

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: February 22, 2023

+ W.P.(C) 6953/2021, CM APPL. 2152/2023

UNION OF INDIA & ANR.

..... Petitioners

Through: Mr. Chetan Sharma, ASG with
Mr. Anil Soni, CGSC and
Mr. Amit Gupta, Adv. for UOI

versus

CHINTHAPALLY RAJASEKHAR

..... Respondent

Through: Mr. K. K. Rai, Sr. Adv. with
Mr. Vivek Raja, Mr. Kaushik
Peddor, Mr. Anshul Rai and
Ms. Sreoshi Chatterjee, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this writ petition is to an order dated December 2, 2020, passed by the Central Administrative Tribunal, Principal Bench, ('Tribunal', for short) in Original Application No.3421/2019 ('OA', for short) whereby the Tribunal has allowed the OA filed by the respondent herein, thereby setting aside the order of punishment passed against the respondent with a further observation that it shall be open to the Disciplinary Authority to pass a fresh order, keeping in view, the findings and observations in the order. The

Tribunal was of the view that in case the Disciplinary Authority feels that punishment needs to be imposed, it shall be one which does not come in the way of the entitlement of the respondent to be promoted, subject to his otherwise being found fit. It also directed that if any sealed cover was maintained, it shall be opened and consequential steps shall be taken.

2. The facts as noted from the record are that the respondent is an officer of Indian Foreign Service (IFS) of 1990 batch. He earned various promotions while working as Joint Secretary in the Ministry of External Affairs. He was issued a charge memo dated February 23, 2017 alleging that he had a child through a woman, whom he did not legally marry; that he obtained a birth certificate fraudulently from Nagarapalika Parishad, Chandpur, Bijnor, UP in respect of the child; and a passport on the basis of the same. He was also placed under suspension, but was reinstated after sometime.

3. The respondent submitted his reply to the charge memo. The case setup by the respondent in his reply was that he had a child through a woman by name Ms. GG, a Mongolian national through an arrangement of surrogacy and that he did not have any illicit relation with her. He further stated that though he had a birth certificate for the child, from the United States of America ('USA', for short), it became necessary to obtain a birth certificate from an authority in India, for the purpose of obtaining a passport for the surrogate child, and that the same was presented for obtaining passport.

4. It was his case that none of the authorities who issued the certificates, have ever stated that any misrepresentation was made or

fraud was played and that the charges framed against him are without any basis. His case was also that the entire episode is the result of an anonymous letter sent by an employee in a Foreign Embassy, who was dismissed for acts of misconduct, and that the very initiation of the proceedings against him was without any legal or factual basis. Pursuant to the departmental inquiry, the Disciplinary Authority imposed the penalty of reduction to the next lower post for a period of two years, which shall be a bar for promotion of the respondent during such period, with a further direction that on promotion on the expiry of the period of two years, the reduction to the lower post shall not operate to postpone the future increments of pay and that he shall regain his original seniority in the next higher post.

5. The OA was filed with a prayer to declare the entire disciplinary proceedings as illegal and violative of Central Civil Services (Classification, Control and Appeal) Rules, 1965 ('CCS (CCA) Rules', hereinafter) and to quash the charge memo dated February 23, 2017 and the order of punishment dated July 31, 2019. He also made a prayer for promotion, by opening the sealed cover and to extend consequential benefits thereof. In fact, he sought the benefit of the judgment dated March 22, 2018 in OA.30/2018 filed by one Ms. Devyani Khobragade.

6. The case of the respondent before the Tribunal was that he had an unblemished service, spread over several decades and the charge sheet was issued on the basis of an anonymous letter submitted by an indisciplined employee in the Foreign Embassy. As a matter of policy, disciplinary proceedings are not initiated on the basis of anonymous

letters. The proceedings have been initiated against the petitioner only with a motive to deny him promotion, which had become due at the relevant point of time.

7. It was also his case that the child was born out of surrogacy which was very much permissible in the USA at that time and no one connected with the surrogacy expressed any grievance, much less submitted any complaint. It was also his case that the birth certificate of the child was obtained on May 11, 2008 from the State of Illinois, USA. It was for the reason that it would be difficult to get a passport for the child on the basis of such certificate, that he approached the Nagarpalika Panchayat, Chandpur, State of UP and obtained a certificate on May 25, 2005. Hence, it cannot be said that the birth certificate is a fraudulent one, more so when no allegation in that regard has been made. It was also his case that he never had any relation outside his marriage and that the report of the Inquiry Officer is false.

8. That apart, he attacked the advice rendered by the Union Public Service Commission ('UPSC', for short) by stating that it had travelled beyond the scope of the actual charges and has even failed to take into account, the manner in which the proceedings have originated. Further, the subject matter of the charge sheet were in the realm of his personal life and, totally unconnected with the official duties that should not damage his career. In fact, certain "softening clauses" in the order of punishment shows the lack of gravity in the entire issue.

9. The petitioners herein stated that the acts and omissions on the

part of the respondent are very serious in nature and the articles of charge were proved by the Inquiry Officer. He was given full opportunity in the inquiry proceedings and a report of the Inquiry Officer was furnished to him. The reply submitted by the respondent was forwarded to the UPSC which in turn gave its advice and the impugned order was passed, duly taking into account, the said advice. The Tribunal has in paragraphs 14 to 23 held as under:

“14. As observed earlier, though six articles of charge were framed, the broad allegations are two in number. The first and second is about the alleged illicit relationship of the applicant with a woman by name Ganchimeg Gombosuren, who is a wedded one and begetting a child through her. The third is about the obtaining a diplomatic passport on the basis of an alleged fraudulent birth certificate. In a way, these allegations are inter-related. Here itself, it needs to be mentioned that the incident took place way back in the year 2005. It is not even alleged that the applicant made secret, of any of his personal matters, to the extent they are needed to be incorporated in the service record. The proceedings were initiated on the basis of a letter said to have been received from one Mr. Rafael Oliva Lerro. This is evident from the very first paragraph of the counter affidavit filed by the respondents. It is also necessary to mention that the said letter was not included in the list of documents though as many as 28 documents were shown in the Annexure. The applicant procured a copy there of and filed the same in the OA. He has also drawn the attention of the Tribunal that the author of the letter was a highly indisciplined employee and engaged on contractual basis, so much so, that he was discontinued more than once. The plea of the applicant that it is the time tested policy of the Government not to initiate disciplinary proceedings on the basis of the anonymous letters, is completely disregarded in his case.

