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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.970/90.

Date of Judgement : 26.11.93.

S.Prakash

.. Applicant

Vs.

1. Union of India, Rep. by
The Chief General Manager,
Telecommunications,
Hyderabad-500001.
 2. The Dy. General Manager,
Competent Disciplinary Authority,
Telecommunications,
Hyderabad-500001.
 3. The Inquiry Officer & JTO,
Telecommunications,
Hyderabad-500001.
 4. Director,
Telecommunications,
Warangal.
- .. Respondents

Counsel for the Applicant :: Shri A.Shyam Rao

Counsel for the Respondents:: Shri N.R.Devaraj, Sr. CGSC

CORAM:

Hon'ble Shri Justice V.Neeladri Rao : Vice-Chairman

Hon'ble Shri A.B.Gorthi : Member(A)

J u d g e m e n t

X As per Hon'ble Shri A.B.Gorthi : Member(A) X

The Applicant was appointed as a Lower Division Clerk (L.D.C. for short) in the Office of the General Manager, Department of Telecommunications, A.P. Hyderabad vide letter of appointment dt. 16.11.81 issued by the Dy. General Manager. On 23.8.83, he was called upon to furnish copies of certain documents such as the letter from the Staff Selection Commission, Madras nominating him for the post of L.D.C., the original educational certificates, employment exchange card etc. The Applicant responded by giving copies of only

his appointment order and section posting order. He further stated that he appeared for the Staff Selection Commission examination held in August, 1980 and that the examination centre was at Alia College, Hyderabad. He expressed his inability to furnish any further information. He was then served with a charge memo dt. 31.1.89. The gist of the charges levelled against him was that he did not appear for the tests held by the Staff Selection Commission in August, 1980 and that, as such, his name ^{was} not in the select list of candidates, but that he gained employment wrongfully and that he further gave false statement to the effect that he appeared for the Clerks' Grade Examination held by the Staff Selection Commission at Alia College, Hyderabad in August, 1980. After a departmental disciplinary enquiry, he was awarded the penalty of dismissal from service. His appeal was rejected. In this O.A. he has challenged the validity of the inquiry proceedings, the penalty of dismissal and also the appellate authority's order rejecting his appeal. His prayer is that the penalty be set aside and that he be reinstated in service with all consequential benefits.

2. Shri A. Shyam Rao, learned counsel for the Applicant assailed the validity of the penalty, essentially on the ground that ^{Applicant} ~~the~~ ^{was} denied reasonable opportunity to defend himself during the inquiry and that the Inquiry Officer's findings were perverse. During the inquiry, reliance was placed ~~mainly~~ on the evidence to the effect that the name of the Applicant did not figure in the list of selected candidates issued by the Staff Selection Commission, Madras. The Respondents contended that the relevant file which should have been in the Office of the General Manager

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was lost in 1983 during the shifting of the office. It was urged on behalf of the Applicant that the file could not have been lost in 1983 as the shifting of the office took place in 1980. The evidence of Shri K.Chandrasekharan (P.W.1) Asst. Director(Staff) should not have been believed because it was he who caused the disappearance of the files. His statement that on his visit to Madras Staff Selection Commission, he found that the name of the Applicant did not figure in the computerised lists of selected candidates, was purely an attempt to cover up his own guilt. The main contention of the learned counsel for the Applicant is that the Applicant was not guilty of any fraudulent act and that the whole affair was on account of acts of omission in the Staff Selection Commission, Madras and at the Office of the General Manager, Hyderabad.

3. The validity of the charge memo itself has been assailed on the ground that it was too vague to enable the Applicant to project his defence. There was no specific averment in the charge memo of any act of omission on the part of the Applicant which was considered culpable. In this context, reliance has been placed on a judgement of the Tribunal in Rajkumar Singh Vs. Union of India & Ors. 1992(1) SLR 280. The allegation in that case was of showing false disposal of appeals but in the charge memo no particulars as to which and how many appeals were falsely shown as disposed of by the delinquent employee were given. The charges in respect of the Applicant before us are that he falsely stated that he appeared for the Clerks' Grade Examination held by the Staff Selection Commission, Madras in 1980 and that he gained wrongful employment without having appeared for the examination held by the Staff Selection Commission. The statement of articles of charge

read with the statement of imputation of misconduct discloses the allegations against the Applicant in sufficient detail and it cannot therefore be said that the charges suffer from vagueness.

