

(68)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD
BENCH AT : HYDERABAD

O. A. No. 44/1990

Date of order: 20.7.'90

BETWEEN

B. Narayana Rao

.. Applicant

Versus

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

2. Director Telecom, Guntur Area,
Guntur.

3. Divisional Engineer,
Telecom, Eluru, W.G. Dist.

.. Respondents

APPEARANCE

For the Applicant

: Shri T. Jayant, Advocate

For the Respondents

: Shri N. Bhaskar Rao, Addl.
Standing Counsel for
Central Government.

CORAM

THE HON'BLE SHRI B.N. JAYASIMHA, VICE CHAIRMAN

THE HON'BLE SHRI D.SURYA RAO, MEMBER (JUDICIAL)

(Judgement of the Bench delivered by Sri B.N. Jayasimha),
Hon'ble Vice Chairman

The applicant herein was a Telecom Office Assistant
who has been dismissed from service by an order No.
E/Disc/BNR/88-89 dt.18.7.88 passed by the third respondent.

Ans

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The applicant states that he had applied for the post of Telecom Office Assistant in 1982 in response to a newspaper advertisement. The Divisional Engineer, Telecom, Eluru (respondent No.3 herein) selected him and directed him to undergo training and produce security. Thereafter he was directed to undergo and learn typing. The applicant was appointed by another memo dt.4.10.1982 as Telecom Office Assistant on regular basis w.e.f. 14.2.'82. He has been continuously working since then. Thereafter respondent No.3 directed the applicant to submit the original certificates for verification. In reply to the above memo the applicant through his letter dt.18.5.84 informed the third respondent that he had lost the originals in floods and that he applied for the duplicates to the concerned educational authorities. Thereupon the third respondent by his letter dt.30.6.'84 informed the applicant that if the duplicates were not submitted before 12.7.84 action will be taken against him under CCS (CCA) Rules, 1965. The applicant requested for further time to submit the duplicates and he was given extension of time upto 31.7.'84. The applicant, some time later, represented that the educational authorities wanted true copies of the certificates for issuing duplicates and ^{hence} requested for the supply of the same along with a certificate of missing so as to enable him to obtain and submit the duplicates. While this was so, a charge memo was issued to the applicant under Rule 14 of the CCS (CCA) Rules, 1965 alleging that the applicant had furnished wrong information in the attestation form dt.20.5.'82 in connection with his recruitment as Telecom

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Office Assistant for the first half year of 1982 with regard to his date of birth and thus obtained employment wrongfully thereby contravening Rule 3(1)(i) and (iii) of CCS (Conduct) Rules, 1964. An enquiry was held and on the basis of that the applicant was dismissed by an order dt.18.7.'88. The applicant contends that the order of dismissal has been passed by the disciplinary authority by relying upon the enquiry report behind the back of the applicant without furnishing a copy of the enquiry officer's report, without awarding the reasonable opportunity to make a representation ^{against} the enquiry officer's report. The applicant ~~had~~ submitted an appeal dt.17.8.'88, to the Director, Telecom, Guntur Area, Guntur for setting aside the dismissal order. But he had not received any order ^{on} for his appeal till the date of filing this application. Hence he had filed the present application.

3. We have heard Shri T. Jayanth, learned counsel for the applicant and Shri Naram Bhaskar Rao, Addl. Central Govt. Standing Counsel. Shri Jayant at the outset states that he is relying upon the decision of the full bench of this Tribunal in Premnath Sarma Vs. Union of India (1988)6 ATC 904, wherein it was held that an order passed by the disciplinary authority without furnishing a copy of the Enquiry Officer's report in cases where he himself is not the Enquiry Officer, is violative of principles of natural justice. He states in this case that the disciplinary authority had passed the order without furnishing a copy of the Enquiry Officer's

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Report. In Premnath K. Sarma's case it was 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."

The above decision will ^{apply} ~~only~~ apply to the case

before us. In view of the aforesaid decision in

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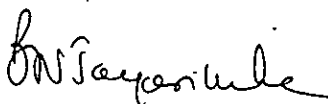
1. The Secretary, Ministry of Communications,
Union of India, New Delhi.
2. The Director, Telecom, Guntur Area, Guntur.
3. The Divisional Engineer, Telecom,
Eluru, W.G.Dist.
4. One copy to Mr. T.Jayant, Advocate.
17-35B, Srinagar colony, Gaddiannaram, P&T Colony, P.O.
Milsukhnagar, Hyderabad-660
5. One copy to Mr.N.Bhaskara Rao, Addl.CGSC.CAT.Hyd.Bench.
6. One spare copy.

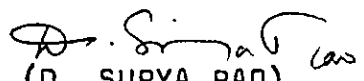
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~~the aforesaid decision~~ in Premnath K. Sharma's case, we hold that the order of punishment No. E/Dis/BNR/88-89 dated 18.7.1988 is quashed. This, however, will not preclude the respondents from further proceeding with the enquiry by enabling the 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 ^{not} 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, nothing said herein would affect the decision of the disciplinary authority and we would hasten to 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.


(B.N. JAYASIMHA)
VICE CHAIRMAN


(D. SURYA RAO)
MEMBER (JUDICIAL)

Dictated in the open court
Dt. 20th July, 1990


DEPUTY REGISTRAR (JUDL)

Rve
26/7 (6)

CHECKED BY.

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COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

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

AND

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

AND

THE HON'BLE MR. J. NARASIMHA MURTY : M (J)

AND

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

DATE: 20/7/90

ORDER/JUDGMENT: —

I.A./ R.A./ C.A./ No.

in

T.A. No.

W.P. No.

O.A. No.

44/90

Admitted and Interim directions issued

Allowed. ✓

Dismissed for Default

Dismissed as withdrawn.

Dismissed.

Disposed of with direction.

M.A. Ordered/Rejected.

No order as to costs.