15. The applicant stated that his mother passed away and it was her wish that a child be begotten and named after her

and since his wife was not inclined for that, he took recourse to the surrogacy with the consent of a woman of Mangolian origin. According to him, the birth certificate was issued by an authority at Illinois USA and since the entry therein would not enable him to get the passport for the child in the proper manner, he obtained a birth certificate from the Nagar Palika parishad, Chandpur (Bijnur) UP duly stating all relevant facts. applicant explained the alleged discrepancy by stating that once the child was born out of surrogacy, certain amount of secrecy was required to be maintained and infact the law permitted of that.

16. The only witness shown in the Annexure-IV of the charge memo is one Dr.Syeed, Formerly Consulate General of India, Chicago. He was neither the complainant nor the one, at whose instance, the disciplinary proceedings were initiated. The allegation of illicit relationship, the marriage and begetting a child was not proved against the applicant and both the articles of charge were hold not proved. Then remained the charge of the so called fraud made for obtaining birth certificate, etc. Here itself, it needs to be mentioned that the complainant Mr. Rafael Oliva Lerro did not mention anything about the birth certificate or any other material. It is at a later stage, that they were mentioned.

17. In articles 3 and 5, the allegation is about the manner in which the birth certificate was obtained from Nagar Palika Parishad, Chandpur, UP, and the diplomatic passport on the basis of such certificate. In both the charges, the word fraudulently was used. In Article 5, the applicant was alleged to have suppressed the material facts. Articles 4 and 6 are about the obtaining of the diplomatic passport, even while the child was in possession of a passport of USA.

18. As regards the allegation about fraudulently obtaining the birth certificate from Nagar Palika Parishad, Chandpur, UP, the Inquiry Officer no doubt held that Articles 3 and 5 are proved. However, it must be said to the credit of the respondents that in the counter affidavit, they have categorically stated that when contacted, the officials of the

Nagar Palika Parishad, UP have stated that their record is clear and perfect in relation to the birth certificate and there are no traces of misrepresentation of fraud in the process. Therefore, the very basis for the allegation ceases to exist.

The relevant paragraphs read as under:

(iv) That Administration Division, vide their note dated January 14, 2016, intimated regarding discrepancies in personal records of the applicant (Annexure R-8). As per Ministry's record, Smt. Begum Akhtar is the spouse of the applicant. She is holding Diplomatic passport No. 1009315 (valid till 25.10.2017). The applicant and Smt. Begum Akhtar are shown as parents of Ms. Jaya Gayathri (d.o.b 8.5.2005), bom in Chandpur, Bijnor, U.P, on Diplomatic passport No. 1008533 (valid till 09.05.2017). As per birth certificate issued by Nagar Palika Parishad, Chandpur, Bijnor, U.P, Ms. Jaya Gayathri (d.o.b 8.5.2005) is the daughter with Ms. Begum Akhtar as mother and the applicant as father (Annexure R-9). However, in another birth certificate issued by Carle Foundation Hospital in Urbana Champaign, Illinois, USA, Ms. Jaya Gayathri was born in the same hospital to Ms. Ganchimeg Gombosuren (born in Mongolia) and the applicant (Annexure R-10). The father's name is identical in both the birth certificates. These Birth certificates were sent for verification to CGI, Chicago (for the US birth certificate) and the District Magistrate, Bijnor, U.P. (for the Indian certificate), respectively. Consulate General of India, Chicago had forwarded an email confirming that the information in the copy of the birth certificate was consistent with the information on the original birth record filed with the State Vital Records Office (Annexure R-11). A response from the office of DM, Bijnor, was received informing that the matter was investigated by the Addl. District

Registrar (Birth & Death), Bijnor, U.P and the investigation revealed that all the entries in the Birth Certificates dated 25.5.2005 issued by the Nagar Palika Parishad, Chandpur, District Bijnor, U.P. were correct (Annexure R-12) This gave rise to a situation where there were two birth certificates indicating birth at two different places (countries) for the same child. However, a close scrutiny of the documents forwarded by the DM's Office revealed the following:

(a) The verification of the birth certificate dated 25.05.2005 has been done on the basis of entries made in the Register of Births of Nagar Palika Parishad, Chandpur, Distt. Bijnor (Annexure R-13). It could be seen that all the entries made on 30.04.2005 (date of registration of birth) matched those in the birth certificate in question. Mother's name is shown as Akhtar Begum in the register.

(b) However, two discrepancies had been observed in the birth register regarding issues which were not reflected in the birth certificate. First, age of the mother is shown as 25 years under column 18 of the register. Considering that the DOB of Smt. Akhtar Begum, spouse of Shri Rajashekhar, is 25.11.1965, her age would have been 39 years when Jaya Gayathri was bom (08.04.2005). Secondly, under column 19, against the entry for number of births (including the child being registered), '1' has been indicated. The correct entry should have been '3' since Jaya Gayathri is the third child of Shri Rajashekhar. These inconsistencies indicated that false entries has been made in the birth register.

(c) Father's/Mother's permanent address in the birth certificate has been shown as

"Mohalla Patiyapara, Chandpur (Bijnor), UP. Although, this is again consistent with the relevant entry made in the birth register, the records available in the Ministry reveal that both Shri Rajashekhar and his wife Akhtar Begum, belong to Andhra Pradesh and have their bases there. There is no evidence in Ministry's record such as passport, service book, personal files, etc., to suggest that they have or ever had a permanent home address in Chandpur, Distt. Bijnor, U.P.

(d) The register indicated that the delivery was done through a 'mis-wife'.

