

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15799 of 2013

Manoj Kumar Son of Late Nityanand Kumar Resident of Village Anadipur,
P.S.- Kahalgaon, District- Bhagalpur

... .. Petitioner/s

Versus

1. The Union of India through the Commissioner, Central Excise, Patna Central Revenue Building, Bir Chand Patel Path, Patna
2. Commissioner, Central Excise, Patna Central Revenue Building, Bir Chand Patel Path, Patna
3. Additional Collector (Presently Additional Commissioner) (P and V), Central Excise, Patna Central Revenue Building, Bir Chand Patel Path, Patna
4. Joint Commissioner (P and V), Central Excise, Patna Central Revenue Building, Bir Chand Patel Path, Patna
5. Deputy Commissioner (P and V), Central Excise, Patna Central Revenue Building, Bir Chand Patel Path, Patna
6. Staff Selection Commission (Central Region), Government of India, Department of Personnel And Traini 8 Beli Road, Allahabad

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Pushkar Narayan Shahi, Sr. Adv. Mr. Sanjeet Kumar Singh, Adv. Ms. Deeksha Singh, Adv.
For the UOI	:	Mr. S.D. Sanjay, Add.S.G. Mr. Anshay Bahadur Mathur, SC
For the SSC	:	Mr. Rajesh Kumar Verma, ASG

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE SHIVAJI PANDEY)

Date : 29-05-2020

Heard learned counsel for the parties.

Learned counsel for the Union of India has produced the original record before this Court for examination and we are passing the order on the basis of material available in the writ application as well as the original record supplied maintained in due course of business.



In the present case, the petitioner is challenging the order dated 21.12.2012 passed by the Central Administrative Tribunal, Patna Bench, Patna in OA No. 547 of 2007, whereby and whereunder, the learned Tribunal has held that the petitioner has committed fraud, thereby entered into service as he belongs to General Category candidate but, has ensured his place as a scheduled caste candidate. So, the termination of service by the authority concerned cannot in any way be faulted.

The fact of the case moves in the manner that an advertisement was published by the Staff Selection Commission on 17.10.1987 for recruitment of Auditor, Junior Accountant and Upper Division Clerk. The petitioner applied for the said post. Accordingly, the examination was conducted and was declared successful treating him as a schedule caste candidate. Accordingly, he joined the post but, subject to verification of his caste. As per records of the Staff Selection Commission, he has claimed to be a member of scheduled caste, thereby he has occupied the seat as a selected candidate. Before joining, he was called upon to fill up attestation form providing information as required therein. Accordingly, he filled up the form on 18.5.1990 (Annexure-5) in which he has given his details and also declared his father's name as Late Nityanand Kumar and, he has specifically stated he does



not belong to schedule caste against column 9 Kha wherein information is required as to whether he belongs to scheduled caste category or not, in answer, he has given the remark as “No” and, thereafter, he has joined the post. The letter dated 30.4.1990 (Annexure-4, Page-108), shows his name as one of the seven candidates belonging to scheduled caste category were recommended for appointment. It is reflected from the last column of first page wherein it has specifically been mentioned that seven candidates, as per advertisement, were recommended from the category of scheduled caste and with respect to unreserved candidate as well as ex-serviceman, endorsement has been made that the Commission would nominate their names as and when available and attached sheet with name of seven candidates under the scheduled caste category giving their seniority wherein the name of the petitioner as serial no.1. The Commission did not recommend the name from the general category, accordingly, the petitioner joined the service. The letter dated 24.9.1990 shows that in the application form of Manoj Kumar, the petitioner, some documents were not available such as matriculation, higher secondary certificate and the caste certificate in support of caste category status was asked to supply. The letter of Manoj Kumar, the petitioner, received on 15.5.1990, declared that he does not



belong to schedule caste category and, hence, the question of submission of certificate does not arise though he has attached the certificate of matriculation. When the Staff Selection Commission could know that he does not belong to the schedule caste category, his recommendation for appointment was withdrawn vide letter dated 1.8.1990 which is in the original record followed by termination letter issued to the petitioner dated 17.2.1993 exercising the power under Sub-Rule 1 of Rule 5 of the Central Services Temporary Rules, 1965. Against that, the petitioner moved before the Central Administrative Tribunal vide O.A. No. 124 of 1993 which was set aside vide order dated 28.9.1993 (Annexure-9) and the ground has been assigned that it is not a simple termination letter, it requires holding of an enquiry. A charge-sheet was issued against the petitioner wherein two charges have been framed, which reads as follows:-

“Article-I

Shri Manoj Kumar, who was appointed as U.D.C. in this department on 9.7.90 against the reserved quota as Scheduled Caste Candidate had acted in a manner which suggest fraud and lack of integrity on his part since he failed to mention correctly his caste status and he misled others to believe that he belonged to scheduled caste by



attaching scheduled caste Certificate which resulted in his appointment against the scheduled caste vacancy.

