

**Gurmeet Singh and ors. Vs. Union of India (Uoi) and ors.**

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**Court :** Central Administrative Tribunal CAT Chandigarh

**Decided On :** Oct-31-2006

**Reported in :** (2007)(1)SLJ288CAT

**Judge :** L Goyal, J S Dhaliwal

**Appellant :** Gurmeet Singh and ors.

**Respondent :** Union of India (Uoi) and ors.

**Judgement :**

1. These are a bunch of matters, applicants of which were before this Court earlier also, except the applicants in the case of Gurmeet Singh and Ors. in O.A. 352/CH of 2005. All are persons whose services have been terminated by the respondents on account of obtaining employment on various posts as LDCs/UDCs/Stenographers/Tax Assistants/Sr. Tax Assistants etc. Some of them have meanwhile got promotions from their post even upto the rank of Income Tax Officer, details of which have been given by the applicants in each case. We need not reproduce all the details as the facts and the questions of law which are common are that their services were terminated on the ground that either they had never appeared in the examination held by Staff Selection Commission or if some of them had appeared, none of these applicants had ever qualified the said examination to make them eligible for getting appointment in the Income Tax Department. However, all are said to have produced nomination letters purporting to have been issued by SSC as if they had qualified in the examination held and they were successful in getting employment at various stations in Punjab or offices

which fall under the office of Chief Commissioner of Income Tax, Headquarters at Chandigarh at that time or in various towns of Punjab. At some stage, this fraud came to the notice of the respondent-Department which not only lodged an FIR, but initiated action against all these applicants for termination of their services. The criminal case registered has been investigated and we have been informed that the challan/report of the CBI has been filed in the Court of competent jurisdiction for trial of all the accused.

2. In the case of Gurmeet Singh and Others, the facts, in brief, are that on coming to know of the fact that the applicants in this case had produced a forged nomination letters from SSC and had been successful in obtaining employment, the Department sent their names, father names and date of birth after obtaining these from the applicants alongwith the roll numbers on which they had claimed to have passed the examination held by SSC. The SSC after comparing the same with the result-sheets, copies of which they were having, found that out 25 names sent by the Department, 24 had never appeared in the said examination and thus had never qualified it. They found that one Shri Gurmeet Singh, applicant had appeared and his particulars tallied with the record maintained by SSC, but they confirmed that even Shri Gurmeet Singh had never qualified the said examination. All the applicants were issued show cause notices to explain their position about such employment, copy of which is Annexure A-21 and they have filed their individual replies, copy of which is Annexure A-22. Thereafter, the Chief Commissioner sent them a letter at A-23, dated 21.10.2004 to inform them that the particulars given by them have been examined and verified to find that they had obtained employment on the basis of a fraud. Their services were terminated by impugned orders at A-1 to A-6, which they have challenged in the present O.A. claiming that their services have been terminated illegally and in violation of principles of natural justice, with the prayer for a direction to the respondents to reinstate them in service during the pendency of the criminal proceedings pending before a C.B.I. Court. They plead that no regular departmental proceedings have been held against them and no charge-sheet had been issued to them for any misconduct. No Inquiry Officer was appointed, nor any witness were examined against them. No original record from the SSC has been summoned or proved and they have also not been given an opportunity to summon the required record.

The only opportunity given to them was to produce their roll numbers etc.

etc., mentioned in the show cause notices when they were selected which was almost 14 years back. They plead that they had completed the period of probation successfully and were thus regular employees, having put in more than 14 years of service. Allegations against them in the departmental as well as criminal proceedings are identical. They claim that their appointment was genuine. Respondents came to the conclusion that their nomination letters were forged and fabricated since the applicants failed to produce the particulars about their roll numbers, their application forms, mode of payment of their fees for appearing in the examination, copy of the result, any communication from SSC or newspaper cuttings to show that they had qualified the said examination and were selected by the SSC. They claim that such particulars could not be available with them after so long a time. They plead that the respondent-department and the SSC were involved in the wrong doing, if any, and now they had changed the original documents for the applicants, wherein at no point of time, applicants were involved. They plead that the CBI did not take into possession any dispatch register from which entries regarding the applicants could be traced.

