

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Transferred Application No.328/86

Shri.Sanddireddi Ramaiah
S/o Kondayya,
49/50 Family Lines,
Followers Quarters,
Ghorpuri,
Pune-411 001.

.. Applicant
(Original Plaintiff)

Vs

1. The Secretary,
Union of India,
Ministry of Defence,
DHQ PO New Delhi-11.
2. The Station Commander,
Pune-1.
3. The Director General,
General Service Branch (SD-6B),
Army Headquarters,
DHQ PO New Delhi-11.

.. Respondents
(Original Defendants)

Coram: Hon'ble Vice-chairman Shri B.C.Gadgil.
Hon'ble Member(A) Shri J.G.Rajadhyaksha.

Appearance:

1. Mr.Walia for the applicant.
2. Mr.M.I.Sethna the learned Counsel for the Respondents.

JUDGEMENT (Per Vice-chairman B.C.Gadgil) 26-6-1987.

Regular Civil Suit No.708/86 on the file
of the Civil Judge, Senior Division, Pune is transferred
to this Tribunal for decision.

The applicant (Original Plaintiff) joined service as Conservancy Safaiwala in the Station Headquarters at Pune on 19.9.1970. At the time of seeking such appointment, he gave his name as Gurayya Ballayya. Later on, it transpired that the plaintiff's real name was Sanddireddi Ramaiah, son of Kondayya.

The administration felt that a departmental enquiry be held against applicant with respect to

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obtaining employment under a fictitious name. After a sort of preliminary enquiry, a regular departmental enquiry was held and it was found that the applicant had obtained or secured employment in the military establishment by using a fictitious name. The applicant was dismissed from service in the year 1985. His appeal failed. Hence, he filed the above suit in question for declaration that the order of dismissal from service is null and void and that he be treated as continuing in service.

In the plaint, it is pleaded that the plaintiff's name prior to his marriage was Gurayya Ballayya and that after his marriage it was changed as Sanddireddi Ramaiah, son of Kondayya. The applicant made necessary affidavit in 1981 and got his name changed from Gurayya Ballayya to Sanddireddi Ramaiah and ^{had} ~~that~~ it published in the Maharashtra Government Gazette.

After the suit was transferred to this Tribunal, the Respondents have filed their reply. It was contended that the applicant obtained employment under a fictitious name viz Gurayya, son of Ballayya. Subsequently, the administration learnt from a letter received from one M.Nageshwar Rao that the real name of the applicant was Sanddireddi Ramaiah. Hence, an enquiry was made and subsequently a departmental proceeding was started. It is alleged that the applicant got married in 1975 and that, therefore, there could not be any question of change of name as Sanddireddi Ramaiah on account of the alleged custom. The fact that the applicant changed not only his name but also his father's name would show that the plea

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that the change was due to the alleged custom is not acceptable. It was submitted that a departmental enquiry was properly held and that the punishment is not exorbitant.

We have heard Mr.Walia for the applicant and Mr.M.I.Sethna for the Respondents. During the course of hearing, the relevant files of the enquiry proceedings were made available for our perusal. After holding a preliminary enquiry, a regular departmental enquiry was held by framing the charge on 4.9.84. The gravamen of the charge was that the applicant secured a job under a fictitious name viz. Gurayya Ballayya when his true and correct name was Sanddireddi Ramaiah and that this was misconduct unbecoming of a government servant.

In the enquiry, the evidence of Mr.M.Nageshwar Rao was recorded. He stated that the real name of the applicant was Mr.Sanddireddi Ramaiah and that he did not belong to the Scheduled Caste. It is he who has made an application informing this fact to the department. The applicant has cross-examined the witnesses. However, that cross-examination is not much relevant. Thereafter, the statement of the applicant was recorded. He has stated that his real name is Sanddireddi Ramaiah and that he gave his name as Gurayya Ballayya at the time of employment. He alleged that while seeking employment, he did not state that he belonged to Scheduled Caste. When he was asked the reasons as to why he has a name as Gurayya Ballayya, he stated that one Mr.Narsaiah had directed him to give that name for getting such employment. He has given this statement during the preliminary enquiry. His allegation is that the above statement was given under duress.

However, in the departmental enquiry, he later on admitted that there was no threat and that he adhered to the earlier statement. The earlier statement is dated 14.8.1984. According to him, when he came to Pune in 1970, S/Shri M.Nageshwar Rao and Narsaiah told him that he would get employment as Safaiwala if he would give his name as Gurayya Ballayya. Accordingly, he gave that name for getting an appointment.

It was contended by Mr.Walia that the charge is vague and the Enquiry Officer's report as well as the dismissal order do not give any reason. We have already observed that in the charge, it is specifically stated that applicant obtained his service under the fictitious name of Gurayya Ballayya when his true and correct name was Sanddireddi Ramaiah. This type of charge cannot be said to be vague. Secondly, the applicant has admitted before the Enquiry Officer that his correct name is Sanddireddi Ramaiah. Not only that, but he accepted the position that his earlier statement during preliminary enquiry was correct. With this type of evidence, there was not much to be discussed by an Enquiry Officer and it will be very difficult to hold that evidence has not been properly discussed. The contention of Mr.Walia in this respect is rejected.

