

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 241/90
Transfer Application No.

Date of Decision : 4.8.1995

Smt. D.D.Malihalli

Petitioner

Shri D.V.Gangal

Advocate for the
Petitioners

Versus

Union of India & Ors.

Respondents

Shri P.M.Pradhan

Advocate for the
respondents

C O R A M :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to
other Benches of the Tribunal? No

(M.S.DESHPANDE)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 241/90

Smt. Deepali D. Malihalli

... Applicant

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande

Appearance

Shri D.V.Gangal
Advocate
for the Applicant

Shri P.M.Pradhan
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 4.8.1995

(PER: M.S.Deshpande, Vice Chairman)

Upon a difference between two Hon'ble Members with regard to the final orders that should be passed in the OA.NO. 241/90, the matter came to be referred by the Hon'ble Chairman to me for deciding the matter as a Third Member. The reliefs sought by the OA. are to hold and declare that the dismissal of the applicant by the order dated 9.4.90 Annexure 'A' is illegal and she is entitled to reinstatement with full back wages, allowances and all consequential benefits; to hold and declare that the second chargesheet dated 25.1.1988 is illegal and void and that the order dropping the proceedings which was passed on 30.12.1987 is illegal.

2. The applicant joined the Telephone Department as a Trainee on 15.1.1978 for appointment to the post of Junior Engineer and she came to be appointed upon successful completion of training as Junior Engineer in 1979. In the Form which was filled by the applicant on 6.9.1977 she described her Marital status as Single and represented that she had passed the B.Sc examination on 17.10.1975

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having obtained 418 marks out of 600 marks and mentioned in Col. No. 21 that she had attached the certificate of having passed B.Sc examination along with the application. She also made a declaration on 26.8.1977 in the Form that she was declaring that the statements made in the application were true to the best of her knowledge and belief.

3. By the order dated 22.12.1986 (Annexure-'C') to the petition she came to be charged on Three Heads of Charges, in that in respect of her educational qualification she had given false information that she had secured B.Sc Degree on 17.10.1975 from Jabalpur College with 69% of marks and thus violated the "Warning" given in the attestation form with intention to derive unintended benefit of getting employment as Junior Engineer; secondly, she gave the information that she was not married which was incorrect and a false statement and thus exhibited lack of integrity and unbecoming of a Govt. servant and thirdly, when asked to produce the original certificate of B.Sc degree in October 1986 and original mark-sheet in respect of B.Sc exam, she failed to produce the documents.

4. Shri Narayanaswamy who was the Divisional Engineer appointed Shri D.K.Gore as Enquiry Officer. The enquiry could not make any head-way because according to Shri Gore the Presenting Officer, Nar was not adducing evidence in spite of the opportunity granted to do so and this was followed by extensive correspondence between Shri Gore and Narayanaswamy, the former making allegations about Shri Narayanaswamy's interference in his duties as the Enquiry Officer and writing letters to the General Manager, M.T.N.L., Bombay requesting him to permit/to prosecute Narayan Suamy.

5. On 30.12.1987 (Annexure-'I') Shri Narayanaswamy passed an order dropping the disciplinary proceedings purportedly having been necessitated because the charged officer could not be afforded full and natural justice in the manner in which the inquiry was conducted with the rider that dropping of the proceedings was without any prejudice to the right of the disciplinary authority to initiate fresh disciplinary proceedings against the said officer. On 25.1.1988 on the basis of identical charges another charge-sheet was served on the applicant by Shri Kumaraswamy, Deputy General Manager (P&A), O/O G.M.Telcom, MH Circle, Bombay. Before issuing this charge-sheet the applicant had been transferred by the order dated 7.1.1988 to CTO, Bombay, ^{earlier} she having been with Bombay Telephones and having been transferred to M.T.N.L. and from there to C.T.O. The enquiry proceeded before Shri Bade. Shri Bade submitted his report on 12.6.1989 stating therein that the Presenting Officer was not to produce any witness but he had only to produce documents. Shri Bade submitted the inquiry report on 24.1.1989. The disciplinary authority Shri Kumaraswamy by the order dated 12.6.1989 remitted the proceedings for taking additional steps because in his view the applicant had taken a stand that genuineness of the documents should be proved by the Presenting Officer though she had failed to produce any documents as a positive proof to counter the charges or disprove the information submitted by the Rani Durgawathi Viswavidyalaya, Jabalpur and he thought that in the interests of justice an opportunity should be given by the inquiry officer to verify the genuineness of information contained in the documents and this could be got done through the concerned Viswavidyalaya, Jabalpur authorities in a manner feasible. Thereafter, the inquiry officer fixed a date

