



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/00701/2016
M.A. 350/00435/2016

Date of order: 7th May, 2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Alok Kumar Pandit,
Son of Late Lalit Mohan Pandit,
About 35 years,
Working as Gateman - I under TI
New Cooch Behar,
Residing at New Cooch Behar,
Railway Quarter No. 28/8/Type-1,
P.O. - New Cooch Behar,
District - Cooch Behar (W.B.),
Pin - 736179.

Applicant

VERSUS -

1. Union of India,
Service through the General Manager,
North-East & Frontier Railway,
Maligaon, Guwahati, Assam,
Pin - 781011.
2. Additional Divisional Railway Manager,
North-East Frontier Railway,
Alipurduar Junction,
District - Jalpaiguri,
Pin - 736 123.
3. Divisional Operations Manager,
North-East Frontier Railway,
Alipurduar Junction,
District - Jalpaiguri,
Pin - 736 123.
4. Assistant Operation Manager,
North-East Frontier Railway,
Alipurduar Junction,
District - Jalpaiguri,
Pin - 736 123.
5. Sri S.K. Majumder,
CS & WI, Alipurduar Junction,

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North-East Frontier Railway,
District - Jalpaiguri,
Pin - 736 123,
Working for gain as an Enquiry Officer.

.. Respondents

For the Applicant : Mr. P. Majumder, Counsel

For the Respondents : Mr. B.P. Manna, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached the Tribunal in second stage litigation, primarily challenging his dismissal from service by the respondent authorities and praying for the following relief in particular:-

I. An order do issue directing the Respondents and each of them to withdraw and/or to cancel, rescind and/or to forbear from giving any effect and/or further effect to the purported charge-sheet dated 6.6.2012, the purported findings of the Enquiry Officer dated 19.7.2013, the purported order of dismissal from service dated 15.10.2014, the purported order of the Appellate Authority dated 5.2.2015 and the purported order of the Revisionary Authority dated 5.2.2016 as contained in Annexures "A-3", "A-5", "A-8", "A-12" and "A-14" herein.

II. An order do issue directing the Respondents and each of them to produce all the records and documents before this Hon'ble Tribunal relating to the issuance of the purported charge-sheet dated 06.06.2012, purported findings of the Enquiry Officer dated 19.7.2013, the purported order of dismissal from service dated 15.10.2014, the purported order of the Appellate Authority dated 5.2.2015 and the purported order of the Revisionary Authority dated 05.02.2016 as contained in Annexures "A-3", Annexure "A-5", "A-8", "A-12" and "A-14" for being quashed and/or set aside by this Hon'ble Tribunal.

III. An order do issue by directing the Respondents and each of them to reinstate the applicant in his service along with all back wages and other consequential benefits by treating him as on duty during the period of removal from service.

IV. And pass such further order/orders as to your Lordship may deem fit and proper."

2. Heard Ld. Counsel for the applicant, Ld. Counsel for the official respondents as well as Ld. Counsel in M.A. No. 435 of 2016, in which an application has been made for impleadment as private respondents No. 6,7,8 and 9 in the array of the pending O.A. No. 701 of 2016.

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The applicants in M.A. No. 435 of 2016 have also referred to O.A. No. 719 of 2016 filed by them which, at the time of filing of the M.A., was pending final adjudication in this Tribunal.

3. The applicant has primarily relied on the orders of the Tribunal dated 13.10.2011 in O.A. 62 of 2011 wherein the applicant had approached the Tribunal in first stage litigation. The said O.A. was disposed of with the following directions:-

"11. In conclusion the orders passed by the Disciplinary Authority and the orders of Appellate Authority imposing the punishment are quashed and set aside. Liberty is granted to disciplinary authority to record a finding on the new charge only if the applicant had been put to notice of same during the enquiry and he is given an opportunity to represent against such a finding if recorded in accordance in law. It will be open for respondents to place him under deemed suspension in accordance with law. All other contentions raised by learned counsel for the applicant or in the O.A. are kept open. We have not expressed any opinion on merit of any other question. The applicant will be entitled to consequential benefits. If Disciplinary Authority proceeds further the applicant shall cooperate. This exercise be completed within three months of the receipt of the order. Costs payable by the respondents quantified at Rupees one thousand only."

