

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (S) No. 1422 of 2016

Shri Paritosh Kumar Rai, aged about 32 years, son of Shri Saroj Kumar Rai, resident of Railway Quarter No. DS/1/20-C, Near Children Park, Bokaro Steel City, P.O. & P.S.-Town and District-Bokaro

... .. Petitioner

Versus

1. The Union of India through Ministry of Railways, represented through Secretary, Rail Bhawan, New Delhi-110001
2. The General Manager, South East Central Railway, Zone Bilaspur, PIN No. 495004
3. The Senior Divisional Personnel Officer, South East Central Railway, Rai Division, Raipur, Chhatisgarh, 492008
4. The Divisional Railway Manager (P), Raipur-492008
5. The Assistant Area Manager, South Eastern Railway, Bokaro Steel City, P.O. and P.S. Town and District-Bokaro

... .. Respondents

**CORAM: HON'BLE MR.JUSTICE APARESH KUMAR SINGH
HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY**

For the Petitioner	: Mrs. M.M. Pal, Senior Advocate Ms. Mahua Palit, Advocate Ms. Aparajita Sinha, Advocate
For the Respondents	: Mr. Mahesh Tewari, Advocate

Through Video Conferencing

C.A.V. On 05/10/2020

Pronounced on 04/02/2021

Per Anubha Rawat Choudhary, J.

1. Heard Mrs. M.M. Pal, learned senior counsel appearing on behalf of the petitioner along with Ms. Mahua Palit and Ms. Aparajita Sinha, Advocate.
2. Heard Mr. Mahesh Tewari, learned counsel appearing on behalf of the respondents.
3. This writ petition has been filed challenging the judgement dated 9th December, 2015, passed in O.A. No. 260/2012(R) (Annexure-13) by the learned Central Administrative Tribunal, Circuit Bench, at Ranchi, whereby O.A. filed by the petitioner has been dismissed.
The O.A was filed by the petitioner against the order dated

13.11.2012 (Annexure-10) as well as the order dated 26.11.2012 (Annexure-12) whereby the service of the petitioner has been terminated. The petitioner has also prayed for a direction upon the respondents to reinstate the petitioner with back wages to his original post as consequential relief.

Arguments of the Petitioner.

4. It is submitted by the learned senior counsel for the petitioner that the General Manager of Railways have discretionary power to engage substitute in railways against Group-D post in terms of circular dated 04.11.1992 (Annexure-2) and amongst other, the said circular provides that the new appointment of new face as substitute should be made only with prior approval of the General Manager.
5. It has been argued by the learned senior counsel for the petitioner that the petitioner, being an intermediate by qualification and a sports person (football player), applied vide several applications before the General Manager, East Central Railway, for consideration of his candidature for employment in Group-D post and his candidature was considered. Accordingly, the petitioner was offered temporary employment in Group-D post in the scale of Rs. 2550-3200 vide order dated 06.11.2006 (Annexure-3) issued by the Assistant Divisional Personnel Officer, South East Central Railway, Raipur. It is the case of the petitioner that the appointment on temporary basis was issued to the petitioner on the basis of C.P.O. /BSP's letter dated 03.11.2006 as is apparent from letter of appointment itself. After medical examination, the petitioner was allowed to join his post at Raipur vide an order dated 17.11.2006 (Annexure-4). The petitioner along with another namely Abhijit Dutta was sent for initial training and after completion of training the petitioner along with two others namely Abhijit Dutta and Kaushik Ghosh were spared for posting vide order dated 18.12.2006 (Annexure-5).

6. It is the case of the petitioner that all the three new recruits including the petitioner were posted against the direct recruitment quota vide order dated 02.01.2007 (Annexure-6) issued by the Assistant Personal Officer (Cadre) Raipur for senior D.P.O./Raipur wherein it was categorically mentioned that the candidates named in part-A have been approved by the GM/SECR/BSP for engagement as Substitute Group-D in the scale of Rs. 2550-3200 (RSRP) against direct recruitment quota vide CPO/SECR/BSP's letter dated 03.11.2006 and on successful completion of safety training course, they were posted as sub porter at the station mentioned therein.

