

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.352/91

Date of Order: 22.3.94

BETWEEN :

K.Sree Ramulu

.. Applicant.

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

2. Telecom District Manager,
West Godavari,
Eluru - 534 050.

3. Divisional Engineer,
Telecom,
Eluru - 534 050.
West Godavari District.

.. Respondents.

Counsel for the Applicant

.. Mr.T.V.V.S. Murthy *or*
Mr. T Jayant

Counsel for the Respondents

.. Mr.N.V.Ramana

CORAM :

HON'BLE SHRI T.CHANDRASEKHARA REDDY : MEMBER (JUDL.)

HON'BLE SHRI H.RAJENDRA PRASAD : MEMBER (ADMN.)

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Order of the Division Bench delivered by
Hon'ble Shri T.Chandrsekara Reddy, Member (Jud1.).

This is an application filed under Section 19 of the Administrative Tribunals Act to set aside the dismissal order of the applicant dated 15.9.1990 passed by the 3rd respondent and confirmed by the 2nd respondent as per the order dated 3.1.1991 and to direct the respondents to reinstate the applicant in service with all consequential benefits and pass such other order or orders as may deem fit and proper in the circumstances of the case.

The facts so far necessary to adjudicate this OA in brief are as follows:-

2. The applicant herein was selected and appointed as Telephone Operator by the Divisional Engineer Telecom Eluru. He was first provisionally appointed w.e.f. 16.4.82 by order dated 26.5.82 and thereafter on regular basis by order dated 27.4.83. He was given quasi-permanent status by 29.11.85. The respondents entertained a doubt that the applicant had entered into service by producing bogus certificate and by giving a wrong date of birth. In view of the said suspicion the respondents called the applicant to submit the duplicate certificates of documents filed with this application for appointment to the post of Telephone Operator if originals are not available, informing the applicant, failing which that the applicant would be exposing himself for disciplinary action. The applicant did not produce the duplicate copies of the educational certificates as called upon by the respondents. So, the charge memo dated 17.4.1986 as against the applicant was

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issued under CCS (CCA) Rules, 1965 alleging that he obtained by wrongful means his appointment as Telephone Operator by furnishing false educational certificates. A regular enquiry officer was appointed and the enquiry was completed as against the applicant, and the enquiry officer submitted his report to the disciplinary authority. The disciplinary authority did not furnish a copy of the report to the applicant but dismissed the applicant as per the orders dated 25.8.1988. As against the dismissal order, the applicant preferred an appeal. The appellate authority as per its orders dated 12.1.90 confirmed the order of dismissal dated 25.8.1988 passed by disciplinary authority and dismissed the appeal of the applicant. Challenging the dismissal order of the applicant, the applicant filed OA.473/90 on the file of this Tribunal. As per judgement dated 23.7.90 in OA.473/90 the dismissal order passed against the applicant and as confirmed by the appellate authority was set aside on the ground that the applicant was not furnished with a copy of the enquiry report and non furnishing of the enquiry report to the applicant by the disciplinary authority before the disciplinary authority passed the order and denial of opportunity to make a representation as against the enquiry report was against the principles of natural justice. So, this Tribunal as per its orders dated 13.7.90 directed the respondents to furnish a copy of the enquiry report to the applicant and continue the enquiry from the point of furnishing a copy of the enquiry report. As per the direction of the Tribunal the enquiry was continued. But the applicant was kept under deemed suspension by orders passed by the competent authority w.e.f. 25.8.88. The disciplinary authority had forwarded a copy of the enquiry report to

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the applicant along with the c
25.8.88. It was brought to the
that a copy of the enquiry repo
furnished to him along with dism
the applicant was at liberty to s
if any to the enquiry report. The applicant submitted
his representation dated 4.8.90. Taking into considera-
tion the enquiry report and the representation of the
applicant submitted to the disciplinary authority as
against the findings of the enquiry officer and other
material, the applicant was again dismissed by the
competent authority as per the orders dated 15.9.90.
The applicant preferred appeal again to the competent
authority on 12.10.90. As per the orders dated 3.1.91
the appellate authority confirmed the dismissal order
by dismissing the appeal of the applicant. That is how
the applicant once again is before this Tribunal question-
ing the dismissal order dated 3.1.91 passed by the
appellate authority as against the applicant confirming
the order of the dismissal order dated 15.9.90 passed by
the disciplinary authority.

