

Central Administrative Tribunal, Mumbai Bench

OA 928/1995

Mumbai this the 25th day of June, 2001

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mrs. Shanta Shatry, Member (A)

Shri B.N. Dakua
working as Unskilled Labour
Ticket No.56992
residing at C/o Vijay Tailors
Dr. Ambedkar Nagar, Premier
Road, Kurla (West)
Bombay-400 070.

..Applicant

By Advocate: Shri S.P. Inamdar

Versus

1. Union of India through the Secretary,
Ministry of Defence, South Block,
New Delhi-110 011.
2. The Chief of Naval Staff,
Naval Headquarters,
South Block,
New Delhi.
3. The Flag Officer,
Commanding-in-Chief,
Western Naval Command,
Fort, Bombay-400023.
4. The Admiral Superintendent,
Naval Dockyard,
Bombay-400 023.

..Respondents

By Advocate: Shri V.S. Masurkar.

ORDER

Hon'ble Mr. Kuldip Singh, Member (J)

The applicant in this OA is aggrieved of
orders at Annexures A-1 to A-4 passed by the disciplinary
authority and appellate authority whereby the services of
the applicant have been terminated and order of removal
from service has been passed.

2. Order Annexure A-1 has been passed by the
appellate authority, Annexure A-2 by the disciplinary

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authority, Annexure A-3 is the charge-sheet on the basis of which the applicant was proceeded departmentally which is dated 28.11.1985 and Annexure A-4 is the order dated 4.11.1993 by which the President of India had rejected the review application dated 16.9.92 made by the applicant.

3. Facts, as alleged in brief, are that the applicant had joined the services of the respondents - Naval Dockyard as an unskilled labourer after having been sponsored by the Employment Exchange for appointment to unskilled trade. The authorities of the Naval Dockyard Bombay tested the applicant for appointment and he was found suitable for the post and was duly selected. He was also found medically fit and was appointed on casual basis. But subsequently, the applicant was proceeded departmentally on the allegations that at the time of appointment the applicant has produced a School Leaving Certificate which on reference to the issuing authorities for verification of its genuiness was stated to have not been issued by the authorities as intimated by the Head Master Pitola High School, Pitalo Ganjam. Thus the applicant was charged for having secured employment in the Naval Dockyard Bombay on 24.5.98 by fraudulent means by producing fictitious School Leaving Certificate. An enquiry was held and applicant remained ex-parte during the enquiry. Consequent to the enquiry he was removed from service by the order of the disciplinary authority against which he had filed an appeal which was also dismissed. The said order of punishment and appeal were challenged before the Tribunal in OA 57/89 and one of the

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grounds taken up was non-supply of the Enquiry Officer's report before passing the order of punishment and the Tribunal after relying upon the judgment of the Hon'ble Supreme Court in Union of India Vs. Mohd. Ramzan Khan, AIR 1991 SC 471 accepted the OA and remanded the case back to the disciplinary authority for reviewing the disciplinary proceedings from the stage of giving of the Enquiry Officer's report and giving him time to file objections against the same and then conclude the proceedings in accordance with law.

4. Thereafter the proceedings were taken up against the applicant as directed by the Tribunal and ultimately again vide impugned order the applicant was removed from service and appeal was also dismissed and the order of removal was maintained, therefore, the applicant has come up with a fresh OA to assail the impugned orders.

5. In the OA the applicant has taken up pleadings that since he was to be appointed as unskilled worker for which no qualification is at all required so even if he has not studied upto any standard or his school leaving certificate was found to be bogus one but since his appointment is not in violation of the rules as he has been appointed after proper test, so he should not have been removed from service.

6. The applicant has submitted ~~an~~ argumentative pleadings on this aspect and referring to various provisions of the Constitution of India which highlight about the policies to be adopted by the Welfare State for

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providing jobs to people looking into the social, economic and political conditions and submitted that since there was no prescribed qualification for the post of unskilled worker and it is only 8th standard 'desirable' qualification so on this score the applicant, who had been appointed after due selection should not have been removed from service at least as it was not a misconduct.

7. Besides that he again pleaded that since the enquiry was proceeded ex-parte as he has not been given proper opportunity to defend his case and as per the provisions of Rule 14 (11) of the CCS (CCA) Rules, 1965 the Enquiry Officer was supposed to supply copies of evidence to the applicant and since that has not been done so a great prejudice has been caused to the applicant as he could not defend himself so principles of natural justice have been violated, so on that score application should be allowed and the impugned order should be quashed and the applicant should be reinstated in service.