7. Further case of the petitioner is that the petitioner along with others were performing their duties in the post of sub porter and they were issued letter dated 14.05.2007 (Annexure-7) by the Assistant Personal Officer, at Raipur and were directed to appear on 16.05.2007 for their screening for regular absorption of substitute helper in the scale of 2550-3200 and upon appearing, vide order dated 19.06.2007 (Annexure-8) the petitioner was declared suitable by the duly constituted screening committee and was regularized in his service w.e.f. 30.05.2007.

Thereafter the petitioner made an application for mutual transfer which was accepted vide office order dated 05.06.2008 and the petitioner was transferred from Raipur Division of South East Central Railway, to Aadra Division of South Eastern Railway upon mutual transfer and he joined the post at Pundag, Ranchi. He was again transferred from Pundag to Bokaro Steel city and he joined Bokaro on 02.01.2009. The specific case of the petitioner is that right from his initial appointment, his work was throughout found satisfactory and there was no complain against him.

8. However, the petitioner was directed to attend the office of the Vigilance on 01.07.2007 in a vigilance investigation. A

letter dated 21.06.2011 (Annexure-9) issued by the Assistant Vigilance Officer (Personnel) was served upon the petitioner. The Senior Divisional Operational Manager was requested to spare the petitioner to appear with his original certificates in connection with ongoing vigilance investigation and accordingly the petitioner was spared and he appeared in the chamber at Bilaspur on 01.07.2011.

It is submitted that after lapse of one year and four months, the petitioner was served with notice for termination dated 13.11.2012 (Annexure-10) issued by the Assistant Area Manager/South Eastern Railway whereby the petitioner was informed that after investigation on his engagement/appointment as substitute grade-D Raipur Division, his engagement was found fraudulent as grave lacunae was found in the initial appointment of the petitioner alleging that prior personal approval of the General Manager as per RBE No. 185/92 was not taken and hence the competent authority has decided to take appropriate action to terminate his services with immediate effect.

9. The petitioner immediately submitted a detailed representation dated 21.11.2012 (annexure-11) against the termination dated 13.11.2012 (annexure-10) stating that he was appointed after due selection and only on direction he appeared before the concerned vigilance official at Bilaspur on 01.07.2011 where he was put some questions to which he replied and at that time he was shown some paper having white band of whitener on his name in the list and was tried to acknowledge as un-included. The specific case of the petitioner in his representation was that enquiry so made by the Vigilance Officer was neither impartial nor logical and according to the rules of disciplinary proceedings no copy of the vigilance enquiry details was served upon him. It was submitted in the representation that imposition of termination

can be done only after departmental proceeding as per Disciplinary and Appeal Rules, 1968 after affording an opportunity to the petitioner to defend his case.

10. The grievance of the petitioner is that without considering his representation, the Assistant Area Manager, issued his order of termination dated 26.11.2012 (Annexure-12) stating specifically that his appointment as substitute Group-D was found fraudulent as the initial appointment of any fresh case of substitute on the railway requires prior personal approval of the General Manager as per RBE No. 185/92 [Estt. Sr. No. 189/92] which was not taken in his case and accordingly his appointment was *void ab initio*. The petitioner had challenged the aforesaid orders dated 13.11.2012 and 26.11.2012 before the learned Central Administrative Tribunal, which was numbered as O.A. No. 260 of 2012 (R).

