

73

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD
BENCH : AT HYDERABAD :

D.A.No.618 of 1987.

Date of Order : 26.12.1989

T.Nagabhushanam

...Applicant

Versus

The Director, Telecommunication Guntur
and another.

...Respondents

Counsel for the Applicant : Shri K.Manikyala Rao

Counsel for the Respondents : Shri E.Madan Mohan Rao

CORAM:

HONOURABLE SHRI B.N.JAYASIMHA : VICE CHAIRMAN

HONOURABLE SHRI J.NARASIMHA MURTHY : MEMBER (J)

(Judgment of the Bench dictated by Hon'ble
Shri B.N.Jayasimha, Vice-Chairman)

The applicant is a dismissed Telephone-Operator in the office of the Divisional Engineer, Telecommunications, Eluru. He has filed this application against the order of dismissal passed by the 1st respondent in memo No.E/Disc.TN dated 10-6-87 and memo No.TAG/ST/8/132/8 dated 3-9-87.

The applicant states that he is a Graduate in Commerce and he was searching for employment, he came to know that one Sri K.Krishna Rao, Technician, Telephone-Exchange, Machilipatnam was guiding candidates for securing employment in Telecom Department. On his approaching Sri Krishna Rao agreed to help the applicant. Then, Sri Krishna Rao and applicant both took him to register his name in the

Employment Exchange. The applicant filled the application

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form and he also handed over his S.S.C. and B.Com., original certificates and photo copies to Sri Krishna Rao. He has to appear for the written test and interview at Eluru. Applicant appeared for the written test and later for interview before the Divisional Engineer, Telecom.

2. The applicant thereafter appointed as Telephone Operator at Chintalpudi in Eluru Division by the vide memo No.E-50/Appt/Tos/194 dated 26.5.82 issued by the 2nd respondent. He has been working in the department for the last five years. On 30-10-1985 2nd respondent issued a charge sheet stating that applicant had obtained employment wrongfully by furnishing incorrect information about himself. It was stated that the marks obtained by him in SSC examination of April, 1974 bearing roll No.39463 from from Z.P.High School, Kapileswarapuram, Krishna District, school in which he studied and pass the SSC examination are found to be incorrect. The applicant denied the charges on the ground that he had not at all studied in Z.P.H.School Kapleswarapuram, Krishna District. He also stated that He had studied SSC at ZPH School, Chennur, Krishna District and Intermediate and B.Com., in A.J.Kalasala, Machilipatnam. He further state that his originals are collected by Sri Krishna Rao and he had no intention to obtain the employment through illegal methods. When he submitted his application for written test a check list were prepare for checking the information given in the application. He contends that the

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selections was made after due verification.. Applicant further states that Sri Krishna Rao, who submitted his application and attestation forms which were filled according to his directions, may not be taken into consideration as the applicant totally mis-guided by Sri Krishna Rao. He also state that he had not seen recruitment of Telephone Operators for the the Newspaper advertisement for the/first half year 1981, nor does he know that the recruitment was going to be made on the basis of marks obtained in S.S.C. If any illegal or fake documents are found, they are furnished by only Sri Krishna Rao and for that act the applicant should not be penalised.

3. An enquiry was conducted and the applicant requested to go through the Intelligence test paper and the DPC paper. This request was rejected by the Enquiry Officer in his letter No.X/TN-Rule 14-F-7 dated 24-3-86. On the basis of the Enquiry Report, 2nd respondent dismissed the applicant from service. He submitted an appeal, and the order was conformed in his proceedings No.TAG/ST/8/132/8 dated 3-9-87. Aggrieved by this order applicant filed this application.

4. He contends that rule 3(1)(i) and (iii) of the CCS 1964 speaks that every government servant shall maintain absolute integrity. According to this the Government Servant is required to maintain after entering the service and it

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the rules are
doesnot require before his appointment. He contends that/
only to Government Servents who are in service.

5. Respondents filed counter denying the alligations of the applicant. It is stated that the department came to now know through ~~many~~ anonymous complaints, that certain candidates gained entry into Government Service, ~~esp~~ especially in the Eluru Telecom Division during 1979-1982 on producing of false certificates. An enquiry ~~was~~ conducted into the matter revealed that the information furnished by the applicant, ~~Sri~~ in the application form at the time of recruitment on 11-8-81 regarding (1) School where he last studied and appeared for the SSC examination and (2) Marks obtained in SSC examination with Roll No. 39463 from Zilla Parishad High School, Kapileshwarapuram, Krishna District ~~was~~ false. The applicant was not otherwise eligible for appointment to the post of ~~Telecom~~ Telephone Operator to which he was appointed. The Divisional Engineer, who is the competent Disciplinary Authority proceeded under rule 14 of the CCS (CCA) Rules, 1965. The Enquiry Officer conducted regular enquiry and held charges proved. The Disciplinary Authority ~~concurred~~ concurring on the findings of the Enquiry Officer dismissed the applicant from service in his memo dated 17-6-87 No.E/Disc/TN dated 10-6-87. Applicant preferred an appeal dated 17-6-87 to the Director, Telecom. Guntur, who is the appellate authority. The Appellate

