

(2019) 01 CAT CK 0087

In the Central Administrative Tribunal

Case No : Original Application No. 4018 Of 2013

Fateh Singh

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 21-01-2019

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Payment Of Gratuity Act, 1972 — Section 4, 4(1), 4(6)(i), 6, 6(1)
Central Civil Services (Pension) Rules, 1972 — Rule 9
Bihar Pension Rules, 1950 — Rule 43(b)
Constitution Of India, 1950 — Article 14, 16, 142
Delhi Road Transport Authority (Employees Provident Fund) Regulation, 1953 — Regulation 5A
Delhi Road Transport Authority (Conditions Of Appointment And Service) Regulations, 1952 — Regulation 15(2)(vii)

Citation : (2019) 01 CAT CK 0087

Hon'ble Judges : Nita Chowdhury, Member (A), S.N. Terdal, J

Bench : Division Bench

Advocate : Rupesh Kumar, Anubha Singh, Vijay Saini, Manish Garg

Final Decision : Dismissed

Judgement

Nita Chowdhury, Member (A)

1. By filing this OA under Section 19 of the Administrative Tribunals Act, 1985, the applicant is seeking the following reliefs:-

"i. Set aside order of punishment as imposed vide Order dated 23.03.2012 by which 100% of gratuity of the Applicant is forfeited.

ii. Set aside order of appellate authority affirming the order dated 23.3.2012 passed by the Disciplinary authority forfeiting 100% of gratuity of the Applicant.

iii. Pass appropriate order directing the respondent to release entire gratuity of the applicant with 18% interest.

iv. Any other such relief as this Hon'ble Tribunal deems fit in the interest of justice."

2. The brief relevant facts of the case are that the applicant who was an ex-service man was appointed as Security Guard with respondent on 18.1.1975 and as the relevant time the prescribed qualification for Security Guard was 8th pass. a letter dated 20.8.2008.

2.1 According to the applicant, vide letter dated 15.12.1978, the applicant was granted permission to continue his study and to appear in matriculation examination which he availed and passed High School Examination in the year 1979 and continued with the service. However, on the basis of some anonymous complaint, the respondents sent the High School Education Certificate submitted by the applicant for verification to Madhyamik Education Council, U.P. Board of High School & Intermediate U.P. Allahabad Education. In response to the same, a reply vide letter dated 22.9.2008 has been received from Asstt. Secretary (Verification), Allahabad stating therein that as per the record of the D.M.I.G. Dorli, Meerut High School in the year 1979 vide Roll No.643330 Sh. Ompal Singh S/o Shri Jai Singh appeared in the examination and not Shri Fateh Singh (applicant) S/o Shri Dilip Singh. The departmental enquiry at the relevant time was closed vide letter dated 16.6.2009.

2.2 However, in the meantime, again a letter dated 26.5.2009 was written by the respondent department to the Madhyamik Education Council, U.P. Board of High School & Intermediate U.P. Allahabad Education for re-verification of the High School Certificate submitted by the applicant. In the meantime, the applicant vide order dated 17.7.2009 was promoted to officiate as Security Inspector w.e.f. 20.7.2009 in PB-II of Rs.9300-34800 plus Grade Pay on the terms and conditions enumerated therein.

2.3 Vide communication dated 17.7.2009 received on 3.8.2009 from U.P. Board stating that as per the record of the D.M.I.G. Dorli, Meerut High School in the year 1979 vide Roll No.643330 Shri Ompal Singh S/o Shri Jai Singh appeared in the examination and not Shri Fateh Singh S/o Shri Dilip Singh.

2.4 In the meantime, the matter was under investigation with the department keeping in view the seriousness of the matter Vigilance Department (HQ) sent a letter to the Secretary, Intermediate Education Council UP Allahabad for re-verification of the amended letter. In response to the letter, Dy. Secretary, Intermediate Education Council UP Allahabad informed that as per record in the year 1979 vide Roll No.643330 Shri Ompal Singh S/o Shri Jai Singh appeared in the examination and not Shri Fateh Singh S/o Dilip Singh and further informed that this office has never issued any amended letter. For this forgery a complaint was registered vide letter dated 22.3.2010 in I.P. Estate, Police Station.

2.5 Accordingly, Vigilance Department (HQ) again issued a charge sheet to the applicant with regard to his school certificate which was found to be forged and he by producing an amended letter, which on verification is also found to be

forged one, thus, by producing forged amended letter, the applicant tried to cheat the department and mislead the department.

2.6 On receiving no satisfactory reply to the charge sheet, Sr. Manager (Security) deputed an enquiry officer from Yamuna Vihar Depot (East) to conduct full fledged enquiry.

