

*Sequeira*

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION*

***WRIT PETITION NO. 3912 OF 2004***

Shri S.B.Rajbhar,  
Adult,  
Residing at Thakarshi Baithi  
Chawl No.3, Room No.16,  
Near Chaina Mills, Seewri,  
Mumbai – 400 015.

.. Petitioner

***Versus***

The Senior Manager,  
Mail Motor Service,  
Department of Posts,  
Worli, Mumbai – 400 018

.. Respondent

Ms.Nazia Shaikh i/b Mr.M.S.Karnik, for the Petitioner.  
None for Respondent.

***CORAM: N.M.Jamdar, J.  
Tuesday 5 January, 2016.***

**Oral Judgment :**

By this petition the Petitioner challenges the Part I and Part II Awards arising out of Reference C.G.I.T No.2/162/99 by the Central Government Industrial Tribunal, Mumbai.

2. The Petitioner was appointed as a Mechanic in Mail Motor Services by the Respondent - Department of Posts. One of the conditions of the appointment was that if any information or

document produced is found to be false, his services would be terminated. In the process of verification of documents, correspondence was entered into with the Headmistress of the School of which the Petitioner had produced a School Leaving Certificate. The Headmistress informed that the said School Leaving Certificate was fake and was never issued. The Petitioner was proceeded with departmentally as his conduct was in breach of Rule 14 of CCS (CCA) Rules of 1965. After the conclusion of the inquiry he was dismissed from services on 30 September 1996.

3. The Petitioner filed a Departmental Appeal which was rejected on 25 February 1997. Thereafter he filed a Revision before concerned authority in Department of Posts, which was also rejected. Thereafter on 19 July 1999, pursuant to the Industrial dispute raised, a Reference was made to the Central Government Industrial Tribunal No.II, Mumbai. The Tribunal, by Part 1 Award dated 6 December 2001, held that the inquiry was fair and proper and findings of Inquiry officer were not perverse. Thereafter in the Part II Award dated 4 June 2003, the Tribunal observed that the action of dismissal of the Petitioner was legal and justified. The Petitioner has challenged these two Awards in the present petition.

4. Ms.Shaikh, the learned counsel for the Petitioner submitted that opportunity was not given to the Petitioner to examine the witness more particularly, the Headmistress who had sent the letter. She submitted that this amounted to breach of principles of natural justice and therefore, the enquiry was not fair and proper.

She also submitted that considering the fact that the Petitioner was appointed in the year 1982 and was proceeded with after period of 10 years, a punishment of dismissal was grossly disproportionate and ought not to have been inflicted.

5. As regards the fairness of the inquiry, charge-sheet was given to the Petitioner on 8 September 1992. The inquiry was held on 26 June 1993, 14 January 1994, 3 February 1994, 19 May 1994, 9 June 1994 and 8 June 1995. Even though the enquiry was commenced on 29 June 1993, an application for examination of witness was given one year thereafter, on 6 September 1994. The Enquiry officer found that this was nothing but delaying tactics and rejected the application. The Tribunal has found that the conduct of the Petitioner was such that he only wanted to delay the inquiry and nothing stopped him from asking for examination of witness earlier. The Petitioner was given chance to produce list of witnesses twice but he did not avail of this opportunity and therefore, he cannot complain of the same. The letter which was sent by the Headmistress was in her official capacity pursuant to an inquiry in verification of the documents by the Respondent-Department of Posts. It is not the case of the Petitioner that the Headmistress had any animosity against him. Even otherwise, nothing stopped the Petitioner from cooperating with the Enquiry officer and asking for the examination of witnesses earlier. The Tribunal has found fault with the conduct of the Petitioner and has held that the enquiry is fair and proper. There is no perversity in this conclusion. The enquiry which was initiated on 8 September 1992 concluded on 31

July 1995 upon submission of the report of Enquiry officer. Full opportunity was given to the Petitioner. Therefore there is no merit in the challenge to the Part I Award.

6. As regards challenge to the Part II Award on the ground of disproportionate punishment, it has to be kept in mind that the finding of the Enquiry Officer was that the Petitioner produced fake certificate to secure entry in public service. The appointment of the Petitioner was on the condition that if any document filed is found to be false the appointment would be terminated. The document was found to be false upon a full-fledged enquiry. Once the entry is established as having been made on the basis of fraud no equities can be claimed more particularly, when the entry is in public service. The Tribunal has not exercised its equitable jurisdiction under Section 11(a) of the Act and merely because sympathetic view can be taken, it is not enough to hold that the exercise of discretion by the Tribunal is perverse to warrant interference in writ jurisdiction. In the circumstances, there is no merit in the challenge to Part II Award as well.

7. Considering the above position, no relief can be granted to the Petitioner. The petition is accordingly **dismissed. Rule discharged.** No order as to costs.

*(N.M.Jamdar, J.)*