submitted false/fabricated certificate of having passed HSSC Examination while applying for appointment in pursuance of Circular issued by

RRB. He has confirmed this fact during the Fact Finding Inquiry conducted by vigilance. According to applicant, he secured the revised mark-sheet by paying Rs.2000/- to one Shri Topare, the official of the HSSC Board Bhopal.

**15.** It is stated that the inquiry was conducted strictly by following the provisions of Railway Servants (Discipline & Appeal) Rules (for short RS (D&A) Rules) and full opportunity was given to the applicant to defend him. All the authorities have passed reasoned and speaking orders while imposing penalty of dismissal from service, since the sole charge levelled against the applicant was proved by cogent evidence brought on record during inquiry. The OA is, therefore, liable to be dismissed.

**16.** It is stated that on receipt of complaint against the applicant to the effect that he secured false and fabricated mark-sheet of HSSC Examination, a preliminary inquiry was conducted by the Vigilance Department in which the applicant has admitted that he has obtained a false mark-sheet by giving Rs.2,000/- to one of the officials of Bhopal Board. He was, therefore, put under suspension and regular

disciplinary proceedings was initiated against him. During the inquiry, it is proved that the mark-sheet bearing Sr.No.11861 which shows that the applicant has obtained 330 marks out of 800 is manipulated mark-sheet and the mark-sheet bearing Sr.No.55697 shows that the applicant has obtained 272 marks only.

**17.** It is stated that there is no provision under RS (D & A) Rules to issue show cause notice to the delinquent employee by the Disciplinary Authority before imposing the penalty of dismissal/removal, since the report of the Inquiry Officer is served on him and his representation is sought. It is stated that the applicant has not specifically asked for personal hearing before the Appellate Authority. However, personal hearing without legal Assistant was granted to him to meet the principles of natural justice. No grounds are made out for challenging the impugned order. The OA is therefore, liable to be dismissed.

**18.** On 20.06.2017, we have heard Shri M.M. Bhokarikar, learned Advocate for the applicant and the reply arguments of Smt. H.P. Shah, learned Advocate for the Respondents. The Applicant was then directed to produce the

original certificates issued by the HSSC Board Bhopal in his favour on the basis of the revised mark-sheet issued by the Board for perusal and the respondents were also directed to produce the original record concerning inquiry proceeding.

**19.** On 02.08.2017 the applicant and his Advocate remained absent without any intimation. The respondents have, however, produced the original records and deposited it in the Registry. The matter was then adjourned to 16.08.2017 for giving a chance to the applicant to produce the certificate issued by the Board. A notice was also issued to the applicant.

**20.** On 16.08.2017 proxy counsel appeared for Shri C.S.Tembhurnikar and again sought time to produce the relevant document/certificate. Hence time till 22.08.2017 was granted as a last chance, treating the matter as part-heard. On the adjourned date of hearing i.e. on 22.08.2017 also neither the applicant nor his Advocate remained present and since oral arguments were already concluded, the order on the OA was reserved on 22.08.2017.

**21.** We have carefully gone through the entire pleadings of the parties, documents relied upon

by them and also the original record produced by the respondents. We have also given thoughtful consideration to the submissions advanced before us by both the learned Advocates for the parties.

### **FINDINGS**

**22.** The only controversy involved for resolution of this Tribunal in the present OA is whether the impugned orders passed by the authorities thereby dismissing the applicant from service on the charge of submission of false and fabricated pass certificate of HSSC Examination at the time of securing employment is illegal, improper or incorrect on the grounds alleged by him and hence are liable to be set aside.