11. It has been argued by the learned senior counsel for the petitioner that the petitioner was regularized in service vide order dated 19.06.2007 as such regular service of the petitioner could not be terminated without any charge sheet and without any departmental proceeding and the impugned action of termination of the petitioner is in contravention of Article 311 (2) of the Constitution of India. For this the petitioner has relied upon judgments passed by the Hon'ble Supreme Court reported in (2016) 8 SCC 471 (*Avtar Singh vs. Union of India & Others*); (2010) 2 SCC 169 (*Kamal Nayan Mishra vs. State of Madhya Pradesh & Others*) and (2008) 1 PLJR 841 (*Ram Krishna Dubey vs. The State of Bihar & Ors.*). The petitioner has reiterated that the petitioner was a regular employee of Railway since 30.05.2007 i.e. the date of his regularization and his services are governed by Railway Service Discipline and Appeal Rules, 1968 and thus his services could be terminated only in the prescribed manner under Railway Service Discipline and Appeal Rules, 1968 i.e. after issuance of charge

sheet and after departmental proceeding, whereas in the present case the petitioner has been removed from his service alleging fraud vide termination order dated 26.11.2012 by way of punishment without any charge sheet and accordingly without any regular departmental proceeding. She submits that allegation of fraud amounts to serious misconduct and same cannot be said to have been proved in the instant case. She also submits that no punishment can be imposed only on the basis of vigilance enquiry report which was conducted at the back of the petitioner and thereby without giving proper opportunity to the petitioner to defend his case and to cross examine the complainant/ witnesses and as such no punishment can be imposed on that basis. The petitioner has also relied upon the judgments passed by the Hon'ble Supreme Court (2013) 4 SCC 301 (*Nirmala J. Jhala vs. State of Gujarat & Another*) and (2011) 6 SCC 376 (*Commissioner of Police, Delhi & Others vs. Jai Bhagwan*) to state that such finding of fraud, without giving proper opportunity to the petitioner to defend himself, cannot be treated as proved.

12. The learned counsel has also submitted that the decisions passed by the Hon'ble Supreme Court and relied upon in the impugned judgement passed by learned tribunal reported in (2003) 8 SCC 311 (*Ram Preeti Yadav versus U.P. Board of High School and Intermediate Education and Others*) and in (2007) 2 SCC 355 (*Hasham Abbas Sayyad vs. Usman Abbas Sayyad & Others*) are not applicable on the facts and circumstances of this case.
13. It has also been stated that the petitioner is out of service since 26.11.2012 and was never gainfully employed in any establishment during this period and as such he is entitled for reinstatement with full back wages and with all consequential benefit. The petitioner has relied upon the judgment passed by the Hon'ble Supreme Court reported in (2013) 10 SCC 324 [*Deepali Gundu Surwase vs. Kranti Junior Adhyapak*]

Mahavidyalya (D. ED.) & Others].

14. The learned counsel submits that the aforesaid aspects of the matter have not been properly considered by the learned Central Administrative Tribunal while dismissing the O.A.

Arguments of the Respondents.

15. The learned counsel for the respondents has submitted that a specific stand was taken by the respondents before learned tribunal that it was clear case of fraudulent appointment planned and devised by one of the Junior Administrative Grade Officer with an oblique motive of providing unjustified employment. According to the respondents, a fake appointment had taken place while processing the appointment of genuine candidates forwarded by headquarter (Chief Personnel Officer, South East Central Railway, Bilaspur) vide letter dated 03.11.2006 containing therein the names of 18 genuine candidates whose candidature were approved by the General Manager, Bilaspur. It was the case of the respondents that apart from the 18 genuine candidates, the name of the petitioner was also fraudulently included for appointment to the post of substitute Group-D at the behest of Sri G. Shety, the then Sr. D.P.O./SEC Railway. The matter was investigated by the Vigilance Department where it was detected that the appointment of the petitioner was secured by illegal and fraudulent means and consequently the appointment of the petitioner was declared void by the competent authority.
16. On the point of natural justice, it was contended that the petitioner was served with the show-cause notice dated 13.11.2012 as to why his services should not be terminated on the above ground. The petitioner had submitted his representation dated 21.11.2012. After careful consideration of the representation and upon going through the facts and circumstances and the records, the competent authority had passed the order dated 26.11.2012, terminating the services of

the petitioner with immediate effect.

17. It was also submitted by the respondents that under the departmental appeal rules (DAR Rules) and in consultation with the Central Vigilance Commission, New Delhi, action has already been taken against the alleged junior administrative grade officer and other officials whose direct involvement was there in the fraudulent appointment of the petitioner.