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20.9.1989 for hearing at Jabalpur and at the request of the applicant altered the date ^{of} 7.11.1989 at C.T.O. Jabalpur but she did not attend on that date. The case was fixed at Rani Durgawathi Viswavidyalaya, Jabalpur on 8.11.1989.

6. The respondents have produced the order-sheets of proceedings dated 7.11.1989 and 8.11.1989 which show that the applicant did not attend on those dates. Though the learned counsel for the applicant urged that the applicant had no notice of these dates, the postal acknowledgement dated 25.10.1989 shows that the registered letter had been sent to the applicant stating therein, with reference to her application dated 23.10.1989 that she had admitted the document Ex.S-5 initially but she had denied the authenticity of this document at a later stage. The inquiry officer also observed that there was some contradiction in the stand taken by her and in order to give a fair chance to defend her case, a special meeting was held at Jabalpur and the inquiry would therefore ^{take} place at Jabalpur on 7.11.1989. The postal documents shows that the applicant had notice of the date 7.11.1989 and the venue. The case was adjourned to 8.11.1989. The proceedings of 8.11.1989 show that the document S-5 was shown to the Dy. Registrar of Rani Durgavati Vishwavidyalaya and he confirmed that it was issued by his office and in addition he had also shown "The Tabularisation Register" where the names of the candidates who had appeared for B.Sc. Examination 1975 were entered according to the Roll Numbers. The order-sheet shows that according to the document Ex.S-4, the Roll No. allotted to the SPS for final B.Sc. Exam was 184, but it was found that this No. 184 was allotted to Kum. Rajashri Dave, similarly it was found that Roll Nos. 183 and 185 were allotted to Kum. Rekha Bhargava and Kum. Reeta Kulshreshta respectively. It was also noticed that the scheme of examination mentioned in the statement of Marks (Ex-4) did not tally with that of the original Tabularisation

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Register mentioned above and the inquiry thereafter came to be adjourned. It is necessary to advert to all these particulars because on merits the learned counsel for the applicant took the stand that no witness was produced to show that the document S-5 which gave a lie to S-4, i.e. the document produced by the applicant was an authentic one and unless that was done the falsify of statement of marks or its spuriousness would not be established. No document was produced, at the time of entry into service, to show that she had passed the B.Sc. Examination, ^{an} essential qualification for entry into the service.

7. Reliance was placed on behalf of the applicant on the observations in *Hari Giri vs. Union of India & Ors.* (1992) 19 ATC 659, where the Principal Bench of this Tribunal at New Delhi noted that :-

"The Vice-Principal, who was a key witness, was not produced in evidence and the applicant was not given an opportunity to cross-examine him. The Enquiry Officer and the disciplinary authority relied upon the letter received from the Vice-Principal of the School - the sole evidence in this case - without examining him and giving the applicant an opportunity to cross-examine him. This is a serious lacuna vitiating the entire proceedings."

