

(10)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**

AHMEDABAD BENCH

No  
Termination

B

O.A. No. 120 OF 1991.  
~~xxxxxx~~

DATE OF DECISION 13.1.1993.

Avadhbihari I. Shah, Petitioner

Mr. M.D. Rana, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. Akil Kureishi, Advocate for the Respondent(s)

**CORAM :**

The Hon'ble Mr. N.V. Krishnan, Vice Chairman.

The Hon'ble Mr. R.C.Bhatt, 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? ✗

Avadhbihari I. Shah  
L.M.P., Juna Savar,  
Savar Kundla.

.... Applicant.

(Advocate: Mr. M.D. Rana)

Versus.

1. Union of India  
(Notice to be served  
through The Secretary,  
Dept. of Post & Telecom,  
Sanchar Bhavan, New Delhi).
2. The Area Manager,  
Telecom  
Gujarat Region, Khanpur,  
Ahmedabad.
3. The telecom Dist. Engineer,  
Bhavnagar Division,  
Bhavnagar.
4. Sub Divisional Officer,  
Telegraphs,  
District - Bhavnagar,  
Mahuva.
5. Junior Telecom Officer,  
Savar Kundla,  
Dist. Bhavnagar,  
Savarkundla.

.... Respondents.

(Advocate: Mr. Akil Kureshi)

ORAL ORDER

O.A.No. 120 OF 1991

Date: 13.1.1993.

Per: Hon'ble Mr. R.C.Bhatt, Judicial Member.

Heard Mr. M.D. Rana, learned advocate for the applicant and Mr. Akil Kureshi, learned advocate for the respondents.

2. This application under section 19 of the Administrative Tribunals Act, 1985, has been filed by the applicant, Lineman Phones at Savar-Kundla working with the respondents seeking the relief that the impugned order Annexure A-5 dated 20th April, 1989

passed by the Sub Divisional Officer, Telegraphs,

Mahuva by which the applicant services were terminated be quashed and set aside and the applicant be reinstated in service with full back wages.

3. The case of the applicant is that at the time

of joining the office, he had given original School

Leaving Certificate, Annexure-A/3 <sup>in</sup> which there is

the mention of his birth date as 2nd February, 1957.

Thereafter, according to the applicant, he received

a letter from Sub Divisional Officer, Mahuva dated

10th February, 1988 to produce original School

Leaving Certificate within seven days on the receipt

of the letter. It is alleged that the second birth

certificate was obtained by him in which date of his

birth was shown as 2nd February, 1954 vide Ann. A-4.

The case of the applicant is that both the certificates

were issued by the same officer of the School. The

applicant then on 20th April, 1989 received a

termination order through Junior Telegram Officer

Sabarkundla which was issued by the Respondent No.4,

Sub Divisional Officer, Telegraphs, Mahuva, vide

Annexure A-5. The applicant has challenged this

order Annexure A-5 on the ground that it is illegal

and arbitrary and violative of Article 14, 16 &

311 of the Constitution of India.

4. The applicant has also during the pendency

of the application amended the application by adding

paragraphs 7-A to 7-L in the original application.

The applicant contended in these paragraphs that

the order of termination of his services was illegal inasmuch as it was made without giving him any opportunity of hearing and without following any procedure like enquiry, investigation etc.

5. The respondents have filed detailed reply controverting the averments made by the applicant. The respondents have contended that the applicant had produced School Leaving Certificate deliberately with wrong date of birth at the time of joining of training with the Department for appointment. However, upon inquiries with the School authorities true birth date of the applicant was revealed and therefore, the services of the applicant were terminated by the respondents under the provision of Rule 5 of the CCS (CCA) Rules and therefore the application requires to be rejected. The respondents in para 8 of the reply specifically contended that the services of the applicant were terminated by the S.D.O.T, Mahuva on account of the facts that the applicant had produced false School Leaving Certificate at the time of joining the department.

6. Having perused the reply of the respondents in details, it is clear that though the order Ann. A-5 looks very innocuous apparently but if we lift the veil of termination order, in order to find out the correct nature, we find that it contains a stigma against the applicant. The question is whether such an order can

be passed without resorting to an enquiry. More over, if notice Annexure A-6 dated 10th February, 1988 given by the respondents to the applicant is perused, it reads as under:

"Please refer to the T.D. Engineer, Bhavnagar letter cited above and forwarded immediately the original school leaving certificate. If you fail to produce the certificate within 7 (seven) days of receipt of this letter you are likely to be terminated and case will be registered with police for committing fraud."