3. In the case of Bhupinder Singh, their Counsel Mr. D.S. Patwalia has urged similar points as pleaded by the applicants in the case of Gurmeet Singh and Ors., with one exception that all the applicants in this O.A. were party to the earlier litigation and the judgment dated 29.4.2003, copy of which has been placed on file of this O.A. as Annexure A-10, in which a number of cases were disposed of by one common judgment under the title "Avtar Singh v. Union of India and Ors.". In this case also, verification of the facts was done for applicants Shri Bhupinder Singh alongwith others. More than one person in the name of Bhupinder Singh were found to have appeared in the examination held by the SSC, but it is in this case that his parentage, date of birth and roll number were found to be not tallying with the particulars of others named as Bhupinder Singh. It was thus found that this applicant had never qualified the examination held by SSC in 1989.

Similar procedure was followed in his case also, wherein, initially, a chargesheet was issued, but later on a show cause notice was issued to him, to which he filed

a reply affidavit at Annexure A-9. His services have been terminated by an order at A-6, dated 23.8.2001 and A-17, dated 10.11.2003. Mr. Patwalia has made a submission at the Bar that he is Counsel in number of cases as mentioned above in the title of the case, Shri Munish Kaplla being his Assistant. He has referred to the facts of the case of Bhupinder Singh with the claim that other cases are identical on facts and involve identical questions of facts and law. We need not make reference to the detailed facts of other cases referred to him in view of his submission.

4. Applicant Shri Narinder Singh in O.A. 1225/HR/2003, is aggrieved by the order at A-2, dated 28.8.2001, vide which his services have been terminated like Shri Bhupinder Singh above-mentioned. He was also served with a chargesheet, dated 27.11.2000. He claims that when the earlier case was decided by judgment dated 29.4.2003, a direction was given by the Court to hold a regular departmental disciplinary inquiry, which has not been done by the respondents and, therefore, in addition to the grounds mentioned by all others and also taken by the applicant, he pleads that since no inquiry has been held, the impugned order is illegal. He admits that a personal hearing was given to him. Other facts are similar to the facts of the cases of Bhupinder Singh and Ors.

above-mentioned.

5. In the case of Ranbir Singh and Ors. O.A. 510/PB/2005, the applicants are appointees of 1994. Their services have also been terminated in the similar fashion as the applicants in other cases after issuance of show cause notices, on receipt of their reply-affidavits and serving them with detailed orders. Applicants in this case had also filed an O.A. claiming similar relief as in the present case, but the same was withdrawn vide order at A-17, with permission given to them to inspect the record of the respondents to find out the material on the basis of which they have been terminated.

The impugned order of termination is at A-16, which is challenged by them on similar grounds with some specific grounds taken in Para 5(xiv) onwards. They plead that use of word 'termination' in their order is illegal as termination can be done only in specific situations under the law.

6. O.A. 726/PB/2005 has been filed by Shri Dapinder Singh, who was also served with a chargesheet initially, but later on dealt with I as others before this Court had been dealt with by the respondents. They have placed the judgment dated 29.4.2003 as Annexure A-12 in the earlier case decided by this Tribunal. Even though he was issued a show cause notice to which he filed a reply-affidavit, Annexure A-10, and thereafter received a detailed order at A-17, he pleads that he has not been given effective personal hearing as the letter and the telegram sent to him have reached after the dates fixed for such a hearing. He thus pleads that there is violation not only of principles of natural justice, but also of directions given in the judgment A-12.

7. Respondents in all cases have filed their detailed replies contesting the cases on facts as well as the law, pleading that they had all obtained employment in the department in a fraudulent manner as none of them had qualified the examinations in which they were supposed to appear. Most of them never appeared in the examinations and some of them who did appear, had never qualified the same. Nomination papers purporting to have been issued by SSC were produced by each applicant which were never issued by SSC and were forged and fabricated. The employment thus obtained by all of them is no employment in the eyes of law being based on the act of fraud.