By the acts aforesaid, Shri Manoj Kumar is alleged to have failed to main absolute integrity as well as acted in a manner unbecoming of Govt. servant in contravention of Rule 3(1)(i) & (iii) of the CCS (Conduct) Rules, 1964.

Article-II

Shri Manoj Kumar, U.D.C. at the time of filling up the attestation form as well as at the time of joining failed to submit caste certificate. Instead of submitting the caste certificate Shri Manoj Kumar, Specifically mentioned in the attestation form that he was not a SC/ST candidate. Thus he misled others to believe that he is not a scheduled caste candidate but a general candidate at the time of his joining this department.

By the act aforesaid Shri Manoj Kumar, U.D.C. is alleged to have failed to maintain absolute integrity as well as acted in a manner unbecoming of Govt. servant in contravention of Rule 3(1)(i) & (iii) of the CCS (Conduct) Rules, 1964.”



After holding the enquiry, a final order dated 4.5.1998 was passed by the Additional Commissioner, P & V Central Excise, Patna, being the disciplinary authority, exercising the power under Rule 12 of the CCS (CCA) Rules which was affirmed by the Commissioner, Central Excise, Patna, being the appellate authority vide order dated 30.7.1998. Against that, the petitioner again moved before the Administrative Tribunal in O.A. No. 598 of 1999 which was allowed and the order of dismissal was set aside vide order dated 3.6.2005 (Annexure 18). The matter was again remanded back to the disciplinary authority to proceed from the stage of making available the copy of the report of the enquiry officer along with the note of disagreement within the fortnight of receipt of the order and it was left to discretion on the disciplinary authority, either to reinstate the petitioner or keep him under the deemed suspension for the period from the date of removal and after the conclusion of the proceeding, the authority would decide in what manner, the period of suspension will be treated. It is relevant to state that the enquiry officer has submitted the enquiry report dated 22.9.1996 (Annexure-12) in favor of the petitioner which was placed before the enquiry officer and he found certain lacuna in the enquiry and again asked the enquiry officer to hold a fresh enquiry on several



issues mentioned in the order dated 12.9.1997 (Annexure-14), the issues were raised to hold a fresh enquiry, whereafter, again the enquiry officer submitted second enquiry report dated 16.12.1997 (Annexure-15) and he has given his own finding in favour of the present petitioner. The disciplinary authority disagreed with the findings recorded by the enquiry officer and he has given note of disagreement giving his own 10 reasoning why he is differing with the enquiry report, whereafter, the order punishment was inflicted upon him. As we have already stated that the Tribunal has found certain lacuna in the procedural part of warning remanded back the matter again for fresh consideration and, accordingly, the authority has supplied the copy of the entire document relating to enquiry, proceeded with the matter and passed the final order of dismissal from service.

Against the order of remand, the petitioner came before this Court in CWJC No. 12101 of 2005 but, during pendency of this writ application, the final order was passed by the authority pursuant to the remand order which was again affirmed by the appellate authority. On that account, this Court vide order dated 7.2.2007 had given liberty to the petitioner to challenge the order before the Central Administrative Tribunal and, accordingly, again the petitioner challenged in OA No. 545 of 2007 and vide order



dated 21.12.2012, the final order has been passed thereby dismissed the application against the petitioner which is under challenge in this writ application.

In the present case, the issue is pertinent to be looked into as to whether the petitioner has applied under the category of schedule caste or being a general category candidate as the petitioner in the later stage has specifically stated that he had never applied under the scheduled caste category but, wrongly he has been treated as such, rather being general candidate, has been appointed under that category and, for the fault of the Commission, he cannot be made to suffer.

In contra, Mr. S.D. Sanjay, learned Additional Solicitor General of India has submitted the original records for perusal, which has been maintained in due course of business, itself shows that certain manipulation has been made in the office of the Commission itself as the records, maintained in the office suggests that he had applied as a scheduled caste candidate. From the application form, there are certain remarks are necessary to be examined for verifying his claim as to whether he had applied under general category candidate or contra under the category of scheduled caste. Firstly, at the top of the application in the left side, an entry has been made, as for scheduled caste candidate, no



fee was paid by the petitioner as fee was not to be taken from the scheduled caste, he was not supposed to give any fee. Another mark in the application form, he has shown that in 3(c), a pasting of paper has been made where his category has been recorded as scheduled caste (sc) and therein his roll number is also embossed. His roll number has also been embossed at two places, one from the upper side and just below, normally, the roll number will be at singular place. In entry no. 6(a), information is required to be furnished, do you belong to any reserved category, if answer is 'Yes' then indicate the category. He has given the tick mark in option scheduled caste. Further he has also drawn attention of this Court, making submission, mischievously in item no.10, in place of his father, he has given the name of his purported guardian as Jagda Nand Kumar and profession has been shown as cultivation and also brought to the notice that he had sent his caste certificate issued by the District Welfare Officer, Bhagalpur wherein it has been specifically mentioned that, the petitioner, Manoj Kumar is a candidate of scheduled caste but, in this certificate, he has shown himself the son of Jagda Nand Kumar. So, submission is that, the twist has been in caste certificate that in place of guardian, now Jagda Nand Kumar has become his father and his sub-caste has also been shown to be Pasi. The scrutiny of application form was



