

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 775/2001

Date of Decision : 26-6-2002

D.V.Vedante

Applicant

Shri K.R.Yelwe with
Shri S.P.Saxena

Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri R.K.Shetty

Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Shri M.P.Singh, Member (A)

- (i) To be referred to the reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other *to*
Benches of the Tribunal ?
- (iii) Library *yes.*

P.L.Jain
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.775/2001

Dated this the 26 day of June, 2002.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Shri M.P.Singh, Member (A)

Dilipkumar Vasantrao Vedante,
R/at. Suryavanshi Bhavan No.2,
1st Floor, Room No.34,
E.S.Patanwala Marg,
Byculla, Mumbai.

...Applicant

By Advocate Shri K.R.Yelwe
with Shri S.P.Saxena

vs.

1. Union of India
through The Secretary,
Government of India,
Ministry of Commerce,
Udyog Bhavan, New Delhi.
2. The Salt Commissioner,
Government of India,
Ministry of Commerce,
Post Box No.139,
Jaipur.
3. The Deputy Salt Commissioner,
Government of India,
Exchange Bldg., Sir S.R.Marg,
Ballard Estate, P.B.No.1561,
Mumbai.
4. Shri M.A.Ansari,
Deputy Salt Commissioner,
Ministry of Commerce,
Ajanta Commercial Centre,
B Block, 4th Floor,
Ashram Road,
Ahmedabad (Gujrat State).

...Respondents

By Advocate Shri R.K.Shetty

Shetty -

..2/-

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 to quash and set aside order passed by the disciplinary authority and appellate authority dated 19.2.2001 and 15.6.2001 respectively removing the applicant from service with all consequential benefits.

2. The applicant was appointed on adhoc basis as Driver after selection w.e.f. 30.1.1987. Thereafter, he was regularised vide order dated 28.6.1987 and probation period was of two years. After completion of probation period successfully, the applicant continued. A show cause notice was issued on 30.6.1995 to which applicant replied on 27.7.1995. Thereafter, he was removed from service by disciplinary authority vide order dated 2.8.1995. The applicant preferred an appeal against the said order of disciplinary authority which was rejected vide order dated 28.6.1996. Thereafter, OA.NO.254/96 was filed by the applicant which was decided vide order dated 28.7.1999 setting aside the orders of the disciplinary authority and appellate authority with liberty to the respondents to proceed against the applicant, if so desire, as per the extant Rules.

Sign

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3. The respondents served the chargesheet dated 22.9.1999 to the applicant. The applicant replied to the said chargesheet vide his reply dated 1.11.1999. After, appointment of the enquiry officer and presenting officer, the enquiry proceeded. After submission of the report by the enquiry officer, the copy of the same was given to the applicant and thereafter the disciplinary authority passed the order dated 19.2.2001 removing the applicant from service. The applicant preferred the appeal against the said order which was dismissed on 15.6.2001 confirming the order of the disciplinary authority.

4. The grievance of the applicant is that order of the disciplinary authority as well as appellate authority is based on no evidence and he was not afforded opportunity to defend his case as he was not allowed to examine the defence witness and the enquiry officer even did not pass any order rejecting his prayer for examining the defence witness.

5. Article-I of the chargesheet is worth mentioning which is as under :-

" That the said Shri D.V.Vedante, while furnishing the Attestation Form for appointment to the post of Driver had stated that he had studied in Shri Sadguru Sitaram Mahraj Vidyalaya, Pune from 1.8.1978 to 31.5.1984 and had submitted a School Leaving Certificate bearing No.308 dated 31.5.1984 from Shri Sadguru Sitaram Mahraj Vidyalay, Pimpripendhar, Taluka Junnah, District Pune in support of his age and qualification. However, when an inquiry was made with the said Shri Sadguru Sitaram Mahraj Vidyalay, Head Master of the said school informed that the name of Shri Vedante did not appear in the school roll. Thus Shri Vedante had furnished false information in the Attestation Form and produced false certificate in support thereof and thereby failed to maintain absolute integrity and committed an act unbecoming of a Government Servant in violation of Rule 3(1)(i) and 3 (1)(iii) of CCS (Conduct) Rules, 1964."

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6. The perusal of the charge makes it clear that it does not relate to the fact that the applicant was not eligible for appointment as per Recruitment Rules and as such, he has committed misconduct. The learned counsel for the respondents during the course of arguments tried to place on record the Recruitment Rules regarding appointment of the applicant, the educational qualification etc. As the said charge is not levelled against the applicant, we declined to take on record the said recruitment rules which are not relevant for decision.