4. Learned Counsel for the Applicant strongly urged that the Respondents suppressed the personal file of the Applicant which would have contained relevant and important documents such as his application form etc. Due to the non-production of the relevant documents the Applicant was handicapped in his defence. In any case, the Inquiry Officer should have drawn an adverse inference against the prosecution because of its wilful suppression of important documentary evidence. In support of his contention, the Applicant's counsel has drawn our attention to Kamala Kanta Biswas & Ors. Vs. Union of India & Ors. 1990(6) SLR 295. In that case, the Tribunal reiterated the well established principle governing the legal presumption that evidence which could be and is not produced would, if produced, be unfavourable to the person withholding it. A perusal of the enquiry proceedings in the present case would reveal that the personal file of the Applicant was not produced during the enquiry. It is, however, seen that even prior to the holding of the disciplinary enquiry the Asst. Director (Staff) vide his letter dt. 23.8.83 addressed to the Applicant stated that the Applicant's personal file containing copy of the nomination letter from the Staff Selection Commission and other related documents was misplaced during the shifting of the General Manager's office. In his deposition before the Inquiry Officer, the said Asst. Director (Staff) reiterated the same fact. Learned Counsel for the Applicant assailed the veracity of the evidence of this witness on the ground that he was responsible for misplacing the file

and hence his evidence should not be believed. He further
contended that the shifting of the General Manager's
complex back place much earlier than it is 1992. There may
not be sufficient evidence to establish when the new the
personal file was misplaced or lost but at the same time
there is nothing on record to suggest that the respondents
willfully withheld the personal file. As we are not satisfied
that there has been any willful withholding or suppression of
relevant evidence, the question of drawing an adverse
inference that the personal file of the Applicant, if
produced, would have been unfavourable to the prosecution
case, does not arise.

2. During the disciplinary enquiry the Applicant asked
for the examination of certain witnesses and the production of
certain documents. The Inquiry Officer having considered
the request of the Applicant allowed examination of 3 witnesses
and also the production of 3 documents which were
considered to be relevant. There is no doubt that as
contended by the Applicant's counsel, non-supply of copies of
relevant documents to the delinquent employee would amount to
denial of reasonable opportunity of defending himself.
A reference has been made to *Kashinath Dikshit Vs. Union of
India & Ors.* 1986 (2) SC 2118. A reference has also been
made to the case of *P. K. Narasimha Vs. State of A.P.*
1989 (2) AIR 630 wherein it was held that it was not open
on the Inquiry Officer not only to examine the witnesses
but also to get the documentary evidence produced and that
failure to do so would amount to violation of rules. In the
present enquiry, the Inquiry Officer examined 3 witnesses
and 3 documents in defence. All the documents
upon which the prosecution relied and also 3 documents which
the Applicant wanted to be produced to him have been produced.

and hence his evidence should not be believed. He further contended that the shifting of the General Manager's office complex took place much earlier and not in 1983. There may not be sufficient evidence to establish when and how the personal file was misplaced or lost but at the same time there is nothing on record to suggest that the Respondents wilfully withheld the personal file. As we are not satisfied that there has been any wilful withholding or suppression of relevant evidence, the question of drawing an adverse inference that the personal file of the Applicant, if produced, would have been unfavourable to the prosecution case, does not arise.

5. During the disciplinary enquiry the Applicant asked for the examination of certain witnesses and the production of certain documents. The Inquiry Officer having considered the request of the Applicant allowed examination of 2 defence witnesses and also the production of 3 documents which were considered to be relevant. There is no doubt that, as contended by the Applicant's counsel, non-supply of copies of relevant documents to the delinquent employee would amount to denial of reasonable opportunity of defending himself.

A reference has been made to Kashinath Dikshita Vs. Union of India & Ors. AIR 1986 SC 2118. A reference has also been made to the case of P.R.Narasimha Vs. State of A.P.

1989(5) SLR 630 wherein it was held that it was incumbent on the Inquiry Officer not only to examine the witnesses but also to get the documentary evidence proved and that failure to do so would amount to violation of rules. In the present enquiry, the Inquiry Officer examined 5 prosecution witnesses and 2 witnesses in defence. All the documents upon which the prosecution relied and also 3 documents which the Applicant wanted, were brought on record and duly proved

in evidence. The enquiry proceedings would thus reveal that the Applicant was given reasonable opportunity to defend himself.