made by the Staff Selection Commission, from where it appears that in the column 6(ii) category, the authority has ticked the column as scheduled caste and, thereafter, below, the statement is that whether the claim is supported by copies of relevant certificate from the competent authority, it has been mentioned as "Yes". A certificate is also found in the original record wherein his age has been recorded as 1.1.1963 and the name of his father is Nitya Nand Kumar. So, in this manner, the Commission has treated him as a scheduled caste candidate and also from the attestation form, he has declared his father name as Nitya Nand Kumar not his guardian as Jagda Nand Kumar.

Learned counsel for the Union of India has also brought to the notice of this Court that the recommendation of the petitioner was made under the category of scheduled caste as only seven candidates were recommended for the appointment under that category only, inasmuch as, no candidate from general category was recommended for the recruitment.

Per contra, learned counsel for the petitioner has submitted that the claim of the respondent that he has applied for the scheduled caste candidate is completely, misdirected, misconceived and having no truth in this submission. It will be clear from the fact that at the relevant time, the candidate was



required to deposit Rs. 28 and column no.3 shows that he has deposited Rs. 28 through postal order as other entries have been scored. The column 6(a)(1) shows that he has tick marked in the box 'no' opposite to the statement, 'Do you belong to reserve category. Further submitted 6(c) wherein information is required under that column that are you seeking any age relaxation, he has ticked as "no" and, at the same time, he has also stated that entry in column 3(b) of the application form regarding mode of payment in which the petitioner has struck CRFS, DD but, mentioned IPO. Further drawn the memorandum dated 21.6.1991 (Annexure-7) which is related to examination with respect to next promotion of Lower Division Clerk to the Upper Division Clerk as well as the departmental examination for confirmation to Upper Division Clerk wherein the list of examinee has been shown in which two persons have been shown as a scheduled castes candidate whereas the present petitioner has been shown to be general category candidate for confirmation. When the matter was taken up, this Court passed detailed order vide order dated 23.3.2015 wherein the Court has said that if the petitioner being a general category candidate and he was selected in reserved category caste by mistake or otherwise, the petitioner cannot claim his right to continue because the petitioner had not even applied nor could



have applied for that post but, the petitioner had applied for and had been selected as a general category candidate then the confusion as created is of no avail. In that circumstances, the onus is entirely upon the Staff Selection Commission to produce paper as to under what category did the petitioner had applied and under what category, he was considered by the Staff Selection Commission, was the advertisement for general and reserved category candidate, in general category candidate, where did the petitioner stand. These are the questions to be answered by the Staff Selection Commission. The case was finally heard and decided in favour of the petitioner vide judgment and order dated 14.11.2015, thereby this Court has set aside the order of termination and the order of affirmance passed by the appellate authority including the order passed by the Central Administrative Tribunal. Against that, the Union of India had moved before the Hon'ble Apex Court in SLP (Civil) Diary No. 6718 of 2017 which was dismissed vide order dated 8.8.2017 on the ground of delay, whereafter, the Union of India came back and filed review application being C. Rev. No. 418 of 2017 and the case was heard and finally this Court vide order dated 23.4.2018 reviewed the earlier order and again treated to be a fresh writ application for the decision.



This Court vide order dated 20.8.2015 has directed the Staff Selection Commission to furnish the details with respect to petitioner, his position in the merit list, not only the Patna Zone but, Pan India but, in the supplementary affidavit filed by the Staff Selection Commission wherein the list attached is confined to Central Zone, Head Office at Allahabad. No merit list with regard to the Pan India has been brought on record for perusal. The Central zone list reflects the merit position of the petitioner. The paragraph no.7 of the supplementary affidavit shows analysis of result, wherein it has been mentioned that the last selected candidate of un-reserved category in Bihar Zone-6 has 236 marks. The last selected candidate of reserved category in the Bihar Zone in reserved category is 41.19, the mark obtained by the petitioner is 153 and, as such, he was placed in the reserved list at rank no. RL1-00073 against the scheduled caste category. The learned counsel for the petitioner has submitted that they have not carried out the order in letter and spirit as the Commission has restricted his affidavit along with the list with regard to Allahabad zone.