2.7 The enquiry officer gave his finding and came to the conclusion that the amended letter which was issued by the Allahabad Board was forged one and charge against the delinquent officer is fully proved. After going through the enquiry report dated 19.2.2010 carefully, the competent authority was of the opinion that no further enquiry is to be held and a show cause may be issued to the applicant as to why punishment of forfeiture of 100% of gratuity be not imposed. Accordingly, impugned show cause notice dated 22.7.2011 has been issued to the applicant to enable him to file his reply to the same. Prior to that, the applicant has already retired on 30.9.2010. Applicant also filed his reply and after considering the same, the disciplinary authority rejected the same as also did not find anything in his reply which warrants imposition of lesser punishment and accordingly confirmed the same vide order dated 20.3.2012, which was communicated vide letter dated 23.3.2012. Thereafter applicant filed his appeal dated 24.4.2012, which was rejected by the appellate authority vide order dated 10.7.2013.

2.8 Being aggrieved by the disciplinary and appellate authorities' aforesaid orders, the applicant has filed this OA seeking the reliefs as quoted above.

3. During the course of hearing, counsel for the applicant submitted that there is no statutory provision or rules which entitle the respondent to forfeit gratuity of the applicant and as such the impugned orders are illegal and arbitrary. He further submitted that gratuity of an employee is his private property which cannot be forfeited or withheld under garb of departmental enquiry or the proceedings. In support of his contention, learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in the case of State of Jharkhand and others vs. Jitendra Kumar Srivastava and anr. in civil Appeal No.6770/2013 dated 14.8.2013 as also of the provisions of Section 4 (1) of the Payment of Gratuity Act.

3.1 Counsel for the applicant further contended that the applicant has not committed any misconduct and only on the basis of some anonymous complaints, which was earlier also the basis for issuing a chargesheet in which the applicant was exonerated and now on the same cause of action, the similar chargesheet has been issued to the applicant. Applicant also contended that decision in the matter is based on mere unverified postal communications whereas there is nothing on record to show that any witness of the respondent has personally verified about genuineness of the letters as well as about veracity of the documents of the applicant.

3.2 Counsel also contended that respondent has not adopted due process and

has illegally forfeited the applicant's entire gratuity which has personal property not liable to be forfeited in any circumstances except one mentioned in the Payment of Gratuity Act, 1972.

4. On the other hand, learned counsel for the respondents submitted that earlier departmental enquiry, which was ordered to be initiated for the alleged act of submission of fake educational certificate, was concluded as not proved on the basis of an amended letter brought by the applicant allegedly from Intermediate Education Council UP Allahabad during the inquiry proceedings, without verifying the same and in the said letter, it is stated that on re-checking it is found that in the year 1979 vide Roll No.643330 Sh. Fateh Singh S/o Shri Dalip Singh appeared in the examination and passed with second division. However, since the matter was under consideration in Vigilance Department for genuineness of the educational certificate and therefore, Vigilance Department sent a letter to the Security Intermediate Education Council U.P. Allahabad for re-verification of the said amended letter. In response to the said letter, Dy. Secretary, Intermediate Education Council U.P. Allahabad informed that as per record in the year 1979 vide Roll No.643330 Shri Om Pal Singh S/o Shri Jai Singh appeared in the examination and not Shri Fateh Singh S/o Shri Dalip Singh and further informed that they have never issued any amended letter. As such, counsel further submitted that a complaint of forgery was also registered vide letter dated 22.3.2010 in I.P. Estate, Police Station. In above circumstances, Vigilance Department (HQ) again issued a charge sheet to the applicant with respect to his school certificate which was found to be forged and by producing an amended letter, which on verification was also found to be forged one and thus, he tried to cheat the department and mislead the department. Departmental inquiry was conducted in accordance with the prescribed procedures and after completion of inquiry, inquiry officer concluded that the amended letter, which was alleged to be issued by the Allahabad Board was forged one and charge against the applicant is fully proved. Thereupon, a show cause notice was issued to the applicant on 22.7.2011, as in the meanwhile, the applicant has already stood retired on 30.9.2010, as to why punishment of forfeiture of 100% gratuity be not imposed. Applicant submitted his reply and the disciplinary authority having carefully examining the same observed that the pleas taken by him are not acceptable and the said proposed punishment was confirmed vide order dated 20.3.2012. Applicant has also preferred an appeal which was duly considered and rejected by the appellate authority vide order dated 10.7.2013. As such there is no illegality and irregularity in the procedure adopted in the departmental enquiry.