According to the applicant, the Tribunal had set aside Article 1 of the charges after holding that a son from second marriage is legally entitled to obtain a compassionate appointment and, that the purported circular of the Railway Board dated 2.1.1992 was quashed and set aside. The applicant has further contended that, apart from quashing and setting aside the charges at Article I, the power and jurisdiction of the disciplinary authority was limited to recording its findings on the new charge which is Article No. II of the charges. That, the disciplinary authority had to only record his findings after considering the findings of the Enquiry Officer and, after giving the applicant an opportunity of being heard, and, to decide thereafter as to whether any punishment should be imposed upon the applicant with respect to Article of Charges No. II. That the disciplinary authority's actions in framing a fresh chargesheet in respect of Article II of the Charges along with new

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allegations were illegal and arbitrary and smacked of violation of the orders of the Tribunal.

4. In O.A. No. 62 of 2011, the applicant had approached the Tribunal for quashing the orders of the disciplinary authority imposing the punishment of stoppage of increment for three years with cumulative effect and that of the appellate authority enhancing the penalty to dismissal from service. While deliberating on the said O.A., the Tribunal had identified the crucial question/issue to be adjudicated upon, namely, as to whether Railway Board's circular dated 2.1.92 barring compassionate appointment to children of second wife is sustainable in view of provisions contained in Section 16 of the Hindu Marriage Act. The Tribunal, with reference to the ratio in *Y.S. Adhav v. S.D. Adhav & anr.* AIR 1988 SC 644, *P.E.K. Kalliani Amma vs. K. Devi* AIR 1996 SC 1963, *Jhis Keotla vs. Kumar Sitaram Manjhi & ors.* (2003) 1 SWCC 730 and *Mithlesh Kumari - vs. P.B. Khare* (1989) 2 SCC 124, held that the ratio in *Adhav (supra)*, *Kalliani (supra)*, *Keotla (supra)* and *Mithlesh Kumari (supra)* is binding on the respondents and that the instant circular dated 2.1.1992 which provides that compassionate appointment cannot be offered to children from second marriage, if permission has not been obtained, stands quashed accordingly.

Accordingly, the only issue that remains to be adjudicated in the instant O.A. No. 701 of 2016 is whether there had been any procedural violation when the respondent authorities renewed the proceedings and imposed penalty on the applicant, given the liberty which was granted to them in O.A. No. 62 of 2011.

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5(1). The order passed by the Tribunal in O.A. No. 62 of 2011 is henceforth analysed in further detail and the following is inferred therefrom.

Vide the said order:-

(a) The orders passed by the disciplinary authority and appellate authority were quashed and set aside.

(b) Liberty was granted to the disciplinary authority to record his findings on the new charge. Such liberty was granted, provided the applicant had been put to notice of the same during enquiry and he had been given an opportunity to represent against such a finding.

(c) The respondents were at liberty to place the applicant under deemed suspension in accordance with law.

(d) All other contentions raised by the Id. Counsel for the applicant in the O.A. were kept open and the Tribunal desisted from expressing any opinion on merits or any other question.

(e) The applicant was directed to cooperate with the authorities, who should complete the entire exercise within three months and that the applicant would be entitled to consequential benefits, as applicable.

Hence, it is important to note that the Tribunal had not entered into the merits of the remaining article of charge and had also granted liberty to the respondents to record their findings on the new charge.

5.2. Admittedly, the respondents have not comprehended the orders of the Tribunal in its entirety. The charge at Article I was quashed by the Tribunal. When the fresh memorandum of charges were issued on 6.6.2012, consequent to the orders of the Tribunal dated 13.10.2011, however, the respondents once again resurrected the earlier charge of

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applicability of Railway Circular dated 2.1.1992, which prohibits compassionate appointment to the son of the second wife, if no permission is taken towards the second marriage. Hence, the findings of the enquiry authority on Article I of the charges is discounted accordingly with the finding that the respondents had no right to reopen a charge quashed by the Tribunal.

The second article of charge, however, is relevant as not only did the Tribunal allow the respondents to proceed with the charge, but also give them liberty to construe this as a new charge. The second article of charge is extracted from the memorandum of charges dated 6.6.2012 as under:-

ANNEXURE TO STANDARD FORM NO. 5
Memorandum of Chargesheet
Under Rule 79 of the RS (D&A) Rules, 1968

(ANNEXURE)

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ARTICLE II

Sri Alok Kumar Pandit, Gateman under TI/NCB was appointed to the Railway service in the year 2001 on compassionate ground after medical decategorisation of his father late Lalit Mohan Pandit, Ex-Khalasi Helper under SSE/Signal/NCB who retired voluntarily on 09.04.1999 and subsequently died on 15-09-2006.

