IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1119/95

Date of Decision: 10/9/99

P.V.Dolas — Applicant.

Shri S.P.Inamdar — Advocate for Applicant.

Versus

Union of India & Ors. — Respondent(s)

Shri Karkera for Shri P.M.Pradhan — Advocate for Respondent(s)

CORAM:

Hon'ble Shri. D.S.Baweja, Member (A)

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

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

(2) Whether it needs to be circulated to other Benches of the Tribunal? ✗

(D.S.BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 1119/95

Dated this the 10th day of Sept. 1999

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

Prakash Vithoba Dolas,
R/o Keshav Patil Chawl,
No. 18/19, Shastri Nagar,
Near Shankar's Temple,
Old Dombivli(West),
Dist. Thane. ... Applicant

By Advocate Shri S.P.Inamdar

V/S.

1. Union of India through
Member (P) Postal Service Board
Govt. of India, Ministry of
Communication, Deptt. of Posts,
New Delhi.

2. Director Postal Services
Bombay Region, Bombay,
O/o Chief Postmaster General,
Bombay.

3. The Senior Manager, P&T,
Motor Service (M.M.S.),
Worli, Bombay. ... Respondents

By Advocate Shri S.S.Karkera
for Shri P.M.Pradhan

O R D E R

(Per: Shri D.S.Baweja, Member (A)

This OA. has been filed by the applicant challenging the impugned orders dated 30.9.1988, 2.2.1990 and 26.3.1991 through which the punishment of dismissal from service has been imposed and his appeal and revision application have been rejected.

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The applicant has prayed for quashing of these orders with a direction to the respondents to reinstate the applicant in service with immediate effect with all consequential benefits.

2. The applicant was appointed as Gateman, Group 'D' in the scale of Rs.196-232 under Respondent No. 3, Senior Manager P & T Motor Service, Mumbai. He was made quasi-permanent after three years of satisfactory service as per order dated 16.8.1986. The applicant states that as per letter dated 30.12.1986, the respondents made a reference to School authority to verify the genuineness of the certificate produced by the applicant at the time of recruitment. The Headmaster of the School replied as per letter dated 3.3.1987 that date of birth of the applicant was altered found in the School register and his correct date of birth is 22.12.1955. As per the applicant, his correct date of birth is 22.12.1959 as per the School Leaving Certificate obtained by him from the school and the copy furnished to the department. The applicant submits that his original School Leaving Certificate had been misplaced and he has obtained duplicate copy of the same. The applicant further states that after receipt of reply of the Headmaster, his statement had been recorded and he stated that his correct date of birth is 22.12.1959. Inspite of this, the respondents have issued a charge-sheet for major penalty dated 9.9.1987 with the charge that the

applicant has secured appointment as Gateman by producing fake certificate. An enquiry officer was appointed and the enquiry officer submitted his report on 30.4.1988 holding the charge against the applicant as proved. The disciplinary authority based on this enquiry report imposed punishment of dismissal from service as per order dated 30.9.1988. The applicant preferred an appeal against the same and the appeal was rejected as per the appellate authority's order dated 2.2.1990. Thereafter, the applicant had submitted revision application on 17.4.1990 and the same was also rejected as per order dated 26.3.1991. Feeling aggrieved by this punishment, the applicant has sought legal remedy by filing the present OA. on 7.9.1995.

3. The applicant has challenged the impugned orders on several grounds pointing out the infirmities in the disciplinary proceedings and denial of principles of natural justice. These grounds are as under :-
(a) The chargesheet is not specific and is issued on surmises and presumption without application of mind. In view of this, the applicant could not make effective defence with regard to the correct date of birth and the genuineness of the School Leaving Certificate submitted by him. (b) The chargesheet was issued in English and applicant not being conversant with this language could not understand the implications of the charges and could not give his defence effectively.

