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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH:
AT HYDERABAD

O.A.NO. 989 of 1989

Dated: 22-12-1989

G. Kakuleswara Rao

..Applicant

Versus

The Secretary,
Ministry of Communication,
New Delhi and others

..Respondents

For Applicant: Mr.T.Jayant, ADVOCATE

For Respondents: Mr.E.Madan Mohan Rao, Standing Counsel
for the Department.

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C O R A M:

HON'BLE SHRI B.N.JAYASIMHA: VICE CHAIRMAN

HON'BLE SHRI J.N.MURTHY: MEMBER(JUDICIAL)

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(Judgment delivered by Shri B.N.Jayasimha, Vice Chairman)

1. The applicant who was a Telecom Office Assistant in the office of the Divisional Engineer, Telecom, Eluru, has filed this application against orders dated 29-3-1988 passed by the 3rd respondent, dismissing him from service and confirmed by the appellate order dated 24-12-1988 by the Director, Telecom Guntur Area, Guntur, 2nd respondent.

2. The applicant states that he applied for the post of the Telecom Office Assistant in 1st half year 1981 recruitment as per the News Papers advertisement dated 30th and 31st January, 1981. He was selected for the said post and after complying with all the requirements he was directed to undergo training for two months.

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After completion of the training, the 3rd respondent appointed him as a Telecom Office Assistant provisionally for a period of 2 months with effect from 6-7-1981 vide appointment order dated 15-7-1981. Thereafter, by another appointment order dated 2-1-1982 his appointment was regularised w.e.f. 6-7-1981. After a period of three years, the 3rd respondent by his letter dated 19-11-1983 directed the applicant to submit his original certificates of Secondary School and Higher Education within 3 days for verification and return. The applicant replied stating that he submitted the originals at the time of recruitment and that they were not returned to him thereafter. The 3rd respondent thereupon asked the applicant vide memo dated 4-1-84 to furnish some particulars about his educational qualifications and the school/college at which he studied, failing which it would be deemed to be wilful suppression of facts and he would be liable for action as deemed fit. The applicant complied with the same. Thereafter the applicant received subsequent communications and he replied thereto. Thereupon the 3rd respondent herein by his letter dated 15-12-1984 directed the applicant to produce evidence in support of his statement that the originals were already submitted at the time of recruitment and again threatened him with suitable action against him. While so, the 3rd respondent issued a charge memo dated 12-2-1986 to the applicant under Rule 14 of the CCS(CCA) Rules, 1965 alleging that he had furnished wrong information in the Attestation Form dt. 21-3-1981 in connection with his initial recruitment as Telecom Office Assistant. In his preliminary defence,

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the applicant denied the charge. Thereupon, an Enquiry Officer and a Presenting Officer were appointed for holding inquiry into the charge. Accordingly, an enquiry was conducted and the applicant was held guilty of the ~~charge~~ ^{fring} charge. Thereafter, the applicant received the order of dismissal dated 29-3-1988 from the 3rd respondent alongwith a copy of the Enquiry Report dated 26-3-1988.

~~Agreed with the findings of the Enquiry Officer, the 3rd respondent imposed the penalty of the dismissal on the applicant.~~ Aggrieved by the order of dismissal, the applicant submitted an appeal dated 12-5-1988 to the 2nd respondent praying for setting aside the dismissal order. The 2nd respondent who is the appellate authority confirmed the order of dismissal passed by the 3rd respondent. Aggrieved by these orders, the applicant has filed this application. The applicant contends that the 3rd respondent ought to have furnished to him a copy of the enquiry officer's report before passing the final order of dismissal and afforded him a reasonable opportunity to make his representation ~~on~~ ^{on} the said Enquiry Report. He also contends that the enquiry itself is vitiated for various reasons, in that the Verification Report of the District Magistrate was not made available for defence purpose stating that the original was held up in another case, that after enquiry a copy of the prosecution brief was not furnished to the applicant and he was not afforded reasonable opportunity.

3. We have heard Shri Jayant, learned counsel for the applicant and Shri E. Madan Mohan Rao, Standing Counsel for the Respondents.

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4. The main ground urged by Shri T.Jayant, counsel for the applicant is that the disciplinary authority did not furnish the applicant a copy of the Enquiry Officer's Report before passing the Order of dismissal. He relied upon the decision of the Bombay Bench in Premnath K.Sharma Vs. UOI (1988) 6 ATC 994) in support of his contention.

5. We have considered these submissions. In Premnath K.Sharma's case, the Bombay Bench 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"

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Admittedly, in the instant case, the Enquiry Officer's report was not furnished to the applicant before passing the order of dismissal denying him reasonable opportunity to make his representation on the said Enquiry report. Applying the decision in Premnath K. Sharma, we hold the enquiry is vitiated and the orders dated 29-3-1988 and 24-12-1988 passed by the 3rd and 2nd respondent respectively, dismissing the applicant from service, are quashed. This, however will not preclude the respondents from further proceeding with the enquiry by enabling the applicant to make his representation against the Enquiry Officer's report and to complete the disciplinary proceedings from that stage. Since, in this case, the applicant has received a copy of the Enquiry Officer's report, it would be unnecessary to direct the respondents to once again furnish a copy of the Enquiry Officer's report. If the respondents choose to continue the disciplinary proceedings, they are directed to intimate the applicant accordingly and to give him an opportunity to assail the correctness of the Enquiry Officer's report. They are directed to do so within one month from the date of receipt of this order. On receipt of such notice from the respondents, the applicant is directed to submit his representation against the Enquiry Officer's report within a period of one month thereafter and the disciplinary authority is further directed to dispose of the representation of the applicant within six weeks of the receipt of the same. As observed in the case decided by the Full Bench cited above, nothing said herein would affect the decision of the disciplinary authority and we would hasten to add that

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this order of the Tribunal is not a direction to necessarily continue the disciplinary proceedings. That is entirely left to the discretion of the disciplinary authority.

6. In the result, the application is allowed to the extent indicated above. No costs.

B.N.Jayashimha

(B.N.JAYASIMHA)
VICE CHAIRMAN

M.S

(J.N.MURTHY)
MEMBER (JUDL)

DT. 22nd December, 1989.
(Dictated in Open Court)

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S. Venkateswaran
DEPUTY REGISTRAR (J)

TO:

1. The Secretary, (Union of India) Ministry of communications, New Delhi-110 001.
2. The Director, Telecom, Guntur Area, Guntur-522 007, Guntur District.
3. The Divisional Engineer, Telecom, Eluru-534 050, W.G.Dist.
4. One copy to Mr.T.Jayant, Advocate, # 17-358, Srinagar colony, Gaddiannaram, P&T colony P.O., New Dilsukhnagar, Hyderabad 500 660.
5. One copy to Mr.E.Madan Mohan Rao, Addl.CGSC,CAT, Hyderabad.
6. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH

HON'BLE MR. B. N. JAYASIMHA: V.C.
AND

HON'BLE MR. D. SURYARAO: MEMBER (J)
AND

HON'BLE MR. D. K. CHAKRAVORTY: M(AD.)
AND

HON'BLE MR. J. NARASIMHAMURTHY: M(J)

DATED : 22-12-89

ORDER/JUDGMENT

T.A. NO. / (W.P. No.) /

O.C.A. No. 989/89 ✓

Allowed No costs ✓

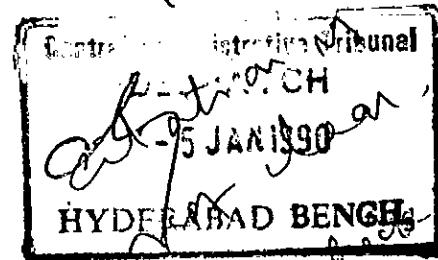
Dismissed

Disposed of

Ordered

No order as to costs.

PSR



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