7. We have carefully perused the statement of imputation of misconduct or misbehaviour in support of the article of charge framed against the applicant which is at page 55 of the OA., and we are of the considered opinion that even in the said imputation, nowhere it is mentioned that what is the educational qualification as per Recruitment Rules for the post of Driver and what was the qualification possessed by the applicant. Amongst the documents listed in Annexure-III, the Recruitment Rules do not find place. As such, in judicial review, a charge which is not levelled cannot be agitated by the respondents, The reason being the applicant has no opportunity to defend the said charge. The scope of judicial review is limited one, i.e. whether the charge levelled against the applicant was duly enquired into after following the prescribed rules, principles of natural justice and whether the order of the disciplinary authority/appellate authority is based on some evidence. In such circumstances, the Recruitment Rules which are not relevant cannot be taken on record and the charge regarding ineligibility of the applicant for the post of Driver cannot be considered at this stage.

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8. The respondents have placed before us the file regarding disciplinary proceedings in which at page 22 to 26 reply of the applicant to the chargesheet dated 22.9.1999 is available. In para 3 of the said reply, the applicant stated that "at the outset I do not admit the charge framed against me under the Memorandum/chargesheet dated 22.9.1999. I would request your honour to order an enquiry to investigate into the charge levelled against me so that I can prove my innocence in the enquiry". In para 8 he refers to the show cause notice issued to him and his reply to the said notice in the year 1995 (30.6.1995), and the reasons for such reply stating the fact that his reply was based on some threatening of the authorities and as such it was not voluntary one.

9. It is the respondents' allegation that the applicant submitted the Attestation Form (At pages 72 to 75 of the OA.) while he was appointed on adhoc basis. The respondents stated that in para 4, the applicant has stated about his residential address and in para 10 he has mentioned educational qualification showing places of education with years in schools & colleges since 15th year of age. As the applicant has never resided at Taluka Junnah, Dist. Pune, hence his acquiring qualification of 8th Std. in school named Shri Sadguru Sitaram Mahraj Vidyalay, Pimpripendhar, Taluka Junnah, Dist. Pune cannot be/and is not a true version.

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10. The learned counsel for the applicant argued that the case of the respondents is based on no evidence. It is true that in judicial review the Tribunal's power is limited one and the Tribunal is not competent to appreciate the evidence but when the case is of no evidence as alleged by the applicant, the Tribunal has to examine the fact whether there is any evidence in disciplinary proceedings to arrive to a conclusion of guilt against the applicant.

11. It is true that the applicant has submitted the photo copy of Attestation Form during the course of disciplinary proceedings before the enquiry officer and the presenting officer accepted the same with reservation that in the original form only the last page bears the signature of applicant while in the attestation form submitted by the applicant, applicant's signatures are available at page No.1 and 3 also to which the learned counsel for the applicant replied that the attestation form which was part of the chargesheet, it is included in Annexure-III, it was supplied by the respondents and he has only submitted the same after putting his signature on page 1 and 3. In such circumstances, we do not find any fault with the applicant in this respect.

12. The attestation form which is said to have been submitted by the applicant while securing the appointment is material document for consideration. Before the entries in the said attestation form are examined, first the fact to be established is that the said form is submitted by the applicant. On perusal of the said Form, we do not find any endorsement regarding the receipt of the same, initialed by any official, the report of verification coupled with initial of the official concerned etc. which in normal course is available in official dealings.

S. L. Sharma

13. Shri R.Mohan was examined during the course of disciplinary proceedings on 9.2.2000. The Learned counsel for the applicant has drawn our attention to question No.3,5 to 9 of the same. Perusal of the question and answer makes it clear that Shri R.Mohan stated that he (the applicant) was expected to produce certain documents as per the notification issued by the respondents, he might have produced the required documents at the time of interview, I have been shown the zerox copy of the certificate dated 31.5.1984 and marked as A-2 Sr.No.5, as the said document does not show any of the remark, that the said document which was produced by him at the time of interview, as the document shown to him does not bear any specific identification, I cannot say that the verification was based on other document, at this stage, I cannot state that on what basis it was done. He further stated that I do not remember whether the applicant has furnished any other certificate. Perusal of the same makes it clear that the zerox copy of certificate No.308 which was shown to the applicant, he does not say with confirmity that whether such document was produced by the applicant at the time of interview. Regarding other answers, suffice to state that he states only the normal procedure adopted without stating the fact in respect of the applicant.

14. Shri M.A.Ansari was examined on 1.3.2000 who happened to be for the first time later on posted at the station w.e.f. January, 1994 to June, 1999. As such, any primary knowledge prior to his posting at the same station cannot be presumed to be possessed by him. It appears that on telephonic complaint, he

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enquired into the matter. Thereafter, a show cause notice dated 30.6.1995 was issued by him. Order of removal dated 2.8.1995 was passed by the disciplinary authority which was confirmed in appeal decided on 28.6.1996 which was the subject matter of earlier OA.NO.254/96. In answers to questions on 29.3.2000, he has specifically stated that the complainant did not even disclose his name and he did not recognised his voice. Suffice to state that this fact has no material bearing either in favour of the applicant or against him. Only the fact that he has issued the show cause notice and after receipt of the reply removed the applicant from service has some relevance but by that it cannot be said, as argued by learned counsel for the applicant, that he was prejudiced with the applicant. Some incident regarding putting of sugar in engine of the vehicle was there. But by that it cannot be said that either he was enimical to the applicant or otherwise prejudiced with the applicant.