Arguments of the petitioner in rejoinder.

18. A rejoinder to the counter affidavit was filed on 11.11.2019 wherein it was stated that it is the own admission of the respondents that departmental proceeding was started against Mr. G. Sethy, Sr. DPO Raipur but the result of the departmental proceeding not disclosed which has a direct bearing in this case as against this petitioner it has been specifically alleged that on fraud & with connivance of Mr. Sethy, Sr. DPO Raipur the petitioner was appointment. It has also been stated that as per the information of the petitioner no punishment has been imposed on him in connection with the appointment of the petitioner rather Mr. G. Sethy, Sr. DPO has been promoted to the post of Dy. CPO and now is posted as Dy. CPO/Bhubaneswar East Coast Railway. The learned counsel referred to para 12 to 15 of the said rejoinder.

19. On 03.12.2019 when the present writ petition was taken up, it was submitted that the impugned order of termination dated 26th November, 2012 was passed after regularization of the petitioner vide order dated 19th June, 2007 (Annexure-8) issued under the signature of Assistant Personal Officer for Divisional Railway Manager (P), Raipur and with the approval of the competent authority. It was also submitted that without any disciplinary enquiry, the services of the petitioner has been terminated only after issuance of a show cause by an authority inferior to the competent authority.

Upon this submission, learned counsel for the respondents

were granted time to obtain instruction to respond to the aforesaid submission made on behalf of the petitioner.

20. Pursuant to the order, the respondents submitted before this court a copy of the instruction dated 08.09.2020 issued by the Assistant Personal Officer, II for Senior Divisional Personal Officer, which is kept on record. Consequently, the petitioner filed a rejoinder to the said statement.
21. The petitioner has specifically stated in the rejoinder to the said statement/instruction dated 08.09.2020 that it is a fact that the petitioner being eligible and qualified for his employment group-D substitute applied for the post along with details and certificates (Annexure-1) and after considering his candidature, by a letter dated 06.11.2006 issued by the Assistant Divisional Personal Officer, petitioner was offered employment as substitute Group-D ; he was given the temporary status on and from 17.03.2007 and after screening and found suitable, he was regularized by the order dated 19.06.2007 by the Railway Manager (P) Raipur, with the approval of the competent authority.
22. Learned counsel submits that the original application of the petitioner was dismissed by the impugned order holding that there is clear case of entering into service by playing fraud and that too without any proper authority and therefore the very entry of the petitioner was ipso facto illegal and without any legal basis and it was held that since the show cause was issued to the petitioner, he was given ample opportunity and accordingly no prejudice has been caused to the petitioner.
23. The learned counsel submits that the records of the case shows that the petitioner has been highly prejudiced due to total non-compliance of principles of natural justice and fair play and the termination of the petitioner without any charge sheet and consequently without any departmental proceedings is ex-facie illegal and fit to be set-aside.

Findings of this court

24. The undisputed facts are as under.

- a. The General Manager of Railways have discretionary power to engage substitute in railways against Group-D post in terms of circular dated 04.11.1992 and appointment of a new face as substitute could be made only with prior approval of the General Manager.
- b. A letter of appointment was issued to the petitioner vide order dated 06.11.2006 by the Assistant Divisional Personal Officer, South East Central Railway, Raipur in which reference of letter dated 03.11.2006 was mentioned.
- c. The petitioner completed the training and was declared suitable by the Screening Committee and was regularized with effect from 30.05.2007.
- d. The petitioner appeared before the Assistant Vigilance Officer of the Railways pursuant to letter dated 21.06.2011.
- e. A show cause dated 13.11.2012 was issued mentioning that after investigation on the appointment of the petitioner as substitute Group-D, the engagement/appointment was found fraudulent and accordingly the competent authority had decided to take appropriate action to terminate the service of the petitioner with immediate effect. The only allegation was that the petitioner was appointed without prior personal approval of the General Manager in terms of circular being RBE No. 185/92 and accordingly, the appointment of the petitioner was *ab initio* null and void. The petitioner was called upon to file a representation, if any, regarding the aforesaid within 10 days.
- f. The petitioner immediately submitted a detailed representation dated 21.11.2012 against the show cause