**23.** The sole charge levelled against the applicant as Article-I read as under:

### **ARTICLE-I**

*“Shri Sanjay Kumar Pal, obtained appointment in Railway through RRB, Mumbai with reference to Employment Notice No.01/92 dated 25.6.92 category No.10 for the post of 'Apprentice Assistant Driver' by submitting false/fabricated certificate of having passed HSC examination of Secondary Education Board, Bhopal.”*

**24.** Further Statement of Imputation of misconduct or misbehaviour in support of the

above referred Article of Charge reads as under:

*“Shri Sanjay Kumar Pal, submitted false/fabricated mark-sheet of Higher Secondary School Certificate Exam held in 1988 with Roll No.660589 and serial No.11861 to Railway Recruitment Board, Mumbai with Employment Notice No.01/92 dated 25.06.92 Category No.01/92 for the post of 'Apprentice Assistant Driver'.*

*Based on the photostat copy of the marksheet submitted by him, he was called for written examination held on 20.06.93 vide RRB Bombay's Call letter bearing Roll No.466670. At the time of interview on 11.02.1993 he gave an undertaking that he will produce original HSSC and Caste Certificate within 8 days but, he did not submit the same to RRB Mumbai.*

*DRM (P) vide his letter No.BSL.P.LR-55. Appr. DSL Asst dated 28.6.1994 intimated Shri Sanjay Kumar Pal that he has been considered for appointment as Diesel Assistant Gr. Rs.950-1500 (RPS). In this letter under para/item 2, he was instructed to produce the original certificate of HSSC/SSC and School Leaving Certificate showing his date of birth and other particulars furnished by him in his application, but he did not submit the same. At the time of recruitment, he was asked to fill-in the Attestation form wherein the candidate is asked to furnish information regarding date of birth, educational details and caste etc. Under item-3 of this attestation form, it has been warned to the candidate that if there has been suppression of any factual information in the attestation form which will come to the notice at any time during the service of the person, his/her services would be liable to be terminated.*

*Perusal of Bio-data filled in by Shri Sanjay Kumar Pal on his date of appointment on page-3 of his service register reveal that under item 7(a) Educational qualification, he has mentioned in his own hand-writing at the time of his first appointment that he had passed Higher Secondary Examination.*

*Shri Sanjay Kumar Pal in his recorded statement, admitted that in fact his original marksheet was having sr.no.055697 and he had obtained only*



272 marks (out of 800) and he had 'failed' in the HSSC Exam held in 1988 whereas the copy of marksheet furnished by him to the Railway Administration bears sr.no.11861 and it shows that he had obtained 330 marks. Further, in his statement he revealed that he managed to obtain the (fake/fabricated) marksheet from the office of the Board of Higher Secondary Education, Bhopal through Shri Tapre, Clerk working in that office in the month of August, 1989 for which he had paid a bribe of Rs.2,000/- to him. Further, in his recorded statement, he admitted that he had appeared in the supplementary examination for HSSC in 1988 but he was declared 'failed'. Thus, he willfully obtained the job of Apprentice Assistant Driver (Diesel) on false/fabricated marksheet obtained through bribe.

A reference was made to the Secretary, Board of Secondary Education, Madhya Pradesh, Bhopal by Vigilance Branch vide letter No.G.130/B-241/M/V.CON. Dated 04.07.1996 to check-up the record and verify/clarify as to the genuineness of certificate. Abhilekh Adhikari (Records Officer) vide his letter No.3669/3699/96 dated 08.07.1996 informed about the variation in the zerox copy of HSSC Exam marksheet of Shri Sanjay Kumar Pal, as under:-

- (i) Original marksheet no.055697 altered/changed to 11861.
- (ii) Against Column Class/Division-in original marksheet the remark existed as "(supplementary)" but the same has been altered/changed as 'Third'.
- (iii) Total marks 272 (out of 800) indicated in original certificate have been altered/changed into 300 (to indicate that he was placed in third division)."