(e) The register also indicated the name of one Dr. Neelam Tyagi as the person who had given information about the birth for the purpose of registration.

19. What remains is the issue pertaining to the diplomatic passport to the child, even while the American passport was existing. The applicant consistently stated that the American passport was surrendered and he did not suppress any fact whatever. At any rate, wherever acts or fraud are alleged, they must be proved through clinching evidence, of a person who is available for cross examination. The acts of fraud are never left to be inferred, howsoever strong, the circumstances may be. They must be clearly pleaded and proved. Further a distinction needs to be drawn between an illegality on the one hand and an act of fraud on the other hand. Every wrong, be it in life of an individual, or in the course of administration, by itself does not become either fraudulent or punishable. It is only when an act is found to have been committed, with clear intention of promoting wrongful gain, that too, in violation of clear provisions of law, that the person can be said to have committed fraud. Wherever the situations are governed by provisions of law, there exists a mechanism to deal with such acts. Permitting the allegations be made and consequences to be followed,

even while the statutory machinery remained inert, is something difficult, to be sustained in law.

20. It was not even mentioned anywhere that the applicant suppressed the factum of his having a child by name Jaya Gayatri or that the biological mother of the child. The institution of surrogacy may not be prevalent in India. However it has taken place in a Country where it is not prohibited. The applicant cannot be visited with such serious consequences at a time when his career reached its peak.

21. In our view, the UPSC has also attached greater importance to certain unverified facts and was guided mostly by the technicalities. Hardly there existed any element of fraud with the assertion by the authorities of Nagar Palika Parishad, that every fact is born on by record and there were no acts of fraud. The applicant did not disown the child. If all these aspects are put together there would have been at the most some technical error or deficiency and any act of fraud or suppression. The applicant was not alleged to have misused the diplomatic passport, issued to his child. It is here, that the need to examine the extenuating or aggravating circumstances, in the context of choosing the punishment arises. The fact that the applicant had an unblemished record spread over nearly 3 decades is certainly an important extenuating circumstance.

22. The very fact that the UPSC as well as the DA felt that after lapse of two years, the applicant would be entitled to be resorted all the benefits, is something which indicates that the respondents are also of the view that the career of the applicant should not be damaged, beyond a point. That was on the basis that the charge, wherein allegations of fraud were held as proved. From the averments in the counter affidavit itself it is evident that there was no fraud wherever, in the process of obtaining certificate from the Nagar Palika Parishad, Chandpur. The cumulative effect of all the discussion is that notwithstanding the protective clauses contained therein, the order of punishment, it

deserves to be set aside by leaving it open to the DA to pass a fresh order. We are also of the view that since the UPSC was already consulted, there shall not be any necessity to consult it once again.

23. We therefore, allow the OA and set aside the order of punishment passed against the applicant. It shall be open to the Disciplinary Authority to pass a fresh order, keeping in view, the findings and observations in this judgement. In case the DA feels that the punishment needs to be imposed, it shall be the one which does not come in the way of the entitlement of the applicant to be promoted, subject to his otherwise being found fit, by the DPC. If any sealed cover was maintained, it shall be opened and consequential steps shall be taken. The authority shall also decide the manner in which the period of suspension shall be treated. There shall be no order as to costs."

10. It is the submission of Mr. Chetan Sharma, learned Additional Solicitor General assisted by Mr. Anil Soni, learned CGSC appearing for the Union of India, that the charge sheet was the result of a complaint made by one Rafael Oliva Lerre, who was the former driver of respondent. On the basis of the aforesaid complaint, an investigation was carried out by the petitioners which lead to the discovery of the fact that the child was born in Champaign, USA, on April 08, 2005 and her parents are the respondent (father) and GG, a Mongolian national (mother). In order to conceal the above stated birth, the respondent fraudulently obtained a birth certificate from Nagar Palika Parishad, Chandpur, Bijnor, Uttar Pradesh, which shows the place of birth of the child, as Chandpur, and Akhtar Begum, as her mother. The birth certificate which the respondent obtained in a fraudulent manner, from Chandpur, Bijnor, Uttar Pradesh, was used by him to obtain a diplomatic passport for his child and while doing so, he suppressed the

material fact that the child had already acquired American nationality and passport.

11. He also stated that the respondent is married to Ms. Akhtar Begum. It was also stated that Rafael Oliva Lerre had in his complaint alleged that the respondent has two families in Havana residing in two separate residences. While his wife and son stayed in the Embassy residence, the other lady along with the child resided in another apartment in Havana. The complainant had recounted his ordeal of listening to the instructions and commands of the two women desiring to use the 'flag car' at the same time.

12. Mr. Sharma, referring to the writ petition stated that though the Joint Secretary (LAC) had noted on the copy of her e-mail that *"I have heard from people about him having two ladies rather than two sets of families but never in writing"*. It had been ascertained from LC Section that there is no chauffeur working in E /I, Havana by the name of Rafael Oliva Lerre. Though the instructions of DoP&T states that anonymous complaints are not to be acted upon, considering the remarks of Joint Secretary (LAC), it appeared that there might be some truth in the anonymous complaint. Accordingly, the Vigilance Unit sought response of the respondent vide letter dated October 20, 2014, sharing a copy of the complaint with him. On examining a note dated June 30, 2011 initiated by the Second Secretary (HOC), E /I Havana and an Office Order dated June 30, 2011, it was clearly established that there was indeed a person by the name of Rafael Oliva Lerro working as messenger-cum-chauffeur in E/I, Havana, who was terminated from service w.e.f. July 1, 2011. In his response dated December 14, 2014,

the respondent accepted that Mr. Rafael Oliva Lerro was the third driver since his arrival in Havana. A second complaint dated March 10, 2015, purportedly by some Cuban workers was received by the then Ambassador, E/I Havana. In the complaint, the complainants had threatened to write to the Cuban Ministry and to a Agency PALCO if no action was taken against the respondent.

