

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

Case:- **SWP No. 3497/2014**  
**IA Nos. 352/2015 & 4739/2014**

Mohd. Mahroof, Age 35 years S/o Mohd. Azam .....Appellant(s)/Petitioner(s)  
Khan, R/o Village Ari, Tehsil Mendhar, District  
Poonch.

Through: Mr. M. R. Qureshi, Advocate  
Mr. Haroon Qureshi, Advocate.

**Vs**

1. Union of India through Secretary to Ministry ..... Respondent(s)  
of Home Affairs New Delhi.  
2. Director General CRPF, New Delhi.  
3. Deputy Inspector General of Police,  
CRPF/RAF R. K. Puram, New Delhi.  
4. Commandant 103, BN, RAF/CRPF  
Wazirabad New Delhi-94.  
5. Deputy Commandant RAF/CRPF.103 BN.  
Wazirabad New Delhi-94.

Through: Mr. Eishaan Dadhichi, CGSC.

**Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE**

**ORDER**  
**(12.03.2024)**

**(ORAL)**

**1.** The petitioner in the instant petition filed under Article 226 of the Constitution of India has implored for the following reliefs:

(i) Writ of certiorari so as to quash the order no. P8-10/13-103 dated 25-08-2014 passed by the respondent no. 4 whereby the petitioner has been removed from the service illegally, unconstitutionally and against the provisions of law, praying for setting aside the same, being not sustainable under law which is require to be quashed in the interest of justice after calling the record.

(ii) Writ of mandamus so as to command and direct the respondents to reinstate the petitioner into service with all consequential benefits in the interest of justice.

**(iii) And for issuance of any other appropriate writ, command, direction or order as this Hon'ble Court may deem just and proper in the facts and circumstances of the case.**

**2.** The facts under the cover of which the aforesaid reliefs have been prayed for by the petitioner are that in the month of February, 1998, the petitioner being a surrendered militant came to be recruited as Constable "General Duty" (GD) in the Central Reserve Police Force (for short 'the CRPF') by way of rehabilitation policy issued by the respondent 1.

**3.** It is being stated that the petitioner prior to his appointment have had passed 8<sup>th</sup> class examination from the "Public Education Trust Model School Ari, Poonch" and had also submitted 9<sup>th</sup> pass certificate, though, same was not relevant at the time of his appointment.

**4.** It is being further stated that after rendering 16 years of unblemished service in the Force, an enquiry came to be ordered against the petitioner upon a complaint filed before the respondent 4 herein regarding the educational qualification of the petitioner.

**5.** It is being also stated that the respondents hurriedly did not consider the reply filed by the petitioner to the complaint proceedings compelled the petitioner to approach this Court by way of SWP No. 2296/2014 and the said petition came to be disposed of on 26.08.2014 with a direction to the respondents that before passing any final order based upon the enquiry report, the reply submitted by the petitioner to the show cause notice and the enquiry proceedings be also considered.

6. It is being next stated by the petitioner that despite the order passed by this Court on 26.08.2014 the respondents issued impugned order dated 25.08.2014 removing the petitioner from service. Aggrieved whereof, the petitioner preferred an appeal before the appellate authority on 24.09.2014.

7. The petitioner has challenged the impugned order of his removal from service dated 25.08.2014 *inter alia* on the grounds that the same has been issued in a hasty manner without application of mind against the established procedure of law inasmuch without waiting for the verification from the Police Station, Mendhar pertaining to the certificate of the petitioner and that the impugned order has been passed contrary to law ignoring the 16 years unblemished service rendered by the petitioner as also the fact that the petitioner have had been recruited as Constable on the basis of 8<sup>th</sup> pass certificate alone and 9<sup>th</sup> pass certificate had no relevance and that the respondents did not follow the provisions of the CRPF Act, 1949 and Rule 27 (c) of the CRPF Rules of 1955.

8. **Objections** to the petition have been filed by the respondents opposing the same *inter alia* on the premise that the petitioner was appointed as Constable GD on 17.02.1989 in relaxation of requisite educational qualification 10<sup>th</sup> pass on the basis of 9<sup>th</sup> pass qualification certificate issued by the Principal Government Higher Secondary School, (Boys) Mendhar dated 15.02.1996 bearing Roll No. 113 of Session 1995.

