

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ~~NEW BOMBAY BENCH AT HYDERABAD~~
NEW BOMBAY BENCH CAMP AT AURANGABAD.

O.A.No. O.A.No. 445/89

DATE OF DECISION: _____

T.A.No. _____

Shri Ram Kuchiashwamy Trinagare Petitioner.

Shri Pradeep Shahane Advocate for the
petitioner(s)

Versus

Divl.Engineer, Telegraphs, Nanded Respondent.
and 3 others

Shri R.G.Deo, Advocate for the
Respondent(s)

CORAM:

THE HON'BLE MR. D.Surya Rao, Member (Judicial)

THE HON'BLE MR. P.S.Chaudhuri, Member (Admn.)

1. Whether Reporters of local papers may be No allowed to see the Judgment ?
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the No fair copy of the Judgment ?
4. Whether it needs to be circulated to No other Benches of the Tribunals ?
5. Remarks of Vice Chairman on columns 1, 2, 4 (To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, NEW BOMBAY
BENCH

O.A.No.445 of 1989

Shri Ram Kuchiashwamy Trinagare,
Age: 35 years, occ:Telephone Operator,
R/o.Bank Colony, Near Shivaji College,
Parbhani, District: Parbhani.

.. Applicant

and

1. Divisional Engineer, Telegraphs,
Nanded.
2. General Manager, Telecommunications,
Maharashtra Circle, Bombay.
3. Director-General, Telecommunications,
Sanchar Bhawan, New Delhi.
4. Union of India through Director-
General, Telecommunications, New Delhi.

.. Respondents

CORAM:

THE HONOURABLE MEMBER (J) SHRI D.SURYA RAO

THE HONOURABLE MEMBER (A) SHRI P.S.CHAUDHURI

Appearance:

1. Shri Pradeep Shahane
Advocate
Counsel for the Applicant
2. Shri R.G.Deo
Advocate
Counsel for the Respondents

JUDGEMENT:

DATE: 27-11-1990

(PER SHRI D.SURYA RAO, HON'BLE MEMBER (J))

The applicant herein is a Telephone Operator working
in the Telephone Exchange, Parbhani, Maharashtra State.
The facts as alleged in the application are as follows:-

1. That the applicant on 23.12.1983 appeared for the

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Departmental Competitive Examination for promotion to the post of Repeater Station Assistant/Phone Inspector/Wireless Operator. Several irregularities took place during the conduct of the examination to which the applicant took objection and as a result the respondents developed a grudge and on false grounds the applicant was expelled from the examination. The applicant filed Writ Petition No.14/84 before the High Court of Bombay. It was later transferred to this Tribunal and numbered as T.A.No.10/87. This was decided on 20-7-1988 as not surviving. On 18.7.1984 the applicant was declared passed in the departmental examination. He therefore received a letter from the respondents to supply certain certificates, which the applicant supplied with his letter dated 26.7.84. The said certificates were necessary for qualifying to be trainee. Thereafter the applicant received a Charge sheet dated 3.8.1984 alleging that the applicant had violated Rule 18(b) of the Appendix-37 of the P& T Manual. He alleges that this charge sheet forms the subject matter of the earlier T.A.10 of 1987. The applicant submitted a reply to the charge sheet on 17-8-1984 stating that he had committed no misconduct under rule 18(b) and that the said rule is not relevant since it contains instructions for invigilators. He had stated that there is no charge of moral turpitude against him. A regular departmental enquiry was conducted thereafter ^{in respect of B} into the charge and respondent No.1 as the Disciplinary Authority, imposed upon the applicant a punishment of censure by an order dated 15-5-1985. Initially the Enquiry Officer's report was not given to the applicant and it was only after the direction of this Tribunal in T.A.10 of 1987 dated 20-7-88

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that the copy of the Enquiry Officer's report was furnished to him. Subsequently the applicant received a letter from the 2nd respondent informing him that his name has been removed from the list of successful candidates who have appeared for the examination for the post of Phone Inspector/Wireless Operator. This was communicated to him by an order dated 16-6-1986. The reason given was that he used unfair means in the departmental examination and the applicant therefore presumes that this order was passed consequent on the punishment of censure. The applicant submitted Writ Petition No.62 of 1986 before the High Court of Maharashtra which was transferred to this Tribunal as T.A.143 of 1987 and was decided on 20-7-1988. In the said T.A. the applicant of his name challenged the order of removal/from the select list. The T.A.143 of 1987 was disposed of alongwith T.A.10 of 1987 with a direction to the applicant to file an appeal against the order of censure with liberty to move this Tribunal if the decision on appeal goes against ~~the~~ him. ^{or} applicant. The applicant states that his appeal was and disposed on 15.11.1988/received by the applicant on 21.11.1988 containing the remarks of the Appellate Authority rejecting the Appeal. He states that he is therefore constrained to file this application challenging the order dated 6.6.1988/16.6.88 deleting the name of the applicant from the list of successful candidates. He is also seeking to challenge the findings of the Inquiry Officer/^{the disciplinary authority} and the Appellate Authority imposing upon him the punishment of censure. His main contention is that there is no proof or finding that the applicant had used unfair means in the examination as alleged in the charge sheet. The findings of the Enquiry Officer are ^{contradictory} ~~contrary~~ and similarly ^{the} ~~in~~ the findings of ~~the~~ respondent No.2 are also contradictory and perverse. The applicant alleges

