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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A. No. 153/91.

Date of Judgement : 18/11/1993.

Smt. P. Rohini

.. Applicant

Vs.

Union of India, Rep. by

1. The Chairman,
Telecom. Commission,
New Delhi.

2. The Telecom. District
Manager, Eluru.

3. The Divl. Enginner
Telecommunications,
Eluru.

.. Respondents

Counsel for the Applicant :: Shri K.S.R. Anjaneyulu

Counsel for the Respondents :: Shri N.V. Ramana, Addl. CGSC

CORAM:

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

Hon'ble Shri T. Chandrasekhara Reddy : Member(J)

Judgement

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

The Applicant was recruited as a Telecom. Office Assistant (T.O.A. for short) in the Telecom. Division at Eluru on 3.2.81. On 12.2.86, she was served with a charge memo alleging that at the time of recruitment she furnished wrong information regarding the percentage of marks obtained by her in S.S.C. After a departmental disciplinary enquiry she was awarded the penalty of dismissal from service. As her appeal was rejected, she has filed this application praying that the order of penalty as also the order of the appellate authority be set aside and that she be put back in service with all consequential benefits.

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2. Shri K.S.R.Anjaneyulu, learned counsel for the Applicant assailed the validity of the penalty order on several grounds. His main contention is that there was no legal and admissible evidence to establish the charge. The delay in initiating and concluding the disciplinary proceedings resulted in injustice to the Applicant and that the refusal by the Inquiry Officer to produce the relevant documents and examine all the defence witnesses greatly prejudiced her in her defence.

3. The Respondents admit that the crucial document on which reliance was placed by the Inquiry Officer was the 'Z' register wherein the entries made against the name of the Applicant showed that she secured 75.6% marks in S.S.C. The Respondents further admit that all the original documents, such as the application submitted by the Applicant and the check slip etc., were missing from the records and were not traceable. It is, however, in the evidence of witnesses that the entries in the 'Z' register were made on the basis of data furnished by the candidates themselves in their applications, as found verified in the check slips. P.W.1, D.W.1 and D.W.3 testified to the effect that after ensuring that the particulars recorded in the 'Z' register were extracted correctly from the relevant documents, such as the applications and check slips, they had initialled/signed in the 'Z' register. They duly identified the 'Z' register and the entries made against the name of the Applicant. Therefore, notwithstanding the non-availability of the primary documents, such as the application submitted by the Applicant herself, it cannot be said that there was no evidence to justify the finding of the Inquiry Officer

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that the Applicant had herself furnished false information regarding the percentage of marks obtained by her in S.S.C. The last candidate, selected on the basis of percentage of marks, secured 74.4% marks and had the Applicant disclosed the truth that she had secured only 45.2% marks in S.S.C. she would certainly have not been selected. There was also nothing on record to show that the entries in the 'Z' register were either false or fraudulently made by the concerned officials. We cannot, therefore, accept the contention of the learned counsel for the Applicant that this is a case of no evidence.

4. Learned Counsel for the Applicant contended that due to the non-production of the application for recruitment submitted by the Applicant and the connected documents prepared at the time of her recruitment, the Applicant was unduly handicapped in establishing her innocence. It was the case of the Applicant that she correctly declared the marks secured by her in S.S.C. and that this could be verified only from the application submitted by her. The Respondents explained that the application form as also certain other related documents in respect of the Applicant were lost and hence could not be adduced as evidence during the enquiry. In support of the contention, due to non-production of important and relevant documents, the enquiry proceedings stood vitiated, Learned Counsel for the Applicant has drawn our attention to S. Vs. Union of India & Ors. [SLJ 1989(4) (CAT) 953]. In judgement, after making reference to the landmark judgement of the Hon'ble Supreme Court in State of Madhya Pradesh & Chintaman (AIR 1961 SC 1623), Trilok Nath Vs. Union of India & Ors. [1967 SLR (SC) 758] and Kashi Nath Dikshit Vs. Union of India (AIR 1986 SC 2118), the Tribunal observe

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the refusal by the Inquiry Officer to give to the delinquent officer the documents required for defence would amount to denial of reasonable opportunity and would vitiate the entire proceedings.

5. Whether a delinquent employee is denied 'reasonable opportunity' during a disciplinary enquiry is a question of fact which needs to be examined from the attendant circumstances. In the instant case, the Respondents found that the relevant file containing the application submitted by the Applicant and certain other related documents was missing. Accordingly, they relied only on the entries contained in the 'Z' register and this would be evident even from Annexure III to the charge memo. When a document sought by the delinquent employee is lost and cannot be produced during the enquiry, it has to be seen as to what extent, if any, ~~to which~~ the delinquent is prejudiced in his/her defence. It would be a travesty of justice, if in each and every case, where an important or essential document is lost, it is to be concluded that no valid enquiry could be held. So long there is a reasonable explanation as to the non-production of a document, it cannot be said that the delinquent is denied due opportunity. In the instant case, 'Z' register which was made at the relevant time and in due discharge of duties and identified by the witnesses who initialled/signed the same was produced in evidence to show that the Applicant declared the marks obtained by her in S.S.C. as 75.6%. She had ample opportunity to examine the register and cross-examine the witnesses who identified/proved the document. We are, therefore, of the considered opinion that in the instant case the Applicant cannot be said to have been denied due opportunity or prejudiced in any manner on account of the non-production of the documents demanded by her.

