

115

(JUDGMENT OF THE BENCH DELIVERED BY THE HON'BLE
MR. D. SURYA RAO, MEMBER (JUDICIAL)).

- - -

The applicants herein were previously working as Sepoys in the Central Excise Department in Andhra Pradesh. They seek to question the order C.No.II/7/A to D and F to H/84 dated 10-12-1986 passed by the 2nd Respondent removing them from service as also order C.No.II/26/3/87-CIU dated 7-5-1987 passed by the 1st Respondent dismissing the appeal preferred by the applicants against the order of removal from service. The removal of the applicants from service was consequent on an enquiry held into the allegation that they had obtained employment in the Central Excise department by fraud on the basis of a forged letter of sponsorship sent by the District Employment Officer, Adilabad sponsoring their names. The following article of charge was framed against the applicants:

"S/Sri G.Sivasankara Rao, Mohd. Ghiasuddin, Mohd. Moizuddin, Mohd.Rafiq, Mohd.Habeebuddin, Mohd.Jaweed and Y.Krishna, Sepoys of Central Excise, Hqrs. Office, Hyderabad are charged in C.No.II/IOA/7A to H/84-Vig. dt. 28-11-1984 of having failed to maintain absolute integrity and also for behaviour unbecoming of a Government servant thereby violating the provisions of Rule 3(1)(i) and 3(1)(iii) of C.C.S. (Conduct) Rules, 1964 in as much as they got themselves recruited into the Department as Sepoys of Central Excise, by fraudulent means on the strength of a false/bogus list of candidates purported to have been sponsored by the District Employment Exchange Office, Adilabad."

After framing of the charge, the enquiry was held by the Enquiry Officer, ^{third respondent R} appointed by the disciplinary authority. The Enquiry Officer, the third Respondent,

R

(118)

by his Report dated 6-10-1986 came to the conclusion that it is not clearly established that the charged officers were actually guilty of the offence. He, however, also held that their innocence has not been proved beyond doubt. Thereupon the disciplinary authority, the 2nd Respondent, by an order dated 10-12-1986 agreed with the finding of the Enquiry Officer only to the extent that the innocence of the charged officers has not been proved. He disagreed with the rest of the finding namely that the guilt of the charged officers for the offence charged has not been proved. He, therefore, imposed upon them the punishment of removal from service. This order was confirmed in appeal by the 1st Respondent vide his order dated 7-5-1987. It is these orders that are sought to be questioned in this Application. It is their case that the Department has not discharged the burden of proving the charge. ^{It is contended that the finding of the second respondent is} ~~and to hold~~ that the applicants are responsible for proving their innocence is a perverse approach. It is their case that they were in no way responsible for sending the letter of sponsorship which is alleged to be a forgery, that no evidence has been brought on record or established that it is the applicants who have created the alleged document or that they were responsible for its coming into existence. ^{It is also contended that} the reasons given by the 2nd Respondent for deferring with the enquiry report are based on no evidence and on the other hand ^{his conclusions} ~~they~~ are based on surmises and conjectures and unwarranted inferences and that there was serious lacuna in that the forgery was not duly established by sending the disputed letter to the handwriting expert.

(117)

2. We have heard the arguments of the learned counsel for the applicants, Sri S.L.Chennakeshava Rao, Advocate and Sri Parameshwara Rao, Advocate for Sri P.Ramakrishna Raju, Central Government Standing Counsel, on behalf of the Respondents.

3. The evidence relied upon by the prosecution against the applicants comprised primarily of documentary evidence viz. Ex.P1, Collector of Customs and Central Excise letter dated 9-1-81 addressed to the Director of Employment and Training, Hyderabad, notifying the vacancies; Ex.P.2 letter dated 28-2-81 of the District Employment Officer, Adilabad addressed to the Assistant Collector of Central Excise, sponsoring 12 candidates; Ex.P.3, alleged forged letter dated 30-3-1981 purporting to have been issued by the District Employment Officer, Adilabad sponsoring 18 candidates including the applicants, and Ex.P.5, letter dated 28-5-1982 from the District Employment Officer, Adilabad giving the list of 18 persons whose names find a place in the X.63 register maintained in the Employment Exchange, to establish that the names of the applicants do not find a place in the said register. The oral evidence primarily relied upon are of PW.1, the investigating Inspector of the Central Excise Department and P.Ws. 2 & 4, the District Employment Officers of Adilabad Employment Exchange. PW.4 was the District Employment Officer, Adilabad in 1981. He admitted having sent Ex.P.2, letter dt.28-2-81 comprising 12 candidates, but denied having sent Ex.P.3 letter dated 30-3-81. He denied the signature on Ex.P.3 as being his signature. As already stated above, the