dated 13.11.2012 stating that he was appointed after due selection and only on direction he appeared before the concerned vigilance official at Bilaspur on 01.07.2011 where he was put some questions to which he replied and at that time he was shown some paper having white band of whitener on his name in the list and was tried to acknowledge as un-included. The specific case of the petitioner in his representation was that enquiry so made by the Vigilance Officer was neither impartial nor logical and according to the rules of disciplinary proceedings no copy of the vigilance enquiry details was served upon him. It was submitted in the representation that imposition of termination can be done only after departmental proceeding as per Disciplinary and Appeal Rules, 1968 after affording an opportunity to the petitioner to defend his case.

- g. The representation of the petitioner was rejected vide termination order dated 26.11.2012 reiterating the same allegation as mentioned in the notice dated 13.11.2012 .

25. Admittedly the petitioner has been terminated on the basis of vigilance enquiry and no charge-sheet was issued to the petitioner and accordingly no departmental proceedings were initiated against the petitioner. Admittedly no document was ever issued to the petitioner pursuant to which it was alleged that the appointment of the petitioner was fraudulent in absence of prior personal approval of the General Manager. Admittedly, the petitioner had stated in his representation that during vigilance enquiry he was shown some paper having white band of whitener on his name in the list and was tried to acknowledge as un-included. It was also submitted that imposition of termination can be done only after departmental proceeding as per Disciplinary and Appeal Rules, 1968 after affording an opportunity to the petitioner to defend his case.

26. The specific case of the petitioner is that the allegation of fraud against the petitioner has not been proved and the petitioner could not have been terminated without any departmental proceeding as per Disciplinary and Appeal Rules, 1968 as the petitioner was a confirmed employee of Railways after completion of training and required procedure. Further case is that the petitioner has been highly prejudiced by termination without disciplinary proceedings as he did not have the opportunity to examine the documents relied upon by the respondents and no opportunity to cross examine any of the witness/ complainant has been given.

27. The specific case of the respondents is that the appointment of the petitioner is based on foundation of fraudulent means and therefore the same is *ab initio void* and there was no need to issue charge sheet or conducting regular enquiry in the case of the petitioner as he was not a railway employee on account of fraudulent employment. It has also been pleaded that had the petitioner been a genuine candidate appointed by following the rules, then only being a railway employee, the Disciplinary and Appeal rules, 1968 would have applied and as such the charge sheet would have been issued and regular enquiry would have been conducted.

28. It is further specific case of the respondents that the false appointment was planned and devised by one Junior Administrative Grade Officer with an intention to provide employment to the outside person who was neither an aspirant/candidate applied for the said employment nor his candidature was processed and approved by the competent authority i.e. a General Manager, South East Central Railway, Bilaspur against the General Manager discretion quota for the face of appointment as substitute group-D post.

The respondents have given certain facts in their submission dated 08.09.2020 filed before this court that in the year 2006, a

proposal containing 64 applications was processed by the Headquarter South East Central Railway for engagement/appointment of new face group-D substitutes against General Manager discretion quota and a proposal containing a list of 64 candidates were put up before the General Manager, South East Central Railway, at Bilaspur on 31.10.2006 for obtaining his personal approval and out of 64 candidates, he had approved 62 candidates for appointment/engagement of group-D substitute at South East Central Railway (Annexure-B). After obtaining the approval of the General Manager at Bilaspur the names were immediately forwarded to the Division/ Unit (Annexure-C) and eventually the letter of the Headquarter dated 03.11.2006 containing the name of 18 candidates addressed to DRM/R was received by the said Sri G. Shety and then by Sr. D.P.O./R and they were instructed to issue offer of appointment and other subsequent formalities including medical test, training posting etc. It is the specific case of the respondents that neither the name of the petitioner appeared in the list of 64 candidates who applied for employment in Group-D substitute against General Manager discretion quota, nor his name appeared in 62 candidates approved list wherefrom 18 names of the candidates were forwarded to Raipur Division and in Raipur Division the name of the petitioner was processed for appointment along with 18 candidates by resorting to unfair means under the instruction of said Sri G. Shety which surfaced during the course of vigilance investigation. It has also been mentioned that Sri G. Shety on receipt of the letter from the Headquarter dated 03.11.2006 neither put up the same before the DRM/Raipur nor handed over to the concerned dealing person but called upon the Chief Office Superintendent of recruitment section and showed a list of 19 candidates by including the name of the petitioner and instructed to prepare offer of appointment

