

(66)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

D.A. 1198/91.

Dt. of Decision : 25.7.94.

Mr. Y.V.S.B.K.V.Prasad

.. 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. Qivisional Engineer,
Telecommunications,
Eluru-534 050,
W.G. District.

.. Respondents.

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

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

CORAM:

THE HON'BLE SHRI A.V. HARIDASAN : MEMBER (JUDL.)

THE HON'BLE SHRI A.B. GORTHI : MEMBER (ADMN.)

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25th
July

ORDER

¶ As per Hon'ble Shri A.B. Gorthi, Member (Admn.) ¶

The grievance of the applicant is, on account of the order dt. 4.10.1990 by which he was dismissed from the service. The order of dismissal was confirmed by appellate authority on 3.1.91. The claim of the applicant is, for setting aside the order of dismissal passed by the disciplinary authority, as also, the appellate authority's order rejecting his appeal, and to reinstate him in service with all consequential benefits.

2. The applicant was selected and appointed as Telecom Office Assistant (TOA) by the Divisional Engineer, Telecom, Eluru w.e.f., 6.7.81 by an order dt. 15.7.81. The original appointment was on ~~as~~ a provisional basis, but it was made regular after due verification by an order dt. 2.1.1982. While the applicant was satisfactorily performing his duties, he was surprised to receive a memo dt. 30.6.84 directing him to submit original educational certificates. The applicant replied that all the original certificates had already been submitted by him at the time of his selection. Notwithstanding the same, the respondents served him with a charge memo dt. 12.2.86 alleging that, he had furnished wrong information regarding the School in which he studied SSC, and regarding the percentage of marks he secured in SSC in connection with his initial recruitment as TOA in 1981. A regular departmental enquiry was held the at end of which he was found guilty and awarded the penalty of dismissal from service. His appeal to the competent authority was rejected.

3. Heard learned counsel for both the parties.

Mr. T.V.V.S.Murthy learned counsel for the applicant has assailed the validity of the penalty order on several grounds. Firstly, he contended that the applicant's conduct which was anterior to the date of his selection, ~~not~~ could be made the subject matter of charge, as such conduct ^{under C.C.S. (Conduct) Rules 1964} could not be said to ~~be~~ mis-conduct. In support of his contention, he has relied on Abdul Aziz Khan Vs Union of India 1974 (1) SLR 67. The contention of the applicant's counsel cannot be accepted for the reason, that it is now well settled that any misconduct ~~relating~~ to securing appointment in Government service would amount to mis-conduct under the CCS (Conduct) Rules 1964. We have taken a similar view in some of the earlier cases wherein the applicant were similarly situated as the applicant herein.

4. It is further contended by Mr. T.V.V.S.Murthy learned counsel for the applicant, that the authorities are estopped from reopening the matter and initiating the disciplinary proceedings, after having conducted proper selection and selected the applicant. We cannot accept ~~this~~ contention as the principle of estoppel cannot apply to an action of a party which was ~~assent~~ ^{in result of} mis-representation or ~~fraud~~.

5. As regards the disciplinary proceedings, it was strongly urged by the applicant's counsel that ^{the} applicant was denied reasonable opportunity to ~~establish~~ his innocence during the enquiry. The applicant required 5 documents for his defence, but his request ~~was~~ rejected. Similarly one of the 4 ~~defence~~ ^{witnesses} cited by him, was not examined.

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In this context, the disciplinary proceedings would reveal that the documents asked for by the applicant were not available and could not be reproduced. As regards one of the defence witnesses, efforts were made to procure his presence and even summons were issued, but the individual failed to turn up. In these circumstances, it is apparent that the concerned authorities acted reasonably and there is nothing on record to show as to how the applicant could be said to be prejudiced in his defence by non-production of the documents/witnesses in his defence.

6. We have carefully examined material on record, as also, a copy of the attestation form shown to us. There can be no dispute that in the attestation forms signed by the applicant himself he had stated that he studied SSC in Z.P.High School, Tamirisa. Accordingly, the respondents referred the matter to the Headmaster, Z.P.High School, Tamirisa to ascertain whether the applicant did study in the said High school. The Headmaster vides his reply dt. 27.10.04 stated that after verification of his School records, it was found that the applicant had not studied in that school at any time and had not appeared for SSC examination either as a private candidate or through the school at any time. The said headmaster was examined as a prosecution witness during the enquiry also. The applicant in his defence contended that the attestation forms was a sham documents and no reliance can be placed in it. The said defence plea taken by the applicant during the enquiry has been rightly, in our view, rejected by the enquiry officer by the disciplinary authority.