120

-5-

Enquiry Officer held that the applicants' guilt has not been established beyond doubt. The reason for his doing so was that after receipt of Ex.P.2 and P.3, the Hqrs. Assistant Collector of Central Excise, Hyderabad had addressed a letter C.No.II/31/4/81-Estt. dated 7-4-81 to the District Employment Officer, Adilabad asking him to confirm the lists sent alongwith Ex.P2.& P.3. The office copy of this letter dated 7-4-1981 has been marked as Ex.D.5 at the instance of the applicants/charged employees. The photo copy of ^{of the letter 27-4-81} ~~the same~~ of the original or fair copy in the office of the District Employment Officer, Adilabad has been marked as Ex.D.1. There is discrepancy between Ex.D1 and D5. While Ex.D.5 refers to both the letters namely Ex.P2 and Ex.P3, in the fair copy, Ex.D1. reference to the letter dated 30-3-81, Ex.P.3 has been obliterated. The reply to Ex.D1/D5 by the District Employment Officer namely letter dated 5-5-1981, to the Assistant Collector of Central Excise, Hyderabad has been marked as Ex.D.6. PW.4 denied having sent the second list that is, the list of 18 candidates enclosed to letter dated 30-3-81, Ex.P.3. He stated that he had confirmed having sent only the list of 12 names ^{by} alongwith his letter dated 28-2-81, Ex.P.2. However, the Enquiry Officer has brought out a very relevant factor namely ~~has stated~~ that in the letter dated 5-5-81, Ex.D.6 (fair copy obtained from the record of the Collector's Office), ^{P.W.2 Confirmed} ~~This letter confirms~~ as follows:

"The lists of candidates sent in letter dated 7-4-81 are in accordance with the submissions made."



PS by

Thus it is clear from this finding of the Enquiry Officer that PW.4 confirmed having sent not one list but 'lists'. Thus by use of the plural word; it is clear that he was referring not only ^{to} one list dated 28-2-81 comprising 12 candidates but also the second list dated 30-3-81 comprising a further list of 18 candidates. It is for this reason that the Enquiry Officer held that it is difficult to disregard the argument of the defence that two lists have been sent by the Employment Exchange.

The question now is how the disciplinary authority has dealt with this argument or contention or reasoning of the Enquiry Officer. He merely states that in the

original of letter dated 5-5-81 namely ~~Ex.D.5~~ ^{Ex.D.1} ~~in the~~ ^{which} ~~records of the~~ ^{obtained} ~~Employment Exchange as having been~~ ^{was}

tampered with. If it has been tampered with, he does not explain how the applicants are responsible for the tampering or how it was to their advantage. Deletion of reference to the list dated 30-3-81 in Ex.D.1 could only safeguard the Employment Officer if he had earlier sent two lists and wanted to go back upon the same by subsequently saying that only one list has been sent by him. It is clear therefore that the 2nd Respondent, disciplinary authority, has not dealt with the objection of the applicants that the Employment Officer, PW.4 had confirmed having sent two lists in his letter Ex.D.6.

The second Respondent also does not care to deal with ^{question of} as to why the Employment Officer used the ^{plural} word 'lists' ^{asked to confirm that he had} when ~~confirming having~~ sent the said list~~s~~. It is

clear therefore that the applicants have established that from the Employment Exchange two lists have emanated and to that extent the finding of the Enquiry Officer that the charge has not been proved stands un rebutted. Since the disciplinary authority has not cared to consider this material factor which is in

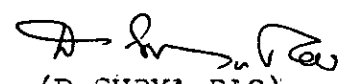
122

-7-

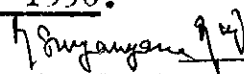
favour of the applicants and seeks to rely only upon the evidence both documentary and oral which is against the applicants, It would follow that the disciplinary authority's finding is based not on ^{the} entire evidence on record but only on evidence favourable to the prosecution. He has not cared to consider the evidence favourable to the applicants as has been done by the Enquiry Officer. He has also not given valid reasons or proper reasons for ^{the} deferring with the Enquiry Officer. In the circumstances, it would follow that the order of the disciplinary authority dated 10-12-1986 as confirmed by the first Respondent's order dated 7-5-1987 is vitiated and is liable to be set aside. We would direct that the applicants be restored to duty as the charge against them has not been established.

5. The O.A. is allowed with the above direction. In the circumstances there would be no order as to costs.


(B.N. JAYASIMHA)
VICE-CHAIRMAN


(D. SURYA RAO)
MEMBER (JUDL.)

Dated: 20th August, 1990.


Deputy Registrar (Judl)

To mhb/

1. The Collector of Central Excise, Hyderabad.
2. The Deputy Collector (PE)
O/o. the Collector of Central Excise, Hyderabad.
3. The Asst. Collector/Enquiry Officer,
O/o. the collector of Central Excise, Hyderabad.
4. One copy to Mr. S.L. Chennakeshava Rao, Advocate
4-1-519, Troop Bazar, Hyderabad.
5. One copy to Mr. G. Parameswar Rao, Advocate for Mr. P. Ramakrishna Raju
CGSC.
6. One copy (spare)

pvm

P7 & L₁₂
✓