13. While respondent was posted as the Ambassador of India in Cuba, Ms. GG was issued an Identity Card by the local Foreign Office. The Identity Card shows her as a domestic servant. Copy of her Mongolian passport reveals that she had obtained Cuban visa from the Ministry of External Relations, Cuba (MINREX) on July 13, 2012 which was valid till June 20, 2014. Thus, Ms. GG reached Cuba in July, 2012, just a month after the arrival of the respondent in Havana, Cuba. A note dated July 08, 2014 issued by Embassy of India, Havana, for renewal of Cuban visa for Ms. GG mentions that she “works at the residence of the Ambassador of India”. However, there is no evidence of the respondent informing the office that he was employing Ms. GG as his domestic assistant.

14. According to Mr. Sharma, the record says that the birth certificate dated April 11, 2005 of the child issued by the State of Illinois, USA, records the mother's name as GG (DOB:07/12/1973; Birth Place: Mongolia), and father's name as Rajasekhar Chinthapally (DOB:18/06/1964; Birth Place: India). The birth certificate also bears the signature of respondent. It is stated that the respondent had affirmed under the relevant column “*I certify that the personal information provided on the certificate is correct to the best of my*

knowledge and belief". The US birth certificate indicates that the child was born in Carle Foundation Hospital, Urbana, Champaign County, Illinois.

15. The Consul General of India, Chicago, vide letter dated February 11, 2016 forwarded an email dated February 10, 2016 from the State of Illinois, USA, authenticating the said birth certificate. The records also show another birth certificate dated May 25, 2005, issued by the Nagar Palika Parishad, Chandpur, District Bijnor, UP in respect of the girl. As per the birth certificate issued by the Nagar Palika Parishad, Chandpur, the birth of the girl was registered on April 30, 2005 against registration number 212. Although the office of the District Magistrate, Bijnor, UP, vide letter dated April 06, 2016, has authenticated this birth certificate dated May 25, 2005, nevertheless, the following glaring irregularities are observed, in respect of the entries made in the Register of Births, while getting the birth certificate, viz.,

"(a) Mrs. Akhtar Begum's age is shown as 25 years in the register; whereas, as per the MEA records, her age should have been 39 years, when Ms. Jaya was born, i.e., on 08.04.2005, though there is no record indicating the date of birth of the respondent/ CO's spouse. However, a copy of her passport available on record indicates her date of birth as 25.11.1965, which proves that the entry in the Register of Births was incorrect;

(b) Against the column relating to the number of births, '1' is written; whereas, it should have been '3', as Ms. Jaya was the third child of the CO at that time;

(c) Although, as per the MEA records [Ex.S-21], the CO has had his bases in the erstwhile Andhra Pradesh (now Telangana), the entries in the register show his permanent

address as 'Mohalla Patiyapara, Chandpur, Bijnor, UP';

(d) The register shows that the delivery was done through a 'mid-wife'."

16. It is stated that birth certificates indicate the same date of birth of the child, i.e., April 8, 2005. However, while the certificate issued from Chandpur, UP, shows the mother as Akhtar Begum, the wife of the respondent, the US certificate mentions the mother's name as GG (born in Mongolia). Father's name is identical in both the birth certificates. On September 25, 2007, the respondent had applied for a diplomatic passport for his child in the Ministry of External Affairs on the basis of the birth certificate dated May 25, 2005 issued by the Nagar Palika Parishad, Chandpur, District Bijnor, UP in connection with his transfer to E/I, Seoul, suppressing the fact that she already possessed a US citizenship and passport, by virtue of which, she was not an Indian citizen. On September 28, 2007, a diplomatic passport was issued in the name of the child.

17. The child had travelled to India on December 30, 2006 on US passport No.028459978, and had left India on April 21, 2007 on the same passport. She again travelled to India on May 06, 2007 and left on November 16, 2007 using the same US passport. Therefore, it is apparent that the child had travelled on November 16, 2007 using the US passport, when she was already in possession of an Indian diplomatic passport which was issued to her on September 28, 2007, though no specific evidence in this regard were available on record. However, this issue is not in dispute as the respondent has not denied the same.

18. The respondent applied for reissuance of the diplomatic

passport of his child, vide application dated May 2, 2012, while he was posted in the High Commission of India, London, before proceeding to his next station of posting as Ambassador of India in Cuba, based on the diplomatic passport, which was issued to her on September 28, 2007. It was in this background that a charge sheet dated February 23, 2017, was issued to the respondent under Rule 14 of the CCS (CCA) Rules.

19. According to Mr. Sharma, the Disciplinary Authority held an oral inquiry and appointed a retired IFS Officer as the Inquiring Authority. The respondent had admitted Articles of Charge III & VI, denied Articles of Charge I, II & IV and did not clearly admit or deny the Article of Charge V.

20. The Inquiry Officer submitted his report dated April 05, 2018, and concluded the first and the second Articles of Charge as not proved and III, IV, V and VI as proved. The Disciplinary Authority accepted the findings of the Inquiry Officer in respect of all of the six Articles of Charge. The Articles of Charge III to VI, which had been held proved by the Inquiry Officer, were distinctly separate from Articles of Charge I & II and were independent of one another and the respondent / CO is not acquitted from the rest of the charges just because the first and the second articles of charge were not proved. The copy of the Inquiry Report was sent to the respondent, who submitted his representation on the same after seeking the advice of the UPSC. The respondent also submitted his response to the advice of the UPSC.

21. Thereafter, on July 31, 2019, the Disciplinary Authority, in agreement with the advice tendered by the UPSC, imposed the major

penalty of reduction to next lower post for a period of two years, which shall be a bar to the promotion of the respondent during such period of two years to the post from which he was reduced, with further direction that on promotion on the expiry of the period of two years, the period of reduction to lower post shall not operate to postpone future increments of his pay, and he shall regain his original seniority in the higher post, under the rules.

22. The submission of Mr. Sharma is that the laws of surrogacy as prevalent in India and abroad have to be considered and therefore the Tribunal has committed an error in holding that the respondent cannot be visited with such serious consequences at a time when his career has reached its peak. The Tribunal has no power to suggest the quantum of punishment which falls exclusively within the domain of power and authority of Disciplinary Authority.

