

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 5th day of January 2007.

Original Application No. 1135 of 2000

Hon'ble Mr. Justice Khem Karan, Vice Chairman
Hon'ble Mr. P.K. Chatterji, Member (A)

Sukhdas, S/o Zibbu Ram, R/o Ajabpur Danda (Sastri Nagar) House No. 18 Naridwar Road Post, Nehrugram, Dehradun.

. . . Applicant

By Adv: Sri B.N. Tiwari

V E R S U S

1. Union of India through the Central Provident Fund Commissioner, Bhikaji Cama Place, Hudeo Vishala, New Delhi.
2. The Central Provident Fund Commissioner, Bhikaji Cama Place, Hudeo Vishala, New Delhi.
3. Additional Central Provident Fund Commissioner (HR) and Appellate Authority (Head Quarters) Bhavishya Nidhi Bhawan - 14 Bhikhaji Cama Place, New Delhi.
4. Regional Provident Fund Commissioner, UP, Nidhi Bhawan, Sarvodaya Nagar, Kanpur.
5. Additional Central Provident Fund Commissioner (Retired) Sri R.K. Rastogi, 39-D, DDA Flats Masjid Moth Phouse-I, New Delhi.
6. Sri R.K. Saxena, Enforcement Officer, Employees Provident Fund Inspectorate, Room No. 3, Awas Vikas Karyalaya, Aligarh.

. . . Respondents

By Adv: Sri N.P. Singh & Sri N.B. Tiwari

O R D E R

By Hon'ble Mr. P.K. Chatterji, Member (A)

The applicant of this OA was appointed as peon in the employees Provident Fund Sub Regional Office

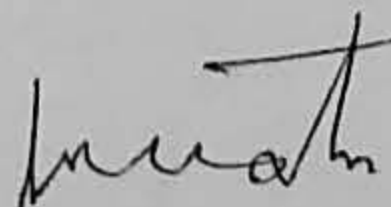
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Dehradun on 02.09.1987. He was promoted as LDC non metric on 23.06.1993 and posted in the same office. The Regional PF Commissioner UP issued a charge sheet against the applicant for major penalty on 05.10.1994. In this it was alleged that the applicant had obtained a forged certificate to get his initial appointment fraudulently. At the time of initial appointment the applicant submitted a school leaving certificate dated 16.07.1972 in which it was shown that he had passed class 8. It is stated by the respondents this was a forged certificate.

2. Upon service of the charge sheet the applicant requested the Disciplinary Authority (in short DA) to give a Hindi translation of the same as he was unable to read and understand the charges written in English. But the DA rejected his application saying that as LDC he was supposed to know English. The DA appointed IO and PO for making enquiry into the charges. Thereafter, the applicant requested the DA to grant permission to appoint ~~ed~~ Sri Guru Narain as his defence assistance. Sri Narain also intimated his consent to the DA. However, this request also was turned down by the DA. The DA subsequently agreed to the appointment of one Sri R.K. Saxena Enforcement Officer to act as the defence assistant.

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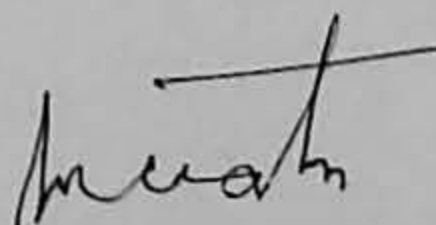
3. The defence assistant appeared before the IO on 31.10.1995 and submitted an application saying that he was given the photocopies of the relevant paper on the same day and, therefore, he needed time. On 04.12.1995 Sri Saxena sent another letter seeking adjournment of the hearing on the ground of his preoccupation with other cases. Thereafter, the IO proceeded to enquiry into the matter without the presence of the defence assistant. The applicant alleges that he was seriously handicapped by the absence of the defence assistant as also by the fact that the proceedings were in English which he was not able to comprehend. In absence of the defence assistant he could not cross-examine SW I. No properly written brief could also be filed by the applicant against the charge sheet. The enquiry was closed by the IO on 26.09.1996 asking the applicant for filing his reply. The applicant submitted his written brief on 04.01.1997 which he says, was got prepared with the help of someone in office. Thereafter, the IO submitted his report on 25.03.1997, and the DA issued a notice on 25.04.1997 calling upon the applicant to make his representation against the report of the IO. The representation was submitted on 12.06.1997 and, thereafter, the DA issued the order of dismissal on 02.09.1997.