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Inquiry Officer's that the report says that he has been exonerated from the alleged blame or attempt of use of unfair means in the examination. He alleges further that the order of the Disciplinary Authority is illegal and arbitrary and that there was no evidence against the applicant. It is further contended that the charge against the applicant is vague and irrelevant. It does not relate to the applicant's using unfair means. The other contentions raised are that the applicant should have been given an opportunity by the Disciplinary Authority before passing the order of punishment. It is also contended that having declared the applicant passed ^{in A} the examination, it is not open to the respondents to arbitrarily set aside that order and further declare that he has not passed without giving him an opportunity. He, therefore, seeks a direction to quash the order dated 6-6-1986 as confirmed by subsequent order dated 16.6.1986 declaring that he has not passed ^{that A} the examination, and he should be allowed consequential relief of appointment orders as Phone Inspector with ^{in A} a specific period, to issue him retrospective appointment from 1984, to quash the order of censure dated 15-5-1986 as confirmed by the Appellate Authority by an order dated 15.11.1988.

2. On behalf of the respondents a reply has been filed denying the various contentions and pleadings ^{averred to D} adversely by the applicant. It is denied that any irregularities were committed by the respondents during the course of the examination and that due to grudge respondents have taken action against the applicant. It is stated that the applicant was expelled from the examination hall due

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to his indulgence in unfair practices on 23-12-1983. It is stated that originally the results of the examination in which the applicant appeared were declared and communicated to the applicant by oversight and that as per the rules, of the Director-General, P&T, ^{it was necessary to} ~~with~~ holds the results of such candidates who are found or suspected to have indulged in unfair practices during the examination. It is stated that charges were duly framed against him for having violated Rule 18 of Appendix 37 'para b' of P&T Manual Vol.IV. It is further stated that the instructions on the answer book supplied to the applicant in the examination hall prohibits using any illegal means ^{when b} of writing answer papers. Despite the warning, the applicant deliberately acted contrary thereto. It is stated that the charges were duly framed, a proper enquiry was conducted, findings were given by the Enquiry Officer and on the basis of his findings, the applicant was rightly punished. It is denied that the applicant was exonerated ~~of~~ ^b the charges and that the disciplinary authority after studying the enquiry report took the view that the charges are established and thereafter only the punishment was finalised. Since the applicant was awarded the punishment ^{of} ~~for~~ committing malpractices in the examination, and since he was punished as a result of the enquiry, his name was rightly deleted from the list of selected candidates. It is further stated that respondent No.3 as the Head of the Department is fully empowered to cancel or delete any letter or order earlier issued if it was a wrong or an erroneous order. It is, therefore, contended that the applicant is not entitled ^{to} ~~for~~ any of the reliefs claimed by him and the application is liable to be dismissed with costs.

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3. We have heard the arguments of the learned counsel for the applicant Shri Pradeep Shahane and Shri R.G.Deo, learned Standing Counsel for the Central Government for the Respondents. The first contention of Shri Shahane is that in the charge, the offence or the misconduct alleged to have been committed by the applicant is not clear. The Statement of article-I reads that the applicant had used to obtain help by irregular unfair means in writing out his answer paper-IV on 23-12-83 involving moral turpitude and misconduct in contravention of Rule 18(b), Appendix-37 of P&T Manual Volume-V. Annexure-II in support of the charge, reads as follows:

"During the above said period while appearing to the departmental competitive examination for promotion to the cadre of RSA/PI/WO on 23-12-83 for paper-IV, the said Shri R.K.Trinagare was found going very frequently for urine purpose outside. This created a suspicion in the minds of the invigilators namely Shri Lonare N.R. and Sri Edgar R.G. Thereafter when said Shri R.K.Trinagare went out for urine purpose both the invigilators after a short while followed the said Shri R.K. Trinagare and found to their surprise that the said Shri R.K.Trinagare was referring books which were being shown by Shri Rauke, Roll No. MHT/143/83 who was also a candidate for the said examination. Thus, said Shri R.K.Trinagare has violated rule 18(b)(i) Appendix-37 of P&T Manual, Volume-IV."

