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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.15/91.

Date of Judgement : 12.4.94

V.Paparao

.. Applicant

Vs.

1. Union of India, Rep. by
Secretary,
Dept. of Telecommunications,
Govt. of India,
New Delhi-110001.
 2. Chief General Manager,
Telecommunications,
Andhra Pradesh Circle,
Hyderabad-500001.
 3. Dy. General Manager,
Telecommunications,
West Godavari Dist.,
Eluru-534050.
 4. Divisional Engineer,
Telecommunications,
Eluru-534050.
- .. Respondents

Counsel for the Applicant :: Shri T.P.V.Subbarayudu

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

C O R A M

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

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

In this application the relief claimed by the applicant is for setting aside the order dismissing him from service and for reinstating him in service with all consequential benefits.

2. The applicant was appointed as Telecom. Office Assistant (T.O.A. for short) on 14.9.1982. He was served with a charge memo dt. 12.2.1986 alleging that he secured employment as T.O.A. by furnishing false date of birth

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in his attestation form. The applicant denied the charge and asserted that he mentioned the correct date of birth, viz: 10.6.1954 in the application form. During the enquiry, the application form was not produced by any witness. On the conclusion of the enquiry, the disciplinary authority imposed the penalty of dismissal. The applicant submitted an appeal but it was rejected by the appellate authority.

3. The main contention of the applicant is that in his application seeking employment as T.O.A., he recorded the correct date of his birth which is 10.6.1954. This was not perhaps noticed by the concerned officials and he was thus considered eligible and appointed as T.O.A. although he was over-aged for the said appointment. As regards the attestation form signed by the applicant showing his date of birth as 8.7.1957, the applicant asserted that it was a false document and that, in any case, his recruitment was done on the basis of information given in his application form only.

4. Learned Counsel for the applicant contended that there was no evidence to establish the charge against the applicant. ~~Admittedly~~ ^{and it is} The correct date of birth of the applicant is 10.6.1954, ~~which~~ ^{and it is} was duly reflected in the application form. During the enquiry the said application form was not produced. The attestation form produced in support of the charge was not duly proved. As regards the non-production of the application form during the enquiry, it is explained by the respondents that the applicant himself took the application form earlier and then claimed that it was lost by him. As regards the attestation form, it was duly produced in evidence by a witness and the applicant was allowed to cross-examine

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the said witness. There is no dispute that in the said attestation form, the date of birth of the applicant was shown as 8.7.57. When the Enquiry Officer found that in the attestation form the applicant declared his date of birth falsely, it cannot be said that his finding was perverse or not based on evidence. The applicant's counsel relied upon a judgement in the case of K.P.Poulose Vs. State of Kerala & Another, AIR 1975 SC 1259, to plead that due to the non-production of the application form, on the basis of which the applicant was given employment, the Enquiry Officer's finding that the applicant was guilty of the charge cannot be sustained. Relevant passage from the judgement is extracted below:-

4. We have been taken through all the relevant documents by the learned counsel for both sides and we are satisfied that Ext. P.11 and Ext. P.16 are material documents to arrive at a just and fair decision to resolve the controversy between the Department and the contractor. In the background of the controversy in this case even if the Department did not produce these documents before the Arbitrator it was incumbent upon him to get hold of all the relevant documents including Exts. P.11 and P.16 for the purpose of a just decision.

6. Under Section 30(a) of the Arbitration Act an award can be set aside when an Arbitrator has mis-conducted himself for the proceedings. Misconduct under section 30(a) has not a connotation of moral lapse. It comprises legal misconduct which is complete if the Arbitrator on the face of the award arrives at an inconsistent conclusion even on his own finding or arrives at a decision by ignoring very material documents which throw abundant light on the controversy to help a just and fair decision. It is in this sense that the Arbitrator has miscondacted the proceedings in this case. We have, therefore, no hesitation in setting aside such an award.