3. Counter is filed by the respondents opposing
this O.A.

4. We have heard in detail Mr.T.V.V.S.Murthy,
counsel for the applicant and Mr.N.V.Ramana, Standing
Counsel for the respondents.

5. Mr.T.V.V.S.Murthy, contended that the dismissal
order passed as against the applicant is liable to be
set aside on 2 grounds, namely
that the principles of natural
justice are violated in this case that the applicant
had not been paid subsistence allowance and so the

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applicant's ~~officer's~~ fundamental rights violated. Before considering the first contention raised on behalf of the applicant by Mr.T.V.V.S.Murthy a few admitted facts have got to be stated. The applicant had passed S.S.C. examination. At the time of ~~the~~ passing of the SSC examination, the applicant had secured only 46.2% of marks. The date of birth of the applicant as shown in the SSC register is 15.8.61.

6. At the time of entry into service as Telephone Operator the applicant had furnished the following particulars to the competent authority in his application and in the attestation form:-

1. 76.8% marks as having secured by him in S.S.C examination.

2. Date of birth as 15.8.62.

7. During the course of the hearing of this OA learned counsel for the applicant very ~~fairly~~ conceded that the applicant had secured 46.2% marks during the year 1977-78 and the date of birth as entered in SSC register is 15.8.61. With 46.2% marks in SSC examination the applicant absolutely had no chance for selection as Telephone Operator. ~~But~~ for showing as 76.8% the marks in SSC as having been secured the applicant would not have been eligible for the said post. It is not in dispute that the applicant had not secured 76.8% marks in the SSC examination but only had secured 46.2%. So, it is apparent that the applicant by producing bogus marks had secured the post of Telephone Operator by fraudulent and deceitful means. The applicant absolutely had no chance to enter into service with his date of birth 15.8.61 as the applicant would have been overaged with his date of birth as 15.8.61. So, to

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overcome the disqualification with regard to the age the applicant had also furnished the date of birth as 15.8.62 which admittedly is not correct date of birth.

8. From the admitted facts there cannot be any doubt that the applicant had secured a job as Telephone Operator by fraudulent means. In AIR 1991 SC 909 U.P. Junior Doctor's Action Committee v. Dr. B. Sheetal Nandwani and others respondents, the Supreme Court was dealing with a case where a fake order in a non-existent writ petition was produced before the High Court for securing order to the effect that the Selection Examination for filling up of the seats in the post-graduate Medical Courses of the seven medical colleges in U.P. were cancelled and a direction was issued to the State Government to grant admission on the basis of M.B.B.S. results, and on the basis of those two orders some admissions were secured in some medical colleges it was held that those who had taken admission on the basis of such orders, that is on the basis of the M.B.B.S. results without going through a selection examination could not be allowed to continue in the Post-Graduate Courses. In the said case at para 5 of the judgement the Supreme Court has stated the circumstances in which such benefit has been taken by the candidates concerned would not justify attraction of the application of rules of natural justice of being provided an opportunity to be heard. So, from the said judgement it is quite evident when certain benefits were obtained by fraudulent means by producing fake documents the concerned persons cannot urge that the principles of natural justice are violated. So, in view of the said Supreme Court decision it is not open for the applicant that the principles of natural justice are violated.