9. It is being next stated that a compliant dated 09.11.2012 came to be made by one Imitiaz Ahmed Khan to the office of Director General CRPF wherein it had been alleged that the petitioner has got recruited in the Force by

producing fake educational certificate of 9<sup>th</sup> pass and that the petitioner is misusing his official position by threatening his co-villagers, whereupon a letter came to be addressed by the respondent 4 to the Principal Government Higher Secondary School (Boys), Mendhar for verification of the certificate produced by the petitioner who in terms of the reply dated 18.03.2013 informed the respondent 4 that the petitioner had never been the student of the Government Higher Secondary School (Boys), Mendhar.

**10.** It is being further stated that the SHO Police Station, Mendhar had also been called upon by the respondent 4 to enquire into the matter in response of which the SHO in terms of letter dated 20.03.2013 intimated as well, that the petitioner had never been the student of Government Higher Secondary School (Boys), Mendhar, but the petitioner had been found to be a student of Government Middle School, Surhoti and had appeared in the 8<sup>th</sup> class examination in Session 1992-93, however, had been declared fail and that he had obtained a School Leaving Certificate from the Headmaster of the said School.

**11.** It is being next stated that upon having received the aforesaid verification from the Principal Government Higher Secondary School (Boys), Mendhar as also the SHO Police Station, Mendhar, a preliminary enquiry was initiated in the matter vide office order dated 01.04.2013 and upon receipt of a report of the said preliminary enquiry dated 15.04.2013, charge against the petitioner was *prima facie* found to be established whereupon the Articles of charge came to be framed against the petitioner by the respondent 4 vide

memorandum 06.05.2013 for having committed misconduct punishable under section 11 (1) of the Act of 1949 read with Rule 27 of the Rules of 1955 for having submitted a fake school discharge certificate of 9<sup>th</sup> pass at the time of recruitment in the Force by concealing the fact of not being 9<sup>th</sup> class pass.

**12.** It is being also stated that the Articles of the charge were served upon the petitioner and was directed to submit his reply within 15 days and consequently an enquiry officer came to be appointed on 04.06.2013 to enquire the charges framed against the petitioner and that during the enquiry, the petitioner produced a duplicate School Leaving Certificate bearing serial No. 1292 dated 19.08.2013 and letter No. HSS/20/M/162 dated 01.06.2013 claimed to have been issued by the Principal Government Higher Secondary School (Boys), Mendhar, however, upon verification the said duplicate certificate as well as the letter was reported to be fake by the Principal of the school.

**13.** It is being further stated that upon completion of the enquiry, the Enquiry Officer submitted the enquiry report on 06.02.2014 holding the charges leveled against the petitioner as proved whereupon the copy of the enquiry report was provided to the petitioner vide letter dated 08.02.2014 with a direction to submit his reply within 15 days, to which the petitioner did not submit any reply, but overstayed leave w.e.f. 03.03.2014 to 05.04.2014 and after reporting back to the duty on 01.06.2013 produced a duplicate School Leaving Certificate dated 19.08.2013 which upon verification was also found to be fake as per the report of the Principal Government Higher Secondary School (Boys), Mendhar and also upon a further verification conducted through Deputy Chief

Education Officer, Poonch Headquarter Mendhar, the said documents are reported to be not genuine.

**14.** It is being further stated that after examining the record of evidence and the report of enquiry, the disciplinary authority in terms of the impugned order removed from the petitioner from service.

**15.** In response to the grounds urged in the petition, the respondents in the reply filed thereto have also stated that the minimum qualification for Constable being matric was prescribed by GSR 72 dated 15.09.1987 and the petitioner was enrolled under the said GSR in the month of Feb, 1998 in relaxation of the rules on the basis of 9<sup>th</sup> class certificate produced by the petitioner. It is being also stated in the reply to the grounds that the procedure prescribed in Rule 27 of the Rules of 1955 has been followed and that the petitioner was given sufficient opportunity to defend himself which he too misused by producing a fake and forged certificate. It is being further stated that the appeal preferred by the petitioner against the order of his removal was decided by the appellate authority rightly and lawfully on 28.11.2014.

