IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD.

O.A. NO.440/1990 Date of the Order: 18 -6-1990.

Between

V.Bhaskara Rao ... APPLICANT

A N D

1. Union of India, rep. by the Secretary, Ministry of Communications, New Delhi-1.

2. Deputy General Manager, Telecom., District West Godavari, Eluru.

3. Divisional Engineer, Telecom., Bhimavaram, West Godavari Dist.

... RESPONDENTS

Appearance:

For the applicant : Shri T.Jayant, Advocate

For the Respondents : Shri N.Bhaskara Rao, Addl.CGSC

CORAM:

The Hon'ble Shri B.N.Jayasimha, Vice-Chairman

and

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

contd...2.

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

The applicant herein is an ex-telephone operator in the Telecom. Department working under the Divisional Engineer, Telecom., Bhimavaram, West Godavari district, the third Respondent herein. He seeks to question, in this application, the order No.X/VB/84-85/40 dated 9-2-1988 issuedby the third Respondent, removing him from service by way of punishment under the C.C.S. (C.C. & A.) Rules, 1965 and the order No.TAE/ST/Disc/01/2-3/4 dated 4-1-1990 passed by the 2nd Respondent herein rejecting the appeal preferred by the applicant against the order dated 9-2-1988. The order of removal from service was passed after issue of a Memorandum of charges dated 19-7-1984 alleging that the applicant has produced a Matriculation certificate which is found to be not genuine, when the applicant had applied for appointment in the year 1980. This conduct of the applicant is alleged to be in violation of the C.C.S. (Conduct) Rules, 1964. After the enquiry, the impugned order dated 9-2-1988 waspassed and as already stated, was confirmed in appeal. Various contention have been raised in theapplication assailing the order of removal from service as also the order of the appellate authority.

2. We have heard the learned counsel for the applicant Shri T.Jayant and Shri N.Bhaskara Rao, Additional Central Government Standing Counsel who,on our direction,has taken notice at the stage of admission.

(16)

3. Apart from the various contentions raised, Shri Jayant contends that the applicant can bedisposed of on the single contention viz. that the matter is covered by the decision of the full bench of the Central Administrative Tribunal, Bombay Bench rendered in Premnath K.Sharma's case reported in 1988(6) ATC 904 wherein it has been held that the report of the Enquiry Officer ought to have been furnished before the disciplinary authority passed the order of punishment to enable the applicant to assail the findings of the Enquiry Officer before the disciplinary authority passed the order of punishment. It was held, in Premnath K.Sharma's case, 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..

In view of the above said decision, we hold the enquiry in the instant case is vitiated and the order imposing the penalty of removal from service must be 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 proceedings to complete the disciplinary proceedings from that stage. The application is allowed to the

extent indicated above but in the circumstances we make 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 the same time, we may add that 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.

4. Since we are allowing the O.A. on the ground that the matter is covered by the Full Bench decision in Premnath K.Sharma's case, we are not taking up the other contentions raised. It is open to the applicant to raise these contentions before the Disciplinary Authority if further action is sought to be taken against him.

(B.N.JAYASIMHA)
VICE-CHAIRMAN

(D.SURYA RAO)
MEMBER(J)

Dated: 18th day of June, 1990.

(Dictated in open court)

DEPUTY REGISTRAR(J).

To mhb/

1. The Secretary,Union of India, Ministry of Communications,N.Delhi-
2. Deputy General Manager, Telecom District,West Godavari,Eluru -534050.
3. Divisional Engineer,Telecom,Bhimavaram,WG.Distt.
4. One copy to Mr.T.Jayant,Advocate,17-358,Sainagar Colony, Gaddiannaram,P&T Colony P.O.,Dilusukhnagar, Hyderabad-500660.
5. One copy to Mr.N.Bhaskara Rao,Addl.CGSC,CAT, Hyderabad.
6. One spare copy.

CHECKED BY

TYPED BY: COMPARED BY :

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH:HYD.

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

AND

HON'BLE MR.D.SURYA RAO:MEMBER:(JUDL)

A N D

HON'BLE MR.J.NARASIMHA MURTHY(M)(J)

A N D

HON'BLE MR.R.BALASUBRAMANIAN:(M)(A)

DATED: 16/6/90.

ORDER/JUDGMENT:

M.A./R.A./C.A./No. - in

T.A.No. W.P.No.

O.A.No. 440/90

Admitted and Interim directions issued.

Allowed.

Dismissed for default.

Dismissed.

Disposed of with direction.

M.A. ordered.

No order as to costs.

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