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(c) Copies of the documents such as School Register or an extract thereon indicating the date of birth of the applicant recorded had not been produced with the chargesheet as this document is relied upon in drawing inference against the applicant without corrobation which has resulted in denial of natural justice to the applicant. (d) The key witness that is the Headmaster of the School who issued/signed the School Leaving Certificate and also the letter dated 3.3.1987 was not produced as a prosecution witness and therefore applicant was denied the opportunity to cross-examine him. The onus was on the department to prove the charges by producing the key witness. (e) There was a delay in issue of chargesheet as the applicant was appointed in 1983 and the issue with regard to his date of birth had been raked up only in 1987. The delay has caused prejudice to the case of the applicant as after several years it is difficult for the concerned staff to recollect as to what had happened in 1983. (f) The findings of the enquiry officer are not based on the evidence and mainly based on the inference that the certificate produced was fake. (g) A copy of the enquiry report was not supplied to the applicant before imposing the punishment and therefore the law laid down by the Hon'ble Supreme Court in Mohd. Ramzan Khan's case has been violated. (h) The order of disciplinary authority does not show the application of mind as

it is not a reasoned order. (i) The appellate order also is not a speaking order and also personal hearing as requested by the applicant was not allowed. (j) The order of the revision authority also suffers from the vice of non application of mind. The revision authority also did not allow any personal hearing before passing the order.

4. The respondents have filed the written statement controverting the submissions of the applicant. The respondents submit that it had come to their notice that the date of birth indicated by the applicant in the attestation form was not correct and therefore the enquiry was made with the School authorities. The Headmaster of the School as per letter dated 3.3.1987 advised that the date of birth recorded in the School Register is 22.12.1955. The applicant has indicatedhis date of birth as 22.12.1959. Based on the date of birth as 22.12.1959, the applicant would have been over-aged for appointment and therefore the applicant submitted a false certificate to secure appointment by showing being within age limit. In view of this position, the applicant was issued a chargesheet. The respondents deny the allegation of the applicant with regard to denial of principles of natural justice. The respondents submit that the reasonable opportunity had been afforded to the applicant in conducting the enquiry. It is further stated that if the applicant wanted to cross-examine the Headmaster of the School

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he could have called him as a witness from his side. The respondents contend that the chargesheet was issued on the basis of documentary evidence received from the School authority and therefore giving the names of witnesses in the chargesheet did not arise. The respondents also deny the statement of the applicant that he had made a request for summoning the Headmaster of the School as a witness. The respondents state that the report of the enquiry officer is based on the evidence on record and the orders of the disciplinary authority, appellate authority and the revision authority have been passed after due application of mind considering the various issues raised by the applicant in his appeal as well as revision application. The respondents pray that the applicant has not made out any case and therefore the present OA. deserves to be dismissed. The respondents have also opposed the application as being not maintainable due to being barred by limitation as the revision application of the applicant was dismissed on 26.3.1991 and the present OA. has been filed after several years on 7.9.1995.

5. The applicant has filed a rejoinder reply contesting the averments of the respondents in the written statement. The applicant maintains the ground advanced by him in the OA. stating that he had specifically requested for summoning of Headmaster as a witness for cross-examination but the same was not allowed.

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6. We have heard the arguments of Shri S.P.Inamdar, learned counsel for the applicant and Shri S.S.Karkera on behalf of Shri P.M.Pradhan, learned counsel for the respondents. The respondents have made available the original file containing the disciplinary proceedings and the same has been carefully gone through.

7. The various grounds advanced by the applicant in assailing the impugned punishment orders have been detailed in Para 3 above and these will be considered one by one to ascertain whether the impugned orders are vitiated by any of these grounds.