letters to 19 candidates by including the name of the petitioner and consequently offer of appointment was issued to all 19 persons including the petitioner and since 19 appointment letters were issued, therefore all the consequential formalities including medical test etc. were completed as routine manner and finally the petitioner was posted as substitute Group-D. Consequently, the petitioner after issuance of show cause was ultimately terminated.

The specific case of the respondents is that it was manifest from the documentary evidence that the case of the petitioner is self proved and that the appointment of the petitioner has been made based on fraudulent means and therefore it did not require any detailed and departmental enquiry.

29. In the present case, it is not in dispute that an appointment letter was issued to the petitioner and it is also not in dispute that the petitioner could have been appointed only after due approval of the General Manager, but the specific case of the respondents is that neither the name of the petitioner was included amongst the 64 candidates whose names were considered for the purposes of appointment by the General Manager nor his name appeared in the list of 62 candidates whose names were ultimately recommended for appointment nor the name of the petitioner figured amongst the 18 candidates who were to be appointed rather the name of the petitioner was inserted as a nineteenth candidate at a later stage at the behest of Sri G. Shetye, the then Sr. D.P.O./SEC Railway against whom the respondents had proceeded departmentally. On the basis of the aforesaid it is submitted that the appointment of the petitioner was fraudulent.

30. I find that in letter of show cause for termination as well as the letter of termination the only allegation is that the candidature of the petitioner was never approved by the General Manager, but the aforesaid detailed facts, as have been mentioned above

were not mentioned. It is further not in dispute that the show cause for termination was based on vigilance enquiry in which the petitioner was neither provided any document relied upon by the respondents nor was entitled to cross examine any witness/complainant.

31.I further find that in the representation pursuant to the show cause, the petitioner had mentioned that when he had appeared for the vigilance enquiry, some documents were shown to him and amongst those documents, the document using whitener was also there to show that the name of the petitioner was not included and that he had demanded copies of the documents which were never furnished. These aspects of the matter have not been dealt with in the impugned order of termination and thus the impugned order of termination is completely non speaking on the points raised by the petitioner in the representation filed pursuant to show cause for termination.

32.I find that on the one hand, the authorities did not put the entire relevant fact regarding non-approval of his name by the General Manager while issuing him the notice for termination, and on the other hand, the petitioner has been deprived of examining the documents on the basis of which such allegation was made. The use of whitener in any document as indicated by the petitioner in his representation, if relied upon by the respondents, could have a serious bearing in the matter and accordingly, the petitioner has been highly prejudiced by non - supply of the relied upon documents and by non-disclosure of the entire materials on the basis of which it was alleged that the name of the petitioner was not approved by the General Manager and accordingly alleged that the appointment of the petitioner was fraudulent.