8. The pleadings being thus complete, we have heard the learned Counsel for all these applicants and also the Counsel for the respondents. We have also gone through the material on these files.

9. Since the facts of case of Gurmeet Singh and Others are identical to the facts of all other cases, with the exception which has been mentioned above, inter alia, that applicants of this case were not party to the earlier litigation, while others were parties to the same.

We have perused the judgment given by a DB of this Tribunal in the earlier cases of the applicants, copy of which has been placed at Annexure A-10 in the case of Bhupinder Singh. It has been noticed that the departmental enquiry based on chargesheet served on some of the persons was not pursued by the department and instead, on obtaining legal advice, their services were terminated in August,

2001, copy of one such termination order was reproduced in A-10. Finding that similar termination orders were passed in all other cases, which is so even now, similar grounds were taken for challenging the impugned order of termination in those O.As. as in the present case, including violation of principles of natural justice and non-holding of detailed departmental disciplinary enquiry. Regarding rights of persons who obtain employment either fraudulently or on the basis of a fraud and as to whether any opportunity of hearing is required to be given to such a person, reference has been made to a judgment in the case of Brij Mohan and Ors. v. UOI and Ors. 1995(1) SLJ 109 (CAT-Chandigarh) : 1995(1) ATJ 1, decided by a DB of this Tribunal. It was recorded in the judgment at A-10 that in a case where the selection/appointment to a public service was based on forged and fabricated selection panels, such appointment or selection can be terminated without affording any opportunity of hearing to the aggrieved individual. Even principles of natural justice are not attracted to such an appointment and no opportunity of hearing was required.

10. Reference has been made to another judgment in the case of Sanjiv Kumar Aggarwal and 3 Ors. v. Union of India and Ors. 1987(3) SLJ 353 (CAT), which has been relied upon even now by the respondents. In our opinion, the facts and the pleas taken in the present cases are similar, if not identical, to the facts of the case of Sanjiv Kumar Aggarwal (supra). There also the candidates had obtained employment without having qualified the requisite examination, had successfully completed their period of probation and had been confirmed and served for a fairly long time. On these grounds, they had claimed protection of Article 311 of the Constitution by taking grounds as taken in the cases before us. The Court held that an appointment obtained by fraud can be terminated by a simple order and such order would be valid as the contract formed by fraud is no contract and cannot confer a status.

A party to fraud cannot seek to reap the fruits and advantages of fraudulent act and in the circumstances it is immaterial as to who has committed the fraud. Since the appointment had been vitiated by fraud, it was void ab initio and thus that appointment was no appointment in the eyes of law. The department thus was not obliged to initiate or proceed with a departmental enquiry under the relevant

disciplinary Rules. The Tribunal relied upon judgment in the case of Prabhu Lal Sharma v. Union of India and Ors. JT 11. Reference has further been made to the judgment in the case of Union Territory of Chandigarh v. Dilbagh Singh and Ors.

; Union of India v. M. Bhaskaran 1996(2) SLJ 25 (SC) : 1996(1) SCT 469; and Krishan Yadav and Anr. v. State of Haryana and Ors. , wherein similar views have been expressed. The Bench had considered some judgments cited by the Counsel for the applicants as well. Following the views expressed by various Courts, including the Hon'ble Supreme Court, the Court had concluded that in cases where employment had been obtained on basis of fraud, by all these applicants, who are once again before us, they had no right to claim all these protections. In Para 15 of Annexure A-10, it was recorded that no contract of service comes into being where fraud is involved in getting employment and consequently, a simple order of discharge would be sufficient.