It was next contended by Mr.Walia that getting an appointment under a false and fictitious name would not constitute misconduct as contemplated by the Services Rules. He relied upon a decision of the Allahabad High Court in the case of Abdul Aziz Khan Vs Union of India reported in 1974(1) S.L.R.67. In that case, the plaintiff obtained an employment though he never appeared for selection before the Selection Board and was not selected and that he got himself medically examined and secured employment. The Allahabad High Court

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observed in Para 11 that the charge is vague and defective. It is further observed that securing an appointment as Loco Shed cleaner by deceitful means could not be in the course of performance of his duty as Railway servant and would not amount to misconduct. In our opinion, the view taken by the Allahabad High Court is too technical. The position will be anomalous if that view is accepted. Let us take an illustration: While applying for a post, a candidate is asked to write in the application whether he was previously prosecuted or convicted. In reply to such query, he mentions in the application by stating against the concerned column that he was neither prosecuted nor convicted. He gets an appointment. Subsequently, it is found that he was not only been prosecuted but also convicted for various offences such as theft, criminal breach of trust, forgery etc. It would be a surprising proposition that the applicant cannot be removed from service for the false statement, simply because the statement preceded the appointment. One has to see the substance of the allegations and in our opinion, false allegation which is relevant for the purpose of seeking appointment would be a misconduct for which punishment can be inflicted. Thus, we differ from the view taken by the Allahabad High Court.

The last contention of Mr. Walia is that the penalty is too severe. According to him, the applicant may be reinstated in service without any back wages. He draws our attention to the decision of the Calcutta Bench of the Central Administrative Tribunal in the case of Sadhan Kumar Vs Union of India reported in A.T.R.1987(1) (CAT)228. It appears that termination, after allowing

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applicant for nine long years, by reason of his not passing the Screening test was held by the Tribunal to be bad and it was set aside. It is material to note that in the present case, the applicant's service is terminated as a penalty after following proper procedure. Hence, the above decision is not applicable to the facts of the case.

Mr. Walia then relied upon the Supreme Court judgment in the case of Shankar Dass Vs Union of India reported in AIR 1985 S.C.772. A government servant was convicted under section 409 for criminal breach of trust. The Magistrate gave benefits of the Probation of Offenders Act and no punishment as such was inflicted. The reasons given by the Magistrate for leniency were that the accused was in dire financial distress. His son died; thereafter wife fell from the upper storey of the house and was seriously injured and then his daughter fell seriously ill. The Magistrate observed that under the compelling circumstances, the accused could not deposit the money in question in time. He was later on dismissed from service on account of such conviction. The Supreme Court held that in the facts and the circumstances of the case, the dismissal order was bad. In our opinion, the facts before the Supreme Court were very peculiar and it is in this background that the delinquent's dismissal was set aside.

Shri Walia also relied upon the decision of the Hyderabad Bench of the Central Administrative Tribunal reported in 1987(3)ATC 472 (M. Sri Ramulu V/s the General Manager, South Central Railway & Others). In that case, the applicant belonging to "Valmiki" community a Scheduled Caste applied for appointment in the reserved vacancy

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advertised by the Respondents in 1949. He had attached a Caste Certificate issued by an MLA. He approached another MLA for Caste Certificate to be produced at the interview following the written test. The MLA gave him a certificate that he belonged to a Scheduled Tribe. In Aug.1978, for promotion as Chief Clerk, applicant was called for interview after he passed the written test in 1977. He was asked to produce his Caste Certificate as his original Caste Certificate was doubted. In 1979 a D.E. was instituted for misconduct and on 14.8.80 his removal from service was ordered. Thus after about 22 years of service the applicant was removed from service. The Central Administrative Tribunal (Hyderabad Bench) directed his reinstatement in service and refixation of lowest seniority amongst 'OCs' treating him as belonging to "Other Community". The reason was that the applicant had never himself made a claim that he belonged to a Scheduled Tribe in a Tribal agency area and had maintained that he belonged to a Scheduled Caste. Therefore, the CAT took a sympathetic view considering long years of service and age of applicant. Leniency was shown as the applicant had to be given the benefit of doubt in the face of two different certificates given by two different MLAs on different basis. There is no such case in the application before us.

In the present case, we have an applicant who secured an employment in a Military Establishment under a false and fictitious name. While considering the contention that the penalty was exorbitant, we also heard the respondents. The relevant file was shown to

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us. From it, it is seen that the Employment Exchange had sent a list of candidates who could be considered for the appointment. The name of Gurayya Ballayya finds place in the list and against that name it is mentioned "Scheduled Caste".

It appears that the applicant had knowledge of this fact and hence he gave his name as Gurayya Ballayya. The endorsement of Gurayya's selection finds place in col.6 of the list. Thus the real Gurayya who was eligible for appointment did not get service. Instead, the applicant who did not belong to the Scheduled Caste obtained government service by impersonating someone and presenting himself as Gurayya Ballayya. In our opinion, there is much substance in the contention of the Respondents that in the background of these facts the penalty of dismissal from service cannot be said to be disproportionate.

The application is, therefore, dismissed. The parties to bear their own costs. The files be returned to the Respondents or to their Advocate.

B.C.Gadgil

(B.C.GADGIL)
Vice-Chairman

D.G.Rajadhyaaksha
(D.G.RAJADHYAKSHA)
Member(A)