

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 335

1990

~~XXXXXX~~

DATE OF DECISION 19 - 10 - 1990

P.J. POULOSE

Applicant (s)

Mr. M.R. Rajendran Nair

Advocate for the Applicant (s)

Versus

The Assistant Engineer, Cross Respondent (s)

Bar Telephone Exchange, Muvattupuzha & 2 others

Mr. K.A. Cherian, ACGSC

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V. Krishnan, Administrative Member

The Hon'ble Mr. N. Dharmadan, 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. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

Per Shri N. Dharmadan, JM

The applicant filed OA:139/90 when disciplinary proceedings were initiated against him raising preliminary grounds. The allegation was that he had furnished false information relating to his community in his application dated 13.6.1986 and secured regular employment in a group D post reserved for the scheduled Caste quota and thereby failed to maintain integrity and behaved in a manner unbecoming of a Government servant. We were reluctant to interfere at that time because it was premature as the applicant could have raised these grounds before the disciplinary authority as preliminary issue and obtained reliefs. Accordingly we disposed of the application as per Annexure-X judgment dated 7th March 1990 directing the applicant to raise them before the disciplinary authority as preliminary grounds so that the disciplinary authority can deal with the same and pass appropriate orders.

in the earlier O.A. ↘

2. The main issues raised by the applicant are :-

(i) the alleged misconduct pertains to an action of the applicant stated to have committed by him before he entered the government service and since he was not a government servant at that time no action would lie against him under CCS (Conduct) Rules, 1964.

(ii) the alleged action would not come within the four corners of 'misconduct' contemplated under the rules.

3. After the judgment, the applicant filed the Annexure XI representation dated 15.3.90, specifically raising the aforesaid issues before the first respondent in terms of the directions contained in the judgment. But the first respondent, according to the applicant, did not consider the contentions in the light of the directions in the judgment at Annexure-X. Hence he has filed the present application under Section 19 of the Administrative Tribunals Act, 1985 challenging Annexure I order of the 1st respondent and Annexure II memorandum of charges.

4. The factual background is that the applicant was engaged by the 1st respondent as a casual mazdoor at the age of 23 on 1.4.78. The extract, Annexure III, of the Admission Register kept in the M.T.M High School, in which the applicant studied, certifies that he belongs to Cheramar Christian community, which is included in the Scheduled Caste. The casual labour service card (Annexure-IV) issued by the Sub Divisional Officer, Telegraphs, Muvattupuzha also discloses that he is a member of Scheduled Caste (Cheramar Christian). Pursuant to a notification dated 3.5.86 he applied for recruitment to the cadre of Group D regular post against SC quota. He produced Annexure III and IV. He was selected and appointed in the SC quota on a temporary basis. When the

applicant was required to produce caste certificate he produced ~~XXX~~ Annexure-V certificate dated 1.10.1986 issued by the Tahsildar, Muvattupuzha in which it is stated that he belongs to Cheramar Christian community which is recognised only as 'other backward class'. So the applicant was directed as per Annexure-VI memo dated 25.11.88 to produce caste certificate in the prescribed proforma from the revenue officer not below the rank of Tahsildar. Accordingly he obtained the Annexure-VII certificate dated 17.1.89 from the same Tahsildar of Muvattupuzha in which it is stated that the applicant belongs to Cheramar Christian community as per his school records. Again Annexure-VIII memo dated 31.1.89 was issued to him directing to produce caste certificate in the prescribed proforma to prove his caste as Scheduled Caste within seven days. Since he had not produced such a certificate Annexure II charge memo was issued by the 1st respondent containing following charges:-

"Article-I"

That Shri P.J Poulose, an O.C. candidate while working as Casual Mazdoor furnished false information and produced false certificate relating to his community in his application, dated 13.5.86 for recruitment to the cadre of Regular Mazdoor(Gr.D) against 1985 quota of vacancies of Ernakulam Telegraph Engineering Division and secured selection against S/C quota of vacancies. Shri P.J.Poulose has thereby failed to maintain integrity and also behaved in a manner quite unbecoming of a Government servant violating the provisions of Rule 3(1) (i) and 3(1)(iii) of CCS(C) Rules, 1964".