12. On this aspect, we may make reference to some more judgments, which have meanwhile come into existence since the last order at A-10, even though we also record that on the proven fact of fraud in producing forged and fabricated nomination letters from SSC when none of the applicants had ever qualified the examination held for their employment confers no right on any of these applicants for holding the posts to which they were appointed or promoted, nor have they any right to get any protection of Article 311. As held by the Supreme Court in the case of M. Bhaskaran (supra), on detection of fraud when services are terminated these will not be interfered with by the Court. Orders of employment are void or at least these are voidable at the option of the employer. Termination of service amounts to recalling of orders of appointment fraudulently obtained by the employee as also the applicants before us as those appointments are erroneous. It was further recorded in this case that by mere passage of time, fraudulent practice would not get any sanctity and if a lenient view is taken it would amount to putting premium on dishonesty and sharp practices. Bank of India and Anr. v. Mandivikar and Ors.

2006(1) SLJ 47 (SC), in which reference has been made to a number of judgments rendered by the Hon'ble Apex Court explaining the law on fraudulent appointments and also as to how fraud is committed, it has been held that the

fraud vitiates everything and no protection can be extended to a person who obtains employment on fraud, nor any benefit can be extended based on such recruitment. *Andhra Pradesh State Financial Corporation v. GAR RE- Rolling Mills and State of Maharashtra and Ors.*

*v. Prabhu* 1993(7) SLR 671, it has been held that no inquiry is required to be held in cases of fraud in getting employment. In case of *R Vishwanatha Pillai v. State of Kerala and Ors.* 2004(2) SLJ 1 (SC) : 2004(1) Supreme 436, it was held that fraudulent appointment is void from its inception. Such appointee cannot claim that he was holder of a civil post entitled to protection of Article 311 as it is no appointment at all under the law. In this case appointment given in 1973, further promotions and other appointments were all nullified after a number of years even though the candidate had come promoted to IPS. *Prabhu Lal Sharma v. Union of India and Ors.* JT 2001 (Suppl. 1) S.C. 584, it was brought to the notice of the Hon'ble Supreme Court that holding of enquiry was dispensed with without recording any reasons in writing for not holding enquiry. The termination of service was on ground of filing of a forged certificate of matriculation. Despite these legal defects, the Hon'ble Supreme Court refused to interfere on such facts, even if procedure under Rule 19(II) of CCS (CCA) Rules was not followed by the Department.

16. The law has now been crystallized that persons who have obtained employment on basis of fraud deserve no sympathy, deserve no enquiry and deserve no claim or grant of an opportunity in name of adherence to principles of natural justice.

17. Despite such position under law, in the present case, we find that while deciding the earlier cases by A-10, a DB of this Court was quite cautious in giving certain directions so that even possibility of mis-carriage of justice is ruled out. The Bench recorded that the department had only relied upon a letter received from SSC to take decision against the applicants by terminating their services and that it, itself had not made any enquiry on their own to ascertain the facts. The Bench also recorded that the applicants had not been associated with any enquiry, if any, held at that time, nor were they called upon to explain their point of view. The

Court recorded that in such a case, inquiry should have been made by the respondent-department with the active participation of these applicants. In Para 17 of the order, the Court gave certain directions while disposing of earlier O.As. to the effect that Chief Commissioner of Income Tax shall hold an enquiry with regard to the genuineness or otherwise of the nomination letters produced by the applicants, purporting to have been issued by the Commission, based on which these applicants were appointed after issuing notices to all the applicants requiring them to submit, inter alia, the information, which we are reproducing below; (i) Whether they had applied for recruitment/selection/appointment to the post of LDC/UDC/Stenographer Gr.D/Inspector pursuant to the advertisement/ notification made by the Staff Selection Commission, New Delhi? (ii) Whether they had appeared for the examination conducted by the Staff Selection Commission in the year 1989/90 and if so, their application No./ Roll No. allotted to them or the admission card issued to them and date of examination and place of centre where the examination was given by the concerned applicants; (iii) What was their residential address given in the application form; (iv) What was their actual date of birth and the date of birth given by them in the applications submitted to the Staff Selection Commission; (v) Copy of the nomination letter delivered to by the Commission, if any, retained by them; or (vi) Any other material information which may be relevant and germane to the enquiry in hand.