23. He stated that the UPSC was not guided by technicalities nor did it attach greater importance to ascertain unverified facts and that most of facts and the evidence in departmental proceedings have to be left to the wisdom of the Disciplinary Authority. He stated that the Tribunal has wrongly held that there are no acts of fraud. The Tribunal should not have commented on the quantum of punishment merely on the ground that the respondent has an unblemished record of three decades.

24. That apart, he stated that the Tribunal has not given any reasoning while interfering with the findings of the Inquiry Officer that the allegations of fraud were held as proved. In fact, according to Mr. Sharma, the Tribunal has curtailed the powers of the Disciplinary

Authority by directing that the punishment should be such that it would not come in the way of entitlement of the respondent to be promoted.

25. He stated that the Tribunal has erred in directing to open the sealed cover before any order has been passed by the Disciplinary Authority. Mr. Sharma laid stress on the following finding of the Tribunal:

- (i) Submitting fraudulently obtained birth certificate to the Ministry in respect of his child;
- (ii) Obtaining the diplomatic passport for the child by suppressing the fact that she was not an Indian citizen;
- (iii) Suppressing material facts for obtaining diplomatic passport for the child and applying for an Indian diplomatic passport on September 25, 2007 by suppressing the fact that she was already in possession of a US passport and therefore acquired foreign nationality which falls under Articles of Charge III to VI held to be proved by the Inquiry Officer.

26. He also stated that the Tribunal failed to appreciate that obtaining the birth certificate fraudulently, deliberately concealing it from the Ministry, providing false information on the same and acquiring a diplomatic passport makes the respondent guilty of violating Rules 3(1)(i), (vi) & (xviii) of CCS (Conduct) Rules, 1964 and Rule 13 of The Passport Rules, 1980 and Rule 12 of the Indian Foreign Service (Conduct and Discipline) Rules, 1961.

27. He submitted that the Tribunal has overlooked the fact that the respondent utilised the fraudulently obtained birth certificate to procure diplomatic facilities to his child. That apart, the Tribunal failed to

appreciate that the Citizenship Rules, 2009, confer authority on the Central Government and provides for rules of procedure in Schedule III of the Rules. Paragraph 3 of Schedule III states that *“the fact that a citizen of India has obtained on any day a passport from the Government of any other country shall be conclusive proof of his having voluntarily acquired the citizenship of that country before that date”*.

28. Thus, according to Mr. Sharma, by having acquired the US passport, the child of the respondent had acquired the citizenship of USA. That apart, it was his submission that the Tribunal failed to appreciate that Section 4(1) of the Citizenship Act, 1955 states that *“child born outside India on or after December 03, 2004 shall be a citizen of India by descent, if either of the parents (father or mother) is an Indian citizen at the time of birth of the child and the birth of the child has been registered with the concerned Indian Mission abroad within one year of the birth and the parents of the child have to submit a declaration that the child does not hold passport of another country. The approval of the Central Government is necessary in all such cases where the request for such registration is made after the expiry of the said period”*. The respondent did not abide by the procedure stated above, which fact has been ignored by the Tribunal.

29. According to him, a minor who has obtained a foreign passport before registering at an Indian Consulate cannot be registered as Indian Citizen under Section 4 of the Citizenship Act, 1955. This has been further clarified by the Ministry of Home Affairs vide letter dated February 02, 2011. However, a provision exists under Section 5(1)(d)

of the Citizenship Act, 1955 for registration for citizenship of minor children of persons who are citizens of India by making an application to the Central Government. Unfortunately, the respondent did not reveal the fact that his child was born outside India and was in possession of a US passport. Further, the respondent did not apply for Indian citizenship for her under Section 5(1)(d) of the Citizenship Act, 1955.

30. He also stated that the Tribunal failed to appreciate the fact that the respondent had taken US passport for his child before intimating the Ministry of External Affairs as per Rule 12 of the Indian Foreign Service (Conduct and Discipline) Rules, 1961. By not declaring to the Ministry of External Affairs the fact of possession of the US passport by his child, the respondent has violated Rule 12 of the Indian Foreign Service (Conduct and Discipline) Rules, 1961.

31. According to him, the respondent has failed to produce any documentary evidence to establish that there was an agreement amongst the stakeholders namely, his wife, Smt. Akhtar Begum; surrogate mother, Ms. GG and himself for the surrogacy arrangement. There is also no medical certificate on record to establish that Smt. Akhtar Begum was medically unfit to conceive. He has also not been able to produce any evidence, if at all that he carried out any consultations with any legal or medical expert for ensuring that there were no unforeseeable implications of this arrangement. He has also not been able to produce any document / evidence to establish the veracity of the procedure followed by the clinic for carrying out “artificial insemination”.

32. It was also the endeavour of Mr. Sharma to state that the Tribunal failed to appreciate that the respondent while holding a position of such high pedestal, fraudulently obtained an Indian birth certificate in violation of the prescribed guidelines / procedure, and then applied for an Indian diplomatic passport for his child, who was already holding a US passport at that time, on the basis of that birth certificate twice on September 25, 2007, and May 02, 2012. The respondent's conduct is considered very serious violation of the extant statutory provisions, and by the above mentioned act, the respondent displayed a lack of integrity, failed to maintain high ethical standards and honesty, and acted contrary to law, thereby violating Rules 3(1)(i), (vi) & (xviii) of the CCS (Conduct) Rules, 1964.