Sri Alok Kumar Pandit, Gateman under TI/NCB at the time of appointment in Railways submitted family declaration of his father late Lalit Mohan Pandit as Ex-employee wherein it appears that the name of the wife of ex-employee i.e. mother of Sri Alok Kumar Pandit is Smt. Anjali Pandit which was signed by Sri Alok Kumar Pandit on 29.5.2000. On the other hand, Smt. Gita Rani Pandit, Carriage Khalashi under SE/C&W/NCB has declared in her family declaration for the year 1999 mentioning Sri Alok Kumar Pandit as his son. But Sri Alok Kumar Pandit did not bring the fact to the notice of Administration before his appointment in Railways on 16.6.2001. Rather Sri Alok Kumar Pandit declared in his family declaration with inclusion of two sisters viz., Sabita Pandit and Arati Pandit as sister without indicating the name of his parents.

But these two girls name neither declare by the ex-employee (Sri Lalit Mohan Pandit) nor Smt. Gita Rani Pandit as their daughter. Thus, from where these two girls become sister of Sri Alok Kumar Pandit? Thus Sri Alok Kumar Pandit has given a false declaration in order to secure a job in Railways thereby violating RB's rule circulated vide letter No. E(D&A)92GS/4/3 dated 20.07.93 as well as willfully for undue advantage which proves his lack of integrity and acted in a manner unbecoming of a Railway servant and thus violated the provisions of 3.1(i) and 3.1(iii) of Railway Service Conduct Rules, 1966."

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The enquiry authority deliberated on the same and his assessment on the second Article of Charge which has been included in his enquiry report dated 19.7.2013 is reproduced as under:-

"REPORT OF THE DEPARTMENTAL ENQUIRY INTO THE CHARGES FRAMED AGAINST THE CHARGE OFFICIAL SHRI ALOK KUMAR PANDIT, GATEMAN UNDER TI/NCB/N.F. RAILWAY VIDE MEMORANDUM OF CHARGE FOR MAJOR PENALTY ISSUED BY ASSTT. OPERATIONS MANAGER/APDJ VIDE NO. CON/OP/VIG-118 (2) DATED 6.6.2012.

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6. ASSESSMENT OF EVIDENCE, DISCUSSION & REASON FOR FINDINGS:-

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B. The statement of imputation of misconduct/misbehavior in support of the article of charges framed against Shri Alok Kumar Pandit, Gateman under TI/NCB in Article-II at the time of appointment in Railways submitted family status of his father Late Lalit Mohan Pandit as Ex-Employee wherein it appears that the name of the wife of ex-Employee, i.e. mother of Shri Alok Kumar Pandit is Smt. Anjali Pandit which was signed by Shri Alok Kumar Pandit on 29.5.2000 in the Inquiry sheet of Sectional Welfare Inspector, Smt. Gita Rani Pandit, Carriage Khalasi under SSE/C&W/NCB has declared in her family declaration for the year 1999 mentioning Shri Alok Kumar Pandit as his son which Alok Kumar Pandit did not bring to the notice of Administration before his appointment in Railways on 16.6.2001. Rather Shri Alok Kumar Pandit declared in his family declaration without mentioning his mother's name and inserted name of two sisters viz. Sabita Pandit and Arati Pandit as sister without indicating the names of his parents.

But these two girls name neither declared the ex-employee (Late Lalit Mohan Pandit) and Smt. Gita Rani Pandit as their daughter. Thus from where these two girls became sister of Shri Alok Kumar Pandit? Thus Shri Alok Kumar Pandit has given a false declaration in order to secure a job in Railways thereby violating Railway Board's rule circulated vide letter No. E(D&A)92 GS/4/3 which proves his lack of integrity and acted in a manner unbecoming of a Railway Servant and thus violated the provision of 3.1(i) and 3.1(iii) of Railway Service Conduct Rules, 1966.

