

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD.

OA. 851/92

Date of Judgment: 28.9.95.

Between:

T. Krishna Murthy ... Applicant.

Vs.

1. The Director, Telecommunications, Hyderabad Area, Hyderabad.
2. Deputy General Manager (P&T), Hyderabad Telephones, Hyderabad.
3. The General Manager, Telecom, District, Suryalok Complex, Hyderabad-33.
4. The Government of India, Min. of Communications, Dept of Telecommunications, New Delhi-110 001.

... Respondents.

COUNSEL FOR THE APPLICANT : SHRI B. NARSIMHA SARMA

COUNSEL FOR THE RESPONDENTS: SHRI N. V. RAGHAVA REDDY.
ADDL. CGSC.

CORAM:

HON'BLE SHRI JUSTICE V. NEELADRI RAO, VICE CHAIRMAN
HON'BLE SHRI R. R. NGARAJAN, MEMBER (ADMN.).

JUDGMENT

(As per Hon'ble Shri Justice V. Neeladri Rao, Vice-Chairman)

The applicant was working as Stenographer in the office of the Divisional Engineer, Telecommunications, Rural, Hyderabad from 16.11.78. He was eligible to appear for the competitive examination for promotion to the cadre of Junior Engineer in 1985. He had written the Papers I and II held on 10-7-85 and Papers III and IV held on 11-7-85 of the said competitive examination.

2. Charge Memo dated 31.7.86 was issued to him with the following charge:

and Sri Bhavanarayana, and Shri M.V.S.Reddy. The applicant raised an objection that as they were not cited as witnesses in the charge memo, they could not be examined and in support of it Rule 14(15) of the CCA Rules was relied upon (but instead of referring it as Rule 14(15), it was referred to as para 15 under Rule 14). Thereupon the enquiry officer referred the matter to the disciplinary authority. Then by letter dated 7-10-87 (Annexure-III to the rejoinder of the applicant) the enquiry officer was informed that the matter has to be considered against Rule 14(15) of the CCA Rules. Thereupon the enquiry officer informed the applicant by letter dated 12-10-87 that the witnessss referred to by the presenting officer that is, the invigilators, etc, would be examined at the date of next hearing. Then the applicant had given representation dated 19-10-87 raising the same objections in regard to the examination of the witnesses who were not cited in the charge Memo. (Vide Annexure-IV to the rejoinder). It was further stated in the said representation that it was not open to the Vigilance Officer to give any instructions to the enquiry officer in regard to the enquiry. Thereupon the enquiry officer informed the applicant by letter dated 22-11-87 that the decision referred to in the letter dated 12-10-87 is that of the Dy.General Manager, Operations(Disciplinary Authority) and it was communicated to him through the Vigilance Officer, and he permitted the presenting officer to examine the ~~invigilators~~ invigilators and Shri Appalaraju as they were signatories to the complaint given by Shri E.S.R.Murthy, the supervisor to Shri Mukherjee, and the copies of the statements of those witnesses recorded by the vigilance officer during investigation were given to the applicant.

4. The main contentions for the applicant are as under:

(i) The answer scripts in papers II to IV which were sent to the G.E.Q.D., were not handed over by the applicant and he had never placed them in the answer scripts given by him, and he handed over the answer scripts to the invigilator and he had not handed over the answer scripts in regard to paper-IV to Shri Appalaraju. Even the latter had not stated that the applicant handed over the answer

wherein it was stated that Shri S. Appalaraju, TOA in the office of D.E.Telem, Rural, Hyderabad who was enlisted for the said examination for clerical assistances handed over the paper-IV of the applicant and as it ~~xx~~ contained papers folded at number of places he (the supervisor) had a doubt about the genuineness of the folded papers and hence he compared the same with the signature of the applicant in the hall ticket and it was found that the hand-writing on the said paper was at variance with the hand-writing of the applicant in the hall ticket and when he enquired it was found that the applicant had already left. The said report was signed by all the six invigilators and also Shri S. Appalaraju and Shri P. Bhavanarayana, who was also a TOA in the office of the D.E.Telem, Rural Hyderabad and who was also drafted for clerical assistance at the said examination. The said supervisor reported the matter to the Vigilance officer of the Telecom Circle and the latter had taken statements from all concerned. The Vigilance Officer had referred matter with answer scripts in paper I to IV of the Roll No. APA 111/85 which are in regard to the applicant, to the Government Examiner for Questioned Documents (GED), Govt. of India, Hyderabad and the latter opined that the answer scripts relating to Paper-I were in the handwriting of the applicant while the answer scripts relating to Papers II to IV were not in the hand-writing of the applicant. It is stated for the respondents that there upon the charge memo, dated 31-7-86 was issued to the applicant. As the applicant denied the charge, the enquiry under Rule 14 of the C.C.S. (C.C. & A) Rules was conducted. The further case of the respondents is that the enquiry under Rule 16 of the C.C.A. Rules was held against Shri S. Appalaraju for the role played by him that is, in collecting the paper from the applicant and handing over the same to the supervisor when he was not expected to collect the same from the examinees, and an order was passed imposing punishment of withholding one increment without cumulative effect in regard to Shri Appalaraju. The Presenting Officer requested the enquiry officer to permit him to examine all the six invigilators, Shri Appalaraju

if it is of the opinion that the production of such evidence is necessary, in the interests of justice.