6. The next contention raised on behalf of the Applicant is that the evidence adduced before the Inquiry Officer did not establish the charges against the Applicant and that the Inquiry Officer's findings are therefore perverse. In this context, Shri A. Shyam Rao has drawn our attention to the undermentioned cases:-

- (1) Paramhans Pandey Vs. Union of India & Ors. 1990(6) SLR 108.
- (2) Jagdish Baliram Totade Vs. M.N. Bhagat & Ors. 1990(6) SLR 604.

In the case of Paramhans Pandey Vs. Union of India & Ors. the Calcutta High Court found that some of the basic evidences were missing and it was left in the realm of surmises and conjectures. It was, therefore, observed that it would not be proper to proceed on surmises and conjectures to penalise the delinquent employee in the disciplinary proceedings.

In the case of Jagdish Baliram Totade Vs. M.N. Bhagat & Ors. the Bombay High Court held that if the case is based on no evidence or evidence other than on record the findings of the Inquiry Officer to the contrary would be perverse and deserve to be interfered with by the High Court in exercise of its jurisdiction. There can be no doubt that the charge against the delinquent employee has to be proved by relevant and cogent evidence and that the requirement of proof cannot be substituted by any amount of surmise and conjecture. In the instant case the evidence would show that the Applicant was appointed on the basis of a letter purporting to have been issued by the Staff Selection Commission, Madras. The relevant records held by the Staff Selection Commission, Madras showed that no such candidate in the name of S. Prakash (the Applicant) appeared or qualified in the typewriting or stenography test or in the

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Clerks' Grade and Stenographers Examination held by the Staff Selection Commission in 1980. This fact is established not only by the relevant documents but also from the evidence of the witnesses who examined the same. The statement of the Applicant that he appeared for the said test was thus false and the Inquiry Officer's findings to that effect cannot be said to be based on either surmise or conjecture. The contention of the Applicant that the Inquiry Officer's findings are perverse cannot, therefore, be accepted.

7. Another issue raised on behalf of the Applicant is that during the enquiry the burden was cast upon the Applicant to disprove the charges and that this is contrary to what has been held by the Hon'ble Supreme Court in Magraj Patodia Vs. R.K.Birla & Ors. AIR 1971 SC 1295. That was a case under the Representation of the People Act (1951). Relevant passage from the judgement reads as below:-

"The evidence adduced by a petitioner in an election case must be cogent and conclusive. A charge of corrupt practice cannot be equated to a criminal charge in all respects. Still burden of proving the commission of the corrupt practice pleaded is on the petitioner and he has to discharge that burden satisfactorily. In doing so he cannot depend on preponderance of probabilities. Many times corrupt practices at election may not be able to be established by direct evidence and may have to be inferred from the proved facts and circumstances but the circumstances proved must reasonably establish that the alleged corrupt practice was committed by the returned candidate or his election agent."

The above decision will be of no assistance to the Applicant's case because in the disciplinary enquiry that was conducted sufficient evidence had been led through the depositions of the K.Chandrasekharan (P.W.1) and Shri P.C.Mohanan (P.W.5) to show that the Applicant neither qualified in the examination held by the Staff Selection Commission, Madras nor his name was sponsored by the Commission for appointment by the Respondents. Moreover, in an election case, the plea of corrupt practice is somewhat akin to a criminal charge but a departmental

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disciplinary proceeding cannot be equated with a criminal trial. It is settled law that a disciplinary enquiry is not bound by the strict rules of evidence.

8. In Anil Kumar Vs. Presiding Officer & Ors. AIR 1985 SC 1121 it was observed that where the Inquiry Officer save setting out the names of the witnesses, did not discuss the evidence and merely recorded his ipse dixit that the charges were proved and did not assign a single reason why the evidence produced by the delinquent did not appeal to him or was considered not credit-worthy, the order of termination of service based on such proceeding was liable to be set aside. Placing reliance on the aforestated case, learned counsel for the Applicant assailed the Inquiry Officer's report on the ground that it was not a reasoned one. A careful perusal of the Inquiry Officer's report would at once negative the plea of the Applicant's counsel. There was detailed analysis of the evidence of the various witnesses and the documents brought on record, before the Inquiry Officer came to the conclusion that the charges against the Applicant were established and that the defence case lacked in substance.

