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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

~~O.A. No.~~

T.A. No.

239/87

198

DATE OF DECISION 6.4.1990

Shri C.C.Chawaria

Petitioner

Shri D.V.Gangal

Advocate for the Petitioner(s)

Versus

The Inspector of Armaments & Amr.

Respondent

Shri R.C.Kotiankar.

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M.Y.Priolkar, Member(A),

The Hon'ble Mr. J.P.Sharma, Member(J).

1. Whether Reporters of local papers may be allowed to see the Judgement ? ye
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Writ Petition No.1080/82 in
Tr. Application No.239/87.

Shri C.C.Chawaria,

... Applicant

V/s.

The Inspector of Armaments,
Ambazari, Nagpur & Another.

... Respondents.

Coram: Hon'ble Member(A), Shri M.Y.Priolkar,
Hon'ble Member(J), Shri J.P.Sharma.

Appearances:-

Mr.D.V.Gangal, advocate
for the applicant and
Mr.R.C.Kotiankar, counsel
for the respondents.

JUDGMENT:-

(Per Shri J.P.Sharma, Member(J))

Dated: 6.4.1990

The petitioner was employed as a Mazdoor under the Respondent No.2 and he was promoted as Junior Examiner, having applied for that post, published by the office order No.94 dt. 28.7.1977, in which the minimum educational qualification mentioned was standard VIII in any recognised regional language. The applicant in support of his educational qualification filed a certificate of Vidya Night High School, Nagpur showing that he passed IXth standard examination in the year 1976. The applicant therefore, was allowed to work on the promotional post of Junior Examiner. The photostat copy of that School Leaving Certificate is (Annexure-'A').

2. The respondents subsequently after 14.9.1978 revised the recruitment rules in respect of Group 'C' and Group 'D' which included Junior Examiner and for the post of Junior Examiner the VIIIth standard qualification was dispensed with. A circular was issued which is (Annexure 'D') to this petition. In this the qualification prescribed was only 3 years experience as Mazdoor and passing of the trade test.

3. By the memorandum (Annexure 'B') to the petition dt. 30.1.1980 it was proposed to proceed under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 on account of the fact that the applicant Shri C.C.Chawaria submitted a false certificate for his educational qualification to the Inspector of Armaments, Ambazari, while applying for the post of Junior Examiner. The charge sheet was served on the applicant along with the articles of charges. The Enquiry Officer, Lt.Col. N.Raghavan, concluded the Enquiry Proceedings and gave the findings (Enclosure to Annexure 'C') dt. 12.12.1980 holding that the applicant Shri C.C.Chawaria had produced the certificate in support of his qualification, which when came to light was ^{found} false, but the individual tried to save the situation by denying the submission of the same. The Inspector of Armaments as Disciplinary Authority imposed a penalty of reduction from the post of Junior Examiner to the post of Mazdoor by the order dt. 5.1.1981 (Annexure 'C').
4. An appeal was preferred by the applicant and the same was dismissed by the order dt. 15.1.1982 (Annexure 'E') by the Appellate Authority, Director General of Inspection.
5. It appears that certain similar matters in which penalty of reduction in rank was imposed were reviewed under Rule 29 of CCS (CC&A) Rules, 1965 and by the order dt. 6.4.1983 (Annexure 'J') the penalty of these delinquent officer charged officials was reduced for a period of two years from the date of the said order i.e. 5.1.1981.

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6. In the meantime before the above order had already been passed in the review of other delinquent charged officials the applicant had filed the writ petition i.e. the present Tr. Application before the Hon'ble High Court, Nagpur Bench. On 5.12.1983 the Hon'ble High Court Bench after hearing the applicant's Counsel ordered that the case of the applicant be considered for promotion to the post of Junior Examiner and that will be subject to the result of this writ petition. Thereafter, the applicant was promoted as Junior Examiner and is working sincethen on the same post. In this writ petition the applicant has claimed the following reliefs:

- (a) Quashing of the departmental proceedings including inquiry report and consequential orders which are Annexures 'B', 'C' and 'E' be set aside and quashed.
- (b) Rule 11(vi) of the CCS (CC&A) Rules, 1965 be declared as unconstitutional and be struck down being void, violative of Articles 14 and 16 of the Constitution.
- (c) That the applicant be granted continuity in the seniority of Junior Examiner w.e.f. 5.1.1988 with consequential benefits of pay and allowances.
- (d) A prayer for stay has also been made to those became redundant.

