

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 4th DAY OF February, 2011)

Hon'ble Dr.K.B.S. Rajan, Member (J)

Hon'ble Mr. D.C.Lakha, Member (A)

Original Application No.1132 of 2005

(U/s 19, Administrative Tribunal Act, 1985)

Smt. Kusum Kumari alias Kusum Devi,
Aged about -----Widow of Late Yogendra Pandey,
R/o 797-G Lalit Nagar, Railway Colony,
District - Allahabad.

..... ***Applicant***

Present for Applicant : Shri S.S.Sharma, Advocate.

Versus

1. Union of India, through General Manager,
North Central Railway, Head Quarter office Allahabad.
2. The Divisional Signal & Telecommunication Engineer,
North Central Railway, DRM, Office Allahabad (The Appellate
Authority)
3. The Assistant Divisional Signal & Telecommunication Engineer, I,
North Central Railway, D.R.M Office, Allahabad. (The Disciplinary
Authority)
4. The C.E.I/H.Q.,
Northern Railway, Room No. 406, 4th Floor, D.R.M. Office, New
Delhi, (The Enquiry Officer)

..... ***Respondents***

Present for Respondents : Shri Munna Pandey, Advocate

ORDER

(Delivered by Hon. Dr. K. B. S. Rajan, Member-J)

This is a peculiar case. The applicant initially employed as Water Woman in 1986 on compassionate ground appeared in a departmental test held on 28.3.1998 and supplementary test held on 04.04.1998 for

the post of Telephone Operator against the 60% departmental quota.

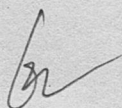
She was issued with a charge-sheet. The charge being as under:-

1. श्रीमती कुसुम कुमारी ने 28.3.1998 को परीक्षा के लिए अपनी उपस्थिति पंजिका में दर्ज की परन्तु उत्तर-पुस्तिका में स्वयं न लिखकर गलत तरीके से किन्ही अन्य दो व्यक्तियों उत्तर-पुस्तिका पर लिखाया और इस प्रकार परीक्षा में गलत तरीकों से उत्तीर्ण होने का प्रयास किया ।

2. Enquiry was conducted and there were 7 prosecution witnesses in addition to 7 relied upon documents. The enquiry was conducted in which the applicant herself stated that she was not assisted by any external persons while writing the examination but at the same time stated that the answer sheets shown to her (stated to be her answer sheets) do not contain her hand writing. The applicant also stated that she did not know English. Answers were in English language.

3. On the Enquiry Officer's rendering the finding that the charge against the applicant stands proved, the Disciplinary Authority imposed the penalty of reduction to a lower stage from Rs. 3850 to 3235/- in the pay scale of Rs. 2650-4000/- for a period of 5 years with cumulative effects. When the applicant challenged the aforesaid order by the appellate authority latter passed the following order:-

I have gone through the case, charge sheet, enquiry report, employee and the representation dated 20.4.2005 submitted by Smt. Kusum Kumari and find that punishment given by D.A. is a in commensurate with the charges proved and there is not justification to change the punishment imposed by the D.A hence appeal is rejected.



4. The applicant has challenged the aforesaid orders.
5. Respondents have contested the O.A. They have stated that it is very clear from the documents relied upon including the opinion of the Hand Writing Expert that the applicant has not written the answer sheet in her own hand writing.
6. Counsel for the applicant submitted that the Appellate Authority's order is cryptic; that the Disciplinary Authority has not applied his mind while arriving the decision to impose penalty; the Enquiry Officer has also not considered the deposition of the prosecution witness as well as the defense witnesses, which went in favour of the applicant.

For example Shri S. K. Pandey, P.W.-I has deposed as under :-

प्रश्न 2 : श्रीमती कुसुम कुमारी के उपर आरोप है कि उन्होंने दो व्यक्तियों से अपने कापी लिखवाई इस आप कहों तक सहमत है ।

उत्तर : परीक्षा कक्ष में मेरी उपस्थिति में कोई दूसरा व्यक्ति इसकी कापी नहीं लिख रहा था ।

Prosecution witness of Shri J. B. Tiwari has deposed as under:-

प्रश्न - 1 श्रीमती कुसुम कुमारी पाण्डेय पर आरोप है कि उन्होने अपनी उत्तर पुस्तिका दो आदमियों से मिलकर लिखवाई क्या यह परीक्षा भवन में सम्भव था १

उत्तर -1 नहीं यह संभव नहीं था ।

प्रश्न - 2 क्या आप परीक्षा भवन में पूरे समय तक उपस्थित थे १ क्या बाहरी व्यक्तियों का परीक्षा भवन में आना जाना था १

उत्तर - 2 हाँ मैं पूरे समय तक परीक्षा भवन में था । बाहरी व्यक्तियों का उस समय आना जाना नहीं था ।

Shri Saiyyad Haldar DW has deposed as follows: -

Q. 3 You were present in the examination hall throughout the period did you observe that the two persons wrote Answer sheet of C.O.?