8. The first ground raised is that the charge-sheet is not specific and has been issued on surmises and presumptions without application of mind. On account of this infirmity, the applicant contend that he has not been able to put up effective defence against the chargesheet before the disciplinary authority. The applicant has brought out several defects in the chargesheet in support of his contention that the charges are vague and not specific. The applicant submits that the charge brings out that he had submitted a fake certificate while functioning from 1.1.1983 which is not factual as the certificate was produced at the time

of recruitment and not during service. It is further stated that the date of birth recorded in the School Register which is claimed to be the correct date of birth by the respondents has not been indicated in the Article of Charge as well as the statement of imputation. The chargesheet is further incomplete as no list of witnesses have been indicated in Annexure-IV. The applicant has submitted that if the chargesheet is incomplete and vague then the same is not sustainable and deserves to be quashed. The applicant to support this contention has cited several judgements of the Tribunal, namely, :-

(a) Shyama Prasad Mitra vs. Union of India & Ors.
1988(1) CAT SLJ 403.

(b) Ashutosh Kumar Das vs. Divisional Commercial Suptd. N.F.Ray, Lumding.1988(1) CAT SLJ 442.

(c) K.N.Prakasan vs. Union of India & Ors.
1992 (2) (CAT) SLJ 74.

(d) Kailash Pandey vs. Union of India & Ors.
OA.NO.425/95 decided on 17.6.1998 (Mumbai Bench).

We have carefully gone through these judgements and find that vague or defective chargesheet without indicating list of witnesses and list of documents etc. has not been held to be legally sustainable and such a chargesheet has been set aside. However, on going through the present chargesheet, i.e. Articles of Charges, Statement of Imputation and the relied upon documents, we do not subscribe to the contention of the applicant that the charges

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are vague and the chargesheet is incomplete. The charge is very specific that the date of birth as claimed in the School Leaving Certificate submitted by the applicant does not correspond to the entry of the date of birth in the School Register and therefore the certificate submitted by him is fake. The applicant's contention that the date of birth which is said to have been recorded in the School Register has not been indicated in the Statement of Imputation is not tenable. Further, as regards the contention of the applicant that the chargesheet is incomplete on account of non-listing of the witnesses in Annexure-IV, we are not pursuaded to find any substance in this contention of the applicant. In Annexure-IV it is clearly mentioned that no witnesses are proposed to be relied upon and there the word 'NIL' has been recorded. If Annexure-IV was kept blank, then only the applicant could have taken a plea that the list of witnesses has not been disclosed. We, therefore, fail to understand as to how the applicant makes a submission that the chargesheet is incomplete on account of non-listing of witnesses in 'A-4'. On going through the averments made in the OA., we do not find that any plea having been made that the applicant had raised this issue while submitting his defence against the chargesheet. On going through the disciplinary proceedings file, we note that the applicant has submitted his defence against the chargesheet as per his letter dated 19.9.1987 and in this letter he has not made any mention that the charge is vague and the chargesheet is incomplete. In this letter, he has denied the charges which clearly implies

that the applicant had understood the charge which he had to meet with and only then he denied the same. In the light of these observations, we are unable to find any merit in the contention of the applicant and therefore the ratio of what is held in the cited judgements does not apply to the case of the applicant.

9. The second ground taken is that the chargesheet is issued in English and the applicant not being conversent with the language could not understand the charges and could not give his defence effectively. This ground of the applicant is without any merit. The applicant has not brought out that he had asked for the chargesheet to be served on him in the language he can understand. On going through the disciplinary proceedings file, we note that the applicant had been corresponding on the subject in English. The applicant had also got the assistance of defence assistant who was conversent with the English language. In view of these facts, we are unable to comprehend as to how the applicant has made this ground and taken a plea that he has not been able to effectively defend his case.

10. The third ground taken is that the copy of the enquiry report was not supplied to the applicant before imposing punishment in terms of the law laid down by the Hon'ble Supreme Court in the case of Mohd.Ramzan Khan. This contention is not tenable in view of the subsequent pronouncement of the Hon'ble Supreme Court in the case of Managing Director, Electronic Corporation of India vs. B.Karunakar, 1992 SCC (L&S) 361 wherein

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it is laid down that
what is held in Ramzan Khan's case will have prospective effect
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from the date of judgement, i.e. 20.11.90 In the present case, the punishment has been imposed before this date and therefore non-supply of enquiry report does not vitiate the disciplinary proceedings and the punishment imposed based on the same.