**25.** It is not disputed that the applicant was selected through a regular process initially as Apprentice Assistant Driver. After undergoing the medical examination and the prescribed training, he was appointed as Assistant Driver on regular basis. It is also not disputed that

minimum educational qualification for the post of Assistant Driver was HSSC examination pass. According to the applicant, at the time of seeking appointment, he submitted copy of the revised/duplicate mark-sheet issued by HSSC Board Bhopal on 29.08.1988 vide Annexure A-14, in which it is shown that he has secured 69, 21, 75, 80 and 85 marks in Hindi, English, Physics, Chemistry and Higher Maths respectively, total 330 out of 800. It is however, not specifically mentioned in the said mark-sheet that the applicant has passed in the said examination nor Division of passing is mentioned although he is shown to have secured 41% marks on rechecking. According to the respondents, this is a forged and fabricated mark-sheet submitted by the applicant at the time of securing appointment and he failed to produce its original. Whereas, according to applicant since he failed in the Annual examination of the year 1988 having secured 272 marks only out of 800 i.e. 34%, he applied for re-checking and verification of the answer-sheets to the HSSC Board, Bhopal and then the said duplicate/revised mark-sheet Annexure A-14 was issued by Board. However no explanation was given by the applicant as to why

he could not produce the original of the said mark-sheet Annexure A-14 at the time of document verification or during the course of the inquiry before the Inquiry Officer or thereafter before this Tribunal in this OA for our perusal. He has also not produced the certificate in original or photocopy issued by HSSC Board, Bhopal in this behalf.

**26.** Further, the authorities have come to a conclusion that the said mark-sheet is fabricated and forged on the strength of the statement made by the applicant before the Vigilance Officer during preliminary inquiry that he paid Rs.2000/- to one official of the HSSC Board Bhopal for securing the said mark-sheet. It is also obvious that a vigilance inquiry was undertaken since a complaint was received that the applicant secured a bogus mark-sheet of HSSC examination, although he failed in the said examination. The record also shows that during preliminary inquiry, a reference was made to the Secretary, SSC Board, Madhya Pradesh, Bhopal vide letter No.G.130/B-241/M/V.CON. dated 04.07.1996 (office copy of which is however not produced by respondents on record of inquiry as RUD nor in this Tribunal

nor the same is found in the official record of inquiry). In response to the said letter, the Board vide communication dated 08.07.1996 under outward No.3669/3699/96 (which is Relied Upon Document at Sr.No.6 in Annexure III of the Charge-sheet), informed that the applicant has initially secured 272 marks in Annual examination of the year 1988 bearing mark-sheet No.55697 with Roll No.66589 and thereafter he secured 330 marks as per revised mark-sheet bearing No.11861 with the same Roll no.66589. Since the respondents themselves have produced the above referred communication and relied upon the same in response to the letter issued by the General Manager, Central Railway, CST, Mumbai and since there is nothing on record to show that it is a forged or fabricated document issued by the SSC Board, Bhopal in response to the letter from General Manager, Central Railway, CST, Mumbai dated 04.07.1996, still on the basis of statement given by applicant during vigilance inquiry, it was held by all the three authorities that the mark-sheet produced is fake and fabricated document. This conclusion seems to be reasonable and proper since the applicant could not produce the original mark-sheet dated

29.08.1988 at the time of document verification after his appointment for which no plausible explanation is forthcoming from applicant. Hence we hold that the authorities were right in not placing reliance on the said mark-sheet inspite of communication dated 08.07.1996 received from Board.

**27.** Although it is true that the applicant submitted that he applied for re-checking and verification of the answer-sheets of Annual Examination of 1988, however, its particulars are not given as to in which subject he in fact failed and applied for revaluation. Hence adverse inference will have to be drawn against the applicant. Further, his contention that he paid Rs.2,000/- to one official to secure the said duplicate/revised mark-sheet, *prima facie* raises a doubt that it may be a forged document. This is so because otherwise there was no reason to pay any extra amount to the Board official for getting the said mark-sheet except the prescribed charges, which according to the applicant he has already deposited in office of HSSC Board Bhopal for verification/revaluation of the answer-sheet as per receipt produced.

**28.** It may be mentioned here that in order to

ascertain the genuineness and authenticity of the duplicate mark-sheet dated 29.08.1998 including its contents and the authority which has issued it, during preliminary inquiry photocopy of the said mark-sheet should have been forwarded to the HSSC Board, Bhopal to confirm the same if it has issued it. However, instead of doing so, the letter dated 04.07.1996 was issued which was replied vide relied upon documents dated 08.07.1996. However, since the second mode was adopted by the respondents and on the basis of the other evidence on record it has come to the conclusion that mark-sheet produced for securing the job was forged or fabricated, adverse inference will have to be drawn against the applicant.