6. As regards calling all the defence witnesses, we find from the report of the Inquiry Officer that he examined four defence witnesses. Shri K.Venkata Ratnam was dropped as he had requested the Inquiry Officer not to call him as he was not keeping good health after retirement. The Inquiry Officer disallowed three other witnesses for the reason that their evidence would not be relevant. The contention of the learned counsel for the Applicant is that on account of non-examination of some defence witnesses, the enquiry is vitiated. In N.Viswanathan Nair Vs. Supdt. of Post Offices & Ors. I II(1990) ATLT (CAT) 673 it was held that "by dropping the defence witness without making any diligent efforts to procure his presence the Applicant was not given reasonable opportunity to build up his defence. It is settled law that the Inquiry Officer is not bound to call all the witnesses cited as defence witnesses. So long there is due application of mind by the competent authority and the request is turned down for reasons which are satisfactory, no objection can be taken to non-examination of some of the witnesses, unless it is shown that the delinquent is prejudiced in his/her defence thereby. The enquiry held in the case of the Applicant would clearly show that not only the Applicant was given reasonable opportunity to lead her defence, which she did by examining four/witnesses but also she cannot be said to have been prejudiced in her defence either by the non-production of the documents or non-examination of some of the witnesses in her defence.

7. Learned Counsel for the Applicant contended that the 'Z' register carries with it no evidentiary value and hence this is a case of no evidence and hence the penalty is liable to be set aside. We cannot accept this submission because in a departmental disciplinary enquiry, strict and sophisticated rules of evidence cannot be applied. So long there is some

evidence and so long as the findings of the Inquiry Officer are reasonable, it is not for the Tribunal to undertake a re-appraisal of the evidence.

8. Finally it was urged on behalf of the Applicant that the recruitment process was finalised on 3.2.81 but the issue was raked up and the Applicant was served with the charge memo on 12.2.86, i.e., after a period of 5 years and that, due to this inordinate delay, it should be held that the enquiry proceedings are vitiated. In support of his contention, learned counsel for the Applicant placed reliance on the following cases:-

- (1) Mohanbhai Dungarbhai Parmar Vs. Y.B.Zala & Another (1980 SLJ 477).
- (2) Manasaranjan Das Vs. State of Orissa & Ors. I 1973(2) SLR 553 I.
- (3) Kundan Lal Vs. The Delhi Administration, Delhi & Ors. I 1976(1) SLR 133 I.

In all the above cases, it was held that due to inordinate or unwarranted delay, the disciplinary proceedings deserved to be set aside. In coming to that conclusion, the facts of each case were kept in view. It is not laid down as a rule that disciplinary proceedings must be held or concluded within a specified time. In examining the question of delay, we must first see whether the delay was unreasonable or unjustifiable. Next we must take into consideration the likely prejudice caused to the delinquent in preparing the defence case. In the instant case, it is seen from the Respondent's reply that the Applicant was directed to produce the original educational certificate vide Divl. Engineer Telecommunications, Eluru letter dt. 19.11.1983, but ^{SLR} did not do so even till 15.12.84. The Respondents had to make a reference to the school authorities to ascertain the actual number of marks secured by the Applicant in S.S.C. The Headmaster sent his report vide letter dt. 18.2.85. Under these circumstances,

which show that the Applicant herself partly contributed to the delay, the Applicant cannot, ~~therefore~~, claim that the disciplinary proceedings be declared as vitiated due to the delay.

9. In the result, we find that the disciplinary proceedings including the penalty awarded suffer from no such irregularity or illegality as would justify our interference. The O.A. is, therefore, dismissed but there shall be no order as to costs.

T. Chandrasekhar Reddy
(T. Chandrasekhar Reddy)
Member (J).

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

Dated: 1 Nov 1993.

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8/11/93
Dy. Registrar (Judl.)

Copy to:-

1. The Chairman, Telecom, Commission, New Delhi.
2. The Telecom District Manager, Eluru.
3. The Divisional Engineer, Telecommunications, Eluru.
4. One copy to Sri. K.S.R. Anjaneyulu, advocate, CAT, Hyd.
5. One copy to Sri. N.V. Ramana, Addl. CGSC, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

Rsm/-

1 Nov 1993

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TYPED BY

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APPROVED BY

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: 1/1/1993

ORDER/JUDGMENT: ✓

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

O.A. No.

153/91

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.

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Central Administrative Tribunal
DESPATCH