This notice reveals the mind of the respondents that they wanted to terminate the services of the applicant on the ground of giving the false school leaving certificate with the threat of filing criminal case against the applicant for committing fraud. Under these circumstances it was incumbent on the respondents to first to start an enquiry against the applicant before terminating his services. The protection under Article 311(2) is given to the applicant and before terminating the services, an opportunity has to be given to the applicant to explain the allegations against him and the services can not be terminated without holding an enquiry. In this view of the matter, the order Ann. A-5 is illegal and bad in law and the same requires to be quashed and set aside. We therefore, pass the following order.

O R D E R

The application is allowed. The impugned order Annexure A-5 dated 20th April, 1989 passed by the

respondent No.4, Sub Divisional Officer, Telegraphs, Mahuva is quashed and set aside and the respondents are directed to reinstate the applicant in service within one month from the date of the receipt of this order with continuity of service and / to pay all the backwages according to the rules applicable to months \* the applicant within three weeks from the date of the receipt of this order. The respondents would be at liberty to hold an enquiry against the applicant if / so desire. The application is disposed of. No orders as to cost.

*Raval*

(R.C.Bhatt)  
Member (J)

*Chen*  
13.1.93

(N.V.Krishnan)  
Vice Chairman

vtc.

\* as per order dated 12/04/93

DATE	OFFICE REPORT	ORDERS.
12.4.93		<p>xxxxx Mr. Variyava for Mr. Akil Kureshi is present for the original respondents. None is present for the original <del>xxxxxx</del> applicant. This M.A is filed by the original respondents for substitution of the words "three months" in place of the words "three weeks" referred to in the order portion of O.A. 120/91. On 13th January, 1993 there is no reply filed to this M.A. We rely on the averments made in this M.A. and the words "three weeks" referred to in the order portion be deleted and in that place the words "three months" be substituted and the Registry is directed to make correction accordingly in the order portion of O.A. 120/91. M.A. is disposed of.</p> <p><i>M.R. Kolhatkar</i> (M.R. Kolhatkar) Member (A)</p> <p><i>R.C. Bhatt</i> (R.C. Bhatt) Member (J)</p> <p>vtc.</p>

DATE	OFFICE REPORT	ORDERS
12.4.93		<p>Mr. Variyava for Mr. Akil Kureshi is present for the original respondents. None is present for the original <del>xxxxxxxxxxxx</del> applicant. This M.A is filed by the original respondents for substitution of the words "three months" in place of the words "three weeks" referred to in the order portion of O.A. 120/91. On 13th January, 1993 there is no reply filed to this M.A. We rely on the averments made in this M.A. and the words "three weeks" referred to in the order portion be deleted and in that place the words "three months" be substituted and the Registry is directed to make correction accordingly in the order portion of O.A. 120/91. M.A. is disposed of.</p> <p>(M.R. Kolhatkar) Member(A)</p> <p>(R.C.Bhatt) Member(J)</p> <p>vtc.</p>

DATE	OFFICE REPORT	ORDERS
10/6/93		<p>Heard the learned advocate Mr. Variava for Mr. Kureshi in M.A./236/93. The original respondents seek extension of time of 3 months from the date of this application. The time had already expired much earlier in April, 1993. The S L P is filed on 20/4/93 has mentioned in this M.A.. The original respondents could have taken order of the Hon'ble Supreme Court, even before this M.A. on 7/5/93 was given. However, we extended time upto 30/6/93 with the condition that no further extension will be given. The endorsement on the top of this M.A. shows that a copy of this M.A. was sent by registered post with AD to the other side advocate .</p> <p>Call on 30/6/93.</p> <p style="text-align: right;"><i>Res</i> (R.C.Bhatt) Member (J)</p> <p style="text-align: center;">*SS</p>

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DATE	OFFICE REPORT	ORDERS
30.6.93		<p>Mr. Variava for Mr. Akil Kureshi for the respondents seeks further extension of time. Time is granted upto 15th July, 1993. M.A.236/93 is accordingly disposed of.</p> <p style="text-align: right;">(R.C.Bhatt) Member (J)</p> <p>vtc.</p>

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30.6.93		<p>Mr. Variava for Mr. Akil Kureshi for the respondents seeks further extension of time. Time is granted upto 15th July, 1993. M.A.236/93 is accordingly disposed of.</p> <p><i>AC</i></p> <p>(R.C.Bhatt) Member (J)</p> <p>vtc.</p>