The Enquiry Officer concluded that the second Article of Charge was partially proved. The applicant/charged officer was given an opportunity to respond to the said enquiry report and the said defence was duly taken into consideration by the disciplinary authority, who, however, did not accept the defence of the applicant/Charged Officer and passed an order dismissing the applicant/charged officer from the

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respondents' service with immediate effect. The orders of the disciplinary authority dated 15.6.2014 (Annexure A-8 to the O.A.) is reproduced as below:-

N.F. Railway

Notice of Imposition of Penalty under Rule - 9 of the RS (D&A) Rules - 1968

No. Con/OP/VIG-118(2)

Date 15/10/2014

**Place of Issue: Divisional Railway Manager (Optg.) APDJ's Office
N.F. Railway/Alipurduar Junction**

**To
Sri Alok Kumar Pandit,
Gateman under TI/NCB,
N.F. Railway.**

Shri Alok Kumar Pandit, Gateman under TI/NCB was charged vide memorandum vide Con/OP/VIG-118(2) dt. 06.06.2012 and asked to defend the charges leveled against him within 10 days time, which was acknowledge by CO on 12.6.2012. Charge official had submitted his defence against the memorandum on 21.6.2012. But defence of CO was found unsatisfactory by DA. Hence on 03.09.2012 DA appointed Sri Swapan Kumar Majumder, Chief Staff & Welfare Inspector, CS&W/APDJ had submitted his report. A copy of the report was also supplied vide L/No. CON/OP/VIG-118(2) dt. 23.07.2013 to CO for his representation if any against the enquiry report. On 07.08.2013 CO submitted his representation.

ORDERS

On going through the memorandum of charges and defence the enquiry report submitted by the enquiry Officer is accepted. Representation of CO against the enquiry report is not acceptable on following grounds:-

Sri Alok Kumar Pandit, Gateman under TI/NCB did not bring the fact into the notice of the Railway Administration that he was the son born from second wife of his father late Lalit Mohan Pandit rather he had shown his step mother as his mother suppressing as well as giving such false declaration while filling up forms for CGA (Compassionate Ground Appointment). It is well established from the enquiry report. His such act is showing lack of integrity on his part and acted in a manner unbecoming of Railway Servant and thereby violated Rule No. 3(1)(i) and 3(1)(iii) of the Railway Service (Conduct) Rules, 1966 and as such Article-I of charge sheet, to the extent of such charge, is proved.

Sri Alok Kumar Pandit, Gateman under TI/NCB made following two false declarations at the time of initial appointment for securing Railway service:-

1. He made false declaration that Smt. Anjali Pandit (i.e. first wife of Late Lalit Mohan Pandit) was his mother.
2. He made false declaration in his family declaration that Miss. Sabita Pandit and Miss. Arati Pandit were his sisters.

Above two allegations against Sri Alok Kumar Pandit are established and thereby Article-II of charges are also proved on account of following:-

- (i) In terms of para 6(G) of enquiry report submitted by EO it appears that against the examination of EO (Q.9) he (Sri Alok Kumar Pandit) clearly stated that "my mother did not prefer for family pension because there was a gentlemanly agreement in family discussion during the lifetime of my father that my step mother would occupy and enjoy the properties at

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Bachukamari and also receive the family pension and application for appointment on CG in Group-C post would be submitted by the father in favour of me and it is pertinent to mention that none of my step brother was having minimum qualification to become eligible for Group-C post. Thus it proves that the fact for eligibility criteria for getting compassionate ground appointment was known to him and he has given impression that as if he is the son born from the 1st wife Smt. Anjali Pandit and even not indicated Manik Pandit and Hiralal Pandit his step brother or born by the wife Smt. Anjali Pnadit and clearly signed himself against the family particulars of the Ex. Employee column on 29.5.2000 in scripting "The above particulars has been explained by me". Hence his involvement in family dispute to have the Railway job cannot be ruled out and above facts prove that he made false declaration that Smt. Anjali Pandit was his mother.

- (ii) After verification of all records of his father late Lalit Mohan Pandit and in terms of Para 7 of enquiry report submitted by EO, it is evidently proved that Sri Alok Kumar Pandit gave false declaration that Miss Sabita Pandit and Miss Arati Pandit were his sisters. In fact no such girls ever existed and it was accepted by CO during the course of enquiry.

Considering all aspects and application of mind it is established that the CO, Sri Alok Kumar Pandit, Gateman under TI/NCB has indulged himself in fraudulent act by giving false declaration. Thus Sri Alok Kumar Pandit failed to maintain absolute integrity and acted in a manner unbecoming of Railway Servant and thereby violated Rule No. 3(l)(i) and 3(l)(iii) of the Railway Services (Conduct) Rules, 1966.

