

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 206/91  
T.A. No.

199

DATE OF DECISION 26.7.1991

<u>Shri Hari Giri</u>	<u>Petitioner</u> Applicant
<u>Shri P.T.S. Murthy</u>	Advocate for the <del>Petitioner</del> Applicant
Versus	
<u>Union of India through Secy.,</u> <u>Miny. of Labour &amp; Others</u>	Respondent
<u>Shri P.P. Khurana</u>	Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. B.N. Dholiwal, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*
2. To be referred to the Reporter or not ? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *N*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *N*

(Judgement of the Bench delivered by Hon'ble  
Mr. P.K. Kartha, Vice-Chairman)

The applicant, who has worked as a Peon in the  
Office of the respondents for over 17 years was dismissed  
from service by the impugned order dated 21.12.1990 after  
holding an inquiry under the provisions of the C.C.S. (CCA)  
Rules, 1965. He has sought for quashing the impugned order  
dated 21.12.1990 and for reinstating him in service with  
full back wages and all consequential benefits.

2. The applicant was appointed as Peon on 13.2.1973.

He was made quasi-permanent in 1976 and permanent, in 1984.

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3. On 25.7.1989, the applicant was given a show-cause notice, wherein it was stated that he "secured the job by producing false and unauthentic educational certificate". He was, therefore, directed to show-cause within 7 days of the receipt of the notice, failing which it was stated that his services would be terminated.

4. The applicant submitted an explanation in reply on 31.7.1989 stating that the certificate furnished by him at the time of joining the service was not fake nor unreal but proper and genuine which was properly obtained from the Principal of the Multan D.A.V. Higher Secondary School, West Patel Nagar, New Delhi.

5. On 19.7.1989, Respondent No.3 (Deputy Director, Central Institute for Research and Training in Employment Services) wrote to the Vice-Principal, D.G. D.A.V. Senior Secondary School, West Patel Nagar, New Delhi to verify whether the education certificate produced by the applicant is genuine or not. On 20/21.7.1989, the Vice-Principal informed Respondent No.3 that no such certificate had been issued by them. He, however, added that previously the school was known as Multan D.A.V. Higher Secondary School, West Patel Nagar, New Delhi, but now-a-days, it is called D.G.D.A.V. Senior Secondary School.

6. On 23.7.1990, the respondents issued to the applicant a memorandum initiating disciplinary proceedings against him under Rule 14 of the C.C.S. (CCA) Rules, 1965.

The imputation of misconduct was the following:-

"Shri Hari Giri, Peon has produced a certificate to the effect that he has passed VIIIth Standard from Multan D.A.V. Sec. School, West Patel Nagar, New Delhi, which were in English, is false and forged. The Vice Principal of the School has given in writing that the certificate which is in English, is a case of fraud as in those days the school used to issue certificate only in Hindi. The said certificate was not issued to Shri Hari Giri s/o Kishan Giri by the school. It is also evident that the date of birth of Shri Hari Giri has been given as 15.6.1948 and he is reported to pass VIIIth standard in 1957, when he was only 9 years old."

7. After holding an enquiry, the respondents passed the impugned order whereby the applicant was dismissed from service.

8. The applicant has challenged the impugned order of dismissal on the ground that he was not given a reasonable opportunity to defend himself. The respondents have stated  
*On*

in their counter-affidavit that the enquiry was held in accordance with the rules and that a reasonable opportunity was given to him to explain.

9. We have gone through the records of the case carefully and have considered the rival contentions. The learned counsel for the respondents vehemently argued that this is not a fit case in which the Tribunal may interfere and grant any relief to the applicant. The learned counsel for the applicant submitted that the inordinate delay in raising up the issue of the educational qualifications of the applicant vitiates the entire proceedings. There is force in this submission. The respondents had three opportunities to verify the matter. They could have done so at the time of entry of the applicant in service in February, 1973, or before he was made permanent in 1984. before they declared him quasi-permanent in 1976. The impugned proceedings were initiated against him after a lapse of 17 years for which there is no plausible explanation. It has been stated in the counter-affidavit that "the appointing authority perhaps could not notice anything wrong with the certificates till 1984. In September, 1984, the then Director of the Institute ordered that the educational certificates for all Class IV employees in

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the Institute be got verified from the concerned educational institutes." The respondents have not satisfactorily explained the delay involved in the verification of the educational certificates of the applicant.