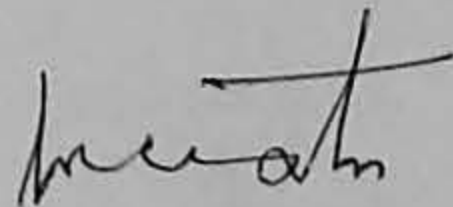
4. The applicant says that he got an appeal drafted with the help of some friend and filed the same on 02.09.1997. The appeal was rejected by the Appellate Authority on 07.02.2000. The applicant then submitted an appeal before the second Appellate Authority (respondent No. 2) who, it is alleged, dismissed the same by just saying that the second appeal did not lie as per rule. The applicant is aggrieved that instead of dismissing the second appeal in this way he should have been guided and advised about the provision of a revision petition of which he was not aware. This would go to show that the respondents were very unsympathetic to the applicant.

5. The applicant has requested the Tribunal to quash the order dated 02.09.1997, 07.02.2000 (Appellate order) and dated 27.07.2000 (Order on the Second appeal). He has also requested that the Tribunal directs the respondents to reinstate the applicant with full back wages. As ground for his prayer, he has cited the following:

- i. The School leaving certificate was genuine, there was nothing fraudulent about it.
- ii. Refusal to give the documents in Hindi and to conduct the enquiry in Hindi was a violation of the principles of natural justice.



- iii. There was denial of reasonable opportunity as the respondents did not accept his choice of the defence assistant and the defence assistant whom he was compelled to accept did not attend the enquiry at all.
 - iv. The applicant was not given opportunity to defend himself by cross-examining the witnesses and adducing documents.
 - v. This is a case of no evidence. The IO attempted to prove the charges on the basis of written report from the school authority, but the applicant's request for summoning the persons signing the report was rejected.
 - vi. The documents relied upon by the DA were not furnished to the applicant.
 - vii. The charge against the applicant was not proved. Moreover, the enquiry/investigation by Sri A.K. Mukhjerji was made in respect of Book No. 186 and not 86.
6. The learned counsel for the applicant also said that rejection of applicant's request for furnishing the a copy of charge sheet in Hindi was violation of Article 350 of the Constitution. In this respect the applicant's counsel cited from the Apex Court judgment in AIR 1990 SC 605 in the case Kubic Dariausz Vs. U.O.I. & Ors. According to him the Apex Court had observed that even if the petitioner feigns ignorance of the language, it would be the state's responsibility to furnish a copy in the language he wanted.

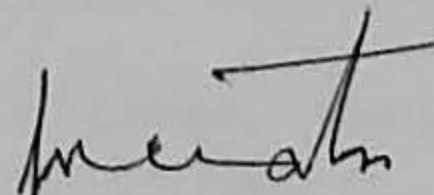


7. However, the relevant extract of the judgment is actually observed to be as follows:

"Constitution of India, Art. 22(5) - Preventive detention - Grounds - Communication in language understood by detenu - Foreign national detained - Grounds and order served in English - Court is competent to decide whether detenu feigns ignorance of language or has its workable knowledge - In instant case held Polish national had work - able knowledge of English - Article 22 (5) not violated."

8. The respondents denied all the allegations in their reply stating that full opportunity was given to him and there was no denial of natural justice. It was not that no defence assistant was provided to him. But the defence assistant of his choice could not be spared and, therefore, his request was rejected. But it was not that the service of DA was not available. It has also been stated by the respondents that the IO adjourned the enquiry on several occasions due to absence of defence assistant. For this reason the enquiry took a long time of about one year. If the applicant could not secure proper assistance from the defence assistant it was his failure.

9. We have applied our mind to his matter and we are of the view that not accepting the applicant's choice of the DA is not a denial of opportunity. The applicant can always have the service of an alternative assistance who can be spared. This view



has been observed by the Apex Court in AIR 1976 SC 1686, H.C. Sareen Vs. U.O.I. & Ors.