4.1 Counsel for the respondents further submitted that the forfeiture of gratuity is admissible irrespective of the fact whether the applicant has spent long years of service or not, the fraudulent act on the part of the applicant does not entitled him to benefit like gratuity, which normally granted to a superannuated employee. He by placing reliance on Regulation 5A of the Delhi Road Transport Authority (Employees Provident Fund) Regulation, 1953 read with CCS (Pension)

Rules, especially Rule 9, which cannot be said to be in conflict with provision of Payment of Gratuity Act, submitted that it is not imperative in the Scheme of Gratuity Act that the gratuity has to be necessarily released to the concerned employee on his retirement even if departmental proceedings are pending.

4.2 Counsel also submitted that in this case it is apparently clear in the subsequent inquiry that applicant has not only submitted forged High School Certificate but also submitted a fake letter when earlier departmental enquiry was initiated with regard to submission of fake high school certificate. Therefore, he submitted that in such cases even the principles of natural justice are not required to be complied with in setting aside such fraud. In this regard, he placed reliance on the judgment of the Apex Court in the case of Regional Manager, Central Bank of India vs. Mudulika Guruprasad Dahir and Ors., (2008) 13 SCC 170; A.P. Public Service Commission vs. Koneti Venkateswarulu and Ors., (2005) 7 SCC 177; Raju Ramsing Vasave vs. Mahesh Deorao Bhivapurkar and others, JT 2008 (9) SC 445, and A V Papayya Sastri and others vs. Government of AP and others, JT 2008 (8) 57.

4.3 Counsel further submitted that there is no bar for initiating departmental proceedings afresh in as much as the departmental proceedings in this case has been initiated under Rule 9 of the Rules *ibid* wherein it is within the right of departmental authorities to withhold or withdraw pension and Section 4 (1) of Gratuity Act has no application to fact of the present case.

5. We have heard learned counsel for the parties and carefully perused the material available on record.

6. In this case, admittedly, the applicant has not challenged the departmental inquiry proceedings but has challenged the orders passed by the disciplinary and appellate authorities. We have perused both the orders. So far as observance of procedure is concerned, we do not find any illegality in the same. Rather the disciplinary authority after receipt of findings of the inquiry officer, issued a show cause notice to the applicant and thereafter after considering the reply of the applicant to the said show cause notice, the disciplinary authority confirmed the proposed penalty of forfeiture of 100% gratuity upon the applicant. Applicant also preferred his appeal against the said penalty order, which the appellate authority has also considered and rejected.

7. So far as contention of the applicant's counsel that there is no statutory provision or rules which entitle the respondent to forfeit gratuity of the applicant is concerned, we do not find any substance in the same as the issue involved in this case is related to forfeiture of 100% gratuity and the same has been imposed upon the applicant by the respondents in view of the fact that during the pendency of the proceedings, the applicant retired and the applicant was found to have committed misconduct by submitting a forged Matriculation Certificate as well as for submitting a forged amended letter qua the status of his high school certificate, which act amounts to fraud/forgery for which the

applicant would have been dismissed from service under Regulation 15 (2) (vii) of the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952 and as per the Delhi Road Transport Authority (Employees Provident Fund) Regulations, 1953, which takes cognizance and specifically prohibits payment of gratuity to a dismissed employee. We may, therefore, refer to the said provision which reads as follows:

"5-A Special Contribution by the Authority-(GRATUITY):-

The Authority shall also contribute to the Provident Fund of an employee at the time of his leaving the service of the Authority after completing a minimum service of 15 years including periods of leave with pay but excluding the periods of leave without pay but excluding the periods of probation, at the rate of half a months basic pay for each completed year of service subject to the maximum of 15 months basic pay to be calculated on the terminal basic pay drawn at the time of leaving the service, if the Authority is satisfied that the service rendered by the employee has been good, faithful, and efficient.

Provided that the special contribution shall not be payable if an employee is removed or dismissed from the service of the Authority as a disciplinary measure in pursuance of clause 15 of the Delhi Road Transport Authority (Conditions of Appointment and Service Regulations, 1952."

The above regulation is basically a non statutory one and cannot be said to be in conflict with the provisions of statute namely the Payment of Gratuity Act, 1972. Issue was raised whether the above regulation was in conformity with or contradictory to the statutory provisions of the said Act. We may take the extract of the relevant Section of the Gratuity Act, 1972. The sub section 6 of Section 4 of the Payment of Gratuity Act 1972 prescribes the grounds under which gratuity can be withheld or forfeited partly or fully. This Rule reads as follows:-

"(6) Notwithstanding anything contained in sub-section (1), -

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

(b) the gratuity payable to an employee may be wholly or partially forfeited]-

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."

