

(108)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD.

* * *

O.A. 409/91

Dt. of Decision : 23.3.1994.

S. Phanibhushana Rao

.. Applicant.

Vs

1. Union of India, Rep. by
the Secretary,
Ministry of Communications,
New Delhi - 1.
2. Telecom District Manager,
West Godavari, Eluru-534 050
W.G. District.
3. Divisional Engineer,
Telecommunications,
Eluru - 534 050(W.G.Dt.)

.. Respondents.

Counsel for the Applicant : Mr. T.V.V.S.Murthy.

Counsel for the Respondents : Mr. NV.Ramana, Addl. CGSC.

CORAM:

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

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

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ORDER

[(As per Hon'ble Shri T. Chandrasekhara Reddy, Member(J))]

The facts and issues rasied in OA 352/92 are similar to the present OA (409/91). We have dismissed OA 352/92 as per our orders dated 22.3.94 for reasons mentioned therein.

2: Today we have heard Mr TVVS Murthy, learned counsel for the applicant and Mr NV Ramana Standing Counsel for the respondents.

3. During the course of the hearing of this OA, Mr TVVS Murthy submitted that the applicant had secured only 40.2% marks in his ~~ex~~ SSC examination. It is not in dispute that the applicant while applying for the post of Telephone Operator in the year 1981 had shown as having secured 79.8% of marks in his SSC examination. It is also not in dispute that the applicant had submitted bogus documents and educational certificates showing that he had secured 79.8% of marks in his SSC examination. The applicant purposefully to make himself eligible for selection ^{to} ~~of~~ the said post seems to have shown his marks as 79.8%. It is only due to inflated marks and in producing ~~the~~ false certificates that the applicant had been selected for the said post. With the marks of 40.2% secured in the SSC examination, the applicant had absolutely no chance to be selected to the said post of Telephone Operator. It is quite evident that the applicant by playing fraud on the department and by ~~deceitful~~ means had secured the said post of Telephone Operator. So, in view of this position, the OA filed by the applicant is liable to be dismissed and is accordingly dismissed.

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4. In AIR 1991 SC 909 UP Junior Doctor's Action Committee Vs Dr. B. Sheetal Nandwani and others respondents the Supreme Court held as follows:-

"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 UP 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 MBBS results without going through a select examination could not be allowed to continue in the post-Graduate courses and that the first order being non-existent should be declared to be a bogus one and the second order made on the basis of the first order should be set aside as having been made on the basis of misrepresentation.

In such a case, the circumstances in which such benefit was 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."

Another decision of the Supreme Court in AIR 1993 SC 2638 Gurdeep Singh Vs State of J&K and others respondents the Supreme Court 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 has served to create an ~~exemption~~ impression that even where 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 jeopardise the purity of selection process itself; engender cynical disrespect towards the judicial process and in the last analysis 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 reduces the jurisdiction and discretion of courts into private benevolence."

The observations of the Hon'ble Supreme Court in the above two decisions would apply on all fours to the case on hand.

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5. As could be seen, the applicant does not have any right to hold the post. It is only a ~~xxx~~ candidate that has been found to be eligible for the post and is selected and is appointed, gets a right to hold the post and continue in the post. As the applicant does not have any right either to hold the post or continue in the post, it is not for the applicant to complain that the principles of natural justice are violated.

6. So, we see no merits in this OA and is dismissed accordingly. The parties shall bear their own costs.

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

23 MAR 94

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

Dated: 23rd March, 1994

(Dictated in the Open Court)

Prakash
3-3-94
Deputy Registrar (J)CC

To sd/mvl

1. The Secretary, Union of India,
Ministry of Communications, New Delhi-1.
2. The Telecom District Manager, West Godavari,
Eluru-050-W.G.Dist.
3. The Divisional Engineer, Telecommunications,
Eluru-534050.
4. One copy to Mr.T.Jayant, Advocate & Mr.T.v.v.S.Murthy, Advocate,
CAT.Hyd.
5. One copy to Mr.N.v.Ramana, Addl.CGSC.CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

pvm

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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(AD)

AND

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

AND

it R. S. Endre prasad

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

Dated: 23 - 3 - 1994

~~ORDER~~ JUDGMENT

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

O.A.No.

in
No 9/91

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.