10. There are also several procedural irregularities in the conduct of the enquiry vitiating the enquiry.

11. The charge-sheet issued to the applicant contained only the charge and the imputation. It did not contain the list of witnesses. The list of evidence by which the articles of charge were proposed to be sustained consisted of the photocopies of the School certificate and of the letter received from the Vice-Principal, <sup>Q</sup> who was a key witness, was not produced in evidence and the applicant was not given an opportunity to cross-examine him. The Enquiry Officer and the disciplinary authority relied upon the letter received from the Vice-Principal of the School - the sole evidence in this case - without examining him and giving the applicant an opportunity to cross-examine him. This is a serious lacuna vitiating the entire proceedings (vide U.P. Warehousing Corporation Vs. V.N. Vajapae, 1980 (3) S.C.C. 459).

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12. In Mangal Singh Vs. Commissioner of Himachal Pradesh, 1975 (1) SLR 500, the Deputy Supdt. of Police was an important witness in a disciplinary inquiry held against the petitioner under the CCS(CCA) Rules, 1965. It was the Deputy Supdt. of Police who submitted a report that he had found that the petitioner had allowed the passengers to board the vehicle and travel in it without tickets being issued to them. The High Court of Himachal Pradesh held that the non-examination of the Deputy Supdt. of Police vitiated the disciplinary proceedings. Shri R.S. Pathak, C.J., as he then was, observed as follows:-

"When the Deputy Superintendent of Police was not produced in evidence and was not available for cross-examination by the petitioner, it is apparent that the report submitted by him cannot be relied on as material against the petitioner. In my opinion, the General Manager was wholly wrong in holding that the two charges stood notwithstanding the absence of the Deputy Supdt. of Police as a witness. Consequently, the very basis on which the show cause notice against removal was issued stands vitiated."

13. There are authoritative judicial pronouncements to the effect that in a departmental inquiry, reliance should not be placed on the earlier statements of witnesses without

securing their presence at the inquiry and without affording an opportunity to the delinquent Government servant to cross-examine them.

14. In Union of India Vs. Shri T.R. Verma, AIR 1957 SC 882 at 885, a constitution Bench of the Supreme Court has observed as follows:-

"Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them".

15. In Shri M.C. Jayaram Naidu Vs. University of Mysore (1974 SLJ 699 at 701) which related to a departmental inquiry conducted against an employee of the University of Mysore, Shri Venkataramiah J., as he then was, observed as follows:-

"In such enquiries it is desirable that all witnesses on whose testimony the management relies in support of its charge against the workman should be examined in his presence.

Recording evidence in the presence of the workman concerned serves a very important

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purpose. The witness knows that he is giving evidence against a particular individual who is present before him, therefore, he is cautious in making his statement. Besides, when evidence is recorded in the presence of the accused person, there is no room for persuading the witness to make convenient statements, and it is always easier for an accused person to cross-examine the witness if his evidence is recorded in his presence. Therefore, we would discourage the idea of recording statements of witnesses ex parte and then producing the witness before the employee concerned for cross-examination after serving him with such previously recorded statements even though the witnesses concerned make a general statement on the latter occasion that their statements already recorded correctly represented what they stated. In our opinion, unless there are compelling reasons to do so, the normal procedure should be followed and all evidence should be recorded in the presence of the workman who stands charged with the commission of acts constituting misconduct.

16. There are similar observations in Om Prakash Sharma Vs. General Manager, Haryana Roadways, 1980 (1) SLR 167 at 168 decided by the Punjab & Haryana High Court and in Narayana Misra Vs. State of Orissa and Others, 1982 (2) SLR 506, decided by the Orissa High Court.

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17. The order passed by the disciplinary authority on 21.12.1990 also indicates non-application of mind.

The report of the Enquiry Officer dated 17.10.1990 leaves much to be desired, as it is a sketchy one (vide page 57 of the paper-book).

18. In the report of the Enquiry Officer, he has

stated that the applicant has been working as a Peon for the last 17½ years against a permanent post and that he is 70% physically handicapped. There has been no cause of any complaint with regard to his conduct and work. He is married and having his small children and the family is fully dependent for its livelihood on his job. The disciplinary authority has not applied his mind to the aforesaid submissions.

19. In the conspectus of the facts and circumstances of the case, the applicant is entitled to succeed in the

present application. The application is disposed of with the following orders and directions:-

(i) We set aside and quash the impugned order

dated 21.12.1990, whereby the applicant was sought to be dismissed from service.

The applicant shall be reinstated in service as Peon with immediate effect.

(ii) The applicant would be entitled to continuity

of service, full back wages and all  
consequential benefits.

(iii) There will be no order as to costs.

*B. N. Dholiwal*  
(B. N. Dholiwal) 26/7/91  
Administrative Member

*26/7/91*  
(P. K. Kartha)  
Vice-Chairman(Judl.)