8. The respondents placed reliance on the entries in the Z Register, which is a document prepared in due discharge of official duties by the concerned officials. The extract of the Z Register would indicate that the applicant had secured 80.40 marks in matric and that his date of birth as 10-5-58. The contention of the respondents is, that the entry in the Z register were made based on the data furnished by the applicant himself in his application form, supported by the documents Annexed to his application. The applicant questioned the admissibility ~~as~~ also ~~the relevance~~ of the entries in the Z register. Learned counsel for the respondents has clarified that no candidate who secured less than 79% marks was selected during the said selection, and the question of selecting the applicant had secured lesser percentage of marks, would not have arisen. The applicant's contention is, that he studied in the Government junior College, Avanigadda and that he correctly reflected the marks secured by him as 39.6%. If any wrong entry has been made in any of the registers, the applicant was not responsible. The plea of the applicant gets negatived from the fact that in the attestation form he himself declared that he studied in Z.P. High School, Tamirisa. This supports the respondents' contention that the applicant, at the time of his selection, submitted a false SSC certificate showing not only that he studied in Z.P. High School Tamirisa, but also, that he secured 80.40% marks as reflected in the relevant column of the Z Register.

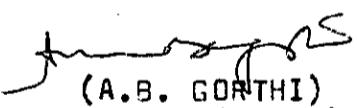
8. The evidence that was thus adduced during the enquiry was relied upon by the enquiry officer and the disciplinary authority in finding the applicant guilty of the charge. Because of the fact that some of the crucial documents relevant to the case, such as, the application form

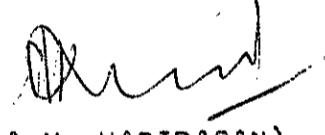
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submitted by the applicant himself and the check list that was supposed to have been prepared by the respondents before the preparation of the Z Register were lost and were not traceable, it was because of this that the applicant could with considerable force attack whatever the evidence was left adduced to inculpate him.

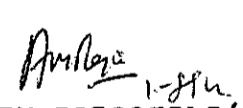
9. The disciplinary authority having gone through the enquiry proceedings and having come to the conclusion that the applicant was guilty of the charge, on the basis of the evidence adduced during the enquiry, we find no justification for interfering with the same. The appeal submitted by the applicant was also duly examined by the competent authority and was rejected.

10. In the result, we find no merit in this application and the same is hereby dismissed. There shall be no order as to costs.


(A.B. GORTHI)
MEMBER (ADMN.)


(A.V. HARIDASAN)
MEMBER (CUDL.)

Dated : 25th July 1994.
(Dictated in Open Court)


DEPUTY REGISTRAR(J)

spr/mvl

Copy to:

1. The Secretary, Ministry of Communications, Union of India, New Delhi-1-
2. The Telecom District Manager, West Godavari, Eluru - 534 050.
3. Divisional Engineer, Telecommunications, Eluru - 534 050. West Godavari District.
4. One copy to Mr.T.Jayant, Advocate, CAT, Hyderabad.
5. One copy to Mr.N.V.Ramana, Addl.CGSC, CAT, Hyderabad.
6. One copy to Library, CAT, Hyderabad.
7. One spare copy.

6th Aug
M 29/7/94
YLKR

Typed by
Checked by

Compared by
Approved by

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR.A.V.HARIDASAN: MEMBER(J) ✓

AND

THE HON'BLE MR.A.B.GORTHI : MEMBER(A) ✓

Dated: 25.7.94

ORDER/JUDGMENT. ✓

M.R.P./C.P.NO:

G.A.NO. 1198/91 ✓

T.A.N.

(W.P.NO. _____)

Admitted and Interim Directions
Issued.

Allowed.

Disposed of with directions.

Dismissed. ✓

Dismissed as Withdrawn.

Dismissed for Default.

Rejected/Ordered. (8)

No order as to costs.

