

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A. No. 451 of 1987

Date of order: 20-8-1990.

Between:

Mohd. Gouse Samdani

... APPLICANT

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1. Collector, Central Excise,
Hyderabad.
2. Deputy Collector (PE),
O/o Collector, Central Excise,
Hyderabad.
3. Asst. Collector (Enquiry Officer)
O/o Collector, Central Excise,
Hyderabad.

... RESPONDENTS

Appearance:

For the applicant : Mr. S. L. Chenna Keshava Rao, Advocate
For the Respondents : Mr. Parameswara Rao, Advocate
for Sri Ramakrishna Raju, CGSC

CORAM:

The Hon'ble Mr. B. N. Jayasinha, Vice-Chairman

and

The Hon'ble Mr. D. Surya Rao, Member (Judicial).

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

The applicant herein was working as a Sepoy in the Central Excise Department, having been recruited in the year 1981. The applicant seeks to question the order C. No.II/26/4/07.CIU dt.8.5.1987 passed in appeal by the first Respondent, the Collector, Central Excise, Hyderabad confirming the order No. C.No.II/10A/7E/84 dt.10.12.1986 passed by the 2nd respondent, the Deputy Collector (P&E), Central Excise, Hyderabad, removing the applicant from service as Sepoy. On 21.5.1982 a charge was framed against the applicant to the following effect.

"Sri Mohd. Ghouse Samdhani, Sepoy of Central Excise, Hqrs.Office, Hyderabad (applicant herein) is charged in C.No.II/10A/7A to H/84-Vig. dt.28.11.1984 of having failed to maintain absolute integrity and also for behaviour unbecoming of a Govt. servant thereby violating the provisions of Rule 3(1)(i) and 3(1)(iii) of CCS (Conduct) Rules, 1964 in as much as he got himself recruited into the Department as Sepoy of Central Excise by fraudulent means on the strength of a false/ bogus list of candidates purported to have been sponsored by the Dist.Employment Exchange Office, Nizamabad."

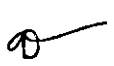
An enquiry was held and the Enquiry Officer, by his report dt.16.10.1986 held that it was not clearly established that the applicant was actually guilty of the offence. The Enquiry Officer was also of the view that the applicant's innocence had not been proved beyond any shadow of doubt. The 2nd respondent, the disciplinary authority, agreed with the finding of the 3rd respondent, the Enquiry Officer that the innocence of the applicant is not proved beyond doubt, but disagreed with the finding that his guilt is not established. He thereupon passed the impugned order dt.10.12.1986 for the reasons given therein, removing the applicant from service. The applicant preferred an appeal before the 1st respondent under Rule 22 of the CCA Rules.

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This was dismissed by the first Respondent by the impugned order dated 8.5.1987. It is these orders sought to be questioned in this application. The applicant contends that the alleged forged letter containing his name in the list was not proved to be brought into existence at the instance of the applicant or other similarly placed persons. He contends that he had been called for the interview by the Department and was duly selected. It is stated that no reasonable opportunity was allowed in that he was not allowed to peruse the file containing the disputed letter, that the reasoning of the 3rd respondent is on no evidence and based on surmises and conjectures. He also alleged that no proper enquiry was conducted in that the handwriting expert's opinion was not called for to establish the forgery. For these reasons he prayed that the order of punishment may be set aside.

2. On behalf of the Respondents, a counter has been filed denying the various contentions raised by the applicant. It is stated that the evidence produced has established that the applicant's name was never sponsored by the Employment Exchange and the list containing his name was a bogus and forged document, that this was established by examining the concerned Employment Officer, and therefore, the guilt of the applicant has been duly established. It is contended that there is no infirmity in the order of the 2nd respondent in differing with the Enquiry Officer or in the order of the first respondent passed in appeal confirming the order of the second respondent.

3. We have heard the learned counsel for the applicant Sri SL Chennakesava Rao, Advocate and Sri Parameswara Rao, for Sri R. Ramakrishna Raju, Central Govt. Standing Counsel, on behalf of the respondents.