It also contains the following statement of imputation:-

" In the application, it is alleged, that Sri P.J Poulose furnished false information against col.8 of the form relating to community as S/C (Cheramar Christian) suppressing the fact and in support of his claim as S/C, he had produced an extract of the Admission Register of MTM High School, Pampakuda where his community has been shown as S/C to secure regular employment in the department. Based on his declaration to the effect that the particulars furnished by him are true and that he is liable to be dismissed from service,

if later, they were found to be untrue, Sri P.J Poulose was provisionally selected for appointment as Gr.D Regular Mazdoor against notified S/C quota of vacancy, 1985 vide DET, Ernakulam, Memo No.E.217/3/85/53 dated 15.10.86."

5. The applicant submitted Annexure-IX representation dated 22.2.89 stating that he belongs to Cheramar Christain community which is recognised as 'other backward class' and that he could understand only now that he was selected as Group D from the quota reserved for Scheduled Caste" and xxxxxxxx that he had not deliberately put forward a false claim for getting the appointment. In fact the school records and the casual labour service card clearly state his community and the category to which he belongs. He does not know whether his community was included in Scheduled Caste at the time of his admission in the school. He has also filed OA 139/90 which was disposed of by our judgment at Annexure X dated 7.3.90.

6. The respondents in the counter affidavit have taken the stand that the applicant was provisionally selected and appointed as Group D regular mazdoor against one of the Scheduled Caste vacancies because in the application he has stated his community as Scheduled Caste (Cheramar Christian). He has also produced along with the application Annexure III, the extract of the school admission register stating as a member belonging to Scheduled Caste. The column in the application form reads as follows:-

"Does the pupil belonged to Scheduled Caste and Scheduled Tribe or other Backward communities or is he a convert from Scheduled Caste or Scheduled tribes.

Since the certificate from the school authorities was not sufficient to prove the status, the applicant was directed to produce caste certificate from the revenue

officer not below the rank of Tahsildar. xxxx He failed to produce the required certificate establishing that he is a member belonging to Scheduled Caste from the Tahsildar. Hence disciplinary proceedings were initiated against him. It is also stated that the applicant was aware at the time of selection that he is not eligible for getting a post reserved for Scheduled Caste since the certificate Annexure-V dated 1.10.86 states that he belongs to 'other backward class'. Thus there is suppression of facts to obtain the appointment in the vacancy reserved for the Scheduled Caste. The applicant was provisionally selected and appointed as Group D regular mazdoor against notified Scheduled Caste quota vacancy as per Memo No.E.217/3/85/53 dated 15.10.86. It was on the assurance given by the applicant that he will produce the necessary certificate to establish that he is a member of the Scheduled Caste that the appointment order had been issued. Since he has not produced any certificate from the revenue authorities, as agreed to by him, disciplinary proceedings were initiated against the applicant.

7. The learned counsel for the applicant denied the allegations and strenuously contended that the directions in Annexure-X judgment of this Tribunal had not been complied with by the first respondent while passing the impugned order. Even though he has raised the above two issues the first respondent did not consider them specifically as preliminary issues and pass orders in terms of the directions of this Tribunal. Hence the applicant is seriously prejudiced. If the disciplinary proceedings are allowed to be conducted pursuant to Annexure-II charges, it would, according to the learned counsel, in all probability end in a major punishment of dismissal, discharge or removal.

from service, which will stand in the way of the applicant getting further employment. On the other hand if this is treated as a preliminary issue and decided against the applicant the worst that can happen is only a cancellation of the appointment order which will result in his continuance as a casual mazdoor under the respondents.

8. Having considered the matter we feel that the 1st respondent did not really understand the implication of the directions in the judgment at Annexure-X. The two issues raised by the applicant go to the root of the matter. Hence we directed "the applicant, if so advised, should raise the aforesaid points in his reply to the Memorandum at Annex.I and the respondents are directed to decide these preliminary issues through the competent authority before further action on the memorandum is taken". Accordingly the applicant in Annexure XI reply to the charge raised the following specific issues that the "charges alleged to have done by me relates a period when I was not a government servant and proceedings cannot be held for acts which did not constitute a misconduct under the rules at the time of the commission of the offence". He also admitted in it "I don't want any undue advantage out of the false entry in the school records".