33. He stated that the second birth certificate, which was issued by the Nagar Palika Parishad, Chandpur, District Bijnor, UP on May 25, 2005 was acquired by willful use of false facts, and using fraudulent/*mala fide* means. According to him, the Tribunal failed to appreciate the claim that this certificate was acquired without the knowledge of the respondent does not carry any merit at all, because it is proven beyond reasonable doubt that the respondent had himself subsequently used the same certificate while applying for an Indian diplomatic passport despite being fully aware about the false facts in the certificate. The charges I and II are not relatable to charges III to VI, even if the charges I and II are not proved, the charges III to VI having been proved, the Disciplinary Authority was within his right to impose the penalty as was done in the case. Though, the charges are not related to loss of public funds, it is still fulfils the essential

elements of misconduct. Further, past record / conduct will not absolve the respondent of any wrong committed by him. It is a clear case that the birth certificate dated May 25, 2005 was issued on the basis of fraudulent entries made in the records of Nagar Palika Parishad, Chandpur, District Bijnor, UP. It is, therefore, obvious that the birth certificate dated April 11, 2005 issued by the State of Illinois, USA is the true one, according to which the child of the respondent was born to Ms. GG and not to Smt. Akhtar Begum, the spouse of the respondent. From this, it can be inferred that the respondent had arranged for fraudulent entries to be made in the birth register of Nagar Palika Parishad, Chandpur, District Bijnor, UP to facilitate the issuance of a false birth certificate with the purpose of suppressing the truth about the birth of his child, the truth that she was not born to his lawfully wedded wife, Smt. Akhtar Begum, but to Ms. GG out of an illegitimate relationship with her.

34. Finally, he stated that the impugned order of the Tribunal is clearly illegal and contrary to the position of law and the same is liable to be set aside.

35. Mr. Sharma has relied upon the following judgments in support of his submissions:

- (i) ***State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya (2011) 4 SCC 584,***
- (ii) ***Rae Bareli Kshetriya Gramin Bank v. Bhola Nath Singh & Ors., (1997) 3 SCC 657;***
- (iii) ***Haji Lal Mohd. Biri Works v. Commissioner of Income Tax, Lucknow-II, (1997) 3 SCC 659;***
- (iv) ***Union of India & Anr. v. G. Ganayutham, (1997) 7 SCC 463;***

- (v) *Government of T.N. and Anr. v. A. Rajapandian, (1995) 1 SCC 216;*
- (vi) *S.Karthikeyan v. The Deputy Inspector General of Police Madurai Range, Madurai & Ors., W.A. Nop.3263/2019, dated September 18, 2019; and*
- (vii) *R. Pandian v. The Postmaster General, Union of India & Ors., dated September 15, 2016.*

36. On the other hand, Mr. K. K. Rai, learned Senior Counsel appearing for the respondent would submit that the respondent admittedly rendered three decades of outstanding service around the world, including in extremely hard stations, with vouched impeccable integrity. Notwithstanding the respondent's impeccable professional record, certain inconsequential personal family issues of 2004 were raked up belatedly in 2017 by the petitioners, which have no bearing on the respondent's official responsibilities or on public interest. The respondent and his entire family extended their fullest cooperation, and it is in these enquiry proceedings that the Tribunal had on December 02, 2020 set aside multiple penalties wrongly imposed by the Disciplinary Authority on the respondent.

37. He laid stress on the fact that notwithstanding the directions of the Tribunal, the petitioners have, in a completely *mala fide* manner and with intent to deny the respondent of his well deserved dues, dragged the instant proceedings well beyond even the originally levied penalty of two years. He stated that the writ petition has become infructuous, insofar as the respondent has already served the penalty imposed by the Disciplinary Authority twice over and nothing remains to be determined in the instant writ petition.

38. That apart, he submitted that the writ petition is not maintainable as the Tribunal has in the impugned order dated December 2, 2020 exercised its discretion by setting aside the penalty imposed on the respondent, whilst empowering the Disciplinary Authority to impose any other penalty in line with the findings of the Tribunal.

39. He stated that the petition filed by the petitioners is totally misconceived and liable to be dismissed as no writ can lie seeking to replace the discretion exercised by the subordinate Court / Tribunal. In this regard, he has relied upon the judgment of the Supreme Court in the case of *Syed Yakoob v. K.S. Radhakrishnan*, AIR 1964 SC 477 and *Sawarn Singh v. State of Punjab*, (1976) 2 SCC 868.

40. That apart, he submitted that this Court while exercising its jurisdiction under Article 226 of the Constitution of India, shall not venture to re-appreciate of the evidence and come to a different conclusion. In support of his submission, he has relied upon the judgment of the Supreme Court in the case of *Union of India v. P. Gunasekaran*, (2015) 2 SCC 610. In this regard, it is his submission that the Tribunal has recorded the findings of fact in its decision / order dated December 2, 2020 which have naturally led to the Tribunal allowing the OA filed on behalf of the respondent and exercising its discretion to set aside the punishment imposed on the respondent.

41. Without prejudice, Mr. Rai has submitted that the petitioners are now seeking to do indirectly what they cannot do directly insofar as the petitioners are continually punishing the respondent in a manner directly contradictory to the Tribunal's order and in any event far

exceeding the penalty prescribed even by the Disciplinary Authority in its order dated July 31, 2019.

42. In support of his submission, he submitted that all punishments suggested by the Disciplinary Authority and UPSC have been fully and finally served by the respondent, i.e., the respondent has already been reduced to the lower grade of Director and has remained in the said position for the last two years, without any promotion or added benefits, whereas his juniors in the batch were promoted as Additional Secretaries in September, 2018 and as Secretaries in December, 2021. The respondent has, therefore, suffered the penalty proposed by the Disciplinary Authority twice over, i.e., for two consecutive two years terms between February, 2017 and February, 2019 and July, 2019 until July, 2021.

43. That apart, it was the submission of Mr. Rai that the petitioners' reply dated July 27, 2022 to the respondent's representation, filed pursuant to an order of this Court dated May 31, 2022 makes it evident that the petitioners are keen to derail the process of justice and defeat all legitimate rights accruing in favor of the respondent. In the end, he submitted that the respondent has suffered grave prejudice as belated claims and allegations pertaining to the year 2004 were for the first time raised in 2017, i.e., after more than 13 years, severely diminishing his ability to defend himself and as such, all such allegations / claims are barred from being raised. He has sought dismissal of the writ petition.

44. Having heard the learned counsel for the parties and perused the record, the short question which arises for consideration is whether

the Tribunal was justified in setting aside the order of punishment passed against the respondent while directing the Disciplinary Authority to pass a fresh order keeping in view the findings and the observations in the judgment and further directing the Disciplinary Authority that it should pass a punishment which would not come in the way of the entitlement of the respondent to be promoted, subject to him otherwise being found fit.