11. The 4th ground is that there is a delay in issuing the chargesheet. The applicant has stated that he was appointed in 1983 and issue with regard to his date of birth has been raked up only in 1987 by issue of the chargesheet under reference. The respondents have brought out that subsequent to his appointment, it had come to the notice that the School Leaving Certificate submitted by the applicant did not appear to be correct and therefore an enquiry with the Headmaster of the School had been done to establish the genuineness of the School Leaving Certificate which was a duplicate certificate. The Hon'ble Supreme Court in the case of State of Andhra Pradesh vs. N.Radhakishan, 1998(2) SLR (S.C.) 786 in para 19 has laid down
delay in issue of
while dealing with the issue of chargesheet that it is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings, Whether on that ground the disciplinary proceedings are to be terminated, each case has to be examined on the facts and circumstances in that case. In the present case, we find that the delay is only of about 4 years and which in our opinion is not very substantial. Further,

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the applicant has not brought out as to how the prejudice is caused to him. The only submission that the applicant has made is that after several years it is difficult for the concerned staff to recollect what happened in 1983. This contention is not tenable in the issue dealing with the date of birth which is based on the school record. The school record is available. It is not the case in the present case that the school record was not available which could be verified by the Headmaster. The applicant has himself brought out that he obtained the suplicate certificate after several years as the original certificate has been lost. We are therefore of the considered opinion considering the facts and circumstances of the case that delay in issue of chargesheet as alleged by the applicant has not caused any prejudice to him in defending his case.

12. The 5th ground is that copy of the document such as School Register or an extract thereon indicating the date of birth recorded of the applicant had not been produced with the chargesheet as this document is relied upon in drawing inference against the applicant without corrobation which has resulted in denial of natural justice to the applicant. On going through the chargesheet, we find that this document has not been relied upon. The applicant has not made any averment in the OA. that he had asked for this document and the same was denied by the disciplinary authority. On going through the proceedings of the enquiry dated 4.4.1984, we find that a question was put to the applicant whether he wanted any additional documents other than listed in

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the chargesheet and he made categorical statement that he does not want any additional document for defending his case. In the absence of any documentary evidence to show that he had demanded this document and the fact of his statement recorded before the enquiry officer on 4.4.1988, we are unable to appreciate as to how the applicant has now taken this plea stating that he has been denied reasonable opportunity in defending his case.

13. The 6th ground and which is main thrust of the attack of the applicant in challenging the impugned orders is that the key witness, i.e. the Headmaster of the School who issued the letter dated 3.3.1987 was not produced as a witness and he had no opportunity to cross-examine him. The applicant therefore contends that no reliance could be placed on the letter dated 3.3.1987 until and unless it is proved by the author and the applicant had cross-examined him. The applicant has also brought out that he had made a request as per his letter dated 27.4.1988 to the enquiry officer to produce the Headmaster of the School.We note that the applicant has not brought a copy of his request dated 27.4.1988 on the record. The applicant has also not made any averment whether this request was considered by the competent authority and any reply was given to him. As brought out earlier, in the statement recorded during the proceedings on 4.4.1988, the applicant has clearly stated that he does not want to cross-examine any witness. On going through the disciplinary proceedings file, we also note that there is no such letter dated 27.4.1988 on the record. Since the applicant has not brought on