97

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Authority confirmed the order of punishment vice Memo no.TAG/ST/8-132/8, dated 3-9-1987. Regarding the averment that the applicant acted as per the advice given by one Sri K.Krishna Rao, Technician, TE, Machilipatnam, it is stated that the applicant was a party to the fraud. The applicant should take full consequences of the false information he furnished even though he alleges to have acted at the instance of some one else. The applicant with a malafide intention gave false information regarding his educational qualification, solely for the purpose of securing employment. Departmental action has already been initiated against Sri Venkataratnam, Sr.Section Supervisor and Sri K.Krishna Rao, Technician. The allegation that he CCS Rules have no application in his case as the act of furnishing incorrect information is anterior to his appointment is devoid of merit. According to instructions of the Government of India, incorporated as item no.2, below Rule 3, and item no.4 below Rule 11 of the CCS(CCA) Rules, 1965, the disciplinary authority can take cognizance of the conduct of the employee prior to his entry into service and initiate action against him. For these reasons, the respondents oppose this application.

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6. We have heard the learned counsel for the applicant and Shri E.Madan Mohan Rao, SC for the department.

7. The learned counsel for the applicant at the outset states that the disciplinary authority did not furnish a copy of the Enquiry Officer's report to the applicant and gave him an opportunity to submit representation against the report before he passes the order of dismissal. According to the decision of the Bombay Bench of the Tribunal in Premnath K.Sharma Vs. UOI (1988(6) ATC 904), non-furnishing of the Enquiry Officer's report before passing of the penalty order vitiate the entire disciplinary proceedings. On this ground alone he urges that the impugned orders should be set-aside. The Bombay Bench in the above cited case held as follows:

"Even after the amendment of Article 311(2) by the 42nd Amendment, the Constitution guarantees a reasonable opportunity to show cause against the charges levelled against the charged officer during the course of the enquiry. In order to fulfil the constitutional requirement he must be given an opportunity to challenge the enquiry report also. The Enquiry Officer enquires into the charges, the evidence is recorded and the charged officer is permitted to cross-examine the witnesses and challenge the documentary evidence during the course of the enquiry. But the enquiry does not conclude at that stage. The enquiry concludes only after the material is considered by the Disciplinary Authority, which includes the Enquiry Officer's report and findings on charges. The enquiry continues until the matter is reserved for recording a finding on the charges and the penalty that may be imposed. Any finding of the Disciplinary Authority on the basis of the Enquiry Officer's report which is not furnished to the charged officer would, therefore, be without affording a reasonable opportunity in this behalf to the charged officer. It, therefore, follows that furnishing a copy of the enquiry report to the charged officer is obligatory."

To:

1. The Director, Telecommunication, Guntur.
2. The Divisional Engineer, Telecommunication, Eluru.
3. One copy to Mr.K.Manikyala Rao, Advocate, 1/8/702/45,
Nallakunta, Behind Sankaramatt, Nallakunta, Hyderabad-4..
4. One copy to Mr.E.Madan Mohan Rao, Addl.CGSC,CAT,Hyderabad.
5. One spare copy.

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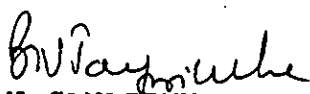
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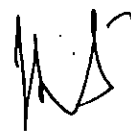
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Following the above decision, we hold that the enquiry is vitiated and the orders dated 10-6-87 and 3-9-1987 imposing the penalty of dismissal from service are quashed. This, however, will not preclude the respondents from supplying a copy of the enquiry report to the applicant and give him an opportunity to make his representation and proceeding to complete the disciplinary proceedings from that stage. The application is allowed to the extent indicated above but in the circumstances of the case there will be no order as to costs. If the respondents choose to continue the disciplinary proceedings and complete the same, the manner as to how the period spent in the proceedings should be treated would depend upon the ultimate result. Nothing said herein would affect the decision of the Disciplinary Authority. ~~At~~ This order of the Tribunal, however, is not a direction to necessarily continue the disciplinary proceedings. That is entirely left to the discretion of the Disciplinary Authority.

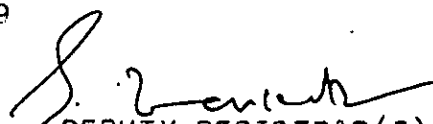

(B.N. JAYASIMHA)
VICE CHAIRMAN


(J.N. MURTHY)
MEMBER (J)

DT. 26th DECEMBER, 1989

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DEPUTY REGISTRAR (J)
29/12