9. Learned counsel for the Applicant has urged that the act/omission alleged against the Applicant would not amount to misconduct as it pertained prior to his appointment as a Govt. servant. In this context he has placed reliance on the judgement of the Allahabad High Court in Abdul Aziz Khan Vs. Union of India, 1974(1) SLR 67. Relevant portion of the judgement is reproduced below:-

"The plaintiff was accused of having committed gross misconduct and of failing to maintain absolute integrity and devotion to duty in-as-much 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 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."

10. A similar issue came up for consideration before the Hon'ble Supreme Court in S.Govinda Menon Vs. Union of India & Another, AIR 1967 SC 1274. Relevant portion of the judgement is reproduced below:-

"It is not necessary that a member of the Service should have committed the alleged act or omission in the 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, 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 member of the service in the course of 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."

The above observations of the Hon'ble Supreme Court pertain to any act or omission which renders a Govt. servant liable to penalty under the All India Services (Discipline & Appeal) Rules, 1969. Nevertheless, the ratio contained in the observations would squarely apply to "misconduct" which is punishable under the C.C.S.(C.C.A.) Rules, 1965 read with the C.C.S.(Conduct) Rules, 1964. We cannot, therefore, uphold the contention that the misconduct of the Applicant herein cannot be the subject-matter of a disciplinary enquiry under the C.C.S.(C.C.A.) Rules, 1965.

11. Finally, learned counsel for the Applicant has drawn our attention to a judgement of the Tribunal (New Bor

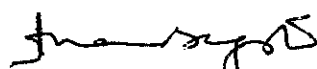
in Vijaya Venkatesh Pai Vs. Union of India & Others, 1988 LAB I.C.95. That was a case where the Applicant was appointed as a L.D.C. for which the age limit was 18 to 25 years. The Applicant therein disclosed her correct date of birth and furnished the relevant school record in support of her date of birth. According to the said date of birth she was over-aged for appointment as L.D.C. but the Staff Selection Commission failed to detect the same and recommended her for appointment. After she was appointed her services were sought to be terminated under Rule 5(1) of the C.C.S.(T.S.) Rules, 1965. Keeping in view the peculiar circumstances of the case, the Tribunal came to the conclusion that the benefit of the lapse on the part of the Staff Selection Commission and the Department must in equity go to the Applicant. As the Applicant neither furnished any false information nor resorted to any unfair means, a sympathetic view was taken and the order of termination was set aside. In the case before us the facts are different because the enquiry clearly established that the Applicant had given false information and obtained his appointment by fraudulent means. The question of taking a sympathetic view of the matter ought not ^{to} arise.

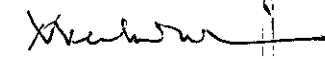
12. In the result, we are unable to accept any of the contentions/raised on behalf of the Applicant.

13. Learned Counsel for the Respondents has drawn our attention to a judgement of this bench of the Tribunal in O.A.No.324/90. The Applicant in that case was similarly situated as the Applicant herein. O.A.No.324/90, where also the validity of the penalty of dismissal was under challenge, was dismissed by judgement dt. 5.10.93. We are not inclined to be persuaded by the plea of the Respondents' counsel that the present

should therefore be disposed of similarly. The issues agitated in the present O.A. are somewhat different and we have examined them in the light of the facts and circumstances of this case.

14. We find that the application is without merit and it is hereby dismissed. There shall be no order as to costs.


(A.B.Gorthi)
Member(A).


(V.Neeladri Rao)
Vice-Chairman.

Dated: 26 Nov., 1993.

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Deputy Registrar(J)

To

1. The Chief General Manager, Union of India, Telecommunications, Hyderabad-1.
2. The Deputy General Manager, Competent Disciplinary Authority, Telecommunications, Hyderabad-1.
3. The Inquiry Officer & JTO, Telecommunications, Hyderabad-1.
4. The Director, Telecommunications, Warangal.
5. One copy to Mr.A.Shyam Rao, Advocate 3-5-42, Eden Bagh, Hyderabad.
6. One copy to Mr.N.R.Devraj, Sr.CGSC;CAT.Hyd.
7. One copy to Library, CAT.Hyd.
8. One spare copy.

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