Though reference was made to several decisions, the observations made in this case must be read in the context of the facts of that case. There Hari Giri, Peon had produced a certificate to the effect that he had passed VIIIth Standard from Multan D.A.V. Secondary School, West Patel Nagar, New Delhi, which was in English, ^{but that was alleged to be a} false and forged document as it had not been issued to Hari Giri by the School. The observations in Para 11 of the judgement show that the Vice-Principal was the sole witness and that the letter of the Vice-Principal was the sole evidence in that case. It is not necessary that there should be a direct evidence in the departmental

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inquiry to establish a particular fact. It was the case of the department ^{here} that the Mark-sheet produced by the applicant was a fake document and this could be shown by bringing ~~on~~ record that the document produced did not fit in the scheme of examination, that the candidate whose Roll No. was 184 was not the applicant but some other person and the marks shown in the Mark-sheet were not the marks which could have been obtained by the applicant having regard to the maximum marks which were prescribed for a particular paper. It was ~~for this purpose~~ ^{that} the letter (Ex.H-1 to the petition) had been referred to the Registrar, Rani Durgavati Vishwa-Vidyalaya from ~~where~~ the applicant came to have passed the B.Sc. Examination, and the reply dated 26.11.1986 (Annexure-'T') by the Registrar ^{was} to the effect that the Mark-sheet produced by the applicant in support of her having passed B.Sc.(Final) Examination in 1975 was fake. The contents of the letter show that the award of marks as stated in the mark-sheet did not match with the scheme of the Examination which was prescribed by the University for the B.Sc.(Final) (Combined Course) Examination of 1975. The Mark-sheet produced by her shows that she had obtained even more than the maximum marks in Physics Paper I, Chemistry Paper I & III and no marks for Physics Paper II, Chemistry Paper II and Mathematics Paper IV had been indicated therein. The nomenclature of another subject was not 'Mathematics' but ~~was~~ Pure Mathematics. Her name also did not appear anywhere in the Rolls of candidates who were admitted to the B.Sc (Final) (combined Course) Examination of 1975 of the University. The tabulation registers of the said examination were also physically verified by Shri S.S.Sirdesai, Asstt. General Manager, Bombay Telephones, nominated by the department. There was also no college such as 'Jabalpur College' which was affiliated to the Jabalpur University during the year 1973-75 or before or after. It

85

was also mentioned that Kumari Sulbha Kulkarni had cheated the department by producing a fake document.

8. The question here is whether the Registrar should have been examined to bring out the spuriousness of the Mark-sheet produced by the applicant. The dates fixed by the disciplinary authority had been notified well in advance to the applicant and she was given an opportunity to remain present but she did not attend and as pointed out earlier the enquiry officer with the assistance of Dy. Registrar compared the relevant documents. The documents which were compared by the Dy. Registrar were all public documents and the Dy. Registrar had made a detailed note of what he had seen and examined.

9. The learned counsel for the applicant urged that the signature of the Dy. Registrar who was present is not to be found on the proceedings on 8.11.1989 though the Enquiry Officer, Bade and the Presenting Officer, Prabhu signed the documents. My attention was not drawn to any rules which required Dy. Registrar also to attest the order sheet written for the day and in the absence of any provisions requiring such a course to be adopted the reference to the presence of the Dy. Registrar was sufficient. The Dy. Registrar also confirmed that document S-5 was issued by his office. In the circumstances when the authenticity of the letter had been brought out and the contents thereof on comparison with the corresponding material were found to be correct, nothing further was necessary to be done in this regard. It was not that the applicant could not have had an opportunity of questioning this material. Though she was given an opportunity, she did not avail of it. The position that Evidence Act does not apply to the proceedings before an Enquiry officer holding a departmental enquiry is well-settled.

Even though the strict rules of Evidence did not apply, the procedure adopted by the enquiry officer on 7.11.1989 and 8.11.1989 cannot be said to be vitiated by any illegality.

10. The learned counsel for the applicant drew my attention to the instructions dated 14.4.1961 to be found at page 67 of Swamy's compilation of CCS (CCA) Rules (Item 33). It is mentioned there that :-

"The normal practice that is being followed in all departmental inquiries is that the statements of witnesses are countersigned by the witnesses concerned, the accused official and the Inquiry Officer so that the validity of the documents is not questioned by any one at a later date. It is necessary that this procedure is followed in all inquiries."