9. In the light of the directions the proper course would have been to decide finally the two issues, viz; whether the applicant was a government servant at the time of the application and whether the alleged offence is a misconduct under the rules which can be pursued by continuing the proceeding against the applicant in the light of Annex.II charges, as preliminary issues. The 1st respondent did not do so. Instead by Annex.I order dated 11.4.90 the 1st respondent proposed to hold the enquiry pursuant to

Annexure. II charge memo after making an admission having the effect that the applicant was not a government servant at the relevant time and without finding as to whether the alleged misconduct come within the scope of the relevant rules. His finding reads as follows:-

"At the time of applying for a particular post, no person will become a Govt. servant. This does not mean that he can adopt fraudulent ways or furnish false information while applying for the post since he is not a Govt. servant. In order to safeguard from these flimsy objections that could be raised by some candidates/officials at a later stage, the Deptt. has taken care in obtaining a declaration from the candidates to the effect that the particulars furnished by him are true to the best of his knowledge and belief and that he is liable to be dismissed from service if later on they were found to be untrue".

We are satisfied that there is no strict compliance of the direction in Annexure X.

10. Even though the first respondent had not ^{strictly and b} /specifically dealt with the question raised by the applicant and not complied with the direction in the judgment, he has virtually come to a tentative finding that the applicant cannot be strictly considered to be a person holding a government post for treating him as government servant at the time when he submitted the application for Group D post; nevertheless he is responsible for having furnished false information and thereby secured an employment in Group D category on a regular basis against SC vacancy. In the light of this finding, the question is whether the enquiry can be allowed to be proceeded against the applicant on Annexure II charge memo. The charge is under Rule 3 of CCS (Conduct) Rules, 1964 for furnishing false information and thereby secured selection against SC quota vacancy. The violation of the undertaking by giving false information in column 8 of the application form is not in the charge. The specific allegations in this behalf is contained only in the statement

29

of imputations which forms part of article of charge.

11. The case of the applicant is that he was not a Government servant at the relevant time when he submitted the application for Group D post and the charge as framed under Rule 3(1)(i) and 3(1)(iii) of CCS(Conduct) Rules, 1964 cannot be sustained. No punishment provided under CCS(CCA) Rules, 1965 can be imposed; for the alleged misconduct does not come within Rule 3 of the Conduct Rules and the penalties under Rule 11 of CCS(CCA) Rules are not applicable. In order to get over this difficulty, the 1st respondent has taken the stand based on the statement of allegations that the applicant can be proceeded against for violation of clause 8 in the application form. But contention that there is no provision for punishing the applicant, if he is found to be guilty is not answered.

12. We are of the view that persons, who deliberately give false information for securing job, should never be allowed to escape from the liability for being proceeded against and also punished for the offence, if ultimately found guilty of having furnished false information and thereby secured employment in the department. Even if there is no rule, such persons can be proceeded against under the general law for the violation of the terms and conditions contained in the notification inviting applications. Submitting application suppressing real facts and furnishing false information while filling up the columns in the application form is a serious matter which should be prevented by punitive actions. But no punishment is provided in the existing rules/ for such violations & suppression. This seems to be very unsatisfactory and disturbing state of affairs.

13. It seems this matter had been examined by the Government of India and they have issued G.I., M.H.A., O.M No.5/1/65-Estt.(D) dated the 30th April, 1965. The relevant portions read as follows:-

"2. The matter has been examined. It was decided to insert the following "Warning" in the Attestation Form for verification/re-verification of character and antecedents of candidates for appointment/employees under the Government.

"WARNING - The furnishing of false information or suppression of any factual information in the Attestation Form would be a disqualification and is likely to render the candidate unfit for the employment under Government.

If the fact that false information has been furnished or there has been suppression of any factual information in the Attestation Form comes to notice at any time during the service of a person, his services would be liable to be terminated."

Ministries/Departments are, therefore, expected to make full use of this provision and to take a serious view of the default when it is found out that candidates have either suppressed factual information or furnished false information.