18. After going through this process, the concerned Commissioner was to pass appropriate speaking orders. The significant part is contained in Para 18 of the order, which is also being reproduced below: 18. If ultimately after the enquiry, it is established that the nomination letters produced by the applicants and received the department directly on the basis of which the applicants were issued the appointment letters were not forged, fictitious or bogus but were genuine documents, in that event the impugned orders of termination of the applicants shall stand set aside and the applicants shall be reinstated in service ignoring the termination orders with all consequential benefits. If the outcome of the enquiry is otherwise i.e. it is found that the nomination papers produced by the applicants were forged and fictitious, the impugned termination orders shall hold good and the O.As. filed by the applicants shall stand dismissed.

19. It is not disputed before us that the respondent-department prepared a questionnaire on the lines as directed by this Tribunal in A-10, as reproduced above, and each applicant was served with such show cause notice and given an opportunity to give answer in form of affidavit which included production of any evidence by them that they had actually appeared in the examination held for them and any evidence indicating that they had ever qualified it alongwith submission of other particulars and such replies given by each of applicants were examined and each of the applicants has been informed that the department has found not only from the reply submitted by him, got verified by the department from its own record and from SSC that the employment obtained by each of these applicants was based on fraud as none of them had ever qualified the said examination and that most of these applicants had not even appeared in the examination relevant.

20. Even though we have recorded above, on the basis of number of judgments of various Courts, particularly of the highest Court of the country, that neither detailed enquiry was required to be held, much less a regular departmental disciplinary enquiry, and that under the law they do not even deserve issuance of a show cause notice, yet all this process has now been gone through on the directions of this Bench as recorded in Annexure A-10, a judgment dated 29.4.2003. As per the observations made in Para 18 of A-10, the applicants had no right of challenging the orders as enquiry has been duly made. However, the Hon'ble High Court had given the present applicants a right to challenge the orders passed on the enquiry made by the respondents, in compliance to the directions given in Annexure A-10, that is how, all these applicants have got a chance of filing the present O.As.

21. We record that in A-10, it was never intended that a detailed departmental enquiry proceedings be held. The respondents have gone through the process of making enquiries on their own with the active participation of the applicants by not only giving their reply in writing but grant of personal hearing as well. In our opinion, even though they had no right yet they have been given sufficient opportunity of placing their point of view and their side of the case.

22. Considered in the light of the detailed orders passed by the respondents, which give reasons to come to the conclusion that service obtained by each of

these applicants is based on a fraud, we find that legally no fault can be found with the conclusions recorded by the Competent Authority. Besides, the reply given by the applicants and the evidence produced by them, the Competent Authority from the photocopies of the result of the examination in which they claim to have appeared, on the basis of the result-sheets and on the basis of letter written by Staff Selection Commission, come to the conclusion which is legally valid that employment obtained by applicants is definitely fraudulent and based on fraud and fabricated nomination letters purporting to have been written by SSC.<sup>23</sup> The claim of the applicants that onus was put on them to prove their innocence is a contention based on misreading of the facts and the directions of the Court in A-10. After respondents had found that their appointment was fraudulent, the Bench had given directions to give the applicants an opportunity of explaining by replying to the queries some of which were mentioned in the judgment itself. Onus is not something static. While making an enquiry to arrive at the truth, applicants were asked to provide any evidence on which they can lay their hands on to indicate that they had applied for the said post and for the said examination, had paid their fees, to indicate the place where they had appeared in the examination, any evidence that they had qualified etc. etc. It can in no manner be called that onus was put on them to prove their innocence because this was an opportunity to them to participate in the process of arriving at the truth.

24. The respondents have made reference to the Alpha list, Master Index and the documents mentioned above. A detailed order has been conveyed to each of the applicants which puts-forth both sides i.e., the reply given by the applicants and examination done by the respondents and the documents relied upon by them. In our opinion, the respondents were able to establish the fraud. Fraud by nature of it, is initiated in the mind of the perpetrator of an act of fraud. Thereafter it is to be inferred or established on the basis of the circumstances as neither the perpetrator would speak that he has committed a fraud, nor the persons who had participated in it would ever admit it.