**Heard learned counsel for the parties and perused the record.**

**16.** According to learned counsel for the petitioner, the respondents could not have removed the petitioner from service in terms of the impugned order after having appointed him in relaxation of rules overlooking the fact that the petitioner had been appointed on the basis of 8<sup>th</sup> class pass certificate and the 9<sup>th</sup> class certificate produced by him was irrelevant and insignificant even if it is assumed for the sake of arguments, the said certificate was found to be fake.

**17.** On the contrary, the counsel for the respondents while opposing the contentions of learned counsel for the petitioner would submit that the petitioner though came to be appointed in relaxation of the rules yet the petitioner indisputably produced a fake 9<sup>th</sup> class certificate which certificate essentially was a basis for appointing the petitioner in the relaxation of rules.

**18.** Law is no more *res integra* and stands settled that if an appointment has been secured by a person by misrepresentation or on the basis of a forged and fabricated document, such an appointment would be *non est* in the eyes of law and does not create any right in favour of the person so appointed.

It is equally settled position of law that the principles of natural justice are to be followed only in a case where appointment is legally valid as illegal appointment secured on the basis of forged and fabricated documents does not vest any right on the person and fraud vitiates everything. A reference in regard to the aforesaid principles of law to the judgments of the Apex Court passed in case titled as “**Union of India Vs. Dattatray S/o Namdeo Mendhekar and others**” reported in (2008) 4 Supreme Court Cases 612 as also case titled as “**State of Uttar Pradesh and others Vs. Ravindra Kumar Sharma and others**” reported in (2016) 4 Supreme Court Cases 791 wherein at para 8 following has been provided:-

**“8. In [Ram Chandra Singh v. Savitri Devi](#) it was held thus:**

**‘15. .... Fraud as is well known vitiates every solemn act. Fraud and justice never dwell together.**

**16. 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 word or letter.**

17. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.

18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully 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 ensues therefrom although the motive from which the representations proceeded may not have been bad.

23. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous.

25. 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.

26. In [Shrisht Dhawan v. Shaw Bros.](#), it has been held that:

‘20. Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct.’

29. In [Chittaranjan Das v. Durgapore Project Ltd.](#)

‘56. Suppression of a material document which affects the condition of service of the petitioner, would amount to fraud in such matters. Even the principles of natural justice are not required to be complied with in such a situation.

57. It is now well known that a fraud vitiates all solemn acts. Thus, even if the date of birth of the petitioner had been recorded in the service returns on the basis of the certificate produced by the petitioner, the same is not sacrosanct nor the respondent company would be bound thereby.’”

19. Keeping in mind the aforesaid position of law and reverting back to the case in hand, it is not in dispute that the petitioner came to be appointed as Constable (GD) in the Force in relaxation of the rules. The petitioner has not denied to have produced 9<sup>th</sup> class pass certificate at the time of seeking of his recruitment in the Force. The petitioner has consciously produced a fake 9<sup>th</sup> class pass certificate before the respondents at the time of his appointment in



relaxation of rules. The respondents in presence of the said state of affairs though were not required to hold an enquiry against the petitioner before his removal from service, in view of the aforesaid settled position of law that illegal appointments do not vest any right in an employee if same is secured on the basis of forged and fabricated document and that such an appointment is *non est* in the eyes of law and that the principles of natural justice are not attracted in such case yet the respondents have afforded a reasonable opportunity to the petitioner to defend his case in terms of the applicable rules.

**20.** In view of the establishment of fraud having been consciously played and committed by the petitioner at the time of securing appointment in the Force, the 16 years of service rendered by him pales into insignificance, as in law fraud vitiates everything.

**21.** Viewed thus, the petition is liable to be dismissed. Accordingly, petition is **dismissed**.

**22.** The record produced by the learned counsel for the respondents is returned back in the open Court.

**(JAVED IQBAL WANI)**  
**JUDGE**

**JAMMU**  
**12.03.2024**  
*Shivalee*

Whether the order is reportable : Yes  
Whether the order is speaking : Yes