4. The documents adduced against the applicant were exhibits P.1 to P.5. Exhibit P.1 is ^a official letter of the Collector, Central Excise addressed to the Director, Employment & Training, Hyderabad notifying the vacancies of Sepoys in the Central Excise Collectorate, Hyderabad. Ex.P.2(a) is the District Employment Officer, Nizamabad's letter dated 24-2-1981 sponsoring the names of three candidates (S/C). The name of the applicant did not figure in this list. Ex.P.2(b) is second letter of the District Employment Officer, Nizamabad, dated 24-2-1981 sponsoring five candidates (S.T). The name of the applicant did not figure in this list also. Ex.P.2(c) is ^a the third letter of the District Employment Officer, Nizamabad dated 24-2-81 addressed to the Collector, Central Excise, sponsoring seven candidates. The name of the applicant did not figure in this list. Ex.P.3 is the alleged forged letter dated 23-3-1981 from the District Employment Officer, Nizamabad to the Collector, Central Excise, Hyderabad, sponsoring 16 candidates. The name of the applicant figured in this list. Ex.P.4 is a letter dated 28-5-1982 addressed by the District Employment Officer, Nizamabad to the Assistant Collector (Vig.), Hyderabad wherein a list of 16 candidates figuring in the records of the Employment Exchange were furnished. Ex.P.5 is letter dated 27-5-82 from the Asst. Collector (Vig.), Central Excise, Hyderabad to the District Employment Officer, Nizamabad deputing one Sri Khan Saheb Shaik, Inspector of Central Excise (Vig.) for verification of Employment Exchange records. The Investigating Inspector of the Central Excise Department who investigated the case was examined as PW-1 and the District Employment Officer Nizamabad, Mr.R.Kamalakar was examined as PW-2. The main

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evidence against the applicant was a register of the Employment Exchange known as X.63 wherein the name of the applicant does not find a place. The other evidence against the applicant was Ex.P.3, the letter dt.23.3.81 which was denied by PW-2 as having been sent by the Employment Exchange. PW-2 denied that the signature on the said document was that of the Dist. Employment Officer. The disciplinary authority relied upon the evidence of PW.2 that Ex.P.3 had not emanated from his office, that it was, therefore, a forged one which was brought on record, that the beneficiary of such a document is only the applicant and that, therefore, the charge against the applicant is proved. He held as follows;

"What remains to be decided is how far the charged officer can claim ignorance of these fraudulent manipulations. It is difficult to conceive of a situation where the interested party, viz., the charged office could remain oblivious of the attempt to sponsor his name. It does not stand to reason that either the employment exchange or the Central Excise Dept., should take up the cause of an individual without his (the charged officer's) knowledge. No Govt. Dept., in the ordinary course would be expected to know the bio-data and personal particulars of any individual unless these have been furnished by the concerned individual. This part, no outsider and in particular a Govt. Dept., whether State or Central, could be expected to evince a cursory interest in the fortunes of any ordinary citizen unless the individual himself takes the first step.

It, therefore, logically follows that no one other than the charged officer himself (irrespective of whether or not he had enlisted the support of relatives, friends or well-wishers) could have initiated and purported these fraudulent manipulations."

Thus, despite there being no direct evidence that the applicant had got prepared the letter dt.23.3.'81, Ex.P.3 or that he was directly responsible for having brought about this letter, the disciplinary authority came to the conclusion that he himself had done so on the basis that

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he is the beneficiary. However, the Enquiry Officer, while accepting the theory that Ex. P2(a) (b) and (c) were sent by the Employment Exchange and that Ex.P.3 was not sent by the Employment Exchange, held that the case of the prosecution had been successfully established or proved. The Enquiry Officer relied on document Ex. D2 which is an office copy of the letter addressed by the Asst. Collector, Central Excise, Hyderabad to the District Employment Officer, Nizamabad seeking confirmation as to the correctness of the lists sent through (Ex.P.2 (a) to (c) and Ex P.3. The Enquiry Officer also found from the records of the concerned file in the Excise Collector's Office that the District Employment Officer, by a letter dated 15.4.1981 sent by registered post, to the Hqrs. Asst. Collector, Central Excise, confirmed having that the lists were genuine. He also advised to proceed further for necessary further action. In another letter to the Director, Employment and Training, Hyderabad that a total of 31 candidates were sponsored by the Employment Exchange. The Enquiry Officer found that the total of 31 candidates comprised as follows :

