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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 241 OF 1986.
~~Ex. No.~~

DATE OF DECISION 18-11-1986.

BABUSINH SHIVNATHSINH Petitioner

K.H. BAXI Advocate for the Petitioner(s)

Versus

GENERAL MANAGER, AHMEDABAD (TELECOM) Respondents.

J.D. AJMERA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. BIRBALNATH, ADMINISTRATIVE MEMBER.

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal. *No.*

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J U D G M E N T

O.A.No. 241 OF 1986.

Date: 18-11-1986.

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioner, Babusinh Shivnathsinh, has challenged the validity of the order dated 20.2.1984 passed by the Assistant Engineer, Respondent No. 3; whereby his name has been removed from the select list. The impugned order (Annexure 'D') reads as under :-

It has been ascertained that the High School mark sheet submitted by you alongwith T.O. Application is bogus and forged one. You were selected as T.O. Candidate on the basis of marks shown in that certificate.

THEREFORE, it is regretted to inform you that your request for appointment as Telephones Operator can not be accepted to and your name has been removed from select list and you will have no claim for the same in future.

2. It is contended inter-alia, by the petitioner that the impugned order is bad in law and violative of the provisions of Articles 14 & 16 of the Constitution of India, as he has not been given any opportunity to explain the situation and even no reasons are assigned by the authority while passing the same. The respondents have contested the application and have denied the averments and the allegations made against them. According to them, the petitioner got himself selected by producing forged mark sheet showing that he has passed S.S.C. Examination with 71% of marks. But the inquiry revealed that he had obtained only 44.4% marks even as per his admission before the Assistant Labour Commissioner (Central, Ahmedabad) and on the basis of other relevant materials. The petitioner's name was removed from the select list as he was selected on the basis of the information which was

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found to be forged and bogus. In this view of the nature of their plea, it is submitted by Mr. J.D. Ajmera, the learned counsel for the respondents that the impugned order is quite legal and valid.

3. While determining the validity of the impugned order we are required to advert to the three-fold contentions raised by Mr. K.H. Baxi, the learned counsel for the petitioner, during his arguments. Firstly, that there is a subsisting relationship of the employer and employee between the parties as the petitioner had accepted the offer of appointment. Secondly, that no opportunity was afforded to him to explain the situation and thirdly, no reasons are assigned in the impugned order.

4. It is pertinent to note that the respondents have not given any order of appointment to the petitioner for the post of Telephone Operator. The petitioner was only informed vide letter dated 27.10.1980 (Annexure 'A') that he has been provisionally selected as Telephone Operator and that too subject to verification of several documents including mark sheet and following other formalities. Moreover the regular training was also required to be undertaken before the petitioner could be given an appointment for the aforesaid post. It is borne out from the letter dated 11.12.80 (Annexure 'B') that the petitioner was already apprised about the cancellation of training programme in his case, as the authorities had entertained a doubt regarding his school testimonials.

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5. It is not the case of the petitioner that he had signed and filed a joining report in token of his having accepted the offer of appointment. It is conceded that the petitioner was prosecuted before the Court of J.M.F.C., Surat in respect of the complaint, lodged by the Respondent No.3, for using the forged mark sheet, for the offence punishable under sections 420, 465, 467, 468 and 471 of I.P.C. and later on, he was acquitted by the Court. Therefore, the petitioner sought appointment for the post of Telephone Operator, on the ground that he was acquitted by the Court for the alleged crime. But the respondents however passed the impugned order.

6. The petitioner has assailed the said order on the ground that it has been passed by the authority without affording him an opportunity to explain the situation and no reasons are assigned while passing the impugned order. In order to examine, the merits of the plea raised by the petitioner the reference may be made to a x'erox copy of the marks sheet found at page 30, the original whereof was produced by the petitioner and on the basis thereof, he was ranked in the select list at sr.no.5. Whereas a x'erox copy of the marks sheet found at page 29, pertaining to the petitioner reveals that he had secured only 220 marks. On the basis thereof, it can be well seen that he had secured only 44.4% marks in S.S.C. Obviously, had the petitioner given correct marks sheet then he would not have been selected, because the last member was selected on the basis of his percentage at 61.85%. The petitioner was duly informed that his selection was merely provisional and it was subject to verification of marks sheet. He has

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neither challenged the marks sheet showing that he had secured only total 220 marks at S.S.C.Examination nor he has calimed that he had secured total 355 marks as shown in the certificate purported to have been forged. The impugned order is neither an order of dismissal, removal or termination from service or reduction in rank as contemplated under Article 311 of the Constitution of India. Above all, no relationship of master and servant is established between the parties.

7. There is no vested right in the matters of appointment recognised and protected by law. When a select list of the candidates is prepared, it simply indicates that at the given moment, he is considered eligible for appointment. Inclusion of name in the select list does not confer a right for appointment. Events subsequent of the formation of the panel may render him unfit for appointment (see N.M. Siddique vs. Union of India, A.I.R. 1978 S.C. 386). There is no requirement in law that any regular inquiry has to be held before the order of exclusion of the name in the select list is passed by the authority. Therefore, there is no question of a notice or a hearing being given to the petitioner, when his name is proposed to be removed from select list, as contended. The Rule of natural justice, 'audi, alteram, partem' does not apply to the situation. (see Union of India vs. M.L. Kapoor, A.I.R. 1974 S.C. 87). Even on the perusal of the impugned order, it can not be said that the reasons are not assigned by the authority while passing the same. In this view

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of the matter, the contentions canvassed by
Mr. Baxi, the learned counsel for the petitioner,
merit no consideration.

8. In the light of the aforesaid discussion,
there are no valid grounds to assail the impugned
order. It does not suffer from any illegality or
irregularity whatsoever. The application, therefore,
merits no consideration and stands dismissed with
no order as to costs.

18/11/82
(BIRBAL NATH)
ADMINISTRATIVE MEMBER.


(P.M. JOSHI)
JUDICIAL MEMBER.