15. On perusal of the chargesheet along with Annexure-III, we find that the document listed at Sr.No.6 certificate dated 21/22.7.1995 issued by the Principal Purva Byculla Mahanagar Palika Madhyamik Sala was also produced by the applicant which was relied on document by the respondents which is admitted by the Presenting Officer.

P.L. Sharma

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16. Perusal of the proceedings dated 12.1.2000 (Annexure-15 page 67 & 68) makes it clear that the documents at Sr.No.1 "Copy of School Leaving Certificate bearing No.308 dated 30.1.1984 from Sadguru Sitaram Mahraj Vidyalaya, Pimpripendhar, Taluka Junnah, District Pune was not admitted by chargesheeted employee and as such cannot be taken on record and needs to be proved by the Presenting Officer. Regarding attestation form submitted at the time of appointment and relied on document at Sr.No.3 is being denied by the chargesheeted employee and it is claimed that this form being disputed one and needs to be proved by Presenting Officer. Regarding Document No. 4 and 5, there is no dispute between the parties which are letters issued by the Head Master, Sadguru Sitaram Mahraj Vidyalaya, Pimpripendhar, Taluka Junnah, Dist. Pune and letter dated 30.6.1997 issued by Deputy Salt Commissioner, Mumbai addressed to the applicant. The narration of the said proceedings is material one for the reason that it was the duty of the disciplinary authority when the documents were not admitted by the applicant to establish the same that the ~~attestation form~~ application has been submitted by the applicant while seeking appointment. The evidence as discussed above in paras 13,14,17 of this order, which is discussed above, does not lead us to the conclusion that the applicant submitted the ^{alleged} attestation form along with the copy of school leaving certificate at the time of seeking adhoc appointment.

P.C.M. —

17. Shri R.Mohan was further examined on 9.8.2000 and 20.8.2000 but nothing could come on record to support the claim of the respondents. Statement of R.Mohan dated 20.8.2000 only reveals the fact that he has proceeded only on the notings of his assistants. C.P.Parab was also examined on 27.6.2000 but as he was advised to undergo catrait operation of the right and left side eye within one month or two months he was not able to state anything either in favour or against the respondent.

18. The learned counsel for the respondents relied on 1997 SCC (L&S) 492 - Delhi Administration through its Chief Secretary & Ors. vs. Sushil Kumar which lays down the proposition that if an applicant is selected subject to verification of character and antecedents, denial of appointment to him on ground of undesirability when he is acquitted /discharged of the offences under Ss.304,324/34 and 324 is not made improper. In our considered view, the said question is not at all relevant to the issued involved. Here, as per the argument of the learned counsel for the respondents the applicant was not possessed with the required eligibility criteria regarding his education while in the case cited by him, it was a case where the applicant was found physically fit, passed the written test and interview, as such, there was no lack of educational qualification in the said case. But denial was on account of his undesireability being involved in some criminal case though acquitted or discharged. If we examine the case regarding false statement included in the attestation form, the said case can have some relevance. But before doing so, the respondents have to establish that the applicant has submitted the said attestation form which contains the false averments.

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19. On perusal of the proceedings dated 29.3.2000, we find that the Presenting Officer submitted the File No.A-12032/3/86 Admn along with the original file of the same bearing pages Nos. 1 to 83 and noting sheets pages 1 to 22 dealing with cases of officers. Suffice to state that it was objected by the defence assistant but it was taken into consideration while deciding the matter in question. On perusal of the same, page no.86 and 87 defence assistant requested that Shri L.J.Yadav, Dy.Salt Commissioner may be summoned as defence assistant. The enquiry officer failed to pass any order summoning Shri L.Yadav as defence witness or even rejecting the prayer of the applicant.

20. The applicant has not examined himself during the course of disciplinary proceedings therefore, it was the duty of the enquiring authority to question the applicant regarding the circumstances appearing against him in the evidence for the purpose of enabling the applicant to explain any circumstances appearing against him. The said principle is based on Rule 14 (18) of CCS (CCA) Rules. We have perused the file regarding the disciplinary proceedings and we are of the considered opinion that the applicant was not examined by the enquiry officer. As such, there is also a material irregularity which prejudiced the applicant's defence. The discussion in para 19 along with it discloses that extraneous matter was allowed to be taken on record and there was no fair trial.

J. (S) /

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22. In the result, OA. is allowed. The orders of the disciplinary authority and appellate authority dated 19.2.2001 and 15.6.2001 respectively are quashed and set aside. The applicant is entitled to be reinstated in service with all consequential benefits. The respondents are directed to reinstate the applicant in service with all consequential benefits within a period of one month from the date of receipt of a copy of the order and pay the cost amounting to Rs.1,000/- to the applicant. ~~He is~~

S.L. Jain
(S.L. JAIN)

MEMBER (J)

mrj.

Order of the Corporation
to appoint agent(s)
on 03/27/92

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