OA 1055/94

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

(1) ORIGINAL APPLICATION NO. 373/94.
(2) ORIGINAL APPLICATION NO.1055/94.

Pronounced, this the 24th day of February, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

(1) ORIGINAL APPLICATION NO.373/94.

Kaushal Kishore,
Ex-Fireman Gr.II,
C.A.F.V.D., Kirkee,
Pune - 411 003.
(Applicant by Shri S.P.Saxena) ... Applicant.

V/s.

1. Union of India through the
Secretary, Ministry of Defence,
DHQ P.O.,
New Delhi - 110 011.
2. Director General of Ordnance Services,
Master General of Ordnance Branch,
Army Headquarters,
DHQ P.O., New Delhi - 110 011.
3. The Commandant,
C.A.F.V.D.,
Kirkee,
Pune - 411 003.
(Respondents by Shri R.K.Shetty). ... Respondents.

(2) ORIGINAL APPLICATION NO.1055/94.

P.Velluswamy,
Ex-Fireman Gr.II,
C/o.Perumal Vedapatty,
Periyaripatty (P.O.),
Omalur (TK), Salem (Dist.),
Tamilnad - 636 503.
(By Advocate Shri S.P.Saxena)

V/s.

1. Union of India, through
the Secretary,
Ministry of Defence,
DHQ P.O.,
NEW DELHI - 110 011.
2. The Director General of Ordnance Services,
Master General of Ordnance Branch,
Army HQrs.,
New Delhi - 110 011.

...2.

3. The Commandant,
   CAFVD,
   Kirkee,
   Pune - 411 003.
4. The Officer-in-Charge,
   Akhil Bhartiya Anusuchit Jati Parishad,
   713, Tadiwala Road,
   Pune - 411 001. ...Respondents.
   (By Advocate Shri R.K.Shetty)

: ORDER :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

These are two applications filed under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed reply opposing the applications. After hearing both the counsels, since point involved is a common point in both the OAs, we are disposing of both the OAs by this common order.

2. Both the applicants came to be appointed as Fireman Gr.II in the office of the Central AFV Depot, Kirkee, Pune in the year 1988. It appears the administration had sent requesition to the Employment Exchange and also to Akhil Bhartiya Anusuchit Jati Parishad Employment Exchange who appear to have sponsored certain names. The applicants came to be selected on the basis of the names sponsored both by the Employment Exchange and the SC/ST Parishad. It appears, subsequently the administration came to know that there was something fishy in the names of the applicants being sponsored by the Employment Exchange. Some informal enquiries were made with the Employment Exchange by writing letters and getting replies. Then it came to light that the names of the two applicants had not been sponsored by the Employment Exchange at all, but some how their names were included in the letter of the Employment Exchange. Therefore, the Administration issued separate charge

sheets dt. 16.10.1992 to both the applicants and the main charge against them is that they had fraudulently included their names in the list of candidates submitted by the Employment Exchange and thereby got appointments fraudulently.

The applicants submitted reply denying the allegations in the charge sheet. Then an Enquiry Officer was appointed to conduct the enquiry. No oral evidence was adduced by the administration. The administration produced relevant documents and relied only on documentary evidence. Then the applicants were questioned by the Presenting Officer and the Enquiry Officer. The applicants did not adduce any evidence on their behalf. Then after conclusion of the enquiry the Enquiry Officer submitted a report dt.4.8.1992 saying that the charge is proved. Accepting the enquiry report, the Disciplinary Authority passed separate orders in respect of both the applicants of the same date viz. 16.10.1992 dismissing them from service w.e.f. 17.10.1992. The applicants submitted their appeals to the Appellate Authority. The Appellate Authority by a separate order dt. 10.9.1993 dismissed both the appeals of the applicants. Being aggrieved by the orders of the Appellate Authority and the Disciplinary Authority both the applicants have prefered these two applications challenging the same.

The applicants have alleged that the enquiry has not been conducted as per rules. That the Disciplinary Enquiry is vitiated, that some documents were not given to the applicants, that no witnesses were examined to prove the alleged charges against the applicants, that the Disciplinary Authority and the Appellate Authority have not passed speaking orders. It is the applicants case that they are not responsible for their names being included in the

letter of Employment Exchange. Then it is also submitted that the penalty of dismissal from service is disproportionate to the charges alleged against the applicants.

3. The respondents in their reply have justified the action taken against both the applicants. Their case is that the applicants have fraudulently included their names in the English letter of the Employment Exchange and their names were not there in the Employment Exchange letter in Marathi. The stand of the amdinistration appears to be that this English letter containing the names of the applicants is a got up and fraudulent document and not a genuine document. It is, therefore, stated that no case is made out for interfering with the impugned orders.

4. We have heard Mr.S.P.Saxena, the learned counsel for the applicants, who questioned the correctness and legality of the Disciplinary Enquiry. He made some comments to demonstrate that the enquiry has not been done as per rules. He also argued that the penalty is dis-proportionate to the charges in question. On the other hand, Mr.R.K.Shetty the learned counsel for the respondents supported the impugned orders and submitted that this Tribunal should not interfere with the orders of the respective authorities.