The submission and counter submissions have been made by both sides in their support with respect to their respective claim pertaining to selection of candidates by zone-wise or country-wise. It appears from the advertisement that the



examination was conducted on the zone-wise, as per Clause-18 of the advertisement, a candidate was to elect only one of the center mentioned in column-1 of the table below, no change in center would ordinarily be allowed in favour of a candidate and must submit the application only to address mentioned therein. While appointment will be made initially zone-wise, after entry into the service, the candidates are/were liable to be transferred to any part of India on the post of Auditor in defence, accounts department, candidates are also liable to be posted for field services in any part of India as well as outside India. In the table attached to the advertisement, in serial no.6 wherein the Bihar has been shown, centers have been mentioned Bhagalpur, Chaibasa, Darbhanga, Hazaribagh, Gaya. Patna and Ranchi and the Regional Director SCC has been shown to be Allahabad, Uttar Pradesh.

Both the counsels have tried their best to substantiate and prove their respective claims. As per petitioner, the Commission should have been brought all India merit list for perusal and consideration and, thereafter, it has to be ascertained as to whether the petitioner could be accommodated as a general candidate in any part of India whereas learned counsel for the Union of India has submitted that the select list was prepared made zone-wise, as it is related to the Central Zone and will be confined



its recruitment in the zone itself and the recruitment has been made on different dates for the different zone, recruitment and examination was not conducted on single day at same time rather on different dates in different transaction. The advertisement, it itself shows that he has to choose one center, itself indicates that he has to confined to single zone only, he cannot travel outside the zone and, accordingly, the Staff Selection Commission has submitted that the seniority position of the petitioner which is not under challenge nor its correctness has been challenged by the learned counsel for the petitioner.

It has been submitted by the counsel for the petitioner that he has always claimed to be general category candidate which is supported by the application form supported by declaration made by him and if they have with the open eyes accepted the application form and appointed the petitioner as general candidate, in that circumstances, he cannot turn around and say that he was not appointed under the general category. In support of his submission, learned counsel for the petitioner has placed reliance on the judgment passed in the case of Shri Krishan Vs. The Kurukshetra University reported in AIR 1976 SC 376, Para-7 whereas learned counsel for the Union of India has submitted that if the petitioner by manipulation has entered into the service as a



scheduled caste candidate, later on, it transpires that he does not belong to that category, he cannot claim a right over the said post and rightly his candidature was withdrawn and led to removal and dismissal of the petitioner. In support of his submission, he has placed reliance on the judgment passed in the case of B.H. Khawas Vs. Union of India & Ors. reported in 2016 (8) SCC 715, Bhaurao Dagdu Paralkar Vs. State of Maharashtra & Ors. reported in 2005 (7) SCC 605, Union of India & Ors. Vs. M. Bhaskaran reported in 1995 SCC Supl. (4) 100 and Rakesh Kumar Sharma Vs. Govt. of NCT of Delhi & Ors. reported in (2013) 11 SCC 58.

Mr. S.D. Sanjay, learned Additional Solicitor General has produced a copy of the First Information Report showing that in the present matter, a CBI case has been lodged which is pending before the Patna CBI Court bearing RC No. 0232019A205 dated 1.3.2019 which is kept on record.

In the present case, the only issue has to be decided as to whether the petitioner has/had applied for the scheduled category or in a general category. If the answer goes in favor of the petitioner that he has applied for the general category candidate and was selected as a general category, and his position is to be verified from the merit list, if it is found that he has secured the marks more than that of the last candidate selected in the General



Category, in such circumstances, certainly the order passed by the authority concerned will be bad but, if the Court arrives to a finding otherwise, then certainly he will have to satisfy in what manner the order passed by the authorities are bad in law..

So, in the present case, the issue as to whether the petitioner has applied against the reserved category or a general category and, inasmuch as, in what manner the petitioner is to be treated as to whether the petitioner is to be treated as a candidate of reserved category or general category and his position is to be verified from the merit list which has been attached with the supplementary affidavit of Staff Selection Commission.

In the present case, learned counsel for the petitioner has placed reliance on the judgment in the case of Shri Krishan Vs. The Kurukshetra University reported in AIR 1976 SC 376 wherein the Hon'ble Apex Court has held that when the fact of fraud as has allegedly been committed, is in a position to discover the truth by due diligence, fraud cannot be said to have been proved. This judgment has been given on the different facts and situation as in this case, the fact was that Sri Krishan, the appellant was a teacher in the Government High School, Dumarkha in the State of Haryana. The University of Kurukshetra was running the law classes for three years course and had extended the facility to



persons who were in service to attend the evening classes and complete the three-years course in that manner. The appellant decided to take the benefit of the facility and joined the LL.B. Part-I classes in the year 1971. As per University Statute, a student of the faculty of Law was given the option to clear certain subjects in which he may have failed at one of the examination before completing the three years course. The students were to appear in six papers each year and in April, 1972, the appellant appeared in the annual examination of Part-I but failed in three subjects. Subsequently, he was promoted to Part-II. Accordingly, he joined in the year 1972. Under the University Statute, the appellant was to appear in Part-II examination in the year 1973 for which the appellant applied for his roll number to the University to reappear in the subjects in which he was declared failed but, he was refused the permission. The annual examination of Part-II was to be held in May, 1973. Sri Krishan approached the University authority for granting him the provisional permission to appear subject to getting permission from his employer to attend the Law Faculty. During that period, Sri Krishan was prosecuted for offence under Section 376, 366 and 363 of the Indian Penal Code and was suspended but, ultimately, he was acquitted, reinstated in service. He applied on May 18, 1973 and also in April, 1973 for his roll