7. The learned counsel for the applicant did not press the relief 'B' of the prayer regarding unconstitutionality of Rule 11 (vi) of CCS(CC&A) Rules, 1965. On the face of it also we do not find as to how the said Rule can be said to be violative of Articles 14 and 16 of the Constitution of India, inasmuch as the rule does not discriminate between employees of the Central Government and Civil Services. The main relief therefore remains about the quashing of the departmental proceedings

as well as the order passed on the findings of the Enquiry Report by the Disciplinary Authority, by the Appellate Authority and further the grant of the notional seniority from 5.1.1981 when the applicant was ordered to be reverted to the substantive post of Mazdoor he was holding before his promotion. The applicant also by way of amendment incorporated a relief (f) to the writ petition that in any case the applicant is entitled to deemed date of promotion w.e.f. 5.1.1983 in view of the order (Annexure 'I'). The respondents contested the writ petition. The contention of the respondents has been that on the basis of the false certificate of his educational qualification, the applicant was promoted on 3.10.1977 as Junior Examiner, but was reverted to the post of Mazdoor on 5.1.1981, as a punishment, after holding a departmental inquiry wherein he was found guilty of having submitted the false certificate for his educational qualification. The averment of the applicant in the writ petition has been that he studied privately upto 8th standard and was studying IX standard in Vidya Night High School in Nagpur and passed IXth standard examination in the year 1974. During the course of the inquiry it was found that the ~~personnel~~ who issued the certificate was called and could not read it out though it was said that he issued the certificate and ^{he} was found ~~out~~ to be just Matriculate. The inquiries from the Government of Maharashtra showed that no such school was recognised. The Government of Maharashtra through the Chief Secretary was also requested to inquire into the matter by the letter dt. 22.11.1979 (Annexure 'M'). The contention of the respondents is that there were 10 other similar Mazdoors who filed a false certificates about their educational qualification and they were also equally treated in the manner of punishment after a departmental

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inquiry, but in Review ^{of reversion} the period ~~was~~ reduced to two years. The applicant has been reverted because the promotion was void ab initio. The respondents had denied regarding the deemed date of promotion of the applicant from 5.1.1983. The case of the other similarly punished delinquent officials differs materially from the applicant, as much as, no appeal was preferred by them and they preferred review which ultimately decided as said above by placing a restriction for giving the promotion as Junior Examiner for two years from 5.1.1983. By this the applicant has not gained any advantage as he has gone for redressal of his grievance before the Hon'ble High Court.

8. We have heard the learned counsel for the parties.

9. The main issue in this case is whether the filing of an educational certificate showing the educational qualification upto 8th standard by the applicant should only be of a recognised institution or it only required to be of ~~the~~ fact, that the applicant submitted the said certificate as the educational qualification upto 8th standard. In the context of the present service ^{rules, where} whether Mazdoor is promoted as Junior Examiner, besides minimum educational qualification, there was also a trade test and experience to be undergone of three years. In fact what was desired for promotion was an evidence of the fact that the person considered for promotion from Mazdoor to Junior Examiner must have only ~~an~~ understanding of writing the regional language of VIIIth standard. There cannot be any doubt that the certificate filed by the applicant was of such an institution which has a doubt about its own being

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competent to impart education. Be whatever it may, the applicant was proceeded with departmental inquiry and he was charge sheeted. The case of the applicant is not that he was not given proper opportunity, but what has been argued before us is that in fact, there is no sense in charge sheeting the official as the imputation of charge does not show the applicant has been guilty of an act or omission or committed delinquency in any service matter. The mere emphasis in this case is not on the furnishing of the educational certificate regarding qualification but the manner in which a serving employee has duped the own department for a promotion. In fact the proceedings of the inquiry as well as the inquiry report running into several pages (8 to 25e) shows that the Inquiry Officer has gone into minutest details to ascertain the true facts. Before the Inquiry Officer the applicant took the plea that he did not submit any certificate in support of his qualification. Now it therefore, amounts to the fact that the applicant got promotion as Junior Examiner from Mazdoor without bringing in fact within the knowledge of the respondents that he has got the adequate knowledge of the regional language upto VIIIth standard. His very contention from the side of the applicant goes to show that he knowingly filed a certificate of an institution which he very well knew was not competent to issue the same for being believed to give a conclusive impression about the educational qualification of the applicant. In view of this matter the article of charges framed against the applicant, the whole inquiry proceedings and the findings arrived at the inquiry proceedings cannot be said to be in any way against the record or facts of

