

13

13

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.219 of 1987.

Date of decision : August 31 ,1988.

Chintamani Kar, aged about 33 years,
son of late Banshidhar Kar, village/P.O.
Arjunpur, P.S.Khurda, District- Puri.

...

Applicant.

Versus

1. Union of India, through
Superintendent, Postal Stores Depot,
Sambalpur.
2. Director of Postal Services,
Sambalpur Region, Sambalpur.

...

Respondents.

For the applicant

...

M/s.S.Kr.Mohanty,
S.P.Mohanty, Advocates.

For the respondents

...

Mr.A.B.Misra, Senior Standing
Counsel (Central)

C O R A M ;

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR.K.P.ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to
see the judgment ? Yes.
 2. To be referred to the Reporters or not ? *yes*.
 3. Whether Their Lordships wish to see the fair copy of
the judgment ? Yes.
-

J U D G M E N T

K.P.ACHARYA, MEMBER (J)

In this application under section 19 of the Administrative Tribunals Act, 1985, the impugned orders contained in Annexures-5 & 7 removing the applicant from service are sought to be quashed.

2. Shortly stated, the case of the applicant is that he was selected to work as Mazdoor and he joined in the Postal Stores Depot, Bhubaneswar vide Annexure-1 on 13th April, 1977. Later, the applicant was appointed in Group 'D' cadre vide Annexure-2 on temporary basis at Jharsuguda and while he was serving at Sambalpur, the applicant was served with a charge-sheet on an allegation that the applicant had submitted a Transfer Certificate bearing No.50 dated 10th July, 1968 of Anchalika M.E.School, Itipur, Puri indicating his date of birth and educational qualification in connection with his appointment under Group 'D' category which is not a genuine one. On this allegation, a proceeding under ^{Rule} Article 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1964 was initiated against the applicant and after a full-fledged enquiry, the Enquiring Officer found the applicant guilty of the charge and accordingly submitted his finding to the disciplinary authority who in his turn concurred with the findings of the enquiring Officer and ordered removal of the applicant from service with immediate effect. Hence, this application with the aforesaid prayer.

3. In their counter, the respondents maintained that no illegality/irregularity having been committed during the

15
15

course of enquiry and principles of natural justice having been strictly observed in this case, which also bears out full proof evidence bringing home the charge against the delinquent officer, the impugned orders should not be unsettled.

4. We have heard Mr.S.Kr.Mohanty, learned counsel for the applicant and Mr.A.B.Mishra, learned Senior Standing Counsel (Central) at some length. While assailing the impugned orders, Mr.Mohanty vehemently urged before us that depriving the applicant from examining Maganta Sahu, the then Headmaster of Anchalika M.E. School, Itipur as a defence witness has caused serious prejudice to the applicant and on that count the applicant should be relieved of the charge and the impugned orders of removal of the applicant from service should be set aside. We perused the documents in question and the orders passed by the Enquiring Officer and the Disciplinary Authority and after hearing learned counsel from both sides on this important question, we ^{were} ~~are~~ of opinion that there was no justification on the part of the Enquiring Officer to have deprived the applicant from examination of Maganta Sahu, an important defence witness who would have substantiated the case of the delinquent Officer and thereby prejudice has been caused to the applicant. In a case of this nature, there cannot be an exoneration of the delinquent officer straightway from the charges and the case is bound to be remanded for further enquiry. To serve the ends of justice expeditiously we thought it just and proper to procure the attendance of Maganta Sahu in this Court instead of remanding the case for further enquiry which would have taken a considerable time for

15

its disposal. Counsel for both sides did not have any objection if Maganta Sahu is examined as a court witness and opportunity was given to both sides to test the evidence in cross-examination. Accordingly, Maganta Sahu, now serving under the Government of Orissa, Home Department was summoned and he did appear before this Court. In his deposition, Maganta Sahu stated that the signature appearing in the Transfer Certificate of Anchalika M.E.School, Itipur marked 'X' for identification is not his signature. In the Transfer Certificate bearing No.50 dated 10.7.1968 the date of birth and the educational qualification of the applicant have been mentioned. It further appears in evidence of Court Witness No.2 that in Anchalika M.E.School, Itipur there was no student by the name of Chintamani Kar son of Banshidhar Kar (applicant) and has passed from the said School in the year 1968 and hence the question of granting such a certificate does not arise. Court Witness No.2 also stated that the signature marked 'X' for identification is not that of Maganta Sahu. The applicant was given an opportunity to explain the evidence of Court Witnesses Nos.1 and 2. He stated in his evidence that he had never taken admission in Anchalika M.E.School, Itipur. He privately appeared in Class VII Examination at Anchalika M.E. School, Itipur. He was reading in Pubusahi M.E.School under Khurda Sub-division in the district of Puri and he was admitted into Class IV of Pubusahi M.E.School. There he read for 6 to 7 years. After having failed in the examination of Class VII in Pubusahi M.E.School, he worked for 7 years as a daily

for

17 

labourer in the Postal Stores Depot and it was told to him by the authorities, namely one Jenasamantababu that he could not be absorbed in a regular post on the certificate given by the Pubusahi M.E.School and the abovenamed Jenasamantababu further stated that the applicant should get another certificate from another school testifying that he has passed Class VII examination. So, being requested by the applicant one of his friends, Kapilendra Sahu assured the applicant to arrange a certificate for him from Maganta Sahu, Headmaster, Anchalika M.E.School, Itipur. Accordingly, Maganta Sahu having been requested to grant such a certificate, had granted the certificate in question. The totality of the entire evidence of the applicant coupled with the evidence of Court Witness Nos.1 and 2, which have not been shaken during the cross-examination directed on behalf of the applicant, gives a clear impression in our mind that this certificate was not a genuine one or at least it can be conclusively said that the applicant^{nv} was not a regular student in Anchalika M.E.School, Itipur and has somehow managed to get a certificate which is not a genuine one.

5. Lastly, it was contended by Mr. Mohanty, learned counsel for the applicant that according to Rules there was no necessity to call upon the applicant to file a school leaving certificate indicating the date of birth and his educational qualification and in support thereof Mr. Mohanty relied upon a copy of letter No.66/70/87-SPB-I dated 19.2.1988 issued by the Director General of Posts, New Delhi regarding

relaxation of casual employees in Group D posts. In this letter nothing is said about non-filing of school leaving certificate. The only thing which is stated is that on completion of 240 days of service as casual labour, an incumbent would be entitled to take departmental test subject to certain other conditions. Once a particular person is taken into category of Group D on regular basis his date of birth etc. has to be recorded for the purpose of retirement on superannuation. Therefore, this document namely, the school leaving certificate is an essential requirement. That apart, conceding for the sake of argument, that under the Rules there was no obligation on the part of the applicant to file such a certificate, we have already found that the certificate in question is not a genuine one and hence it is forged one and the forgery could not have been done by anybody else other than the applicant and in no account a forger should be allowed to remain in Government service. Therefore, the applicant was rightly removed from service.

6. Thus, we find no merit in this application which stands dismissed leaving the parties to bear their own costs.

legase
31.8.88
.....
Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

g agree.

Brishu
31.8.88
.....
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
August 31, 1988/S. Sarangi.