

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW YORK
NEW BOMBAY BENCHOXXXXNo.
T.A. No. 75/86

198

DATE OF DECISION 13.7.1989Shri S.A.I.Inamdar

Petitioner

Shri M. Noor Khan

Advocate for the Petitioner(s)

Versus

Union of India and others.

Respondents

Shri S.R.Atre for Sh.P.M.Pradhan

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.B.Mujumdar, Member (J)

The Hon'ble Mr. P.S.Chaudhuri, 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? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? Y
4. Whether it needs to be circulated to other Benches of the Tribunal? Y

(15)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

Tr.A.No. 75/86

Shri S.A.I.Inamdar
Office Assistant,
Office of the Divisional
Engineer, Telegraphs
Ahmednagar Division,
Ahmednagar.

.. Applicant

v/s.

1. The Union of India
through the Office of the
General Manager, Colaba,
Bombay Telephones, Colaba,
Bombay.
2. Shri S.S.Jagdale,
Asstt. General Manager (Admn)
Bombay Telephones, Colaba,
Bombay.
3. Shri B.S.Deshpande
Office of the Divisional
Engineer, Telegraphs,
Ahmednagar Division,
Ahmednagar.

CORAM: Hon'ble Member (J) Shri M.B.Mujumdar
Hon'ble Member (A) Shri P.S.Chaudhuri

Appearance :

Mr.M.Noor Khan
Advocate
for the Applicant

Mr.S.R.Atre
(for Mr.P.M.Pradhan)
Advocate
for the Respondents

ORAL JUDGMENT

Dated: 13.7.1989

(PER: M.B.Mujumdar, Member (J))

The applicant had filed writ petition No. 388/81
in the High Court of Judicature at Bombay and it is transferred
to this Tribunal under Section 29 of the Administrative
Tribunals Act.

2. The relevant facts for the purpose of this judgment are these : The applicant was appointed as Office Assistant on 7.5.1977 in the Posts and Telegraphs Department at Ahmednagar. He was confirmed in that post on 29.1.1980. In pursuance of an advertisement he applied for the post of Junior Engineer. For that post training, both theoretical and practical, of one year was necessary. The applicant was selected and he was sent for training at Ahmedabad on 15.10.1979. He completed the training from 15.10.1979 to 14.10.1980.

3. However, in the meantime, while he was under training, he received memorandum dated 9.5.1980. By the memorandum, he was informed that it was proposed to take action against him under Rule 16 of CCS (CCA) Rules, 1965. Rule 16 is regarding minor penalty. Along with the memorandum, a statement of one article of charge was served. The charge was that the applicant had filed Leave Travel Concession claim without the journey having been performed which amounted to misappropriation of Government money. In the memorandum itself it was stated that he may make such representation as he may wish to make against the proposal of penalty, namely, the penalty of withholding of two increments with effect from the date it falls due for a period of two years without affecting future increments. The applicant replied to that memorandum denying the charge. However, the Disciplinary Authority did not accept the explanation given by him and held by his order dated 26.7.1980 that the charge was established and directed that the L.T.C. advance of Rs.1145/- paid to the applicant should be credited by him within 10 days and his one increment be withheld for a period of two years from the date it was due without affecting future increment. The applicant had preferred an appeal against that order but it was rejected on 30.12.1980.

4. When the applicant had just completed the training, he was informed by letter dated 14.10.1980 that he should report to Divisional Engineer Telegraphs, Ahmednagar which was his parent unit in his original cadre of Office Assistant. Accordingly, the applicant resumed his duty as Office Assistant in the Office of Divisional Engineer Telegraphs, Ahmednagar.

5. On 5.1.1981 the applicant has filed the present Writ Petition in the High Court of Judicature at Bombay challenging two orders. The first order challenged by him is the order of penalty dated 26.7.1980 at Ex.'C' to the petition and the second order challenged by him is the letter dated 14.10.1980 which is at Ex.'F' to the petition by which he was directed to report to Divisional Engineer Telegraphs, Ahmednagar as Office Assistant.

6. The respondents have filed their reply. The applicant has also filed his affidavit and the respondents have also filed additional affidavits along with some documents.

7. We have just now heard Mr.M.Noor Khan, learned advocate for the applicant and Mr.S.R.Atre for Mr.P.M.Pradhan, learned advocate for the respondents.