number to clear the subjects as the stigma of the criminal case had been completely removed. Sri Krishan approached to the University in May, 1973 giving undertaking that if he was not able to get requisite permission from his employer to join the law classes, he would abide by any order that the University may pass. On the basis of this undertaking, he was allowed to appear in Part-II examination in May, 1973. In June, 1973, Sri Krishan wrote a letter to the University authority that the condition on which he was to get the permission was not at all necessary and that his result may now be announced. In June, 1973, the University informed Sri Krishan that since his percentage was short in Part-I, his candidature stood canceled. The correspondence started between Sri Krishan and University authorities but, the University authorities refused to take the appellant to LL.B. Part-III Class. An appeal was filed in September, 1973 to the Vice Chancellor of the University which was rejected in November, 1973 whereafter he approached to the High Court making a prayer for certiorari to quash the order of the University canceling the candidature of the appellant but, the High Court rejected the petition in limine. Accordingly, the matter reached to the Hon'ble Apex Court. In that context, the Hon'ble Apex Court has held that according to the procedure prevalent in the College, the application was forwarded



by the Head of Department in December preceding the year when the examination was held. The Hon'ble Apex Court has held that the admission form of Sri Krishan must have been forwarded in December, 1971 whereas the examination was to take place in April/May, 1972. It was obvious that during the period of 4 to 5 months, it was the duty of the University authorities to scrutinize the form to find out whether it was in order. Equally, it was the duty of the Head of the Department of Law before submitting the form to the University to see that the form complied with all the requirement. If neither the Head of the Department nor the University authorities took care to scrutinize the admission form, then the question of appellant committing a fraud did not arise. It is well settled that when a person on whom fraud is alleged to have been committed, is in a position to discover the truth by due diligence, fraud is not proved. It was neither a case of *suggestio falsi* or *suppressio veri*. The appellant never wrote to the University authority that he had attended the prescribed number of lecturers, there was ample time and opportunity for the University authorities to have found out the defect. In these circumstances, therefore, if the University authorities acquiesced the infirmities which the admission form contained and allowed Sri Krishan to appear in Part-I Examination in April, 1972, by the force of the



University Statute, the University had no authority to withdraw the candidature of the appellant. So, the Hon'ble Apex Court has held that when Sri Krishan had not suppressed any fact and the declaration made by him was correct in the application form which could have been verified and if the University authorities failed to detect the infirmity, in such circumstances, he cannot be said to have committed fraud.

On the strength of the aforesaid judgment, learned counsel for the petitioner submits that as per the application form, he has specifically stated that he does not belong to the scheduled caste. Accordingly, he has paid Rs. 28/- which was payable by the general candidate and, as such, if the authorities failed to verify his caste status, he cannot be attributed to have committed fraud and wrongly and surreptitiously secured his place, is not sustainable in law and, on that basis, he cannot be dismissed from service.

At the later stage, the applicability of judgment will be analyzed in context of the present case at the later stage. We would first examine those judgments cited by the Union of India for the purpose as to whether he can be granted the relief sought for by the appellant. The first judgment has been cited by the learned counsel for the Union of India is the judgment passed in the case of Union of India & Ors. Vs. M. Bhaskaran reported in 1995 SCC



Supl. (4) 100 in which M. Bhaskaran has obtained the railway service on the basis of bogus and forged casual labourer service card and continued in railway service. When such fraud was detected by the Railway authorities, he was removed from service. Against that, he has approached to the Central Administrative Tribunal, Ernakulam Bench which has taken a view that the alleged misconduct does not fall within the scope of Rule 3(1)(i) and (iii) of Railway Services (Conduct) Rules, 1966. In that view of the matter, his removal was set aside, was granted the relief of reinstatement along with the consequential benefit. The Hon'ble Apex Court has taken a view, it was not necessary to give opinion on the applicability of the Rule but, arrived to a finding that he has obtained the employment in Railway service may be of casual nature by placing reliance upon the forged and bogus casual labor service card, led to a finding that M. Bhaskaran has committed misrepresentation and fraud, perpetrated the employer while getting employment in the railway service and, as such, snatched the employment which would not have been made available to him if he would not have been armed with such a bogus and forged Labour Service Card. Further held that once the fraud of respondents in getting such employment was detected whereupon he was called upon to have his say and after receipt of answer,



rightly he has been terminated from service. Thereby, the Court has set aside the order of the Tribunal. The Court further held that by passage of time, a fraudulent practice would not get any sanctity and no equity and estoppel in his favour. Further taken the view, that it was not a matter between the appointing authority and the concerned appointee, rather aggrieved are all those who had similar marks or better qualification than the appointee or appointees but, did not apply for the said post as they were not possessing such qualification.