33.I find that in the rejoinder to the counter-affidavit filed vide affidavit dated 11.11.2019, in response to the statement filed

by the respondents dated 08.09.2020 the petitioner has clearly stated that although a large number of facts in connection with the case have been mentioned, but it does not disclose as to what ultimately happened to Mr. G. Sethy, the then Sr. D.P.O./SEC Railway, at whose behest it has been alleged that a list of 19 candidates by including the name of the petitioner, instead of 18 candidates as approved by the General Manager, was forwarded. In the rejoinder filed by the petitioner vide affidavit dated 11.11.2019, it has been specifically stated that so far as the alleged enquiry proceeding against Sri G. Shety, the then Sr. D.P.O./SEC Railway is concerned, as per the information of the petitioner, no punishment has been imposed on him in connection with the appointment of the petitioner, rather Mr. G. Sethy, Sr. DPO has been promoted to the post of Dy. CPO and now is posted as Dy. CPO/Bhubaneswar East Coast Railway.

34. In the judgement passed by the Hon'ble Supreme Court reported in **(2013) 4 SCC 301 (supra)**, it has held that the preliminary enquiry may be useful only to take a *prima facie* view as to whether there can be some substance in the allegation made against an employee which may warrant a regular enquiry. The Hon'ble Supreme Court has also referred to numerous judicial decisions to observe that a *prima facie* case does not mean a case proved to the hilt. A case can be said to be established if the evidence which is led in support of the case were to be believed, and while determining whether a *prima facie* case had been made out or not, the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence.
35. The Hon'ble Supreme Court in the aforesaid judgement while referring to Constitutional Bench judgments, observed at paragraph Nos. 42 to 48 as under: -

“42. A Constitution Bench of this Court in Amalendu Ghosh v. North Eastern Railway, held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.

43. Similarly in Champaklal Chimanlal Shah v. Union of India a Constitution Bench of this Court while taking a similar view held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India. Preliminary inquiry may be held ex parte, for it is merely for the satisfaction of the Government though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely for the satisfaction of the Government as to whether a regular inquiry must be held. The Court further held as under:

“12. ... There must therefore be no confusion between the two enquiries and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Article 311 that the government servant is entitled to the protection of that article [, nor prior to that].”

44. In Narayan Dattatraya Ramteerthakhar v. State of Maharashtra this Court dealt with the issue and held as under:

“... a preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice of (sic) nor, remains of no consequence.”

(emphasis added)

45. In view of the above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.

46. In Ayaaubkhan Noorkhan Pathan v. State of

Maharashtra this Court while placing reliance upon a large number of earlier judgments held that cross-examination is an integral part of the principles of natural justice, and a statement recorded behind back of a person wherein the delinquent had no opportunity to cross-examine such persons, the same cannot be relied upon.

47. The preliminary enquiry may be useful only to take a prima facie view, as to whether there can be some substance in the allegation made against an employee which may warrant a regular enquiry.

48. A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the case were [to be] believed. While determining whether a prima facie case had been made out or not the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence."

36. I am of the considered view that vigilance enquiry is totally different from a regular departmental enquiry and it is only in the regular departmental enquiry that the delinquent is entitled for cross-examination of the witnesses and compliances of other facets of principles of nature justice. It is not in dispute that the petitioner was not only issued the appointment letter, but was also confirmed after completing all the required formalities and a serious allegation of fraudulent appointment has been made against the petitioner. There is no doubt that an act of fraud vitiates all acts and if proved, would certainly nullify the appointment of the petitioner. However, the allegation of fraud is required to be proved. Admittedly regular departmental proceedings have not been conducted in the present case as no charge-sheet was ever served upon the petitioner. The petitioner was simply issued a show cause notice for termination and an opportunity to file representation against his proposed termination and the petitioner denied the allegations and requested for a regular departmental enquiry. The order of termination does not even deal with the points raised by the petitioner in his representation against the

proposed termination.