In the instant case, we also found that the applicant has committed grave misconduct by submitting a false educational certificate as well as an amended letter, which act is a fraud committed by the applicant and for which he would

have been dismissed. His offence is covered under Section 4

(6) (i) and the relevant clause is "disorderly conduct." There is no conflict between the said provisions of the Act and DTC Regulations.

8. So far as reliance placed by the learned counsel for the applicant on the judgment of the Supreme Court in the case of Jitendra Kumar Srivastava (*supra*) is concerned, the same is not applicable to the facts of this case as that case was not a case of dismissal from service but in that case, the government servant had retired on reaching the age of superannuation, hence the court was considering the issue of grant of full pension, leave encashment and gratuity on account of pendency of the criminal case and the Departmental Enquiry and while considering Rule 43(b) of the Bihar Pension Rules relating to withholding or withdrawing of pension, the Hon'ble Supreme Court had found that under that Rule there was no power to withhold the leave encashment, whereas in the present case having regard to the provisions of Regulation 5A and sub-Section 6 of Section 4 of the Gratuity Act, and also having regard to judgment of the Hon'ble Supreme Court in the case of Manoj Kumar V. Government of NCT of Delhi & Ors., (2010) 11 SCC 702, wherein it has been held that :

"There is no doubt that if any candidate furnishes false or incomplete information or withholds or conceals any material information in his application, he will be debarred from securing employment. It is also true that even if such an applicant is already appointed, his services are liable to be terminated for furnishing false information."

As also in the case of Chairman and Managing Director, Food Corporation of India & Ors. Vs. Jagdish Balaram Bahira and Others, 2017 (8) SCC 670, held as under :

"56. Service under the Union and the States, or for that matter under the instrumentalities of the State sub serves a public purpose. These services are instruments of governance. Where the State embarks upon public employment, it is under the mandate of Articles 14 and 16 to follow the principle of equal opportunity. Affirmative action in our Constitution is part of the quest for substantive equality. Available resources and the opportunities provided in the form of public employment are in contemporary times short of demands and needs. Hence the procedure for selection, and the prescription of eligibility criteria has a significant public element in enabling the State to make a choice amongst competing claims. The selection of ineligible persons is a manifestation of a systemic failure and has a deleterious effect on good governance. Firstly, selection of a person who is not eligible allows someone who is ineligible to gain access to scarce public resources. Secondly, the rights of eligible persons are violated since a person who is not eligible for the post is selected. Thirdly, an illegality is perpetrated by bestowing benefits upon an imposter undeservingly. These effects upon good governance find a similar echo when a person who PART A does not belong to a reserved category passes off as a member of that category and obtains admission to an educational institution. Those for whom the

Constitution has made special provisions are as a result ousted when an imposter who does not belong to a reserved category is selected. The fraud on the constitution precisely lies in this. Such a consequence must be avoided and stringent steps be taken by the Court to ensure that unjust claims of imposters are not protected in the exercise of the jurisdiction under Article 142. The nation cannot live on a lie. Courts play a vital institutional role in preserving the rule of law. The judicial process should not be allowed to be utilised to protect the unscrupulous and to preserve the benefits which have accrued to an imposter on the specious plea of equity "

Again, under similar circumstances in respect of an issue relating to obtaining admission to the MBBS course on the basis of false certificate, the Supreme Court in case of *Nidhi Kaim & Another Vs. State of Madhya Pradesh & Others*, 2017 (4) SCC 1, in paragraph 92 has held as under :

"92We are of the considered view that conferring rights or benefits on the appellants, who had consciously participated in a well thought out, and meticulously orchestrated plan, to circumvent well laid down norms, for gaining admission to the MBBS course, would amount to espousing the cause of "the unfair ". It would seem like allowing a thief to retain the stolen property. It would seem as if the Court was not supportive of the cause of those who had adopted and followed rightful means. "

This Court is of the considered view after taking into consideration the aforesaid observations of the Supreme Court in the aforementioned judgments as undoubtedly the Hon'ble Supreme Court was of the clear view that once when it is reached to the conclusion that the very basis of appointment itself being bad, the said employees as such would not be entitled for any equity based relief, nor would they be entitled for any sort of sympathy on account of length of service that they have put in and as such this Court is of the opinion that reliance placed by learned counsel on the aforesaid judgment is not of any help in this case.

10. Given the aforesaid factual matrix of the case, as also the legal position, which stands discussed in the preceding paragraphs, this court is of the opinion that orders passed by the disciplinary and appellate authorities in this case do not suffer from any illegality and as such this Court does not find any ground to interfere with them. Accordingly, the present OA is dismissed. There shall be no order as to costs.