It may be noted that the Dy. Registrar does not appear to have appeared as examined as witness nor was his statement recorded but in my view that would not affect the validity of the proceedings which have been recorded in the order-sheet. It was the preponderance of the material which the enquiry officer had to consider and the proceedings recorded on 7.11.1989 and 8.11.1989 substantially meet these requirements.

11. On behalf of the applicant, reference was also made to Ashok Kumar vs. State of U.P. And Ors. (1987) 3 ATC 581, There the report of the District Magistrate had been disputed by the employee and it was observed that :-

"It could be read in evidence merely as a fact-finding report without formal proof for initiating action against the applicant but in case the respondents wanted to rely on it as the statement of fact of the District Magistrate contained therein, it was the duty of the presenting officer to produce the District Magistrate as witness and in view of the clear denial of the disputed fact by the applicant in his explanation before the inquiring officer, the report of the District Magistrate could not be relied upon and accepted as a gospel truth and substantive evidence without examining the District Magistrate as a witness and affording an opportunity to the applicant to cross-examine him."

(87)

I have already pointed out that the enquiry officer had himself been to the office of the Rani Durgavati Vishwavidyalaya and examined all the material and made a record of the proceedings. The enquiry officer had thus all the relevant material at that time and it was not merely on the document S-4 that reliance was placed. The observations in Ashok Kumar's case cannot therefore be held good in the present case.

12. So far as the Charge No. 1 is concerned, there was sufficient material for the enquiry officer and the disciplinary authority to reach the conclusion they did.

13. The next question was about the statement regarding the applicant's marital status in the application form. The application form (Annexure-'P') contains several columns. (a) Column 11 was about marriage and the query was whether the applicant was married and if so, he had one wife or more than one wife living and (b) was whether the applicant had married a person who had a wife living (for female candidates), only a dash (—) was given against these queries. Clause (a) could not have applied to the applicant because she was a lady and clause (b) would have been applicable to her and the answer should have been a definite 'yes' or 'No'. The learned counsel for the applicant urged that the applicant had not concealed anything and in fact she had given her address as C/o. Dilip Malihalli, that being the name of her husband and his address. Annexure-'R' was also a document to be filled by the applicant and in that she had tick-marked the portion. The relevant portion of Item 6 indicated that she was unmarried and had not said anything in respect of item (ii) which required her to state whether she was married.

Since the applicant's contention was that she was married at the time of the application, the fact should have been stated clearly in the application and Annexure-'R'. This was not done inspite of the warning that giving false information would entail suitable action. Though the learned counsel for the applicant urged at one stage that the marital status of the applicant would have no relevance to her appointment, the learned counsel for the respondents urged that this had a definite bearing upon the eligibility and suitability of the applicant because of the several consequences which might ensue if proper information is not given. There were several consequences which might ensue if the applicant was required to give the correct information regarding every aspect of her personal life and refrain from doing so. It is difficult to see how the applicant can escape the consequences of the omission. In view of the material before the enquiry no exception can be taken regarding the view taken against the Article III of the charge.

14. In respect of Article III, the contention was that the applicant had not produced the original certificates of B.Sc degree, original mark-sheet in respect of B.Sc. Exam. 1975 and the names of college/colleges she attended after leaving school, though she was asked to do so. There was sufficient material before the enquiry officer despite the contention of the applicant that she had supplied the material at the time of making the application, to reach the conclusion to the contrary. Considering the preponderant material before the authority, it is not possible to take ^{the} view that the finding of the charges not justified by the material on record.

