

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

This the day 5th May 1997.

ORIGINAL APPLICATION NO. 752 OF 1988.

CORAM : Hon'ble Dr. R.K. Saxena, Member (J)
Hon'ble Mr. D.S. Baweja, Member (A)

Salik Ram, S/o Madho,
R/o Camp & Bk Sub Depot, Ordnance Depot,
Allahabad.

..... Applicant.

(By Advocate Shri B.P. Srivastava and R.K. Pandey)

Versus

1. Secretary to the Government of India,
Ministry of Defence,
New Delhi-110 011.
2. Director General of Ordnance Services,
Army Headquarters,
DHQ PO New Delhi .
3. Commandant,
Ordnance Depot Fort,
Allahabad.

..... Respondents.

(By Advocate Shri Ashok Mohiley)

ORDER

By Hon'ble Mr. D.S. Baweja, Member-A

1. This application has been filed
with a prayer to quash the order dated 10.12.1987
of the Disciplinary Authority imposing punishment of
dismissal from service and order dt. 8.4.1988 of the

appellate authority dismissing the appeal.

2. This application has been heard alongwith O.A. no. 1222 of 1988. However, the judgment in these Original Applications are being pronounced seperately.

3. The applicant was appointed as Mazdoor on 16.12.1983 in Ordnance Depot, Allahabad after due process of selection and being sponsored by the Employment Exchange, Allahabad. The applicant states that his registration card no. is 2468/79 and he is son of Shri Madho, R/o Village Tiwaripur, P.O. Sahson District Allahabad and he belongs to Scheduled Caste Community. The applicant furnished the relevant documents to the concerned authority and after due verification, he was appointed. However, one ^{/ Ram, S/o} Shri Salik/ Ram Sumer Yadav belonging to the applicants' village made a complaint that he is the real Salik Ram whose name was sent by the Employment Exchange, Allahabad, and the appointment should have been done in his name. Based on this complaint, it is understood that some inquiry was conducted and the applicant was dismissed from services vide order dated 11.6.1984. The applicant challenged the dismissal order in a Writ Petition. The Hon'ble High Court allowed the Writ Petition quashing the dismissal order dated 11.6.1984 with a liberty to the respondents to proceed against the applicant as per the law. The applicant was reinstated

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on 27.5.1985 and from that date onwards he was put under suspension. He was issued a chargesheet and dt. 18.10.1985 ~~xxx~~ An enquiry was conducted/based on the enquiry report, a show cause notice was issued to him proposing the punishment of dismissal from service. The applicant submitted reply to the show cause notice. The disciplinary authority thereafter imposed the punishment of dismissal from service vide order dated 12.10.1987. The applicant made an appeal against the same and the appeal was also rejected vide order dated 8.4.1988. Being aggrieved, the present original application has been filed on 1.6.1988.

4. The applicant has assailed the impugned orders pointing out the following infirmities :-

- a) The list of witnesses was shown as Nil in the chargesheet while actually the witnesses were ~~xxx~~ examined in violation of the rules.
- b) Non supply of the documents asked for which resulted in handicapping the applicant in defending his case.
- (c) Copy of the enquiry proceeding was not supplied alongwith the order of the disciplinary authority.
- (d) The order of the disciplinary authority has been passed without considering the points raised in his letter dt. 4.12.1987 in reply to the show cause notice. No reasons for arriving ^{at} the conclusion have been recorded by the disciplinary authority.

e) The appellate order has been passed without considering the points raised in the appeal and it is a non speaking order.

6. The respondents have opposed the application by filing the counter affidavit. The respondents while narrating the facts with regard to appointment of the applicant and , thereafter, being removed from service on the charge of obtaining appointment on forged documents have asserted that the enquiry has been conducted as per the extant rules. The charge was proved in the findings of the Enquiry Officer and the orders have been passed by the disciplinary and appellate authority after due consideration of the points raised by the applicant. The respondents contend that the grounds raised by the applicant are not sustainable, ~~xxx~~ the application has no merit and deserves to be dismissed.

7. The applicant has filed the rejoinder reply reaffirming the grounds advanced in the application while countering the submissions of the respondents in the counter reply.

8. We have heard Shri R.K. Pandey and Shri Ashok Mohiley counsel for the applicant and respondents respectively.

9. The material placed on the record has been carefully gone through and the arguments advanced during the hearing have been ^{given} thoughtful consideration. (✓)

10. The infirmities in the disciplinary proceedings alleged by the applicant resulting in denial of principles of natural justice are detailed in para 4 above. The principal ground advanced which was repeatedly highlighted during the hearing is with regard non-supply of the documents asked for. In para 6 (m) of the application, the applicant has detailed ~~xxxxxxx~~ ^{were} four documents which ~~was~~ asked by him from department to defend his case. (a) Investigation report. (b) Original letter issued by the Employment Exchange. (c) Copy of the list in which the name of the delinquent appears. (d) Copy of the application made by the applicant based on which the duplicate registration card no. 2468/79 was issued.