8. Before coming to the defence of the respondents we may mention that at the time when the applicant was appointed as an unskilled labourer in the Naval Dockyard it was not the applicant alone who was appointed but various other persons had been appointed along with the applicant in similar circumstances. Those were also removed from service and they had filed various OAs and four of these OAs bearing Nos. 377/93, 262/94, 263/94 and 287/94 were disposed of by common order dated

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26.3.1998 and the facts which had been judicially noted in the said OAs require to be reproduced in this case as well:-

" The applicants came to be appointed as Unskilled casual labourers in the Naval Dockyard at Mumbai. The minimum qualification was only literacy. However, the desired qualification was VIIIth standard. It appears these applicants names were sponsored by the Employment Exchange. The School Leaving Certificate given by the applicants, for showing pass in VIIIth standard, submitted to the Appointing Authority. Then the applicants came to be appointed as casual labourers in the Unskilled category.

It appears that the department was able to find out that there was some racket going on in the department with the collusion of some officers, concerned clerks and the candidates about the procuring forged or fabricate school leaving certificates for getting employment. Then letters were sent to the concerned schools for verifying the genuineness of the school leaving certificates. The Head Master of the concerned school sent a reply that all these school certificates were forged or fabricated certificates and not issued by the School. Then the department issued charge-sheets against number of employees including the present applicants alleging that they have committed misconduct in procuring the employment by producing a fake or forged certificate. It appears almost all the employees who were charged including the present applicants pleaded guilty to the charges and prayed for a lenient view be taken regarding punishment. It appears the administration took a tough stand and passed an order of removal of service to many such employees. In some cases where the Disciplinary Authority imposed a lesser punishment of stoppage of increments for 3 years or so, but in those cases the Reviewing Authority revised the punishment and imposed the penalty of removal from service. Many of those employees including the present applicants approached this Tribunal challenging the order of termination".

9. The facts as quoted above show that a racket was going on in the department with the collusion of some officers, concerned clerks and the candidates about the

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procuring of forged and fabricated school leaving certificate for getting employment and this case in hand also appears to be one of the instances of the same. As far as those pleadings are concerned for which the applicant had been seeking support in his pleadings with regard to the constitutional provisions ^{they} are irrelevant for the purpose of this case because judicial findings has already been recorded in the earlier OA and all the pleadings have been negatived.

10. The only question with which we are left now is whether the provisions of Rule 14(11) of the CCS (CCA) Rules, 1965 have been properly followed by the Enquiry Officer or not. First of all we may mention in this regard that when the applicant had come up with an earlier OA which was allowed in view of the case of the U.O.I. Vs. Mohd. Ramzan Khan (Supra) and thereafter the applicant had been supplied with all the necessary documents, as directed by the Tribunal. Non-supply of the evidence after the same had been recorded by the Enquiry Officer does not appear to have caused any prejudice to the applicant.

11. It has also been stated in the counter-affidavit that when the enquiry was initiated the applicant was given an opportunity to appear before the Enquiry Officer. Even a registered letter was sent which was returned back with the remarks "not found" do show that there was no stage where the applicant should have been supplied with the copies of the evidence recorded by the Enquiry Officer. Moreover no prejudice seems to have been caused to the applicant as it is the applicant who

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himself had not chosen to appear before the Enquiry Officer. Moreover we may also mention that during the course of arguments the learned counsel for the applicant Shri Inamdar has submitted that provisions of Rule 14 of sub-rule (11) have not been complied with but there are no pleadings to this effect and even otherwise from the counter-affidavit I find that the procedure as enshrined under the CCS (CCA) Rules for such like departmental enquiries have been fully complied with. It was only the shortcomings of the non-supply of the Enquiry Officer's report which too had been supplied after the case had been remanded back after the earlier OA was decided.

12. The applicants counsel has also referred about the discriminatory treatment with the quantum of punishment to other similarly situated employees. But on going through the judgment given on 26.3.98 in 4 common OAs, this fact has also been decided therein and the applicant's contention that on the quantum of punishment he has been discriminated had not found favour in the OAs decided earlier (Supra). This argument has also been negatived in the earlier OAs 377/93, 262/94, 263/94 and 287/94 (Supra). As such we are of the considered opinion that the OA has no merits and the same is liable to be dismissed. Accordingly OA is dismissed. No costs.

Shanta F
(Mrs. Shanta Shastry)
Member (A)

Kuldeep
(Kuldeep Singh)
Member (J)

Rakesh