Ans : I was present from the beginning to the end of the examination as for as I remember no body was writing the Answer sheet of the C.O. during examination.

Reason given by the Disciplinary Authority for not accepting the version of the applicant is as under:-

"After going through the explanation and report of E.O., undersigned he come to the conclusion that the copy of C.O. was written by two other persons as established by G.E.Q.D./SML. This must be only due to connivance of the C.O. as she was the immediate beneficiary. Thus the involvement of C.O. cannot be ruled out. Moreover, as per enquiry report, the other associated accused from 'P' Branch has already been taken up under D&AR.

Therefore, in order to preserve the holiness of the examination and a lesson to other in future it will be misplaced kindness if the C.O. remains unpunished due to certain lacuna in the case."

It is appropriate to extract the statement given by the applicant herself and the same is as under:-

Q. 1 During the investigation answer sheet shown to you against your roll number Exp P-6 was shown to you?

Ans. Yes.

Q.2 Had you written said answer sheet?

Ans : No.

Q. 3 Can you write in English?

Ans. No.

Q. 4 You were declared pass in the examination of T/o onl the basis of 'J' quoted answer sheet Exp. P-6? How you say that said act was fraught competent by the Administration?

Ans : I was not informed about passing/in the same examination. Since answer sheet was not shown to me alongwith others hence I had mention regarding fraud by the Administration.

Q. 5 Can Administration Suo Moto arrange change of Answer sheet of any candidates for getting in pass in the selection without connivance of the candidate?

Ans : Administration is competent to do any-thing.



7. The applicant claims that when there were 57 individuals who wrote the examination strange enough only 56 papers were shown of her. The one written by the applicant herself has not been made available. It was so contended in the appeal also that when the applicant herself had stated that the answer sheets shown to her were not in her handwriting and that the answer sheet written by her was not shown to her, the appellate Authority also failed to look into it.

8. The reason given by the Disciplinary Authority when scrutinized meticulously would go to show that the same is on the presumption that since the applicant was the only beneficiary, she must have connived with two persons to have the examination written and it has also been added that the other associated were also proceeded against. This kind of decision cannot stand judicial scrutiny for the reason that the prosecution witnesses have clearly stated that there was no outsider inside the examination hall and intriguingly, the answer paper which the applicant is stated to have written was not shown to her and the applicant, without any hesitation, had accepted the fact that the answer sheets shown to her did not contain her handwriting. Again, qualifying in the examination alone is not the criterion for promotion. Yet another hurdle of interview was also there. The applicant is right when she says that after writing examination she is to face interview as well and could be made to fail at any stage.

9. The following are the legal lacuna in conducting the Enquiry :-


- A. Failure to proper consideration of the evidences in proper perspective. The prosecution witnesses themselves deposed

that there was no scope of any outsider entering the exam hall. The individual who sat next to the applicant in the examination hall deposed that there was none who was at that time found writing the answer sheet in the place of the applicant. The inquiry officer is expected to analyze all the depositions and weigh in which side the balance tilts. He cannot eclipse the depositions or evidences that were favourable to one side and take cognizance only of the other. Though normally, the Tribunal restricts the examination of cases of disciplinary proceedings on the basis of the finding, in the case of *Moni Shankar vs Union of India*, (2008) 3 SCC 484 the Apex court has held as under:-

Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere.

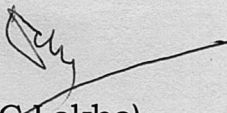
Viewed from the above, the view taken by the inquiry officer and accepted by the Disciplinary authority is erroneous.

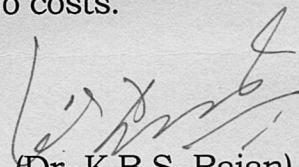
B. Disciplinary Authority's reasoning is perverse. The disciplinary authority has not considered the entire facts of the case. As such, his decision is vitiated, especially when the inquiry report is vitiated for non consideration of the witnesses which went in favour of the applicant.

 C. The appellate Authority's order is cryptic. The four line order impugned is sufficient to prove this.

As the applicant has not been promoted as Telephone Operator and continues in the same Group 'D' Post, punishment meted to her for an alleged misconduct which cannot be stated to have been proved has to be set aside.

10. In view of the discussions made above, the penalty orders are liable to be quashed and set aside. Accordingly Annexure A2 and A3 orders dated 20.3.2005 and 11.7.2005 are hereby quashed and set aside. The applicant is entitled to consequential benefits restoring her pay and payment of annual increment which have been withheld. The respondent shall pass requisite orders for revised pay fixation and also disburse the arrears due to the applicant, within a period of 3 months from the date of communication of this order. No costs.


(D.C. Lakha)
Member (A)


(Dr. K.B.S. Rajan)
Member (J)

/Shashi/