5. It is well settled and there can be no dispute that the scope of judicial review is very very limited. This Tribunal while exercising judicial review cannot sit in appeal over the findings of the Enquiry Authority, Disciplinary Authority or Appellate Authority. Judicial review means to examine the legality of the decision making process and not the actual decision itself.

The comment of the learned counsel for the applicant is that no

witnesses were examined during the enquiry to prove the prosecution case. In our view, this is not a defect in the enquiry. A case can be proved either by documentary or oral evidence or both. The question is whether there is evidence to sustain charges or not. The evidence can be either oral or documentary. Therefore, non-examination of witnesses is not fatal to the prosecution case, since they can prove the charges by documentary evidence only.

6. From the available materials on record and the proceedings sheet maintained by the Enquiry Authority, we find that the administration did produce some documents and they were given exhibit numbers and there were no objections either by the delinquents or by Defence Assistant for marking the documents without examining any witnesses. The applicants had engaged a common Defence Assistant Mr.P.M.Pawar. Mr.P.M.Pawar has gone through all the documents produced by the prosecution and has given a detailed defence brief stating that the case is not proved (vide brief of Defence Assistant Mr.P.M.Pawar produced by the respondents which is filed along with the reply in OA 1055/94).

It cannot be disputed that appointments to the posts in question has to be done after getting names sponsored by the Employment Exchange. A letter had been sent to the Employment Exchange. It appears one more letter had been sent to the SC/ST Parishad as per relevant rules. The learned counsel for the applicant brought to our notice the relevant Circular of the Government which only says that requisition letters may be notified to the Registered SC/ST Associations for the purpose of giving vide publicity. The rules of the circular nowhere provide that the SC/ST Associations can sponsor names. The

object of sending Notifications to SC/ST Associations is only for giving wide publicity so that SC/ST candidates may come to know about the notification and then take steps to get themselves sponsored by the concerned Government Employment Exchange.

In our view, the questionwhether the SC/ST Associations also can sponsor the names of the applicants or not is not of much consequence. In fact there is serious dispute on this point. According to the respondents, the Association never sponsored the names of the applicants and one list was received long after the declaration of the panel. Any how, for our present purpose that enquiry is not necessary.

7. According to the administration they received a letter from the Employment Exchange in Marathi sponsoring 23 names for the post of Fireman Gr.II which is dt.15.2.1988. This letter is produced by the learned counsel for the respondents along with their reply. Admittedly, the applicants name do not find place in the list of 23 names sent in Marathi by the Employment Exchange. It is interesting to notice that on the same date viz. 15.2.1988 there is one more letter by the Employment Exchage in English showing 25 names including the names of two applicants. The Marathi letter is marked as Ex.2 and the English letter is marked as Ex.3. How can two letters be sent by Employment Exchange on the same date, one in Marathi containing 23 names and another in English containing 25 names including the applicants. The first 23 names are common to both English and Marathi letters. On the face of it one document must be genuine and another a got up document. If Marathi letter had already been sent by the Employment Exchange and if they wanted to send two more names they could have sent another letter containing only two names, but

here the second letter again contains 23 names of old list with two more names of the applicants. On the face of it, this looks fishy and suspicious. Then we have the letter from the Office of the Employment Exchange stating that the Marathi letter is the genuine letter and the English letter was not sent by that office.

8. One more interesting thing to be noticed is that the applicants were questioned by the Presenting Officer and they admitted that they had not registered their names in the Government Employment Exchange. Therefore, including the names of the applicants who had not registered themselves in the Employment Exchange, in the letter of Employment Exchange, shows that it is a got up or fraudulent document. The contention of the applicants counsel is that even if the said Enlgish letter is suspicious or fraudulent, the applicants are not responsible and there is no evidence to show that they got their names included in that letter. In our view, this argument has no merit. We cannot get direct evidence that applicants went and talked to an Officer in the Employment Exchange and fraudulently included their names in the English letter. Strict rules of evidence are not applicable to domestic enquiries. The Employment Exchange is not going to get any benefit if the two applicants are appointed. Nobody would get benefit of the English letter except the two applicants. As far as 23 names above the names of the applicants are concerned, their names already appeared in the Marathi letters and therefore they are not responsible for the English letter. It is only the names of the two applicants who came to be added in the English letter and making 25 sponsored names and the one and only beneficiaries of the fraudulent inclusion of the names are the applicants in this case. An irresistible inference and

one and only conclusion that can be drawn is that the applicants with the help of some officials in the Employment Exchange fraudulently got their names included and sent this English letter. We have already seen that the Employment Exchange office has denied sending such an English letter and have even stated in one of the letters that the Registration Numbers mentioned in the English letter do not pertain to the names of the applicants at all. Further, the applicants themselves have admitted in their questioning that they have not registered their names at all in the Employment Exchange. In the circumstances, the finding is that the applicants by fraudulent means got their names included in English letter of the Employment Exchange and as a result of that got appointment under the respondents.