3. In regard to cases where the candidates are not expected to fill any attestation forms but where they produce false information or suppress factual information relating to their qualifications, etc., these are cases of fraud where, if there is sufficient material, a prosecution could be launched. In all such cases of proved guilt, deterrent action should be taken against the persons involved."

14. The Government has taken the view that a deterrent action including prosecution should be taken against such persons who indulge in the fraud and found to be guilty.

15. But the question which arises for decision in this case is whether such a person can be proceeded against under the provisions of CCS(CCA) Rules, 1965 even if it is not a misconduct coming within the purview of conduct Rules. Having regard to the fact that the persons who aspire to become Government servants should come with clean hands and state the facts fairly and correctly for getting the job and if such persons do ~~xxx~~ anything contrary to it we think it would be proper to proceed against him under the provisions of CCS(CCA) Rules notwithstanding the fact that he was not a Government servant at the time of commission of the offence or misconduct. There is no express prohibition in the Rules. Rule 52 of the P&T Manual Vol.III supports this view. It reads as follows:-

"52. The time at which an act was committed or the capacity in which it was committed is not material for deciding whether or not the C.C.S (C.C.&A.) Rules are applicable to an employee. It would, therefore, be quite in order to initiate disciplinary proceedings against a Government servant for some misconduct which is alleged to have been committed at a time when he was not a Government servant, e.g., when he was an Extra Departmental Agent."

It would be pertinent to examine a clarification issued by the Government of India in this behalf. M.H.A, O.M No. 39/1/67-Ests. (A) dated the 21st February, 1967/indicates that imposition of penalty under CCS(CCA) Rules, 1965 is also possible. The OM reads as follows:-

"It is clarified that the provision of Rule 11 of the CCS(CCA) Rules, 1965, which envisages the imposition of penalties on Government servants for 'good and sufficient reason' is adequate authority for taking action against a Government servant in respect of misconduct committed before his employment if the misconduct committed before his employment was of such a nature as has rational connection with his present employment and renders him unfit and unsuitable for continuing in service. When such action is taken, the charge should specifically state that the misconduct alleged is such that it renders him unfit and unsuitable for continuance in service."

16. Under these circumstances the action proposed by the 1st respondent against the applicant as indicated in Annexure I for the violation of the declaration in the application form and furnishing false information against column 8 can be continued under CCS(CCA) Rules, 1965. An enquiry to find out the true position is necessary and such an enquiry can be continued. If ultimately in the enquiry, the applicant is found to be guilty by the enquiry authority a punishment as provided in the CCS(CCA) Rules 1965 can/be awarded. A candidate who deliberately with the object of securing job, furnishes false information by suppressing real facts xxxxxxxx, should be punished if he succeeds in his attempt

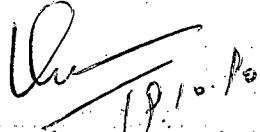
in a deterrent manner that it would be a lesson for others. But necessary amendments should be made in the existing CCS (Conduct) Rules, 1964 at the earliest by incorporating a provision dealing with the misconduct of a person who aspires to become a government servant and furnishes false information deliberately with the object of securing a job as indicated above notwithstanding that he was not a government servant at the time of commission of the offence.

17. Having regard to the facts and circumstances of this case we feel that the first respondent should have modified the charge, if it is found necessary, in the manner indicated above and proceeded against the applicant for having given false information in column No. 8 in the application form for securing the job and thus rendering himself liable to be dismissed in terms of his declaration after first delivering his final decision on the preliminary issues raised by the applicant in accordance with the directions in Annexure-X judgment. As stated above a person who has furnished false information and secured the job can never be allowed to escape the clutches of law on the simple ground that there is no statutory and other provision to deal with such a person or on the ground that his action is not a misconduct coming within the CCS (Conduct) Rules, 1964.

18. In the result the application is disposed of with the direction that the respondents may if so advised, make suitable alterations in the charge as indicated above and proceed against the applicant in accordance with law. The application is disposed of as above. There will be no order as to costs.


(N. Dharmadan)
Judicial Member

19.7.90


(N. V. Krishnan)
Administrative Member