In another judgment passed in the case of Bhaurao Dagdu Paralkar Vs. State of Maharashtra & Ors. reported in 2005 (7) SCC 605, the public interest litigation was filed challenging the grant of benefit of some persons who have obtained the benefit of Freedom Fighter Pension claiming to be freedom fighter. The main allegation was that the persons who have been granted the benefit were either the persons below ten years or certain persons were toddler. On the basis that application, a Committee was constituted which submitted report from which it reflected that in 26 cases, the persons were less than 10 years of age when the freedom struggle was fought and the Committee gave a finding that wrongly they have been provided the benefit under the Freedom Fighter Pension Scheme. The High Court has



rejected the findings of the enquiry committee, the matter was carried to the Apex Court where the Hon'ble Apex Court has held, as fraud is an act of deliberate deception with the design of securing the something by taking unfair and advantage on another. It is a deception in order to gain by another's loss. It is a teaching intended to get an advantage. The fraud vitiates every solemn act. Fraud and justice cannot dwell together. Fraud is a conduct either by letter or words, which induces the other person of authority to take a definite determinative stand as a response to the conduct of the former either by words or letter and it has been held that the deceptive act of the person for the purpose of obtaining the benefit in deceitful manner causing injury to others completely vitiates all previous action arising from either in the shape of benefit or otherwise. It will be relevant to quote paragraph nos. 9 to 16 of the aforesaid judgment which reads as follows:-

“9. By "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill will towards the other is immaterial. The expression "fraud" involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include and any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always call loss or detriment to the deceived. Even in those rare cases where there is a benefit or



advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. (See Dr. Vimla v. Delhi Administration (1963 Supp. 2 SCR 585) and Indian Bank v. Satyam Febres (India) Pvt. Ltd. (1996 (5) SCC 550).

10. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See S.P. Changalvaraya Naidu v. Jagannath (1994 (1) SCC 1).

11. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (See Ram Chandra Singh v. Savitri Devi and Ors. (2003 (8) SCC 319).



12. In *Shrisht Dhawan v. Shaw Bros.*, [(1992) 1 SCC 534], it was observed as follows; (SCC p. 553, para 20)

"Fraud" and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary "fraud" in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, "fraud" is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Indian Contract Act, 1872 defines "fraud" as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact, which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent



must be of fact with knowledge that it was false. In a leading English case i.e. Derry and Ors. v. Peek (1886-90) All ER 1 what constitutes "fraud" was described thus: (All ER p. 22 B-C)

"fraud" is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false".

But "fraud" in public law is not the same as "fraud" in private law. Nor can the ingredients, which establish "fraud" in commercial transaction, be of assistance in determining fraud in Administrative Law. It has been aptly observed by Lord Bridge in Khawaja v. Secretary of State for Home Deptt. (1983) 1 All ER 765, that it is dangerous to introduce maxims of common law as to effect of fraud while determining fraud in relation of statutory law. "Fraud" in relation to statute must be a colourable transaction to evade the provisions of a statute.

"If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope. Present day concept of fraud on statute has veered round abuse of power or mala fide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administration law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. The



misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which the power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Even in commercial transactions non-disclosure of every fact does not vitiate the agreement. "In a contract every person must look for himself and ensures that he acquires the information necessary to avoid bad bargain. In public law the duty is not to deceive. (See Shrisht Dhawan (Smt.) v. M/s. Shaw Brothers, (1992 (1) SCC 534).

13. This aspect of the matter has been considered recently by this Court in Roshan Deen v. Preeti Lal (2002 (1) SCC 100) Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education (2003 (8) SCC 311), Ram Chandra Singh's case (supra) and Ashok Leyland Ltd. v. State of T.N. and Another (2004 (3) SCC 1).

14. Suppression of a material document would also amount to a fraud on the court. (see Gowrishankar v. Joshi Amba Shankar Family Trust (1996 (3) SCC 310) and S.P. Chengalvaraya Naidu's case (supra).

15. "Fraud" is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in Ram Preeti Yadav's case (supra).

16. In Lazarus Estate Ltd. v. Beasley (1956) 1 QB 702, Lord Denning observed at pages 712 & 713: (All ER p. 345 C)

"No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything." In the same judgment Lord Parker LJ



observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. (page 722) These aspects were recently highlighted in the State of Andhra Pradesh and Anr. v. T. Suryachandr Rao (2005 (5) SCALE 621).”

So, the judgment is in line that if a person has obtained the benefit by suppressing the material fact or by deception to claim the benefit under certain head though he does not come under the purview of that benefit, later on detected, vitiates all the solemn acts done in pursuance of the fraudulent act of the parties.