**29.** It is obvious that since the charge of fabrication of document of mark-sheet is levelled against the applicant in a departmental proceedings, preponderance of probability plays an important role and strict proof regarding forgery of the document is not required, like the one in the criminal prosecution. Perusal of the orders passed by all the three authorities clearly show that on the basis of the evidence on record, they have come to a rational

conclusion that the applicant has submitted a forged and fabricated document of HSSC mark-sheet showing that he has passed in the said examination, although it has also come on record that on the basis of same mark-sheet the applicant secured Admission to ITI (Industrial Training Institute) course in 1991 and qualified it.

**30.** According to applicant, at the time of submitting application for rechecking and verification of the answer-sheets, he has submitted the original 'failed' mark-sheet to the Board by August, 1988. However he has not produced its copy on record to show the marks obtained by him in each subject in the said Annual Examination of 1988, before he was declared pass on verification/ revaluation of answer-sheet. Further having secured 272 marks only in Annual examination and on verification/re-checking of answer-sheets he is shown to have secured 330 marks i.e. there was addition of 58 marks to his credit itself raises a doubt about the genuineness of the said mark-sheet. This is so because in normal course there is very little scope for modification of substantial marks during revaluation/re-checking

of the answer-sheets since due care is taken by the Board for evaluation and moderation of answer-sheets. Sometimes the marks may be reduced on re-totalling/re-checking. In such circumstances of the case, the view taken by all the three authorities cannot be said to be improper, illegal or incorrect.

**31.** There is nothing on record to show that full opportunity was not granted to the applicant in disciplinary proceedings to defend him. As such, there is no violation of principles of natural justice. The record further shows that the prescribed procedure has been followed by the Inquiry Officer and also by the Disciplinary Authority and other higher authorities while passing the impugned order, although cryptic orders have been passed by the Disciplinary Authority and the Revisional Authority. The Applicant has not raised any ground before the Appellate Authority or the Revisional Authority that full opportunity was not granted to him during the inquiry to defend him. In such circumstances of the case, the finding recorded by the Disciplinary Authority, Appellate Authority and the Revisional Authority cannot be said to be illegal, improper or



arbitrary, which is passed on the basis of evidence on record. We find ourself unable to take a different view to come to a different conclusion by exercising power of judicial review.

**32.** On perusal of the original record, we have come across one more circumstance which supports the contention of the department that the mark-sheet produced by the applicant at the time of appointment is forged one. After the decision of the Revisional Authority, the applicant has submitted Mercy Petition to the General Manager, for his fresh appointment. The said application is produced on record as Annexure A-13 by the applicant himself. Alongwith the said application, a mark-sheet issued by HSSC Board, Bhopal is also enclosed. It is of March 1999, in which it is stated that the applicant has secured 226 marks out of 500 and passed in Second Division, through postal course. The Applicant has not annexed the duplicate/revised mark-sheet of 08.09.1988 along with the said application. This clearly shows that the applicant was well aware from the beginning that the duplicate/revised mark-sheet dated 29.08.1988 was not a genuine one, although

it shows that he has qualified the said examination by securing 330 marks out of 800, especially when there is no explanation from his side as to why he felt necessary to qualify HSSC examination through postal course in 1999, when infact he has already qualified said examination in August 1988 itself as a regular student.

**33.** From the above discussions, it cannot be said that this is a fit case to interfere with the orders passed by all the three authorities. We hold that no grounds are made out by the applicant for taking a different view and to declare that the impugned orders issued by respondents are illegal, improper or incorrect in any manner whatsoever and to set aside the same.

**34.** In the result, we do not find any merit in the present OA. The OA, therefore, stands dismissed. The parties are, however, directed to bear their respective costs of this OA.

**(Ms. B. Bhamathi)**  
**Member (A)**

**(A.J. Rohee)**  
**Member (J)**

*dm.*