of the case. The case taken by the applicant before the inquiry officer, to the utter surprise, has been that the applicant did not file the certificate of educational qualification, but he has not given any evidence of his own to show that he had actually had the educational qualification upto VIIIth standard. Whole ^{of} this matter therefore, goes against the applicant and gives support to the finding arrived at by the Enquiry Officer. In view of this fact the Inquiry Officer ~~has~~ rightly gave a finding about the mis-conduct of the applicant as well as that he acted in a manner of unbecoming of a Government Servant. Moreover, when there was no certificate of educational qualification in the year 1977, when that was a mandatory qualification for the promotional post of Junior Examiner, then the applicant could not have any grievance as he himself says that he did not submit any certificate of educational qualification. Contrary to this another view has been taken in the writ petition, that too in writing, wherein the applicant admits the said school leaving certificate of Vidya Night High School, Nagpur. The applicant cannot blow hot and cold together. The stand taken before the Enquiry Officer is ~~at~~ totally at variance with what has been pleaded as facts in the writ petition. The respondents in their reply have categorically stated that the minimum qualification of VIIIth standard was required in 1977 for promotion as Junior Examiner from Mazdoor and the applicant as Mazdoor ~~ordaxed~~ filed a certificate which was not genuine and of an Institution which was not a recognised one. Merely because subsequently ^{this the} to/qualification was relaxed would not

give any help to the applicant. What has to be seen is that at the time of requisite promotion the minimum qualification must be possessed by the applicant and if that is not established, rather a certificate to support that educational qualification is suspicious when the person cannot claim promotion on the basis of that certificate. The burden lies heavily on the applicant to show that he had certificate of educational qualification VIIIth standard and he could not produce any. So it cannot be denied that the certificate was filed by him knowingly well that the Institution was not recognised and the justifiable conclusion has been drawn by the Enquiry Officer that the person who issued the certificate could not have even read its contents and was hardly High School in educational qualification. Thus no case is made out to quash the orders of punishment as well as the Appellate Order which is fully justified and covers the whole matter after due consideration of facts coming before the disciplinary authority and appellate authority.

10. The learned counsel for the applicant also desired on the ground of equality and natural justice that at least the applicant be allowed promotion w.e.f. 5.1.1983 in view of the fact that the co-employee i.e. the Mazdoors who have similarly been charge sheeted have also been punished by departmental authority who were subsequently on their filing a review petition were ordered to be reverted from the post of Junior Examiner to Mazdoor only for a period of two years i.e. upto 5.1.1983. In this connection (Annexure 'J' attached to the writ petition at page 45 of the paper book) is material. Thus the case of the learned counsel for the applicant

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is that the punishment awarded to the applicant by the Disciplinary Authority as well as Appellate Authority does not in clear terms mention the period after which the applicant will be in the zone of consideration for promotion to the post of Junior Examiner..

11. The learned counsel for the respondents could not show how for the same acts of commission or omission a different punishment can be awarded to the persons ~~but~~ ~~xxx~~ similarly situated. Giving a careful consideration and on the principles of equality and equity in the matter of punishment the applicant's case cannot go by default when already the Hon'ble High Court when seized of the matter taking into consideration the order of review passed on the similar matters of other co-employees as early as on 5.12.1983 ordered that the applicant's case be considered for promotion subject to the final result of this writ petition. In view of this matter it shall be in the interest of justice and fair play that the applicant be also ordered to be reverted for only for a period of 2 years i.e. from 5.1.1981 to 4.1.1983 and his case for promotion to the post of Junior Examiner for which he had already been working at the time of reversion ~~xx~~ had to be considered in the light of his juniors and other similarly placed co-employees. It has been pointed out that other co-employees who have also been charge sheeted and punished in the departmental inquiry under C.C.S. (C.C & A) Rules, 1965 have been allowed promotion from 5.1.1983 and there is no reason why the applicant be not also be allowed the same benefit. Thus this relief of the applicant on the basis of equity and equality is liable to be considered favourably.

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12. The applicant has not pressed for any other relief.

13. In view of the above discussion the Tr. Application is allowed to the extent that the punishment imposed on the applicant of permanently reverting him, and that order having been upheld by the Appellate Authority by the order dt. 15.1.1982, is modified to the extent that the reversion of the applicant shall be effective only for two years from the post of Junior Examiner to the lower post for a period of two years i.e. from the date 5.1.1981 and two years after the applicant shall be restored to the higher post of the Junior Examiner. Since the applicant has also been allowed to work as Junior Examiner by virtue of the order of the Hon'ble High Court on 5.12.1983 so the applicant shall be given a notional promotion from 5.1.1983 and shall be entitled to all monetary benefits and including that of seniority from that date, treating that he has been for all purposes promoted as Junior Examiner from 5.1.1983. In the circumstances parties shall bear their own costs.

J. P. Sharma
(J.P.SHARMA) 6.4.90.
MEMBER (J)

M. Y. Priolkar
(M.Y.PRIOLKAR) 6.4.90.
MEMBER (A).

Judgment dt. 6.4.90.
Send to parties
on 17.5.90.

Judgment dt. 6.4.90
served on Applicant &
R-No. 1 on dt. 19.5.90

Ny 30/5