Another judgment has been relied upon in the case of Rakesh Kumar Sharma Vs. Govt. of NCT of Delhi & Ors. reported in (2013) 11 SCC 58. In that case, an advertisement was published for appointment to the post of Trained Graduate Teachers (TGT) for various courses including TGT (Sanskrit) and the last date for submission of the application was 29.10.2007. One of the essential qualification for the post was B.Ed. Degree. Sri Rakesh Kumar Sharma claimed to be holding B.Ed. degree for holding the appointment but, later on, it was found that on the last date of filing of the application form, he was not holding the same. As he has obtained the B.Ed. degree after the cut-off date, led to termination of his services. The Hon'ble Apex Court has affirmed the action of the employer holding that he could not have been appointed as on the cut-off date, he was not holding the necessary



qualification which was required for the purpose of appointment as a TGT (Sanskrit) and, on this line, the Hon'ble Apex Court has refused to interfere with the action taken against the employee namely Rakesh Kumar Sharma. This case is not at all relevant to the present case as in the present case, it is not a case that the petitioner was not equipped with the essential qualification. The plea has been taken by the respondents that though he does not belong to the scheduled caste category but, he obtained the same by committing fraud by claiming to be belonging to the scheduled caste (Pasi). So, the aforesaid case does not apply in the present case.

Another judgment relied is in the case of B.H. Khawas Vs. Union of India & Ors. reported in 2016 (8) SCC 715. In that case also, the appointment was secured by claiming to belonging to the schedule tribe community. In this case, the Court has held that his appointment was not final rather it was provisional and it was detected that he does not belong to the Halba community which is notified scheduled tribe in Maharashtra. Accordingly, he was granted the provisional appointment, but, later on, the caste scrutiny committee, after proper verification of the caste certificate, arrived to a finding that he belongs to Koshti caste which is not a scheduled tribe which led to termination before his



services was confirmed. The Hon'ble Apex Court has held that as he was not in a scheduled tribe community, he could not have been appointed. As per the claim of the petitioner, he belongs to Halba which is not correct rather he belongs to Koshti and, on that basis, the Court refused to grant any relief on the plea that he was continuing in service for years together.

Let us examine the present case as to whether action of the authorities requires interference or they have rightly taken action against the petitioner. In the present case, the fact is that the advertisement was published by the Staff Selection Commission for different posts and different departments. In the application form, the entries have been made by the appellant is deceptive in the sense that in item no.3, it has been stated that the fee paid Rs. 28/- only which is both in words and in figure and also in 3(b), it has been mentioned that the payment has been made through I.P.O., in 6a (i), he has stated that he does not belong to reserve category in answer to the question, do you belong to reserve category and, also in 6(c), it has been mentioned that, are you seeking age relaxation, the answer has been given 'No' and 6(d) mentions whether claiming any fee concession, the answer has been given 'No' but, it is not the end of the matter. At top in the left hand side, the entry has been made "No fee" and in 3(c),



sticker has been pasted over which it has been mentioned Scheduled Caste. In 6(a)(ii), he has also ticked in the box of Scheduled Caste and in item no.10, he has not declared the name of his father but, the name of his guardian as Sri Jagda Nand Kumar and occupation has been claimed to be Cultivation.

The original record shows that he has attached the caste certificate as Exhibit-P2 wherein a clear statement has been made that the petitioner belongs to scheduled caste, sub-caste Pasi and here he has declared the name of his father as Jagada Nand Kumar as father whereas in the application form, he has scored the father and shown Jagda Nand Kumar as guardian. After receipt of the same, the Staff Selection Commission scrutinized the application form wherein it appears that he has been shown to be belonging to scheduled caste and also mentions the relevant certificate by the competent authority. In respect of his claim, he has attached the admit card in which his father name has been shown to be Nitya Nand Kumar and the caste category has not been attached. He appeared in the examination at Bhagalpur Center which he had opted. The Clause-18 of the Advertisement reflects that the candidates must select only one of the centers in Column-1 wherein it also mentions that while appointments will be made initially zone-wise, after entry into service, candidates are liable to



be transferred to any part of India. On the post of Auditor in the Defence Accounts Department, the candidates are also liable to be posted for field service in any part of India as well as outside India. Though the Staff Selection Commission has recommended the name of the petitioner but, the letter dated 23.4.1990 (Annexure-3) mentions that certain documents are required for verification which were ticked below and the petitioner was obliged to produce two documents, one of Matriculation Certificate and another SC/ST Certificate in support of his caste category status. In the letter dated 30.4.1990 (Annexure-4), the names of seven persons have been recommended against the vacancy notified in the advertisement under the scheduled caste and scheduled tribe category. The remaining 20 under the general category and ex-serviceman category will be nominated as and when become available and attached the name of the petitioner showing at the top of the list showing his category as scheduled caste.

