

(13)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.80 of 1989

Date of decision : July 5,1990.

Bijay Kumar Hati ...

Applicant

Versus

Sr. Superintendent of Post Offices, Respondents.
Bhubaneswar Division and another ..

For the applicant ... M/s. S.S. Mohanty,
R.Ch. Sahoo,
N. Vaheed,
Mrs. S.L. Patnaik, Advocates.

For the respondents ... Mr. Ganeswar Rath,
Standing Counsel (Central)

C O R A M:

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

A N D

THE HON'BLE MR. N. SENGUPTA, 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.

JUDGMENT

N. SENGUPTA, MEMBER (J) The reliefs asked for in this application are a declaration that the employee's contract between the applicant on the one hand and the respondents in the other is subsisting, quashing of a disciplinary proceeding as at Annexure-2 and for further declaration that the applicant is not liable to be removed from service.

N. SENGUPTA

2. To put the facts in brief it may be stated that the applicant was one of the candidates for appointment to the post of a Postal Assistant and he was selected after the screening of his certificates and testimonials and police verification. The letter of appointment was issued on 31.3.1983 (vide Annexure-1). After receiving the letter of appointment, the applicant joined the service as Postal Assistant in Bhubaneswar Old Town Post Office. On 20.4.1985 Respondent No.1 issued a memo for initiation of a disciplinary proceeding against him(the applicant) under Rule 14 of the Central Civil Services (Classification , Control and Appeal) Rules, 1965 and the copy of that memo is Annexure-2 to the application. The charge against the applicant is that he produced a forged attested copy of false ex-military service certificate and secured appointment against Military quota and thereby exhibited lack of integrity and conduct unbecoming of a public servant and contravened Rule 3 of the Central Civil Services (Conduct) Rules, 1964. The applicant has further alleged that having served the Department since 1983, till 1985 he became overaged for any fresh appointment. Therefore, the respondents are estopped from initiating a proceeding for his removal. The applicant's case further is that the initiation of the disciplinary proceeding is entirely misconceived inasmuch as the production of the certificate was prior to his appointment or joining the service. Therefore, it cannot come within the purview of Conduct

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Rules. He has also questioned the procedure adopted by the disciplinary authorities and the enquiring authorities in not allowing him to inspect some documents on the ground of those being privileged ones. Though, at the time of filing of the application no final order was communicated, at the hearing it has been submitted that an order of removal from service has been served on the applicant.

3. The case of the respondents is that a confidential report that the certificate filed by the applicant was not genuine was received by the Department. So the matter was entrusted to the Central Bureau of Investigation for an enquiry. During the course of enquiry the Central Bureau of Investigation found that the applicant was a student in a College during the academic session 1980-81 and 1981-82 but the copy of the certificate that the applicant produced was to the effect that he (the applicant) was working in the Indian Air Force from 27.1.1981 to 2.3.1982 and on the basis of this false certificate, secured his appointment as an ex-serviceman. After receipt of the C.B.I. report a disciplinary proceeding was started and an enquiring officer was appointed. The applicant also nominated his defence assistant. All reasonable opportunities were given to the applicant to defend himself. Before conclusion of the disciplinary proceeding and passing of the final order, the applicant moved this Tribunal for quashing the disciplinary proceeding initiated against him and this Tribunal by its

order dated 7.10.1988 directed to dispose of the disciplinary proceeding within 120 days from the date of receipt of the copy of that order. After that on 27.1.1989 an order removing the applicant from Government service with immediate effect was passed and was delivered to the applicant on 1.3.1989. Thus, the applicant stood removed from Government service with effect from 1.3.1989. The case of the respondents further is that as the disciplinary proceedings were initiated while the applicant was in service, the plea of the applicant that such a proceeding could not be initiated is without any foundation. In substance, the case of the respondents is that there was no illegality or any irregularity in the conduct of the disciplinary proceeding.

4. We have heard Mrs. S.L.Patnaik, learned counsel for the applicant and Mr.Ganeswar Rath, learned Standing Counsel(Central) for the respondents. As has been indicated above, one of the contentions advanced on behalf of the applicant is that as the production of the certificate was prior to the applicant entering into service, no disciplinary proceeding could be initiated against the applicant with regard to such filing of certificate. It is true that the Central Civil Services(Conduct)Rules really apply to the conduct of a Government servant while in service but in the instant case even though a disciplinary proceeding was with respect to the conduct of the applicant prior to his appointment, the initiation of a proceeding was necessary, though not under the Central Civil Services

*Next Suptd
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(Classification, Control & Appeal) Rules, admittedly the applicant was appointed on the strength of a certificate that he was an ex-serviceman, it is also the case of the respondents that the applicant got his appointment against ex-serviceman quota. If the applicant secured his appointment by practising fraud, he cannot be retained in service. It is common knowledge that before a person is given appointment, it has got to be verified that he possesses a good moral character and unblemished conduct. Article 311 of the Constitution of India makes it clear that for any removal from service, the Government servant is entitled to a hearing, or in other words, there must be a regular proceeding in which ^{facts} ~~case~~ disentitling the Government servant to continue in service must be proved by the Department and the Government servant should be given a reasonable opportunity to disprove such allegations of the Department. A mere form is not material, it is the substance which would determine the validity or otherwise of a disciplinary proceeding. Since an enquiry was necessary before removing the applicant, we would say that the initiation of a proceeding though may not be under the Central Civil Services (Conduct) Rules, yet it is otherwise valid for the reasons mentioned above. In these circumstances, we are unable to accede to the prayer of the applicant to declare that the initiation of the proceeding against him was illegal.

5. From Annexure-R/3 it would be found that a copy the Enquiring Officer's report had not been made over to the

applicant prior to the passing of the order of removal by the appointing authority and thus for the reasons mentioned in Premnath K. Sharma's case which was decided by the Full Bench of this Tribunal, reported in 1988(3)SLJ 449, the order of removal becomes invalid.

6. Some argument was addressed with regard to not making some documents available to the applicant for his inspection. In this regard all that we would like to say is that if any document is ~~intended~~ ^{intended} ~~stated~~ to be used against the applicant, then the applicant would have ^{as} ~~as~~ ^{there would be a} an opportunity to see the document, ^{as} ~~otherwise is denied~~ of a reasonable opportunity to meet the case against him.

7. For what has been stated above, the case is remitted back to the disciplinary authority. He should afford a reasonable opportunity to the applicant to make a representation, if he so chooses, either in writing or orally, within a period of one month from the date of receipt of a copy of this judgment and that representation should be disposed of within a period of three months thereafter.

8. This application is accordingly disposed of leaving the parties to bear their own costs.

Kamal
.....5.7.90
Vice-Chairman

Abd. Syed
.....5.7.90
Member (Judicial)