9. We also do not find any merit in the submissions that certain documents were not given to the applicants. All the documents were produced in the enquiry and they have been examined by the Defence Assistants and he has commented upon the documents in the defence brief. Therefore, we do not find any merit in non-furnishing of some documents. The applicants had full opportunity in defending their case. There is no violation of either the rules or the principles of natural justice. There is substantial compliance of not only the rules, but also the principles of natural justice.

10. We also do not find any merit in the contention that the enquiry authority has not discussed the entire documents in his evidence. The Enquiry Authority is not a Judge. He is an officer in the Army who has been appointed as Enquiry Authority. We cannot expect him to write a detailed Judgment or a detailed order mentioning all the facts and circumstances. The point involved

is a short point. The question is whether the English letter of the Employment Exchange containing the names of applicants is a genuine one or a fraudulent one. On the face of documentary evidence, he has reached a right conclusion. As already stated, we are not sitting in an appeal over the decision of the administrative authorities. Even otherwise, we have gone through the records and are satisfied that the finding against the applicants is fully justified and purely based on documentary evidence.

11. The contention of the learned counsel for the applicants that the order of the Disciplinary Authority is not a speaking order may be correct. But when the Disciplinary Authority has appointed the Enquiry Authority and since he is accepting the report of the Enquiry Authority he need not write a detailed order. The fact that he is accepting the report of the Enquiry Authority means that he is agreeing with the reasoning of the Enquiry Authority and hence he need not write a separate detailed order.

12. We are not impressed by the argument of the learned counsel for the applicant that the order of the Appellate Authority is not a speaking order. We have perused the order of the Appellate Authority. The Appellate Authority is a high ranking official of the rank of Lt.General of the Army, holding the position as Director General of Ordnance Services, New Delhi. Though the order is short, he has referred to the bare minimum facts. He has come directly to the point viz. that the English letter containing 25 names including the names of the applicants was never forwarded by the Employment Exchange and it is a got up document. In view of this finding, he has dismissed the appeal. In our view, the appellate authority though has written a short order, he knows the facts of the case and he has applied his mind to

the crucial point in question and he has confirmed the order of the Disciplinary Authority. As already stated, we have also perused the record and we are satisfied that the finding of the ~~applicfant~~ authorities is fully justified on the basis of overwhelming documentary evidence.

13. We also do not find any merit in the submission of the applicants about the gravity of the penalty. It is true that dismissal from service is the highest penalty that can be awarded in a departmental enquiry. Here the charge is that the applicants have obtained an order of appointment on the basis of false documents. The applicants may belong to SC community. But by procuring a false letter or a forged letter from the Employment Exchange they got appointment and denied appointment to two genuine SC/ST candidates who had registered their names in the Employment Exchange and waiting in queue. If applicants had not been selected then two other SC candidates would have got selection. Getting an appointment on a forged document is a serious matter. For such a grave mis-conduct, penalty of dismissal from service cannot be said to be dis-proportionate to the gravity of the charge. The learned counsel for the respondents invited our attention to a decision of the Apex Court reported in 1997(1) SLJ 118 (Pramod Lahudas Meshram V/s. State of Maharashtra & Ors.), where the appellant in that case who was himself an SC candidate was appointed on the basis of unauthorised recommendation letter. He had put in nine months service. When the administration came to know that the appointment was made on the basis of unauthorised recommentations, the appointment was cancelled and the services were terminated. The official filed a Writ Petition in the High Court which came to be dismissed. In that case no enquiry had been done under the disciplinary rules. On appeal, the

Supreme Court observed that the basis of the appointment was on unauthorised recommendation letter, the appointment cannot be sustained and he has been rightly ~~set aside~~ terminated and there was no necessity for holding an enquiry. What is more, the Supreme Court further observed that it is a fit case in which the State should order CBI enquiry, so that the persons responsible for the malpractices should be prosecuted. In this case, at least the applicants had a fair opportunity of defending themselves and a regular departmental enquiry has been held and the matter has been considered by three different authorities at three different levels and all of them have concurrently given findings against the applicants. On re-appreciation, we do not find any merit to take a different view. Having regard to the nature of the gravity of the charge, it cannot be said that the penalty is dis-proportionate to the charges.

Another submission that the applicants had already put in two to three years service is also of no substance. Though the appointments were made in 1988, the suspicion about the Employment Exchange letter came to light within few months and it could be seen from the records that there was correspondence and some informal enquiry during 1990 and 1991 and then only the administration has decided to hold a departmental enquiry and issued charge sheet in February, 1992.

After considering all the facts and circumstances of the case, we do not find that any case is made out for interfering with the impugned orders in these two cases.

14. In the result, both the applications viz. OA No.373/94 and OA No.1055/94 are hereby dismissed. No orders as to costs.

(D.S.BAWEJA)
MEMBER (A)

(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.