25. The claim that statement of no witness was recorded is an argument which is minus the names of any possible witnesses which could have been examined. If some employees of SSC and of Income Tax department were involved, they

would not be witnesses as they would never speak the truth which can be incriminating.

26. The contention that those persons who participated in the crime/fraud have so far gone scot free, is an argument which is unacceptable under the law as a wrong doer has no right to claim protection on the ground that another participant in the wrong doing has not yet been proceeded against. Action against the applicants is being taken because the wrong doing by them stands provided. They deserved the action on account of their own conduct and cannot be exonerated merely because action could not be taken against some involved employees of SSC or of Income Tax-department.

27. A contention has been raised that this is a case of grant of post-decisional hearing as with the exception of applicants in Gurmeet Singh's case (supra), termination had already been decided upon, whereas opportunity was given to them later on. Firstly, opportunity was as per directions of this Court in A-10 and examination of the facts of the present case indicated that this case was not a case of post-decisional hearing. Besides this, in the case of Haryana Warehousing Corporation v. Ram Avtar and Anr. 1996( 1) SLR 744 (SC) and in the case of Minerva Mills Ltd. v. Union of India , it has been held that in case of urgency/public importance, it may be necessary for the authority to make immediate decision considering public interest. In such circumstances, even in judicial, quasi-judicial or administrative acts, adherence to maxim of audi alteram partem may not be possible before taking action. The Apex Court held that such an order passed would be valid if it will be by post - orders/decisional hearing as the authority can change the order on such post-decisional 'hearing'. The post-decisional hearing in administrative law is well recognized. The authority cited by the applicants as was a case of issuance of a circular determining rights of set of employees informing them that not only decision had been taken but it had been circulated determining their rights in the employment relating to conditions of service. It was in peculiar facts of that case that the Court had concluded that such post-decisional hearing had no meaning.

28. In the case of Dapinder Singh, we find that he was given a show cause notice with details mentioned on it, his participation was solicited for supply of the requisite evidence or any evidence in support of his case available from any source. Thereafter he was duly informed about the material being used by the respondent-department.

Attempts were made to afford him a personal hearing also through letter written to him, copy of which is A-17, followed by a telegram. Even though the address given by the applicant in the present case would indicate that it falls within the post office of Patiala City, yet, he claims that he received these communications after the dates fixed by the respondents had already passed. We have already recorded that with the reply of the applicant in affidavit form given to the show cause notice, there was sufficient material to come to the conclusion as arrived at by the said authority. Non-adherence to grant of personal hearing in the present case is not shown to have resulted in any miscarriage of justice. We put it to the learned Counsel to indicate as to what additional points the applicant wanted to make or submit in personal hearing and that he is free to bring to the notice of the Bench any such new point. Nothing new has been urged before us, and thus we conclude that no prejudice has been caused to him by non-grant of personal hearing even though it may have been slight deviation from the direction given in A-10.

29. Discussion in the above paragraphs would indicate that even though applicants had no right under Article 311 of the Constitution, or any right for claiming disciplinary departmental enquiry proceedings, or even adherence to principles of natural justice, not only the Court had earlier recorded that their earlier O.As. would stand dismissed, but we also have come to the conclusion that these O.As. have no merit. Now, under directions of this Court, the respondents have gone through the process of holding a fact finding enquiry by associating the applicants and by giving them opportunity of producing any evidence to indicate that the documents, including that of nomination letters said to have been issued by the Staff Selection Commission in their favour were genuine. After going through this fair and reasonable process, the department has come to the conclusion that their appointment was based on fraud and thus deserves to be terminated. The enquiry held by respondents, in our opinion, is sufficient

compliance to the directions given in Annexure A-10 and has given ample opportunity to the present applicants of showing their side of the case and opportunity to prove that they had actually applied for the post, had appeared in the examination, and that they had qualified. The conclusions are against the applicants that they did not qualify the relevant examination on the basis of which they claim and got appointment.

30. On the basis of discussion above, we find no merit in any of the cases before us. These O.As. are, therefore, dismissed. No costs.

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