Shri Shahane contends that Rule 18(b) of Appendix-37 lays down that when an examinee leave the examination hall, he should be accompanied by one of the invigilators and must not be allowed to go out alone. He contends therefore, that in so far as the applicant is concerned it is not relevant ^{as a} ^{g.D} and a duty is cast upon the invigilators

and not upon the examinee. We have called for the rules and perused the same. Appendix-37 contains four parts. Part-I is referable to the conduct of examinee while writing an examination. Part-III relates to the duties of the invigilators. Rule 18(b) in part-I prohibits an examinee from referring to books or using any extraneous material in the course of the examination. Rule 18(b) of Part-III lays down that the invigilator should ^{the examinee} accompany ~~if he (examinee)~~ were to leave the examination hall. From a reading of Annexure-II extracted supra, it is clear that the charge against the applicant was that when he went out for urine purpose, he was referring to books which were being shown to him by one Shri Rauke. Thus, the substance of the charge is clearly referable to part-I ~~of~~ Rule 18(b) of the Appendix-37. Nodoubt, when the applicant had raised the plea as to which rule 18(b) the charge is being referred to, the disciplinary authority could have clarified that the Rule 18(b) referred to in part-I of Appendix-37 is the relevant rule for violation of which the applicant is charged. However, as stated above, a reading of Annexure-II makes it clear that it is only Rule 18(b) of Part-I of the Appendix-37 which the applicant is alleged to have violated. In our view no injustice has been caused to the applicant in not mentioning which part of the Appendix-37 the charge is referred to.

4. The next and the main contention of Shri Shahane is that the charge has not been held proved. In this context, he has drawn our attention to the Enquiry Report dated 22-4-1985 of the Enquiry Officer. The

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report discloses that there was a preliminary hearing, that witnesses were examined and cross examined, that there was an opportunity given to both the prosecution and the defence to address their arguments and that the Enquiry Officer evaluated the evidence. The conclusions of the Enquiry Officer are relevant and as follows:

"Shri R.K.Trinagare, T.D.Parbhani was alleged to have resorted to malpractice during the exam of promotion to RSA, PI, etc. There was nothing to prove that Shri R.K.Trinagare copied from others. At the most it might be said that there was only a crude attempt. After the last incident of meeting Shri Rauke outside exam. hall and was produced before the Centre Supervisor, Shri R.K. Trinagare, was not allowed to continue writing his answer book. Hence, even if the consultation with Shri Rauke resulted in some useful information to Shri R.K.Trinagare, he could not use it. There is no proof of using any information by unfair means earlier to the incident of 16.15 hrs. on 23-12-83. Although Shri R.K.Trinagare wanted to surrender the answer book and volunteered to go out, Shri Chavan, as Centre Supervisor, did not permit him to do so on 23-12-83 but expelled him from the examination hall. From the basis of evidence in the enquiry it has to be concluded that Shri R.K.Trinagare as a candidate in the said examination did not quite behave as an honest candidate with knowledge, sufficient to get through the examination would behave and be quiet and disciplined and would avoid any scope for unnecessary incidents that would distract him, from his purpose of answering the paper well. The joint report of the invigilators recorded on the spot coupled with fact that Centre Supervisor had expelled the candidates from the exam. on that date cannot simply be discredited by arguing that the candidate possessed more knowledge than would necessitate copying, that no books were seized or existence of other procedural/omissions or administrative delays all left to themselves without any support extraneous considerations

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prompting the concerned official to act in way he did. Although by strict application of the rules quoted in the charges framed against him, Sri R.K. Trinagare could not possibly be blamed of violation of the same, yet taking into consideration the essence of the imputations of misconduct/misbehaviour and the spirit of the charges it has to be concluded on the basis of the enquiry held, that Sri R.K. Trinagare was found guilty of misconduct during the departmental examination held on 23-12-1983."

5. After the receipt of the Enquiry Officer's report, the disciplinary authority agreed with the report and by an order dated 15-5-1985 imposed upon the applicant the punishment of 'censure'. Shri Shahane draws our specific attention to the concluding part of the order of the disciplinary authority which reads as follows:

"There is no proof of using any information by unfair means earlier to the incident at 16.15 hrs. on 23-12-83. The said official was not allowed to continue writing his answer book after 16.15 hrs. However, Shri R.K. Trinagare, as a candidate in the said examination did not quite behave as an honest candidate. Taking into account of all reports, witness, evidences and article of the charge itself, the following orders are passed. "

Shri Sahane contends that the applicant was charged with having referred to books which were being shown by Shri Rauke and thereby violated Rule 18(b) of Appendix-37. He contends that neither the report of the Enquiry Officer nor the finding of the disciplinary Authority thereof show that the charge has been established. We are constrained to agree with this contention of Shri Shahane. The conclusions of the Enquiry Officer to the extent relevant go to show that (i) there was nothing to prove that Shri R.K. Trinagare copied from others. At the most