Hence, to meet the end of justice, the undersigned has passed the following orders:-

"Sri Alok Kumar Pandit, Gateman under TI/NCB is hereby dismissed from Railway service with immediate effect."

(Vinod Kumar Meena)
Asstt. Operations Manager
N.E. Railway, Alipurduar in
Signature of Disciplinary
Authority

An appeal if any against the above orders lies to DOM/APDJ (Next Higher Authority), provided the same is preferred within 45 days from the date of receipt of this order.

Copy to:

1. DOM/APDJ
2. DRM(P)/APDJ for kind information and necessary action please.

For DRM(O)/APDJ"

At this stage, we deem it necessary to analyse the reasoning of the disciplinary authority as follows:-

- (a) That, the applicant did not bring into the notice of Railway Administration that he was actually the son of the second wife of his father; the latter having retired voluntarily on 10.3.1999, expired on 15.9.2006.

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(b) That, the applicant has shown his step mother, who is actually the first wife of his father, as his own mother while filling up the forms of compassionate ground appointment.

(c) That, the applicant had made two false declarations at the time of his initial appointment with the respondent authorities:

(i) That, the first wife of his father, an ex-employee of the respondent authorities, was his mother;

(ii) That, he had two sisters Ms. Sabita Pandit and Ms. Arati Pandit and declared them accordingly in his family declaration.

The disciplinary authority confined himself as per orders of the Tribunal only to article II of the charges and found that the same were adequately proved against the applicant and as the applicant had indulged in a fraudulent act the disciplinary authority, finding him guilty of acting in a manner unbecoming of Railway Servant and thereby violating Rule 3(I)(i) and 3(I)(iii) of the Railway Services (Conduct) Rules, 1966, dismissed the applicant from service. The appellate authority as well as revisional authority upheld the orders of the disciplinary authority and, being aggrieved, the applicant has approached the Tribunal in the instant Original Application.

5.3 The respondents have controverted the claim of the applicant with the averment that a fresh memorandum of charges was issued to the applicant on the basis of the liberty granted by the Tribunal in O.A. 62 of 2011. That, a proper enquiry was set up by the disciplinary authority and that the disciplinary authority, having confined himself only to the new charge, imposed the penalty of dismissal from the Railway service.

The respondents also brought into light the fact that the step mother of the applicant, who is the first wife of the ex-employee of the

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respondent authorities had filed an O.A. 719 of 2016, praying for compassionate appointment in favour of her own son Shri Pradip Kumar Pandit.

The respondents have cited a number of judgments with regard to the non-eligibility of the ward of the second wife towards compassionate ground appointment namely:-

(i) **Judgement of Hon'ble High Court of Jharkand in WP (S) No. 4461 of 2008, WP(S) 1083 of 2010 in Basanti Devi's case and WP(S) 16 of 2014 in M.V.V. Prakash v. UOI & ors.**

(ii) Orders in **O.A. 497 of 2012** by the coordinate Bench of the Tribunal at Patna.

(iii) Judgment of Hon'ble Apex Court in **2010 (11) SCC 661 (State Bank of India vs. Raj Kumar)**

The respondents have controverted the ratio in **Rameshwari Devi vs. State of Bihar & ors. (AIR 2000 SC 735)** as not applicable in the case of the applicant. They have similarly averred that the ratio in **Purshottam Kumar**, as referred to in **Basanti Devi (supra)** fails to support the case of the applicant.

The Tribunal in O.A. No. 162 of 2011 had conclusively applied the ratio of **Y.S. Adhav (supra), Kallanti (supra), Keotin (supra) and Mithilesh Kumari (supra)** and had held that the Tribunal is bound by the said ratio in dismissing the circular of the Railway Board of 2.1.1992 that refuses compassionate appointment to the ward of the second wife of an ex-employee of the respondent authorities. There is nothing on record to substantiate that the respondent authority have approached any higher judicial forum in challenging the decision of the Tribunal and, hence, we do not deem it fit to enter into or to reopen the issue of

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entitlement to compassionate appointment by the ward of the second wife at this stage. Accordingly, we do not consider it necessary to delve into the applicability of such citations as advanced by the respondents in support of circular dated 2.1.1992.