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15. The learned counsel for the applicant urged that Narayanaswamy had been hostile to the applicant and though there were letters by Shri Gore complaining about the inaction and defiance by the Presenting Officer, no action had been taken by Narayanaswamy and Narayanaswamy was biased against the applicant. Though the learned counsel referred in detail to the correspondence between Shri Gore and Narayanaswamy, it is unnecessary to mention all those details here. He was obviously irked by the conduct of the Presenting Officer and had been complaining against him to Shri Narayanaswamy. It appears that in the course of the correspondence Shri Gore took an attitude of defiance towards Shri Narayanaswamy because in his reckoning Shri Narayanaswamy was not taking the steps which were necessary for a proper conduct of the enquiry. Shri Gore went to the length of making allegations against Shri Narayanaswamy that he was committing the contempt of enquiry officer because of his interference with the enquiry. The learned counsel after referring to these documents stressed that the order dated 30.12.1987 which came to be passed gave a different colour to what had transpired, by representing that action was taken in order to protect the interests of the applicant. The submission that the applicant had never made a grievance about the conduct of the enquiry officer is borne out by the facts and the observations which might indicate that it was because the applicant did not get a full and natural justice that enquiry officer was changed, was not correct. That, however, does not alter the position as is apparent from the lengthy letter dated 26.12.1987 running into 9 pages that the enquiry officer had been making all sorts of allegations against the departmental authority and a reading of the letter would show that the enquiry officer had completely lost his balance. Over-looking the attitude he was taking was not conducive to the holding of a proper

departmental enquiry. Without making any attempt to apportion the blame between the enquiry officer and the disciplinary authority, it is apparent from this letter that whatever might have been the other reasons, the enquiry officer had totally disqualified himself from holding the enquiry. Having regard to these circumstances, I find that even the observations that "the applicant could not get proper and natural justice" in the order dated 26.12.1987 had some grain of truth and no exception can be taken to the ultimate decision to drop the enquiry which was to be held by Shri Gore.

16. The dropping of the proceedings, however, was not unconditional but the disciplinary authority had reserved the right to initiate fresh disciplinary proceedings against the said officer. The learned counsel for the applicant urged that by passing this order the applicant had been completely exonerated and no further enquiry should be held under Rule 14 of the CCS(CCA) Rules. Rule 15 has no bearing on the controversy. The justification, however, is to be found in the D.G.P&T's letter dated 5.7.1979 (page 73 of the Swamy's compilation of CCA CCA Rules, Twentieth Edition) which reads as follows :-

"Reasons for cancellation of original charge-sheet to be mentioned if for issuing a fresh charge-sheet :-

It is clarified that once the proceedings initiated under Rule 14 or Rule 16 of the CCS(CCA) Rules, 1965, are dropped, the Disciplinary Authorities would be debarred from initiating fresh proceedings against the delinquent officers unless the reasons for cancellation of the original charge-sheet or for dropping the proceedings are appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without prejudice to further action which may be considered in the circumstances of the case. It is, therefore, important that when the intention is to issue a subsequent fresh charge-sheet, the order cancelling the original one or dropping the proceedings should be carefully worded so as to mention the reasons for such an action and indicating the intention of issuing a subsequent charge-sheet appropriate to the nature of charges the same was based on.

The reasons which are contemplated under these instructions are to be found in the Memorandum dated 30.12.1987 as well as the indications of the intention of issuing a subsequent charge-sheet. There is no dispute about the fact that the later charge-sheet was identically worded. The learned counsel for the applicant relied on K.R.Deb. vs. The Collector of Central Excise Shillong, 1971 SLJ 301, where it was observed that :-

"Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept in to the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reasons, the disciplinary authority may ask the inquiry officer to record further evidence."

