

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 Circuit Sitting at Aurangabad
 XXXXXXXXX

O.A. No. 198
 T.A. No. 10/87 & 143/87.

DATE OF DECISION 20/7/1988.

Shri R.K. Tringare Petitioner

Shri Pradeep Shahane Advocate for the Petitioner(s)

Versus

Divisional Engineer Telegraphs, Respondent
 Nanded and others.

Shri D.Y. Lovekar Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.C. Gadgil, Vice-Chairman

The Hon'ble Mr. P. Srinivasan, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
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?

} *No*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT SITTING AT AURANGABAD

Tr.10/87 and Tr.143/87

Shri R.K.Trinagare,
Telephone Operator,
R/o.Bank Colony,
Near Shivaji College,
Parbhani.

.. Applicant

vs.

1. Divisional Engineer,
Telegraphs,
Nanded.
2. General Manager,
Telecommunications,
Maharashtra Circle,
Bombay.
3. Director General,
Telecommunications,
Sanchar Bhavan,
New Delhi.
4. Superintendent of Post Offices,
Nanded Division,
Nanded.
5. Union of India .. Respondents in
both the cases.

Coram:Hon'ble Vice Chairman Shri B.C.Gadgil
Hon'ble Member(A)Shri P.Srinivasan.

Appearances:

1. Shri Pradeep Shahane
Advocate for the
Applicant.
2. Shri D.Y.Lovekar,
Counsel for the
Respondents.

ORAL JUDGMENT

Date:20-7-1988

(Per B.C.Gadgil,Vice-Chairman)

Writ Petition No.14/84 and 62/86 of the
file of the Bombay High Court,Aurangabad Bench, are
transferred to this Tribunal for decision and they
have been numbered as Tr.Appln.No.10/87 and 143/87.
Both these matters can be conveniently decided by
common judgment.

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2. The applicant is working with the Telecommunication department as a Telephone Operator in Nanded Telecommunication division. The next promotional post is that of Repeater Station Assistant/Phone Inspector/Wireless Operator. Under the rules an examination is prescribed and the candidates passing that examination are considered for promotion after necessary training. Such an examination was held on 22-12-1983 and 23-12-1983. The applicant appeared for that examination. The last paper was that of Mathematics. It was on 23-12-1983 in the Afternoon. The allegation against the applicant is that during this examination he often visited the Urinal and that the Supervisors suspected that such visits were not for urinating but for some other ulterior motives such as copying. Hence at 4.15PM the Supervisor followed the applicant when he went to the Urinal. At that time another examinee viz. Raoke was also in the Urinal. It is alleged that Raoke showed some books to the applicant and it was done with a view to only help the applicant to use the contents of the books for writing the answers. The matter was reported to the authorities concerned. The applicant was not permitted to continue to write the answer paper after 4.15PM. It appears that this paper was also valued, however, the result of the applicant was not declared. The applicant therefore filed Writ Petition No.14/84(Tr.Appln.No.10/87) for reliefs in connection with the non declaration of results. It appears that during the pendency of this writ the result was declared on 18-7-1984 and the applicant was declared passed.

3. On 3-8-1984 a departmental enquiry was held against the applicant by framing a chargesheet which is at Ex. 'C' in Tr.Appln.No.143/87. The allegation against the applicant is the same as mentioned in paragraph 2. An Inquiry Officer was appointed. He submitted his enquiry report and thereafter the Disciplinary Authority passed an order dtd.15-5-1985 imposing a penalty of Censure.

The said order is at Ex.'E' to the Tr.Appln.No.143/87.

After this penalty order was passed the department issued an order dtd.6-6-1986 cancelling the selection of the applicant. The applicant challenged this order as well as the penalty order by filing Writ Petition No.62/86.

4. When the matter was argued today it became quite clear that Writ Petition No.14/84 does not survive since the result of the applicant has been declared. Thus the said writ petition i.e. Tr.Appln.10/87 is liable to be disposed of as not surviving.

5. The question as to what order should be passed in the other proceeding viz, Tr.Appln.143/87. Shri Lovekar submitted that the applicant has not filed any appeal against the imposition of the penalty and he has not exhausted all the departmental remedies available to him. To that Shri Shahane replied that the appeal could not be filed because the copy of the inquiry officer's report was not supplied to him. Shri Shahane submitted that this Tr.Appln.No.143/87 should be decided by us even though an appeal has not been filed. We are not able to accept this submission of Shri Shahane as ordinarily it would be necessary for an aggrieved employee to exhaust all the departmental remedies that are available to him. In this particular case there are no special reasons for any deviation from ^{The general rule} such proceedings. Of course, Shri Shahane submitted, that the appeal filed hereafter would be barred by time. In our opinion ~~in~~ it would be in the interest of justice if we pass ^{an} order directing the respondents to decide the appeal on merits and ignore the question of delay.

6. Tr.Appln.No.10/87 is disposed of as not surviving. Tr.Appln.No.143/87 is partly allowed. The respondents are directed to supply the copy of the Inquiry Officer's report to the applicant on or before 5th of August, 1988. Thereafter, the applicant, if he so chooses,

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may file an appeal on or before 22-8-1988. The Appellate Authority will entertain that appeal and decide it on merits after ignoring the question of delay. The said decision should be given within a period of 3 months from the date the applicant files the appeal. The order or communications dtd. 20.6.86 and 11-8-1986 vide Ex. 'F' and Ex. 'G' in Tr. Application No. 143/87 will automatically stand cancelled in the event the applicant succeeds in the Appeal, ~~departmental remedies or in any other proceedings.~~

7. With these directions the Tr. Appln. No. 143/87 is disposed of. However, we make it specifically clear that the applicant would be at liberty to move this Tribunal in case if he unfortunately fails in the appeal. Parties ~~to bear~~ bear their own costs.

B.C.Gadgil
(B.C.GADGIL)
Vice Chairman

P.Srinivasan
(P.SRINIVASAN)
Member(A)