5.4. The respondents, however, have averred robustly that the applicant had made false declarations in order to secure a job with the respondent authorities. This is in clear violation of the Railway Board's circular dated 20.7.1993, as well as willful default with the purpose of gaining undue advantage and shows the applicant's lack of integrity and actions in a manner unbecoming of a Railway Servant in violation of the principles of the Railway Conduct Rules, 1966. Such falsehood resulted in the applicant's dismissal from the service of the respondent authorities and was upheld by the appellate authority and revisional authority subsequently.

Law is well settled that if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. The principle of "*Subla Fundamento cedit opus*", namely, a foundation being removed, the superstructure falls, has an application in the instant O.A. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent Court. In such a case the legal maxim *Nullus Commodum Capere Potest De Injuria Sua Propria* is squarely applicable. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation as held in **Union of India v. Maj. Gen. Madan Lal Yadav, AIR 1996 SC 1340; and Lily Thomas v. Union of India & Ors., AIR 2000 SC 1650.**

It is a settled proposition of law that, where an applicant gets an office by misrepresenting the facts or by playing fraud upon the

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competent authority, such an order cannot be sustained in the eyes of law. "Fraud avoids all judicial acts, ecclesiastical or temporal." as ruled in **S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. & Ors.**, AIR 1994 SC 853). In **Lazarus Estate Ltd. v. Besalay**, 1956 All E.R. 349, the Court observed that without equivocation "no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything."

In **Andhra Pradesh State Financial Corporation v. M/s. GAR Re- Rolling Mills & Anr.**, AIR 1994 SC 2151, and **State of Maharashtra & Ors. v. Prabhu**, (1994) 2 SCC 481, it has been observed that a Writ Court, while exercising its equitable jurisdiction, should not act to prevent perpetration of a legal fraud as Courts are obliged to do justice by promotion of good faith. "Equity is, also, known to prevent the law from the crafty evasions and subtleties invented to evade law."

In **Smt. Shrishti Dhawan v. M/s. Shaw Bros.**, AIR 1992 SC 1555, it has been held as under:- "Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct."

In **United India Insurance Company Ltd. v. Rajendra Singh & Ors.**, AIR 2000 SC 1165, the Tribunal had observed that "Fraud and justice never dwell together" (*fraus et jus nunquam cohabitant*) and it is a pristine maxim which has not lost temper over all these centuries. A similar view has been reiterated by this Court in **M.P. Mittal v. State of Haryana & Ors.**, AIR 1984 SC 1888.

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Accordingly, as the applicant has not been able to successfully establish that his actions were not fraudulent or that he did not take recourse to falsehood in submitting his false declarations, the question of procedural violations of the respondent authorities, who had acted strictly in terms of the directions of the Tribunal, will not be of assistance to the applicant at this stage.

5.5. It is also of interest to note that the applicant's own mother, namely, Gita Pandit, was employed as a Carriage Khalasi with the respondent authorities when the applicant has sought appointment on compassionate grounds. In fact, the applicant had never disclosed his mother's employment status to the authorities.

5.6. While reserving O.A. No. 701 of 2016 with M.A. No. 435 of 2016 for orders, the Tribunal in its daily orders dated 9.4.2019 had directed as follows:-

"Ld. Counsel for respondents submits that he has preferred an M.A. seeking 3 months time to implement the order passed in regard to Anjali Pandit.

Accordingly, the O.A. is reserved for orders."

In this context, it becomes relevant to examine the cause of action and decisions taken, if any, in O.A. No. 719 of 2016 and any other O.A.s preceding the same. Reference is made to the daily orders of the Tribunal and also to the reply of the respondents to O.A. No. 719 of 2016 filed by Smt. Anjali Pandit & ors. It is noted here that the applicant, Smt. Anjali Pandit is the first wife of the ex-employee and the step mother of the applicant. The said Anjali Pandit had initially approached the Tribunal as early as in 2012 vide O.A. No. 933 of 2012 which was disposed of on 26.6.2014 by the Tribunal as follows:-

"4. In such view of the matter, since the respondents have already admitted the claim of the applicant, with the consent of the parties, the O.A. is disposed of with a direction upon the respondents to conclude the disciplinary

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proceedings initiated against Alok Kumar Pandit expeditiously preferably within three months and based upon the outcome of the proceedings, to consider the case of applicant No. 2 for appointment on compassionate ground and to intimate the result of the same to the present applicant within two weeks from date of outcome of proceedings."