In the present case, the submission was that Shri Narayanaswamy was bent upon holding the enquiry at the hands of some other officer with a view to have the applicant punished somehow. The position, however, in the present case is that it was not that the first enquiry was over by the exoneration of the applicant but it was dropped with a view to hold ^{up} a fresh enquiry. Even the grievance of Shri Gore was that the enquiry was stalled because of the attitude taken by the Presenting Officer. In these circumstances, the observations in the case of K.R.Deb would not be of any assistance to the applicant. In Som Nath Sharma vs. Union of India & Ors. (1994) 27 ATC 771, a de novo enquiry was held and it was quashed and a distinction between a further enquiry and a de novo enquiry and further enquiry was explained by the Chandigarh Bench of the Tribunal. In the present case, there was no question of holding a de novo enquiry and therefore observations in Som Nath Sharma's case cannot be applied here. I, therefore, see no merit in the submission that after the dropping of the first enquiry, the second enquiry could not have been initiated by the disciplinary authority Shri Kumarswamy.

(92)

17. The learned counsel for the applicant then contended that the applicant came to be charge-sheeted by Shri Kumarswamy who had no authority to do so. The applicant was appointed in Bombay Telephone District. However, subsequently the persons working in Bombay and the territories coming under Bombay Municipal Corporation, the New Bombay Municipal Corporation and Thane Municipal Corporation came to be shown as having been brought on deputation to the public sector Corporation which was known as M.T.N.L., without paying any deputation allowance. The letter dated 25.2.1986 which is an Annexure to the reply to the M.P. dated 3.10.1994 shows that the officials came to be transferred on deputation to the Corporation on the existing terms and conditions without any deputation allowance from the date it took over the operation in Delhi and Bombay. It is clear that there has not been any final absorption of the deputationists so far and Shri Kumarswamy had the authority after the applicant came to be transferred to Maharashtra Circle to initiate the proceedings against the applicant. No exception therefore be taken to the competence of the authority to initiate the departmental proceedings against the applicant.

18. It is necessary to say a word about the order dated 12.6.1989 passed by Shri Kumarswamy, Du. General Manager (P&A), Maharashtra Telecom Circle, Bombay (Annexure 'Y' to the petition). After going through the disciplinary proceedings, the briefs submitted by the Presenting Officer and SPS and the report of Inquiry Officer Shri Kumarswamy felt that in the interest of justice an opportunity should be provided by the inquiry officer to verify the genuineness of information contained in the documents through the concerned Viswavidyalaya, Jabalpur authorities in a manner feasible and

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therefore he remitted the case to the inquiry officer for the purpose. It is clear that the disciplinary authority took all the care which was necessary to see that the relevant material is brought on record. The inquiry officer in his turn afforded an opportunity to the applicant to be present at the proceedings which were held on 8.11.1989 in the premises of the University. Unfortunately, the applicant did not participate at the crucial stage at the enquiry at Jabalpur and as already indicated the enquiry officer after carefully recording the proceedings of that day took the view he did. This would show that the disciplinary authority and the inquiry officer acted with a sense of fair play and adhered to the rules of natural justice.

19. In the view of the matter that I am taking, with utmost respect I find it difficult to agree with the opinion expressed by Shri B.S.Hegde, Member (J) and I am in the agreement with the opinion given by Shri M.R.Kolhatkar, Member (A).

20. It was lastly urged that the applicant had put in 13 years of service before the enquiry began and the charges had no bearing on her performance and that her performance as a Trainee was found to be Outstanding and it was after that that she came to be appointed as Junior Engineer. It is also pointed out that during all these 13 years her work was satisfactory and unblamished. The charges framed had a bearing upon an essential qualifications required for entry into the service as it was necessary to have B.Sc degree and if it is shown that the documents produced in support were forged, the entry in the service would itself be bad. The evidence clearly shows that the applicant had produced fake material for securing ~~an~~ entry into the service and only because the subsequent conduct and behaviour of the applicant

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were unblamished, it is difficult to see how exception can be taken to the department's view that a person placed in the applicant's position could not be continued in service in the face of the charges framed and proved. It was for the department to decide what punishment would be commensurate with the charges proved and no interference in the matter is called for.

21. Upon the view that I am taking and on the basis of majority view expressed by me and Shri Kolhatkar, the final order would be that there is no merit in the application and it is dismissed.


(M.S.DESHPANDE)
VICE CHAIRMAN

mrj.