5. There can be no doubt of the importance of production of all essential and relevant documents relied upon to establish the charge. In the instant case the charge against the applicant was that he furnished wrong date of birth in the attestation form submitted by him in connection with his recruitment to the post of T.O.A. The attestation form itself was produced in evidence. The application form submitted by the applicant, if produced in evidence

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would certainly have shed further light on the issue, but as explained by the respondents, it was taken by the applicant himself who, instead of returning it to the department, stated that it was lost. The applicant claims advantage of a situation created by himself. In any case the attestation form having been duly adduced in evidence, we are of the considered opinion that non-production of the application form, in the stated circumstances, is not fatal to the findings of the Enquiry Officer.

6. The next contention raised by the learned counsel for the applicant is that the applicant was denied reasonable opportunity to defend himself during the enquiry. Neither he was allowed to give his defence brief nor was he permitted to examine the defence witness. A perusal of the enquiry proceedings reveal^{to} the contrary. The applicant, when called upon to proceed with his defence demanded that the application form submitted by him be produced. As the application form could not be produced during the enquiry due to its non-availability, the applicant, in protest, refused to give his defence brief or to call his witness. It cannot, therefore, be said that the applicant was not given a reasonable opportunity to lead his defence.

7. In Annexure IV to the charge memo it was stated that Shri A.L.N. Sastry, Headmaster of the School who counter-signed the attestation form would be one of the witnesses to be examined in support of the charge. During the enquiry, however, Shri Padmanabhacharyulu, the present Headmaster was examined to show that the date of birth recorded in the attestation form was wrong. Shri A.L.N. Sast

was not examined as obviously he was no longer the Headmaster of the said school. As the purpose of examining the Headmaster as a Witness was mainly to show that the date of birth recorded in the attestation form was false, we find nothing irregular if the Enquiry Officer examined the present Headmaster of the school.

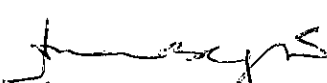
8. It was urged on behalf of the applicant that the Enquiry Officer was biased. The basis for such allegation was that the Enquiry Officer did not cause the application form to be produced in evidence and did not call Shri A.L.N.Sastry as a witness. The first representation of the applicant alleging bias was forwarded to the competent authority, who then rejected it. The applicant subsequently sent another complaint alleging bias on the part of the Enquiry Officer and demanding the enquiry be halted. The Enquiry Officer, rightly in our view, rejected the second complaint as baseless.

9. Finally it was contended by the learned counsel for the applicant that the respondents having selected the applicant and given him appointment should not have proceeded against the applicant, that too, after he had served the Department for over three years. In this context, he drew our attention to the judgement of the Calcutta Bench of the Tribunal in Vijaya Venkatesh Pai Vs. Union of India & Ors. (1988) 8 ATC 719. In that case, the employee, who was above the age limit prescribed by the Staff Selection Commission was selected and appointed due to the fact that his age was erroneously overlooked by the concerned officials. It was consequently held that the employee having worked for over one year and six months, the Department was not justified in proceeding

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to terminate his services in view of the principles of equity and estoppel. That was a case where the Government Servant made no false representation of his age. In the case before us, the allegation was that the applicant fraudulently gained employment by falsely stating that his date of birth was 8.7.1957. Had he disclosed his true date of birth he would not have been selected for appointment because he was above the prescribed age limit.

10. In the result, we find no merit in the application and it is, therefore, dismissed. No order as to costs.


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


(V.Neeladri Rao)
Vice-Chairman.

Dated: 12 April, 1994.


Deputy Registrar (Judl.)

br.
Copy to:-

1. Secretary, Dept. of Telecommunications, Govt. of India, Union of India, New Delhi-001.
2. Chief General Manager, Telecommunications, A.P.Circle, Hyderabad-001.
3. Dy. General Manager, Telecommunications, West Godavari District, Eluru-050.
4. Divisional Engineer, Telecommunications, Eluru-050.
5. One copy to Sri. T.P.V.Subbarayudu, advocate, Advocates Associations, High Court Buildings, Hyd.
6. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
7. One spare copy.
8. One copy to Library, CAT, Hyd.

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O.A. 15791

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COMPARED 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. GORTHY : MEMBER (AD)

AND

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

AND

THE HON'BLE MR. R. RANGARAJAN : M (ADMN)

Dated: 12/4/1994

ORDER/JUDGMENT

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

IN

O.A.No.

15791

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.

pvm