While passing the orders, the Tribunal had noted the family declaration given by the ex-employee of the respondent authorities, namely, the father of the applicant on 20.5.1989. Although the applicant had claimed that his father had married his mother in 1972, the family declaration dated 1989 refers to only one wife, namely, Smt. Anjali Pandit and in a total variance with the truth, the applicant, Shri Alok Pandit finds mention as the son of the applicant with no specific reference to his own mother.

Hence, the ex-employee suppressed the fact of his second marriage from the respondent authorities being aware of the legal and administrative implications and juxtaposed the children of his second wife with the children of his first wife in his family declaration. The respondents thereafter issued a purported order on 29.10.2014 refusing to provide employment assistance to the son of the applicant in O.A. No. 933 of 2012 primarily on the grounds that since one Shri Alok Kumar Pandit had already been appointed on compassionate ground w.e.f. 16.6.2001 and, as there cannot be more than one compassionate appointment against one dead/medically incapacitated employee, the prayer of Shri Pradip Kumar Pandit, the son of the first wife, was turned down by the respondent authorities.

Smt. Anjali Pandit thereafter filed O.A. No. 1650 of 2014 being aggrieved with the rejection order of the respondent authorities and the Tribunal disposed of the same on 4.12.2015 directing the respondents to consider the candidature of Shri Pradip Kumar Pandit for compassionate appointment, if he is otherwise eligible, within a specific period of time.

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While issuing such orders, the Tribunal deliberated as to whether Shri Pradip Kumar Pandit was eligible to get compassionate appointment despite the fact that Shri Alok Kumar Pandit, who is the illegitimate son of the deceased, was expelled from service. No consequent orders of the respondents are on record.

The applicant, Smt. Anjali Pandit and others once again approached the Tribunal in O.A. No. 719 of 2016 and the said O.A. was disposed of by the Tribunal with the following directions:-

"5. A bare perusal of the order supra would in explicable demonstrate that the direction of this Tribunal upon respondents, in the earlier O.A., to consider the case of the applicant Pradip Kr Pandit, was given a complete go bye.

"The respondents have in fact refused to consider his case on weird, untenable and frivolous grounds.

"The tenor of the order was misread either deliberately or with total non application of mind.

"The respondents were bound to consider Pradip Kr. Pandit on merits when Alok Kr. Pandit was dismissed. The respondents are yet to form an opinion that Pradip Kr. Pandit is not the son of deceased or is an imposter in that way.

6. The order impugned, being thus tainted with the vice malafide, arbitrariness, non application of mind and upon misreading and misinterpreting the order of this Tribunal, is quashed.

7. Consequently the O.A., is allowed with a direction to consider Pradip Kumar Pandit afresh, untrammelled by earlier consideration, and with issuance of appropriate order within 3 months from the date of communication of this order."

It is noted from the above, that the O.A. was allowed in favour of Shri Pradip Kumar Pandit taking into consideration the fact that the respondents were bound to consider the case of the applicant on merit, when Alok Kumar Pandit was dismissed.

The respondents thereafter filed an M.A. bearing No. 165 of 2019 in which they prayed for extension of time for implementation of the Tribunal's orders in O.A. No. 719 of 2016. The said M.A. is yet to be finally disposed of and has been listed for consideration by the Tribunal.

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Accordingly, the scope of Shri Pradip Kumar Pandit's appointment remain alive as the respondents have reportedly not challenged the said orders of the Tribunal passed in O.A. No. 719 of 2016 in any higher forum.

The claim of the applicant in O.A. No. 701 of 2016 have not been substantiated either in facts or on law and, hence, this Tribunal does not consider it necessary to intervene in the orders of dismissal of the respondent authorities as no violation of procedural justice or natural justice have been established therein. Further, following the ratio in **B.C. Chaturvedi vs. Union of India & ors. , (1995) 6 SCC 749**, it is established that the proceedings against the applicant have not been vitiated by violation of principles of natural justice, by violation of statutory regulations, vitiated by extraneous considerations or that the conclusions are arbitrary, unreasonable or capricious.

6. Accordingly, O.A. No. 701 of 2016 is dismissed on merit, M.A. No. 435 of 2016 wherein Anjali Pandit and others had prayed for impleadment stands disposed of upon dismissal of this O.A. There would be no orders on costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP