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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : AT HYDERABAD

DA No.90/90.

Dt. of Order: 22.9.93 .

T.Pandu Ranga Rao

....Applicant

Vs.

1. Union of India,
rep. by the Secretary,
Ministry of Communications,
New Delhi-110 001.
2. Director, Telecom,
Guntur Area, Guntur-522 007,
Guntur District.
3. Divisional Engineer,
Telecom, Eluru - 534 050,
W.G.District.

....Respondents

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Counsel for the Applicant : Shri T.V.V.S.Murthy for
Shri T.Jayant

Counsel for the Respondents : Shri V.Bhimanna, Addl. CGSC

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CORAM:

THE HON'BLE SHRI A.B.GORTHY : MEMBER (A)

THE HON'BLE SHRI T.CHANDRASEKHAR REDDY : MEMBER (J)

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(Order of the Divn. Bench passed by
Hon'ble Shri A.B.Gorthi, Member (A)).

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The applicant's grievance is against the order dt.28-11-88 dismissing him from service. Brief facts of the case are as follows :

2. The applicant was appointed as Telecom Officer Asst. in 1981. In 1983 the Respondents asked him to furnish the Original School Certificates but the applicant asserted that he had submitted them at the time of his appointment. He was served with a charge memo on 12-2-86 alleging that he furnished false date of birth in the Attestation form dt.17-3-81 wherein he declared that his date of birth was 15-6-57. After a departmental Inquiry he was dismissed from the service.
3. Learned counsel for the Applicant assailed the validity of the penalty on several grounds. Firstly he contended that the charge memo indicated the punishment also and that showed that the disciplinary authority pre-judged the issue . We have seen the charge-memo, which reads as under :-

"Sri T.Panduranga Rao now working
as TOA since 6-7-81 has furnished

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wrong information in the attestation form dt.17-3-81 submitted by him in connection with his initial recruitment as TOA for the I HY 1981 with regard to his date of birth.

Thus by the above acts, Sri T.Panduranga Rao has obtained employment by wrongfully by furnishing incorrect information about himself and this behaviour prior to the employment renders him unfit to be government servant since his conduct is without absolute integrity and unbecoming of a Govt. servant contravening Rule 3 (1)(i) (iii) of CCS (Conduct) Rules, 1964."

4. The charge ~~disclosed~~ what exactly was the imputation of misconduct and that the misconduct was such as would render him unfit to be government servant. It only thus ~~disclosed~~ the gravity of the misconduct and it cannot be understood to mean that the disciplinary authority decided to dismiss the applicant.

5. The Applicant's counsel urged that the Inquiry Proceedings are vitiated as the Applicant was denied due opportunity to defend himself. His request for examining five defence witnesses was partly allowed and only two witnesses were examined. Similarly he asked for

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five documents but the enquiry officer, admitted only three documents. A careful examination of the Enquiry Proceedings would reveal that keeping in view the nature of the charge, sufficient evidence was adduced and that the applicant was provided with more than reasonable opportunity to put across his defence. It was clearly established that his correct date of birth was 15-6-55 whereas he had wrongly declared it as 15-6-57 in the Attestation Form.

6. The main issue raised by the learned counsel for the Applicant is that the Disciplinary Authority had no jurisdiction to punish the applicant for an act done prior to his entering government service. In support of his plea, he has drawn our attention to the Judgment of the Allahabad High Court in Abdul Aziz Khan Vs. Union of India (1974 (1) SLR 67). Relevant extract is reproduced below :-

"The plaintiff was accused of having committed gross misconduct and of failing to maintain absolute integrity and devotion to duty inasmuch as he secured appointment as cleaner in Loco Department by deceitful means. Further he was accused of having continued in the Railway service without disclosing true facts to the Administration. If anything the charge so framed is not only

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vague to a great extent but also is defective. Securing appointment as Loco cleaner by deceitful means could not be in the course of performance of his duty as a Railway Servant by the plaintiff. It is, therefore, not easily understandable how the alleged appointment of the plaintiff as a cleaner in Loco Department would amount to gross misconduct and will show lack of maintenance of absolute integrity and devotion to duty."

7. In the above case, the main thrust of the allegation was that the petitioner secured appointment by deceitful means and without disclosing facts to the Administration. It was therefore held that the "charge was not only vague to a great extent but was also defective". As regards the other portion of the observation that "securing appointment as Loco Cleaner by deceitful means could not be in the course of performance of his duty as a Railway Servant", we need to examine it deeply. In S. Govinda Menon Vs. Union of India (AIR 1967 SC 1274) the Supreme Court clarified the position in the following words :-

"In our opinion, it is not necessary that a member of the Service should have committed the alleged act or omission in course of discharge of his duties as a servant of the Government in order that it may form the subject matter of disciplinary proceedings. In other words,

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if the act or omission is such as to reflect on the reputation of the officer for his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for that act or omission even though the act or omission relates to an activity in regard to which there is no actual master and servant relationship. To put it differently, the test is not whether the act or omission was committed by the appellant in the course of the discharge of his duties as servant of the Government. The test is whether the act or omission has some reasonable connection with the nature and condition of his service or whether the act or omission has cast any reflection upon the reputation of the member of the Service for integrity or devotion to duty as a public servant. We are of the opinion that even if the appellant was not subject to the administration control of the Government when he was functioning as Commissioner under the Act and was not the servant of the Government subject to its orders at the relevant time, his act or omission as Commissioner could form the subject-matter of disciplinary proceedings provided the act or omission would reflect upon his reputation for integrity or devotion to duty as a member of the Service."

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8. In the face of such categorical assertion coming from the Supreme Court, we are not inclined to accept the observations of the Allahabad High Court in the case of Abdul Aziz Khan (Supra). The misconduct of the applicant would clearly reflect adversely on his integrity as a member of the service. We therefore hold that the disciplinary authority had the jurisdiction to proceed against the applicant in this case.

9. We may also refer to the case of K.Srinivasan Vs. Union of India (AIR 1958 SC 419). In that case it was held that Srinivasan's appointment was itself irregular, unauthorised and invalid, that the government was right in terminating his services when it discovered its mistake; and as his appointment was illegal, he was not entitled to any legal right and the termination of his ~~xxxxxxx~~ ~~xxxx~~ ~~xx~~ ~~xxxxxxxxxx~~ ~~xxx~~ ~~xxxxx~~ appointment could not therefore be said to be an act of punishment. In the case before us the applicant was appointed on the basis of false date of birth furnished by him. Had he disclosed the correct date of birth, he would have been ineligible for appointment. His appointment being in-valid, ab-initio, he would have no legal right as a government servant. Notwithstanding the same since a proper inquiry was held

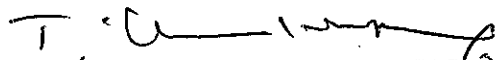
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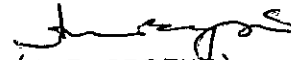
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prior to dismissing him from the service, it cannot even be said that there had been any violation of the principles of natural justice.

10. For the afore-stated reasons we hold that the application is liable to be dismissed and we accordingly dismiss it without any order as to costs.


(T.CHANDRASEKHAR REDDY)
Member (J)


(A.B.GORTHY)
Member (A)


Dated: 22 September, 1993.

Deputy Registrar(J)

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To

1. The Secretary, Union of India,
Ministry of Communications, New Delhi-1.
2. The Director, Telecom, Guntur Area,
Guntur-7, Guntur Dist.
3. The Divisional Engineer, Telecom, Eluru-050
W.G. Dist.
4. One copy to Mr. T. Jayant, Advocate, CAT. Hyd.
5. One copy to Mr. V. Bhimanna, Addl. CGSC. CAT. Hyd.
6. One copy to Deputy Registrar(J) CAT. Hyd.
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHI : MEMBER(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER(JUDL)

AND

THE HON'BLE MR. P. T. TIRUVENGADAM : M(A)

Dated: 22-9 -1993

ORDER/JUDGMENT:

M.A./R.A./C.A.No.

in

O.A.No. 90/90

T.A.No.

(W.P.)

Admitted and Interim directions
issued

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered.

No order as to costs.