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it might be said that there is only a crude attempt; (ii) from the basis of evidence in the Enquiry it has to be concluded that Shri R.K.Trinagare, as a candidate in the examination, did not quite behave as an honest candidate with knowledge sufficient to get through the examination would behave and be quiet and disciplined and would avoid any scope for unnecessary incidents that would distract him; (iii) although by strict application of the rules quoted in the charge framed against him, Shri R.K.Trinagare could not possibly be blamed of violation of the same yet taking into consideration the essence of the imputation of misconduct/ misbehaviour and to the spirit of the charge, it has to be concluded on the basis of the Enquiry held that Shri R.K.Trinagare was found guilty of misconduct during the departmental examination on 23-12-83.

6. The charge against the applicant is that he was using illegal means in the examination by referring to books handed over to him by one Shri Rauke. It is this charge which has to be specifically established and held proved by the Enquiry Officer. The Enquiry Officer has nowhere in his conclusion held that this charge is duly proved. Unless he gives a specific finding that the applicant has referred to the books during the course of examination, the charge cannot be held proved. It was necessary for the enquiry officer to analyse and state, what were the ingredients of the charge and in what manner the applicant had violated the rule with which he was charged and in what manner. A general observation that the applicant was not honest does not mean or amount to the charge having been proved.

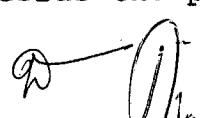
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It must also have been established that the books referred to by the applicant were relevant and related to the subject on which he was being examined and that he thereby used or sought to use unfair means. None of these factors have been brought out. All that the report disclosed is that there is a suspicion against the applicant that he has referred to some books and that there was a crude attempt to copy and the conclusion therefrom is that he did not behave as an honest candidate would behave. Even if we go to the extent of inferring from the enquiry officer's report that an attempt to refer to books relevant to the examination was made by the applicant and that the applicant was thereby dishonest, the further specific finding of the enquiry officer that "by strict application of the rules quoted in the charge framed against him, Shri R.K.Trinagare could not possibly be blamed for violation of the same" is a contrary finding and only means that the Enquiry Officer is of the view that the charge is not established. If that be the case, the applicant has to be acquitted and not found guilty of misconduct. The finding of the disciplinary authority also does not show how the applicant is found guilty of the charge. As in the case of the Enquiry Officer, he merely reiterated that "Shri R.K.Trinagare as a candidate in the said examination did not behave as an honest candidate." This finding does not amount to one that the charge against the applicant has been established and that the applicant was guilty thereof.

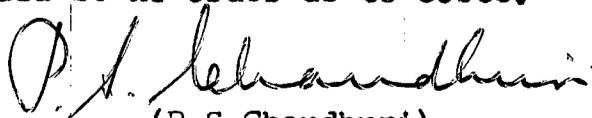
7. For the reasons given by us above, we are of the opinion that the Enquiry Officer's report or the disciplinary authority's order do not go to show that the charge against the applicant has been proved.

We would accordingly set aside the punishment



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imposed upon the applicant. The impugned order No.QT/RKT/84-85 dated 15-5-1985 passed by the Divisional Engineer, Telegraphs, Nanded and the order of the appellate authority viz. the Director, Telecom., Nagpur in Memo.STA/AM-52/Appeal/NNd. dated 15-11-1988 are quashed and set aside. The consequential action taken i.e. his name be deleted from the list of successful candidates in the departmental examination held on 22nd and 23rd December 1983 as contained in letter dated 16-6-1986 of the Assistant Director General (DST) Bombay issued on the basis of the earlier instructions dated 6-6-86 of the Director General, P&T is also quashed and set aside. The applicant is deemed to have passed the said examination and the respondents are directed to issue appointment order as Phone Inspector to the applicant, from the date when his junior passed the said examination and was appointed as Phone Inspector. The applicant may be sent ^{for} to the training to enable him to get the posting orders as Phone Inspector. Though we are directing that the applicant should be posted as Phone Inspector from the date when his junior was posted as such, it is made clear that the applicant will not be entitled to arrears of salary. He would be entitled to only notional promotion as Phone Inspector and will be given notional increments from the date of notional promotion till the date of filing of this O.A. before this Tribunal i.e. 29-6-1989. He would be entitled to arrears only from 29-6-89 and not earlier. He would, however, be entitled to count service from the date of notional promotion for seniority and other service benefits. The O.A. is allowed with the above directions and there would be no order as to costs.


(P.S. Chaudhuri)
Member (Admn)


(D. Surya Rao)
Member (Jud1).

27.11.1990