45. At the outset, we may state that the Tribunal has clearly erred in setting aside the punishment order against the respondent. The scope of judicial review is very limited as has been held by the Supreme Court in a catena of judgments. It is only in the eventuality that the finding/decision of the Inquiry Officer / Disciplinary Authority is manifestly perverse or illegal, or if the finding/decision has been arrived at without any evidence, that the Tribunal or even this Court under Article 226 of the Constitution of India can interfere with the decision of the Disciplinary Authority. It is a conceded case that except two charges, charges III to VI have been proved by the Inquiry Officer. The charges which have been framed against the respondent are the following:

“Article- I

That Shri Chinthapally Rajasekhar, Joint Secretary has a child, Ms. Jaya Gayathri, born from Ms. Ganchimeg Gombosuren, a Mongolian national, with whom he is not legally wedded.

By the above mentioned act, the said Shri Chinthapally Rajasekhar, Joint Secretary, has acted in a manner unbecoming of a Government servant and failed to maintain high. ethical standards, thereby violating Rules 3(l)(iii) & (vi) of the CCS (Conduct) Rules 1964.

Article- II

That Shri Chinthapally Rajasekhar, Joint Secretary, has maintained illicit relations with Ms. Ganchimeg Gombosuren, a Mongolian national, although he is married to Ms. Akhtar Begum.

By the above mentioned act, the said Shri Chinthapally Rajasekhar, Joint Secretary, has acted in a manner unbecoming of a Government servant and failed to maintain high ethical standards, thereby violating Rules 3(l)(iii) & (vi) of the CCS (Conduct) Rules 1964.

Article – III

That Shri Chinthapally Rajasekhar, Joint Secretary, has submitted a birth certificate fraudulently obtained from Nagar Palika Parishad, Chandpur, (Bijnor), U.P., to the Ministry and its offices in respect of his daughter, Ms. Jaya Gayathri.

By the above mentioned act, the said Shri Chinthapally Rajasekhar, Joint Secretary, has shown lack of Integrity and failed to maintain high ethical standards and honesty, thereby violating Rules 3(1)(i) & (vi) of the CCS. (Conduct) Rules 1964.

Article- IV

That Shri Chinthapally Rajasekhar, Joint Secretary, has obtained the diplomatic passport for his daughter, Ms. Jaya Gayathri, by suppressing the fact that she was not an Indian citizen. He has also obtained for her the diplomatic passport as a member of his family although she was not born to his legally wedded wife, Ms. Akhtar Begum, but to Ms. Ganchimeg Gombosuren, who is not, nor has been, his legally wedded wife. These acts were done with the purpose of misusing the privileges associated with a diplomatic passport.

By the above mentioned act, the said Shri Chinthapally Rajasekhar, Joint Secretary, has shown lack of integrity and failed to maintain high ethical standards and honesty, thereby violating Rules 3(1)(i), (vi) & (xviii) of the CCS (Conduct) Rules 1964.

Article- V

That Shri Chinthapally Rajasekhar, Joint Secretary, has suppressed material facts for obtaining diplomatic passport for his daughter, Jaya Gayathri, by submitting a fraudulently obtained birth certificate from Nagar Palika Parishad, Chandpur, (Bijnbr), U.P.

By the above mentioned act, the said Shri Chinthapally Rajasekhar, Joint Secretary, has shown lack of integrity, failed to, maintain high ethical standards and honesty, and acted contrary to law, thereby violating Rules 3(l)(i), (vi) & (xviii) of the CCS (Conduct) Rules 1964.

Article- VI

That Shri Chinthapally Rajasekhar, Joint Secretary, while applying for an Indian diplomatic passport on 25.9.2007 for his daughter, Jaya Gayathri, has suppressed the fact that she was already in possession of a passport of the United States of America bearing No. 028459978. Shri Rajasekhar did not inform the Ministry of External Affairs at any point of time that his daughter was in possession of passport of a foreign country and, therefore, acquired foreign nationality. By the above mentioned acts, the said Shri Chinthapally Rajasekhar, Joint Secretary, has shown lack of integrity, failed to maintain high ethical standards and honesty, acted contrary to the provisions under Rule 13 of the Passport Rules, 1980 and Rule 12 of the Indian Foreign Service (Conduct and Discipline) Rules, 1961, thereby violating Rules 3(1)(i), (vi) & (xviii) of the CCS (Conduct) Rules 1964.”

46. It is not the case of the respondent nor has it been contended by Mr. Rai that the disciplinary proceedings have been held contrary to the rules / principles of natural justice. The finding of the Inquiry Officer with regard to the Articles III to VI are the following:

“11.2.3 Assessment of the evidence from Prosecution and defence

The prosecution's arguments are based on facts verified through official channels There is absolutely no doubt that two separate birth certificates were issued relating to Ms.

Jaya Gayathri Chinthapally, born to Ms. Ganchimeg Gombosuren and the CO. The first one was by the State of Illinois, USA on 11 April, 2005, where Ms. Jaya Gayathri was actually born. The second one was issued by District Bijnor, Uttar Pradesh on 25th May, 2005 evidently through fraudulent means. Though, the certificate is claimed to be arranged by one of the defence witnesses, Shri Manoj Kumar through his late brother who used to work as a Constable in the Uttar Pradesh Police with the knowledge of Smt. Akhtar but without the knowledge of the CO, its subsequent use by CO in applying for an Indian Diplomatic Passport made him a full and willing party to this document including the entries and the procedure adopted for its issue. Therefore, the CO cannot claim that he was not a party to obtaining Ms. Jaya Gayathri's second birth certificate from Bijnor through fraudulent means. The argument of privacy and safeguarding the welfare of Ms. Jaya Gayathri could not entitle the CO to make use of a birth certificate obtained by will full suppression of facts and truth.

In view of the above facts, evidence, arguments and assessments, Article III stands fully established.

