

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. No. 461 of 1986  
 with  
 M. A. No. 878 of 1988

DATE OF DECISION 05-04-1989

Shri Anil Jayantilal Vyas

Petitioner

Shri B. B. Gogia

Advocate for the Petitioner(s)

Versus

Union of India &amp; Others

Respondent

Shri J. D. Ajmera

Advocate for the Respondent(s)

## CORAM :

The Hon'ble Mr. P. H. Trivedi : Vice Chairman

The Hon'ble Mr. P. M. Joshi : Judicial Member

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

(6)

Shri Anil Jayantilal Vyas,  
'Ambica Niwas',  
9, Junction Plot,  
Rajkot.

..... Petitioner

(Adv. : Shri B. B. Gogia)

Versus

1. The Union of India,  
Through: Its Secretary,  
Ministry of Communication,  
Sanchar Bhavan,  
New Delhi.

2. The General Manager Telecom.  
Gujarat Circle,  
Ahmedabad - 9.

3. The Divisional Engineer,  
Telegraphs,  
Rajkot Division,  
Rajkot - 360 001.

..... Respondents

(Adv. : Shri J. D. Ajmera)

J U D G E M E N T

Date : 05-04-1989

OA/461/86

Per : Hon'ble Mr. P. H. Trivedi : Vice Chairman.

The petitioner's services were terminated by an order of 14th March, 1986 in pursuance to the Proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary) Rules, 1965 and he was declared entitled to a sum equivalent to the amount of his pay plus allowances for the period of notice before termination for one month. The respondents, therefore, claim that this termination is termination simplicitor but the petitioner claims having

(9)

regard to the back-ground of the case that it is a penal order which is illegal. The petitioner had applied for the post of Telephone Operator of Baroda Division. He was selected and asked to report for training. After completion of 3 months' training successfully he was asked to report for duty by order dated 31-08-1981 and was appointed as Telephone Operator in the scale of Rs.260-480 at Dabhoi. He was then transferred to Rajkot Division at his request. Thereafter, on 14-10-1985 he was asked to attend the office of the Vigilance Officer and was asked to furnish original marksheet of S.S.C.Examination and High Secondary Examination. The petitioner stated that the original certificate had been produced at the time of his recruitment and he has produced the marksheets which are on record. He was threatened that he would have to appear before the C.B.I. if he does not produce the original marksheets. He was later on informed by the Vigilance Officer that according to the interrogation the petitioner had stated that he had obtained 58% marks in the examination whereas he has been selected on the basis of 73.86% marks. The petitioner states that he has passed S.S.C. with only 42% marks and he does not know how the respondents got the impression that he had 73.86% marks. It is the case of the respondents that had they known 42% marks he had secured, he would not have been called for the interview. The respondents claim that on their detecting the mistakes, although they suspect foul play and collusion and that the petitioner fraudulently obtained the appointment on the basis of false certificates and representation they have not preferred

to visit the petitioner with due consequences but have satisfied themselves only by simple termination.

2. After hearing the learned advocates on both the sides we are unable to state that the petitioner's hands are as clean as he protests. It would be too much of a coincidence if the petitioner were made the beneficiary of the respondent authorities misreading 73.86% instead of 42% and the suspicion that this was totally without any assistance from the petitioner would stick in the throat of most of us. But suspicion is one thing and reasonable proof another. The respondents have not shown that those who had secured 42% marks were not eligible even to apply. No copy of any stipulation regarding the minimum number of marks has been produced. It is, therefore, not possible to state that the petitioner with 42% marks could rule himself out on the bare perusal of the advertisement. He applied for the post and was interviewed. There are averments on the part of the respondents that the petitioner said that he had secured 58% marks. The petitioner states that the original certificates given by the school authorities on his passing the examination were made over to the respondent authorities. We have no doubt that ~~the~~ the normal course documents required to be produced must have been made available to ~~is~~ the respondent authorities. If they were, they should have been scrutinised by the respondent authorities. If they were not, nothing stopped the respondent authorities from asking for them or refusing to declare the petitioner successful until they had got them or making failure on the part of the petitioner to produce them as a reason for their deciding against him. They not only selected him

but sent him for training and after completion of successful training gave him the appointment order. There may be a suspicion but there is no proof that the petitioner in any way led them up to the belief or surmise or conclusion favourable to him and that he has fraudulently hidden his lack of eligibility in any manner. The respondents would have been supported had the petitioner been proved to have done so. The respondents have at all times a right to correct their mistakes. The petitioner has no right to profit from any mistake. In this case, however, 42% marks is not below the threshold of eligibility in terms of any conditions laid down for selection by the respondents. It has also not been found that the petitioner, fraudulently concealed, suppressed, misrepresented or misled the respondents in any manner. The respondents were free agents, had the necessary resources and could easily have made their scrutiny without any hindrance from the petitioner.

3. The respondents have cited 1985 GLH 511 Rasiklal Vaghjibhai Patel Vs. Ahmedabad Municipal Corp<sup>n</sup>. and another and AIR 1974 S.C. 1317 R.S. Sial Vs. State of Uttar Pradesh in support of their plea that they have a right to terminate the services of the petitioner. We are unable to be persuaded that these decisions apply in the facts of the present case as there is no proof of suppressionemeri and suggestio falsi. The motive in terminating the appointment of the petitioner though ostensibly couched in terms of termination simplicitor is one of visiting him with punishment. The learned Advocate for the petitioner has relied upon SLR 1979(1) 818 V. Natrajan Vs. Principal District Judge (Madras) which also apply in this case because such a lapse of time as would entitle the petitioner to estoppel on grounds of natural justice has taken place. We propose to dispose of the merits of the

case on the test of whether the petitioner has been proved guilty of anything culpable for suppressing the truth or suggesting a falsehood, withholding any documents which he should have been produced or failed in obligation cast upon him in the process of selection. We do not find that he has been so found culpable.

4. Accordingly, the petition is found to have merit and succeeds. The impugned order is quashed and set aside and he be reinstated in the post and given his back wages within 4 months from the date of this order. Corrected Suo Moto. Production ~~in~~ of documents in MA./878/88 is allowed and stands disposed of.

No order as to costs.

*Phatak*  
( P. H. Trivedi )  
Vice Chairman

*Joshi*  
( P. M. Joshi )  
Judicial Member