8. It is the case of the applicant that in 1979 while he was serving as Office Assistant at Ahmednagar he had taken an advance of Rs.1145/- on 27.8.1979. On 23.10.1979 he preferred a claim showing that his family had left Ahmednagar on 27.8.1979 by train for Belapur, and had left Belapur on 27.8.1979 for Tezpur by a Matador bearing No. MTJ 1558. According to him his family reached Tezpur on 1.9.1979 and left Tezpur on 6.9.1979 and returned back to Belapur on 17.9.1979 and Ahmednagar on 18.9.1979. In the claim he has mentioned that the distance which his family had travelled by Matador was 1632 km. each way i.e. in all 3264 km. Along with the claim he has submitted a

bill of Bharat Motor Service, Shrirampur signed by the driver one Datta. According to the bill 7 persons had travelled by the Matador. The rate was Rs.1/- per km. and hence according to the bill an amount of Rs.3264/- was received from the applicant. In the bill even the meter readings in km. are given from the start from Belapur and the return to Belapur.

9. Apart from the evidence which was before the Disciplinary Authority, we find from the letter produced by the respondents from the Western India Automobile Association, Bombay dated 3.4.1979 that the distance between Ahmednagar and Tezpur via Lucknow is 2971 km. It is true that according to the applicant his family had travelled from Belapur to Tezpur by the Matador and back from there. The distance between Ahmednagar and Belapur is about 70 km. Even deducting that figure from 2971, we find that the distance between Belapur and Tezpur ~~and back to Belapur~~ comes to about 2900 km. Hence, if the applicant's allegation that his family had travelled from Belapur to Tezpur and back by Matador is valid, the distance should be about 5800 km. In our opinion, no further comments are necessary to show that the bill submitted by the applicant is false. Mr. Noor Khan submitted that in the bill the distance might have been given in miles as ~~5800 km~~ would correspond to about 3600 miles but this submission is quite contrary to the bill. In result, we have no hesitation in saying that the order of penalty dated 26.7.1980 is perfectly legal and valid.

10. Coming to the second impugned order dated 14.10.1980, we find that the applicant in his application for the post of Junior Engineer submitted on 19.9.1979 had stated that he was a Member of Scheduled Caste/Scheduled Tribe being a Khatik. He had given his religion as Muslim. Alongwith the application, he had submitted a Caste Certificate issued by the Tehsildar,

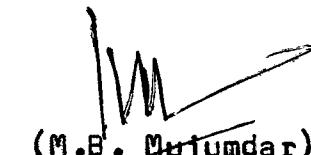
Shrirampur showing that his caste was Khatik which was recognised as a Scheduled Caste. But being a Muslim, obviously he could not be a member of the Scheduled Castes. Hence, a show cause notice dated 12.9.1983 was issued to him. Along with the notice, a statement containing one article of charge was served on him. The charge was that the applicant while functioning as Office Assistant, Ahmednagar, during the period from 7.5.1977 to 4.11.1980 submitted false information to the office. In the statement of imputation of misconduct or misbehaviour in support of the charge it was pointed out that though there is no S/C in the Muslim religion, he had submitted S/C certificate with his application for the post of Junior Engineer in the Bombay Office. By the show cause notice the applicant was called upon to make a representation against the proposed action of minor penalty within 10 days from the receipt of the notice. The applicant did make a representation dated 21.9.1983 submitting that he had not committed any misconduct. However, the Sub-Divisional Officer Telephones by order dated 18.11.1983 held that the charge was established and awarded the penalty of 'Censure'. On 6.1.1984 the applicant submitted another representation requesting that as the Department had not recognised his claim as S/C candidate, he was withdrawing that claim and hence it may be cancelled. It appears that the department then reconsidered his case and found that as the applicant's claim that he was a S/C candidate was rejected, his selection as Junior Engineer and his subsequent training were not in order. His request for selection as belonging to other community was also considered. But he was found not eligible as a direct recruit as he did not fulfill the condition of age limit of 19-27 years as on 1.7.1979. He had crossed that age limit. His case was also considered as a departmental candidate but it was found that according to the recruitment rules it was necessary that he should have rendered not less

than 3 years service in the eligible cadre, but as he was appointed in the department on 7.5.1977 as Time Scale Clerk he had not completed 3 years of service from that date as on 1.7.1979 and hence he was not eligible for promotion as a departmental candidate also. We find nothing wrong in this view taken by the department and hence we are unable to set aside the order dated 14.10.1980 at Ex.'F' to the petition as being illegal or improper in any way.

11. In result, we are unable to hold either of the impugned orders as illegal on any ground. Hence, we dismiss the application, i.e. Tr.A.No. 75/86, with no orders as to costs.



(P.S. Chaudhuri)
Member (A)


(M.B. Majumdar)
Member (J)