10. The learned counsel for the respondents also cited from the judgment 2003 (3) SCC 437 K.V.S. & Ors Vs. Ram Ratan Yadav. In citing this case the learned counsel argued that giving a false certificate would be considered as a major offence for which maximum punishment was required. The learned counsel was of the view that the decision of the Apex Court in this case was fully applicable. The relevant extract is as follows:

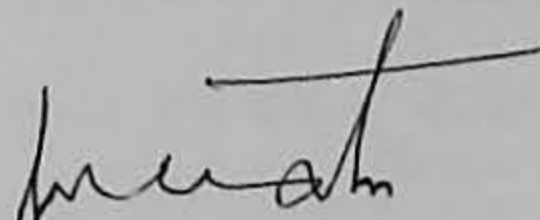
"Service Law - Dismissal - Suppression of material information relating to character and antecedents - Considered a "major offence" for which punishment may extend to dismissal from service, as per terms of offer of appointment - Attestation form, which was required to be duly filled and submitted by appointee, inter alia containing questions if he ever had been prosecuted or convicted by court of any offence and if any case was pending against him in any court at the time of filling up the attestation form - Respondent appointee relying both the question in the negative and also certifying that the information given by him was correct and complete to the best of his knowledge, although a criminal case against him was pending at that time - Held, it amounted to suppression of material information and making false statement which has a clear bearing on the character and antecedents of respondent in relation to his continuance in service - Object of seeking the information being to verify the character and antecedent, the nature or gravity of the offence and ultimate result of the criminal case are not relevant considerations - Contention of respondent (who possessed BA, BEd degrees) that he having received education in Hindi medium, could not understand meaning of words "prosecution" and "conviction" and as such answered the questions on misconceived notion, on facts, not acceptable."

11. The learned counsel for the respondents also refuted the allegations of the applicant's counsel that the witnesses whom he wanted to cross examine

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were not made available. He stated that when authentic report was obtained from the School Authority regarding the School Leaving certificate through which the applicant secured his job, it was not necessary that the same persons had to be summoned for cross examination. He also denied the allegation by the learned counsel for the applicant that he was not allowed to cross examine the witnesses. He said that the applicant was present through out the enquiry at the stage of production of the documents and witness and their cross examination. There was no denial of justice on this ground at all.

12. We have considered the submissions in depth and have applied our minds also. Regarding the contention of the applicant that rejection of his request for a Hindi copy was a violation of Article 350, we are not convinced. The learned counsel referred to the Apex Court judgment to assert the applicant's right to have a Hindi copy. There also we find that the learned counsel's reliance is misplaced. In that case the Apex Court had observed that whether not giving a copy of the document in the language wanted would constitute denial of natural justice would depend upon the circumstances which the Court should decide.



13. The respondents have also stated that having qualified in the examination for the selection of LDC and having worked as LDC in which post he is required to deal with correspondences in English, the applicant cannot feign ignorance of English and take the plea that he has been denied reasonable opportunity by being not given the copy of the charge sheet in Hindi. The respondents have also stated that at all stages of enquiry the applicant had prepared his statements in English from which it would be clear that he could understand what were the charges against him. Whether the right of the applicant has been infringed has to be seen in the light of whether the charges have been properly communicated or not. In this case there is no doubt that the charges, albeit in English, were communicated to the applicant and he could follow the same. Therefore, on this ground it cannot be stated that there has been a denial of reasonable opportunity. We are, therefore, unable to agree with the applicant in this matter.

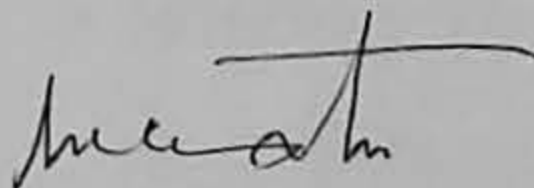
14. The point regarding rejection of the request of the applicant to appoint Sri Guru Narain as defence assistant was also discussed and the relevant judgment of the Apex Court cited. We are of the view that the applicant was allowed the service of another official as defence assistant and there was no violation of natural justice. We have seen the

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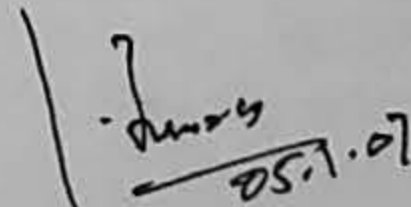
records of the enquiry. It is not denied that the IO was under pressure to conclude the enquiry at an early date. But this is not to be construed as a pressure by the DA to influence of the judgment of the IO. It is very natural that the administration would like to dispose of disciplinary cases within a reasonable time.

15. We have also applied our mind to the other aspect of the argument of the applicant that it was a case of no evidence. In our view the report obtained from the school regarding fakeness of the certificate could be taken as true. The applicant should also have no grievance that enough time and opportunity was not given to him to cross examine the witnesses and adduce witness. The enquiry was conducted through several sittings spanning over a year, in which the applicant was present. Therefore, it is not convincing that he was not given reasonable opportunity.

16. On these considerations, we do not find any merit in this OA which is, therefore, dismissed. No cost.



Member (A)



Vice-Chairman

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