The letter of appointment is provisional appointment (Annexure-6) and one of the conditions mentioned therein that if any information is found to be incorrect, the departmental proceeding will be initiated. After his joining to the Central Excise Department, he was asked to supply the necessary information in



the nature of attestation form wherein he has given necessary information about his name, father's name and other details required under the different headings and one of the information required was as to whether he belongs to scheduled caste or not. He has stated 'No'. So, learned counsel for the petitioner submits that at different stages, he has made his declaration that he does not belong to scheduled caste. So the action of the department removing the services of the petitioner treating him to be a member of the scheduled caste is completely misdirected, illegal and the Disciplinary Authority and the Appellate Authority has wrongly deviated from the findings recorded by the Enquiry Officer and dismissed him from service.

But, the question would arise that in the application form itself, as stated above, he has declared that he is a scheduled caste candidate, he has also ticked the box of scheduled caste, attached the certificate which was issued by the competent authority claiming belonging to Pasi caste, at the same time, he, in the application, has declared his guardian name as Jagada Nand Kumar as a guardian but, in the attestation form, he has given the name of his guardian as Nitya Nand Kumar and declared that he does not belong to scheduled caste or scheduled tribe caste.



From the supplementary counter affidavit filed by the Staff Selection Commission, in paragraph no.7, it has been stated that last selected candidate of unreserved category in Bihar (Zone-6) has obtained 236 marks and the last selected candidate of unreserved category in Bihar (Zone-6) in the reserved list 41 had obtained 219 marks and the petitioner has obtained 153 marks and was placed under the reserved list at rank 73 as scheduled caste category. So, the marks obtained by him, he could not have been appointed under the unreserved category. Even if presumed that he has applied under the unreserved category, he could not have been appointed but, the records shows that the Staff Selection Commission, at the first instance, has recommended seven names under the scheduled caste and scheduled tribe category in which the name of the petitioner is standing at the top. So, from the records, it appears that he was never treated to be a general category candidate and, in the application form, he, in specific terms, has declared himself to be belonging to scheduled caste and, in the left side, it has been written as no fee has been paid, coupled with the fact of attachment of caste certificate shows his caste as scheduled caste, sub-caste Pasi. In that view of the matter, in no way, can be said that he was appointed under the general category candidate. In any stretch of imagination, he could not have secured



the place in the general category but, making declaration to be belonging to scheduled caste fraudulently and deceitfully, he got one post for himself which could have been given to another person of the scheduled caste category but, being a general category candidate, claiming to be scheduled caste, has obtained the service. It also appears that the petitioner has approached to the Tribunal when he was terminated from service without holding the enquiry and the Tribunal had interfered in the matter and asked the authority to hold an enquiry which was done, the Enquiry Officer submitted the report in favor of the petitioner, again the Disciplinary Authority has directed for fresh enquiry on certain points which was also given in favor of the petitioner by the Enquiry Officer and the Disciplinary Authority has differed with the findings of the Enquiry Officer giving his own reasoning and finally has terminated the services of the petitioner. Though he has approached the Administrative Tribunal again claiming that he was not given the second enquiry report along with the reasons of disagreement which was given to him and, finally, the Disciplinary Authority dismissed the petitioner from service. The order of the Disciplinary Authority has been approved by the Appellate Authority. As has been explained that in the first instance, he approached to the High Court which was allowed, the matter went



to the Hon'ble Apex Court which was dismissed on account of limitation, review application was filed which was allowed and, finally, this stage has come. From the records, it appears that he has committed fraud by claiming to be a scheduled caste category candidate, as in specific term, he has declared to be scheduled caste and, very cunningly, though his father was alive but, he has not given the name of his father in the application rather he has given the name of his guardian as Jagda Nand Kumar, attaching a certificate of caste wherein Jagda Nand Kumar has been shown to be his father. This Court has directed for production of the entire list of selected candidate Pan India but, the Staff Selection Commission has produced the list confining to the Allahabad region showing that he could not be selected as a general candidate. Non-production of the entire list does not in any way helps the petitioner in view of the fact that his selection was/is confined to Central Zone and he cannot be adjusted in any part of India as it will lead to removal of certain candidate who has been selected in due process of his own merit. There cannot be equitable consideration in favour of the petitioner as the command of law is that who claims equity must come with clean hand.

The judgment cited by the petitioner does not apply with the facts of the present case as it was a case of appearance of



examination but, the present matter is securing employment by playing fraud.

In that view of the matter, we do not find any illegality in dismissing the services of the appellant after following the due procedure of law as at every stage, natural justice has been followed. So, this Court does not find any infirmity in the action of the Department.

This writ application is dismissed accordingly.

(Shivaji Pandey, J)

(Anjani Kumar Sharan, J)

rishi/-

AFR/NAFR	NAFR
CAV DATE	03.03.2020
Uploading Date	30.05.2020
Transmission Date	

