

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR, BENCH AT NAGPUR**

**ORIGINAL APPLICATION NO.719 OF 2015
(Subject : Termination)**

DISTRICT : NAGPUR

Liladhar Pralhad Khobragade,)
R/o. Rajeshwar Nagar, Near GNT Convent,)
Ganeshpur, Bhandara, Tah. & Dist. Bhandara.)

...APPLICANT

VERSUS

1. The State of Maharashtra,)
Through its Secretary,)
Revenue and Forest Department,)
Mantralaya, Mumbai 32.)
2. The Chief Conservator of Forest (T),)
Nagpur Civil Line, Nagpur.)
3. The Deputy Conservator of Forest,)
Bhandara, Civil Line, Bhandara,)
Tah. & Dist. Bhandara.)

....RESPONDENTS.

Shri S.N. Gaikwad, learned Advocate for the Applicant.

Shri A.P. Potnis, learned Presenting Officer for the Respondents.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN (A)
SHRI J.D. KULKARNI, VICE-CHAIRMAN (J)

DATE : 11.8.2017.

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN (A)

J U D G M E N T

1. Heard Shri S.N. Gaikwad, learned Advocate for the Applicant and Shri A.P. Potnis, learned Presenting Officer for the Respondents.
2. This Original Application has been filed by the Applicant challenging the order dated 28.10.2015 passed by the Respondent No.3, removing him from service.
3. Learned Counsel for the Applicant argued that a Departmental Enquiry (D.E.) was started against the Applicant by order dated 04.03.2005. The Applicant was appointed as a Clerk by order dated 10.06.1998. The Applicant was given benefit of Assured Career Progression Scheme by order dated 21.10.2013. The Applicant was promoted to the post of Accountant by order dated 10.03.2014 by the Respondent No.2. This shows that the Applicant's performance was good and he could not have been punished in a D.E. In the D.E., charges were not proved against the applicant. The Applicant was not given a copy of the Enquiry Report and show cause notice was given on 16.03.2013. The

Applicant had replied to the show cause notice on 28.03.2013. The Respondent No.3 issued the impugned order on 28.10.2015, which is not maintainable as the D.E. was vitiated. During the pendency of the D.E. the Applicant was promoted and the Respondent No.3 is no longer his appointing authority. On that ground also, the impugned order is liable to be quashed.

4. Learned Presenting Officer (P.O.) argued that the Applicant's father was working with the Respondents. He died while in service. Applicant applied for compassionate appointment in place of his father, suppressing the information that his mother was also working in the Government. The Applicant obtained employment by fraud and suppressing vital information. Learned P.O. argued that no prejudice was caused to the Applicant by not supplying him copy of the Enquiry Report. He was held guilty of fraud and was removed from service. As the Applicant was promoted as Accountant pending the outcome of the D.E., which was pending against him, his appointing authority did not change. As such the impugned order is passed by the competent authority.

5. We have carefully perused the material on record. The charge against the Applicant was that he got into Government service by misleading the Government and by filing false certificates. The imputation of misconduct (annexure 2) gives the details of the 'certificate'. It is clear from Annexure- 2 that the Applicant was accused of filing of

false affidavit dated 23.12.1997 to the effect that after his father's death, the responsibility to take care of the family came upon his shoulders. In the reply to final show cause notice dated 28.03.2013 the Applicant has tried to make a lot about the word 'certificates' (प्रमाणपत्र) used in the charge sheet in annexure-1, while the annexure-2 refers to two false documents viz. affidavit dated 23.12.2017 and Application for compassionate appointments. It appears that in annexure-1 the word 'documents' should have been used and not 'certificates'. However, the purpose of annexure-2 in a charge sheet is to elaborate the charges levelled in annexure-1. In the present case, it was quite clear that the Applicant was accused of submitting false affidavit dated 23.12.1997 and false application for compassionate employment. From the reply dated 28.03.2013, it is clear that the Applicant was fully aware of the exact nature of the charges against him in the D.E. and he has mentioned that he did not enclose any false documents along with his application dated 10.12.1997 for compassionate appointment. He has, however, remained silent about the contents of the application.

6. The application dated 10.12.1997 is at Annexure A-1 (page 11). It is reproduced in full :-

“मी वरील अर्जदार विषयाचे अनुषंगाने सविनय सेवेशी अर्ज सादर करतो की, माझे वडील नामे श्री. प्रल्हाद गोंदुजी खेब्रागडे हे आपल्या विभागातील अडयाळ वनेक्षेत्रामध्ये वनरक्षक या पदावर कार्यरत होते, आणि ते दि. २४ नोव्हेंबर १९९७ ला स्वर्गवासी झाले.

माझो वडील नोकरीत कार्यरत असतांना स्वर्गवासी झाल्यामुळे अनुकंपा तत्वारा मला लिपीक या पदावर समाविष्ट करण्यात यावे, हि विनंती.”

It is clear that the Applicant has applied for compassionate appointment, which is given only to help the family of a deceased Government servant, who dies in harness. The Applicant has enclosed 'No Objection Certificate' from other heirs of his deceased father to the effect that they have no objection if the Applicant is given compassionate appointment. The copy of the affidavit is at page 36 of the paper book. The Applicant has stated that he was 'Karta' of the family and responsible for taking care of all his siblings and for marriage of his sisters. This affidavit is clearly misleading, as the Applicant suppressed the fact that his mother was employed in a Group 'C' post in the same Department and if that fact was disclosed, he would have been ineligible for compassionate appointment. It appears that then Deputy Conservator of Forest, Bhandara was either complicit in this fraud or was criminally negligent. Be that as it may, after this facts came to light, a D.E. was started against the Applicant. The charge against the applicant was proved. He was given a final show cause notice dated 16.03.2013 and the Applicant gave reply on 28.03.2013. From the reply of the Applicant 28.03.2013, it is quite clear that the Applicant was fully aware that the only charge against him was obtaining employment by misleading the Government on the basis of false documents. The facts are so gross, that the Applicant could not have given any satisfactory explanation. The Applicant was accordingly removed from service by the impugned order.

7. Though the Respondent No.3 did not make available the copy of the Enquiry Report, based on the facts, we are of the opinion that no prejudice was caused to the Applicant, who had obtained employment fraudulently on the basis of false and misleading documents.

8. Hon'ble Supreme Court in the case of **Ram Preeti Yadav Versus U.P. Board of High School & Intermediate Education : LAWS (SC)-2003-9-26** has quoted from Lazarus Estate Vs. Berly with approval as follows :-

“no court in this land will allow a person to keep an advantage which he obtained by fraud. No judgment of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels anything”

Fraud is defined in the same judgment as follows :-

“Fraud is a conduct either by letter or words, which induces the other person or authority to a definite determinative stand as a response to the conduct of former either by words or letter. Although negligence is not a fraud but it can be evidence on fraud. (see Derry v. Peek)”.

9. In the present case, the Applicant obtained employment by inducing the Authorities to give him compassionate appointment, concealing vital facts and posing as if he was eligible for compassionate appointment. The

Applicant got appointment fraudulently and the order dated 28.10.2015 removes him from service, which the Applicant got fraudulently. This order cannot be allowed to be disturbed for some procedural irregularity which would not have any affect on the outcome of the Departmental Enquiry. We do not find this a fit case requiring out interference.

10. This Original Application is accordingly dismissed with no order as to costs.

Place : Nagpur
Date : 11 . 8 . 2017
Typed by : PRK