37. The learned Tribunal has rejected the requirement of holding a regular departmental enquiry on the ground there is a clear case of entering into the service by playing fraud and that too without any proper authority thereafter relied upon the judgment passed by the Hon'ble Supreme Court in the case reported in **(2003) 8 SCC 311 (supra)** wherein it has been held that once fraud is proved, it will deprive the person of all advantages or benefits obtained thereby and delay in detection or taking action will raise no equities. The learned Tribunal further held that once fraud committed by the petitioner and is detected and proved, the petitioner cannot be protected and he cannot be permitted to reap the benefit of his fraudulent action which he carried out in connivance with some public servants at the helm of affair, thereby depriving genuine job seekers. The learned Tribunal also considered the pronouncement of the Hon'ble Supreme Court that any order which has been obtained by fraud cannot be allowed to stand, even if by a delayed reference when the foundation for the same is alleged fraud and a person who has obtained the appointment by illegitimate means, cannot be permitted to enjoy it when there is a finding that he does not have even a shadow of right to be considered for appointment. In this background, the learned Tribunal dismissed the case of the petitioner in the following words: -

"Fraud is proved in the instant case, as there was false representation and the whole case was manufactured. Since the very entry of the applicant was ipso facto illegal and without any illegal basis, he is not entitled to any protection. Since the show cause notice was issued to the applicant and he was given ample opportunity, no prejudice is caused. Further the applicant has no document to substantiate before this Tribunal and to show that his entry in service was bonafide and legal. Further claim of the respondent that they have proceeded against errant officers for fraudulently manufacturing approval and appointment letter lends support to the claim of the department that very entry of the

applicant was illegal and was the result of a conspiracy coupled with fraudulent action. Since the applicant was the beneficiary, he cannot be permitted to reap the benefit of this fraudulent action in connivance with some unscrupulous public servants. It may be concluded that, in such a case no regular proceeding is required to be initiated as is done in the case of other permanent government servant, entering into service with a genuine appointment process. Hence ordered."

38. I fully agree with the submissions of the learned senior counsel for the petitioner that under the facts of this case the alleged charge of fraudulent appointment cannot be said to have been proved only by vigilance enquiry wherein neither there was any scope for cross-examination of any witness/complainant nor any documents, which formed the basis of the allegation of fraudulent appointment of the petitioner, were referred to in the show cause notice for termination/order of termination nor such documents were served upon the petitioner. Even the point raised by the petitioner in his representation were not considered while passing the order of termination. In the representation the petitioner had also raised a point that even whitener was used on one of the documents shown to him during vigilance enquiry on the basis of which it was alleged that the name of the petitioner was never approved by the General Manager. The charge of fraud which is a serious misconduct, cannot be said to be proved under the facts and circumstances of this case and accordingly the tribunal proceeded on an erroneous premise that the allegation of fraud was proved and consequently dismissed the O.A. In the facts of this case the allegation of fraud, which has been disputed by the petitioner right from the beginning, is required to be proved in course of departmental proceeding under the facts and circumstances of this case.

39. As a cumulative effect of the aforesaid findings, the impugned judgement dated 9th December, 2015, passed in O.A. No. 260/2012 (R) (Annexure-13) by the learned Central

Administrative Tribunal, Circuit Bench, at Ranchi, is hereby set-aside and the impugned order dated 26.11.2012 (Annexure-12), whereby the service of the petitioner has been terminated, is also set-aside.

40. Consequently, the petitioner is reinstated in the services only for the purposes of conducting regular departmental enquiry on the alleged charges. The Authority / Management shall have the liberty to proceed with the disciplinary enquiry by placing the petitioner under suspension. The competent authority of the respondents may issue a charge-sheet within a period of one month from the date of receipt of a copy of this judgment and conclude the proceedings in accordance with law as expeditiously as possible, preferably within a period of 6 months from the date of initiation of departmental proceedings.

41. Depending upon the outcome of disciplinary enquiry, while considering the issue regarding consequential benefits, the Disciplinary Authority may keep into mind the law laid down by the Hon'ble Supreme Court in the case of **R. Vishwanatha Pillai Versus State of Kerala [(2004) 2 SCC 105]** and also **ECIL Versus B. Karunakar (1993) 4 SCC 727**].

42. This writ petition is allowed in the aforesaid terms and to the extent indicated hereinabove.

43. All pending Interlocutory Applications are closed.

(Aparesh Kumar Singh, J.)

I Agree.

(Aparesh Kumar Singh, J.)

(Anubha Rawat Choudhary, J.)