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11.3.3 Assessment of the evidence from Prosecution and defence

The arguments of the prosecution are based on hard facts and documents. There is no doubt that CO applied for an Indian Diplomatic Passport using a birth certificate issued by District Bijnor, Uttar Pradesh through fraudulent means by concealing the facts and truth about the birth of Ms. Jaya Gayathri. The CO's argument of privacy, good faith and their intention to protect and safeguard the interest of his daughter, Ms. Jaya Gayathri would not be able to justify using a birth certificate obtained through fraudulent means. Even, if, this birth certificate was allegedly obtained without his knowledge, by using such a document for obtaining diplomatic passports for Ms. Jaya Gayathri on at least two occasions amounted to a will full usage of fraudulent

document for obtaining Indian Diplomatic Passports, by concealing facts and truth about the birth of Ms. Jaya Gayathri. The CO also did not disclose that Ms. Jaya Gayathri was not only already holding a US Passport but also had travelled on the same document, knowing very well that the Indian Law does not permit the Indian nationals to hold another passport issued by a foreign country unless a specific permission is obtained through due process which was not followed by the CO. Having dealt with Consular and Passport matters for so many years, the CO cannot claim ignorance of law.

In view of the above facts, evidence, arguments, and assessments, Article IV stands fully established.

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11.4.3 Assessment of the evidence from Prosecution and defence

The CO was fully aware of the false entries in this birth certificate relating to the name of the mother and the place of the child's birth and still decided to use this false document for applying for an Indian Diplomatic Passport. The CO also did not at any stage disclose that Ms. Jaya Gayathri was also holding a US Passport.

In view of the facts, evidence, arguments and assessments provided above and also in Article IV, it has been established beyond reasonable doubt that the CO had suppressed facts and truth about the birth of his daughter by submitting a fraudulently obtained birth certificate from Bijnor in obtaining an Indian Diplomatic Passport.

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11.5.3 Assessment of the evidence from Prosecution and defence

The prosecution's case is based on hard facts and documentary evidence. I would have conceded the CO's argument of good faith and "force majeure" in case immediately after leaving the US, he had taken all possible steps and measures for registering the child as an Indian citizen, surrendering her US passport and seeking an Indian diplomatic, passport in lieu thereof. Instead of following the

right course of action, the CO decided to utilize a fraudulently obtained birth certificate for applying for an Indian diplomatic passport. This cannot be condoned. In view of the above facts, evidence, arguments, and assessments, Article VI stands fully established.”

47. It is well settled that Courts and Tribunals should not ordinarily interfere with the findings of the Disciplinary Authority, unless the same has been arrived at without any evidence or suffers from manifest perversity or illegality. Even if the appellate Court / Tribunal is of the view that in its wisdom, it might have arrived at a different conclusion, ordinarily the decision of the Disciplinary Authority ought not to be disturbed unless it is found to be ailing with perversity. From a perusal of the conclusion of the Inquiry Officer on charges III to VI, it is clear that there is sufficient basis for the Disciplinary Authority to come to the above conclusion. We find that the Tribunal while setting aside the punishment order has overlooked the settled position of law and has ventured to re-appreciate the evidence that has come on record, which cannot be sustained in law. Our decision is fortified by the ratio laid down by the Supreme Court in ***State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya, (2011) 4 SCC 584*** wherein it was held as under:

“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries.

Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] , Union of India v. G. Ganayutham [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] , Bank of India v. Degala Suryanarayana [(1999) 5 SCC 762 : 1999 SCC (L&S) 1036] and High Court of Judicature at Bombay v. Shashikant S. Patil [(2000) 1 SCC 416 : 2000 SCC (L&S) 144] .)”

(emphasis supplied)

48. We also find that the charges against the respondent, who is a senior diplomat, are very serious in nature and having been imposed only the punishment of reduction to the next lower post for a period of two years, the Tribunal could not have set aside the same and directed the Disciplinary Authority to impose a punishment which would not obstruct his right to promotion. The scope of judicial review with regard to interference on the quantum of punishment is well settled in terms of the judgment in the case of **B.C. Chaturvedi v. Union of India & Ors., (1995) 6 SCC 749** wherein a three-judge bench of the Supreme Court has held that it is only when a punishment imposed shocks the conscience of the Court, that it would remand the matter back to the Disciplinary Authority for imposing a different / lighter punishment. Relevant part of the judgment reads as under:

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

49. There is no finding of the Tribunal that the punishment imposed on the respondent had shocked its conscience. Rather, we feel the punishment imposed by the Disciplinary Authority was on the lighter side, given the position held by the respondent and the allegations and the evidence that have come on record. The order of the Tribunal to the Disciplinary Authority only to impose such punishment which will not come in the way of the entitlement of the respondent to be promoted, is also illegal as the Tribunal could not have prescribed the parameters for the Disciplinary Authority to impose a certain punishment.

50. Though it is the submission of Mr. Rai that the respondent has already been reduced to the lower grade of Director and he has remained in the said position, and as such has served the penalty proposed by the Disciplinary Authority, the fact remains that the

punishment has been set aside by the Tribunal with consequential directions thereof despite the fact that the charges have been proved and penalty has been imposed, the submission of Mr. Rai is that the respondent should be placed in a position as if there is no decision of the petitioners to his prejudice, leading to the grant of promotions and related benefits in normal course. Suffice to state, this submission of Mr. Rai is devoid of any merit in view of our discussion above.

51. That apart, the direction to open the sealed covers and to take consequential steps is contrary to the earlier part of the order for imposing a separate punishment. Looking from any angle, the order of the Tribunal is unsustainable and the same is liable to be set aside. It is ordered accordingly. The judgments relied upon by Mr. Rai in the case of *Syed Yakoob (supra)*, *Sawarn Singh (supra)* and *Union of India (supra)* shall not help the case of the respondent in the peculiar facts of this case and in view of the conclusion already drawn by us.

52. The writ petition is disposed of.

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As we have heard the parties and decided the petition finally, this application has become infructuous. It is dismissed as such.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

FEBRUARY 22, 2023/aky