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record this letter, we are unable to accept the contention of the applicant that he had made a request to call the Headmaster of the concerned School as a witness. The respondents have also taken a plea that if the applicant wanted Headmaster of the School to be produced as a witness, he could have made a request for the same and he could have cited him as a witness. The respondents have further stated that they have not relied upon any witness as the charges are to be proved based on the documentary evidence which was relied upon in the chargesheet. The however learned counsel for the applicant was at pains during the arguments to make out a case that the onus was on the respondents to prove the charge against the applicant by producing the Headmaster of the School as a witness. He pleaded that the applicant had submitted a School Leaving Certificate which was supplied by the School and if there was any discrepency in the same, it was the responsibility of the respondents to prove by disclosing the entries in the School Register and producing the Headmaster of the School as a witness and affording an opportunity to cross-examine him. In a disciplinary enquiry the burden of proof depends on the nature of charges and the relied upon documents. In this connection, we refer to the judgement of Hon'ble Supreme Court in the case of Orissa Mining Corporation & Anr. vs. Ananda Chandra Prusty, 1997(1) SLJ 133. Their Lordships of Hon'ble Supreme Court on the issue of burden of proof in respect of disciplinary enquiries have observed as under in para 4:-

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"The position with respect to burden of proof is as clarified by us hereinabove viz., that there is no such thing as an absolute burden of proof, always lying upon the department in a disciplinary inquiry. The burden of proof depends upon the nature of explanation and the nature of charges. In a given case the burden may be shifted to the delinquent officer, depending upon his explanation."

In the present case, the applicant claims his date of birth as per the School Leaving Certificate submitted by him at the time of recruitment. The certificate submitted is not the original but said to be a duplicate copy stating that the original had been lost by the applicant and subsequently he obtained a duplicate copy of the same. The respondents having a doubt on the genuine-ness of the duplicate certificate sought the same to be verified from the Headmaster of the concerned school. The Headmaster of the concerned school advised the respondents in writing that the date of birth of the applicant as per record of the school is 22.12.1955. The applicant claims the date of birth as 22.12.1959 as per the duplicate School Leaving Certificate. This claim of the applicant has been confronted to him by the respondents by a letter from the Headmaster of the School. It is, therefore, equally incumbent on the part of the applicant to have contacted the concerned school authority and brought to their notice the letter dtd.3.3.87 written by the Headmaster of the School and also showed them the duplicate School Leaving Certificate issued and get the position clarified. The applicant cannot take a stand that it is the responsibility of the respondents alone to disprove the duplicate certificate

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furnished by him. The onus of proving the duplicate certificate as authentic equally rests on the applicant. In case the applicant wanted to prove the genuiness of the duplicate certificate, he could have asked for the Headmaster of the School to be produced as a witness. As indicated earlier, the applicant did not make any request at the time of inquiry. In this view of the matter, we are unable to appreciate the contention of the applicant that the burden of proof was on the respondents and the applicant had no role to play.

14. The 7th ground with regard to the findings of the enquiry officer being not based on evidence on record raised by the applicant does not have any substance in view of our observations made in paras 12 and 13 above.

15. The last ground advanced by the applicant is that the orders of the disciplinary authority, appellate authority and the revision authority are not speaking orders and further the personal hearing as requested by the applicant by the appellate authority and the revision authority had not been granted. We have carefully gone through the relevant orders and find no merit in the contention of the applicant. The orders are quite reasoned one. The various contentions raised by the applicant have been taken into consideration and the same have been answered in the orders. In our opinion, the orders are speaking and indicate the application of mind. As regards the granting of

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personal hearing by the appellate authority and the revision authority, we find that no such request had been made for the same. In his appeal, the applicant has only referred to non grant of personal hearing by the disciplinary authority. The applicant did not specifically mention in his appeal that before disposing of the appeal, the applicant should be allowed personal hearing. The same applies to his revision appeal. The applicant has not cited the relevant rules under which the disciplinary authority was required to give personal hearing before passing of the punishment order. In the absence of any such rule having been cited and the fact that no request was made for personal hearing before the appellate and revision authorities, we are unable to find any substance in this ground of challenge.

16. Concludingly, in view of the deliberations above, we find that none of the grounds taken by the applicant in assailing the impugned order are sustainable. The OA. therefore lacks merit and is accordingly dismissed. No order as to costs.

(S.L.JAIN)
MEMBER(J)

(D.S.BAWEJA)
MEMBER (A)

mrj.