From the averments made, we find that the list of the names sent by the Employment Exchange had been supplied to the applicant. As regards the other documents, the respondents have explained that the covering letter of the Employment Exchange under which the list of the candidates was sent was not available as the same had been misplaced in the transit. It is further contended by the respondents ^{if} that the applicant considered it as a vital document to defend his case, he could have obtained a copy of the same from ^{the} Employment Exchange. The respondents further submit that the copy of the investigation report had been furnished to the applicant. However, there is no submission with regard to supply ^{of} the copy of the application submitted by the applicant for obtaining duplicate registration card. The respondents ^{also} had given reply to the applicant with regard to supply

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of these documents vide letter dated 7.10.1986 (Annexure-A-5). The applicant in the rejoinder reply has contested the version of the respondents stating that the documents have not been supplied and referred to his letter dated 21.5.1986 (Annexure-1) to the rejoinder reply. We have carefully considered these rival contentions and are of the opinion that the applicant has not made out a case as to how prejudice has been caused to him in defending his case. The respondents have stated that the copy of the investigation report has been supplied to the applicant. The applicant without specifically refuting this has referred ^{to} his letter dated 21.5.1986. In this letter he has referred to preliminary investigation report ^{as per} ~~under~~ which prima-facie case had been made against him. We have gone through the chargesheet and find that no reference has been made to the preliminary investigation report in the statement of charges and any of the documents listed. In view of this ^{the} preliminary investigation report does not become the vital document and its non supply to the applicant, has not prejudiced his case. Similarly, the covering letter under which the Employment Exchange had sent the list of the candidates is not very material as the applicant himself has averred that his name was sponsored by the Employment Exchange and the copy of the list indicating the name of the applicant has been furnished to him. It is not clear as to how this letter would have been helpful to the applicant in defending his case when the main issue was the production of the forged registration card. As regard

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the non furnishing of the copy of the application submitted by him for obtaining the duplicate registration card from the Employment Exchange, we are unable to accept the contention of the applicant that ^{has} it / prejudiced his case. This is a document which the applicant should have obtained and produced in his defence to establish that he had obtained duplicate registration card, as the original had been lost. It was not incumbent on the part of the respondents to supply this document as this was not their case for framing the charges and it was his version that he had obtained the duplicate card. The Hon'ble Supreme Court in judgment State Bank of patiala and others Versus S.K. Sharma 1996 (2) SLR 631 has laid down the principle in context of the disciplinary enquiry and the orders of punishment imposed, based on which the test of prejudice is to be determined. Considering the above facts and the ^{that} circumstances, we do not find any prejudice has been caused to the applicant for non supply of the documents asked for.

11. The second ground advanced is ~~that~~ with regard to non supply of the enquiry proceedings with the order of the disciplinary authority. The applicant has admitted that he has received the copy of the enquiry report. The respondents have not made any specific averments on this aspect. However, from the appeal submitted by the applicant at Annexure A-10, we find that he has mentioned that the copy of the enquiry proceedings has not been supplied to him. However, it is not clear whether the copy of the enquiry ^{were} proceedings ~~were~~ sent to the applicant alongwith the enquiry

report or not. Further, the applicant has not made any averment that he ~~made~~ represented to the office to supply a copy of the enquiry proceedings, in case, he had not received the same. In case, the applicant was handicapped in filing the appeal due to non availability of the copy of the enquiry proceedings, he could have represented for the same. However, he ~~choose~~ ^{without the same} to make an appeal. We have gone through the appeal and find that it is quite exhaustive. The applicant has not brought out as to how he ^{could} further defended his case, in case, the enquiry proceedings were available to him. We are unable to get convinced that this infirmity even if accepted has caused any material prejudice to the applicant in formulating his defence in the appeal.

12. As regards the third ground for examining the witnesses during the enquiry when no witnesses were listed in the chargesheet, the applicant has not furnished any details of the witnesses examined. He has also not disclosed whether these witnesses were cross-examined by him. From the enquiry report, we find that some witnesses have been examined and it appears that these witnesses were examined with a view to prove the various documents relied upon in the enquiry report. If any additional witnesses are produced by the prosecution side with due notice to the applicant and ~~having been~~ ^{he is} given ^{due} the opportunity of cross examination, ^{then} ~~no~~ ^{or} prejudice ~~are~~ ^{could be} denial of the opportunity ~~is~~ ^{is} said to have been caused. In the absence of any details ^{from} ~~of~~ the applicant, we are unable to see any merit in this argument.

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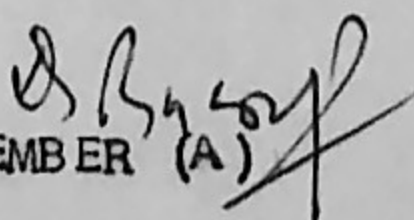
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13. Lastly, we come to the orders of the disciplinary authority and the appellate authority. We have carefully gone through these orders and not inclined to agree with the submission of the applicant that these are non speaking orders passed without considering the points raised by the applicant. The appellate authority has clearly referred to the points raised by the applicant in the appeal and has recorded findings with regard to conducting to the enquiry as per rules and affording the reasonable opportunity to the applicant. In view of these facts, there is no merit in the contention of the applicant.

14. On consideration of the various grounds advanced challenging the impugned orders, we do not find any infirmity in the disciplinary proceedings which has ~~been~~ denied ~~with~~ reasonable opportunity to the applicant in defending his case ~~and~~ or causing any violation of principles of natural justice.

15. In conclusion of the above, we do not find any substance or merit in the application and the same deserves to be dismissed and is, accordingly, dismissed. No order as to costs.


MEMBER (A)


MEMBER (J)

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