Another decision of the Supreme Court in AIR 1993 SC 2638 Gurdeep Singh v. State of J&K and others respondents,

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the Supreme Court has held as follows :-

"Unduly lenient view of the courts on the basis of human consideration in regard to selection of candidate for admission to educational institution by adopting illegal means on the part of the authorities had served to create an impression that even were an advantage is secured by stratagem and trickery, it could be rationalised in courts of law. Courts do and should take human and sympathetic view of matters. That is the very essence of justice. But considerations of judicial policy also dictate that a tendency of this kind where advantage gained by illegal means is permitted to be retained will itself, engender cynical disrespect towards the judicial process and in the last analyses embolden errant authorities and candidates into a sense of complacency and impunity that gains achieved by such wrongs could be retained by an appeal to the sympathy of the court. Such instances reduce the jurisdiction and discretion of courts into private benevolence".

9. It is clear from the judgement that any advantages obtained by fraudulent means cannot be allowed to continue. The observations made by the Supreme Court are clearly applicable to the facts of this case. In view of the fraud played by the applicant in securing the job the applicant does not have a right at all to ask this Tribunal to reinstate him in service. As a matter of fact this is a case where the applicant absolutely have no eligibility for the said post as he had not secured the required number of marks in the SSC examination. It is not in dispute for appointment as Telephone Operator during the relevant period only SSC marks had been taken into consideration. The applicant was also disqualified for appointment to the said post as he was overaged by the time the applicant had applied. So, it is quite evident that the applicant absolutely had no right for appointment to the said post. The appointment of the applicant in view of the facts and circumstances of the case is void in law. So, it is not open for the applicant to plead that either the principle of natural justice are

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Copy to:-

1. Secretary, Ministry of Communications, Union of India, New Delhi-1.
2. Telecom District Manager, West Godavari, Eluru-050.
3. Divisional Engineer, Telecom, Eluru-050, W.Gdt.
4. One copy to Sri. T.V.V.S.Murthy, 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.

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violated or he had been prejudiced in his defence in any way. Mr.T.V.V.S.Murthy contended subsistence allowance was not paid for the deemed suspension period and during the period the enquiry was continued after the judgement of this Tribunal in TA.473/90 and so he had been prejudiced in his defence and that the fundamental rights of the applicant are violated. Mr.N.V.Ramana, for the respondents submitted that for the deemed suspension period the subsistence allowance had been paid in a lumpsum as per the order dated 15.9.1990 and during the period the enquiry was continued after the judgement in OA.473/90, that the applicant had been paid subsistence allowance. So, in view of the categorical statement made by Mr.N.V.Ramana the contention of the applicant is that he had not been paid subsistence allowance during the deemed suspension period and during the period the enquiry was continued can not be accepted. Even accepting the argument of Mr.T.V.V.S.Murthy that the applicant had not been paid subsistence allowance during the enquiry period continued after the judgement in OA.473/90, in view of the facts and circumstances of the case we are unable to understand how the applicant is prejudiced in his defence. As already pointed out the applicant absolutely had no chance for appointment to the said post of Telephone Operator with his performance in his SSC examination. So, we are of the opinion even for any reason the subsistence allowance during the enquiry period had not ^{been} paid to the applicant the same has got nothing to do with the result in this OA. So, we see no merits in this OA and the OA is accordingly dismissed. No order as to costs.

H.RAJENDRA PRASAD
(H.RAJENDRA PRASAD)
Member (Admn.)

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Dated: 22nd March, 1994

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(Dictated in Open Court)

T.C. CHANDRASEKHARA REDDY
(T.C. CHANDRASEKHARA REDDY)
Member (Judl.)

Dy. Registrar (J)

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O.A. 352/41

TYPED BY

COMPARED BY

CHECKED BY

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(AD)

AND

THE HON'BLE MR.TCCHANDRASEKHAR REDDY
MEMBER(JUDL)

AND

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

Dated: 22/3/1994

ORDER/JUDGMENT

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

in

O.A.No.

352/41

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.