Ex.P.2 (a)	-	3 candidates (SC)
Ex.P.2 (b)	-	5 candidates (ST)
Ex.P.2 (c)	-	7 candidates (others)
Ex.P.3	-	16 candidates (others)

Total		31 candidates

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Though these two letters dated 7-4-81 and 15-4-81 contained in the file of the Central Excise Department were not exhibited either by the prosecution or the defence, the enquiry officer found it necessary to look into these since they were most relevant documents. Since these documents from the Employment Exchange confirm having sent 31 candidates, the Enquiry Officer felt genuine doubt as to whether the exhibit P.3 was not sent from the Employment Exchange. Hence, irrespective of the applicant not having been able to prove either by way of production of Employment Registration Card or other documents or his name not being found in the Register X.63, the Enquiry Officer was of the view that his guilt was not established. Now the question is ^{as to} how the disciplinary authority gets over these two documents dated 7-4-81 and 15-4-81 which would prima facie go to show that 31 names (including the 16 under the alleged forged document Ex.P.3) were sponsored by the Employment Exchange. These documents are very vital pieces of ^{ev. den. e} documents in favour of the applicant and should have been specifically exhibited and not suppressed by the prosecution. When the applicant asked for perusal of the file it was denied to him. If this file had been given and he had perused these documents, it could have been possible for him to question the Employment Officer and ask him as to on what basis he had confirmed having sent 31 names. As already stated supra, the confirmation of having sent 31 names is possible only if Ex.P.3 had been sent from the Employment Exchange.

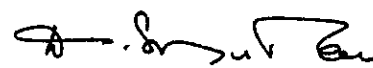
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The Disciplinary Authority disposed of this reasoning of the Enquiry Officer in one sentence namely "confirmation letter dated 15-4-81 of the Employment Officer by itself cannot establish that the charged officer was a bonafide candidate nominated by the Employment Exchange, Nizamabad." In our view, this sort of disposal of a vital piece of documentary evidence is most perfunctory and cannot be sustained. It is well established by the Supreme Court that the disciplinary authority must deal with the documents not only against the charged officer but also the documents which are in his favour. In the instant case, the Enquiry Officer has rightly considered this vital piece of documentary evidence in favour of the applicant and come to the conclusion that the guilt of the applicant has not been brought home. The disciplinary authority on the other hand ignored this documentary evidence and merely relied upon the documents and evidence which have been adduced against the applicant. If the document dated 15-4-1981 is a true and proper document, then it would follow that the contention of the Employment Officer that Ex.P.3 was not issued is contradictory to what ^{it} contained in letter dated 15-4-1981. ^{Since the} Proceedings dated 15-4-81 ^{not} was/made available to the applicant and he was not permitted to cross examine the Employment Officer on the strength of the same, It follows that the entire enquiry is vitiated in that no reasonable opportunity was given to the applicant. The reasoning of the Enquiry Officer that the guilt has not been

brought forth is, therefore, not an illegal or irregular finding and on the other hand the disciplinary authority's impugned order dated 10-12-1986 ignoring this vital piece of evidence vitiates his entire finding. We would, therefore, set aside the order of the disciplinary authority dated 10-12-1986 as confirmed by the appellate authority dated 8-5-1987. We would direct that the applicant be restored to duty as the charge against him 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: 20 th August, 1990.


for Deputy Registrar (Judl.)

To mh/b/

1. The Collector, Central Excise, Hyderabad.
2. The Deputy Collector (PE)
O/o. Collector, Central Excise, Hyderabad.
3. The Assistant Collector (Enquiry Officer)
O/o Collector, Central Excise, Hyderabad.
4. One copy to Mr. S.L. Chenna Keshava Rao, Advocate
4-1-519, Troop Bazar, Hyderabad
5. One copy to Mr. Parameswara Rao, Advocate for Sri Ramakrishna Raju,
CAT. Hyd. Bench.
6. One spare copy.

pvm.