Note:- New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally."

The witnesses who were referred to in the charge memo, and for whose evidence the presenting officer made a request, signed in the report dated 11-7-85 of Shri E.S.R.Murthy, the supervisor which was addressed to Shri Mukherji, the valuer of Paper-IV. Thus their evidence is only to corroborate the evidence of Shri E.S.R.Murthy who was already cited in the charge memo, to the effect that Shri S.Appalaraju who was drafted for clerical assistance handed over the paper-IV bearing roll number APA-111/85 which is that of the applicant and as it contained papers with number of folds the supervisor doubted the genuineness and when he enquired about the applicant it was stated that he had already left and then he compared the hand-writing therein with the hand-writing of the applicant in the hall ticket and as it varied he had sent that report and as he had done it in the presence of all the invigilators and Shri S.Appalaraju and the other T.O.A. who was also drafted for clerical assistance, their signatures were also obtained on the same. Hence their evidence is not for filling up any gap. It was only to corroborate the evidence of Shri E.S.R.Murthy. The Enquiry Officer made it clear in the letter dated 22-11-87 addressed to the applicant that as they were signatories to the main complaint it has to be held that they would strengthen the main complaint and hence they cannot be held as 'foreign' witnesses in any sense of the term. Thus there is no need to refer to ATR 1990(1) CAT 372*, judgment of the Ernakulam Bench relied upon for the applicant and further it was observed in view of the facts therein that the additional witness was cited for filling up the gap.

* P. Parameswaran Nair Vs. Sr. Supdt. of Post Offices

scripts in regard to Paper-IV. Thus there is no evidence to establish that he placed the answer scripts in the handwriting of others in the answer scripts handed over by him by the invigilator. The charge is held to have been proved on the basis of suspicion on surmises. The charge as against him has to be held as not proved as there is no evidence to substantiate it.

(ii) No witness who is not cited in the charge memo can be examined to fill up the gap. The additional witnesses were examined only to fill up the gap. Hence their evidence has to be excluded. Even if it is necessary to examine a witness who is not cited in the charge memo, the same has to be considered only after the witnesses cited in the charge memo are examined and there is an illegality in examining the witnesses who were not cited in the charge memo, even before the witnesses cited in the charge memo were examined. In view of the said infirmity the entire enquiry proceedings have to be held as vitiated and hence the order of punishment has to be set aside.

5. We will refer to the latter contention first.

(1) Rule 14(15) of the C.C.A. Rules reads asunder:

" 14. PROCEDURE FOR IMPOSING MAJOR PENALTIES:

(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before production of such new evidence, exclusive of the day of adjournment and the day to which the enquiry is adjourned. The inquiring authority shall give the government servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the government servant to produce new evidence

increment for one year without cumulative effect was ordered to be stopped as punishment for his alleged role in the examination, that is on the basis of the allegation that even though he was not entrusted with the duty of collecting the answer scripts from the examinees he collected paper-IV of the applicant and handed over the same to the supervisor. Of course Shri S. Appalaraju denied it. But the enquiry officer and the disciplinary authority and also the appellate and revisional authorities believed the version of the supervisor that it is Shri S. Appalaraju who handed over the paper-IV of the applicant to him (supervisor).

Rule 14(25) states that before the close of the case before the disciplinary authority, the enquiry officer in his discretion can permit additional evidence. It refers to the outer limit only. It does not indicate as to when such additional evidence can be permitted. The additional evidence in this case, as already observed, is by way of corroboration. Their signatures are there in the report given by the supervisor on 11-7-85, the very day on which the Paper-IV bearing roll number-APA-111/85 pertaining to the applicant was handed over to the supervisor. Then it cannot be held that there is any irregularity as it is a case of granting permission to examine the witness who signed in the report given by Shri E.S.R. Murthy who was cited as witness. The stage at which the additional evidence can be permitted before the closure of the case on behalf of the disciplinary authority depends upon the facts and circumstances of each case. Assume a case where a witness cited in the charge memo, was examined with reference to facts in the documents maintained in the usual course. If the presenting officer makes a request for marking those documents, when they were not referred to in the list of documents in the charge memo, will it be a case where such permission has to be given even before that witness is cross examined or whether it has to be postponed till all the witnesses cited in the charge memo are examined. It may be helpful even to the delinquent employee to look into the documents with reference to which the witness is examined

In para 7 of the representation dated 19-10-87 the applicant stated that rule 14, sub-rule (15) permits production of new documentary evidence and it does not permit the introduction of witnesses who were not cited in the charge memo. But even the learned counsel for the applicant has not submitted to that effect. The words 'to produce evidence' in Rule 14(5) include oral evidence and there is nothing to indicate that it refers to only documentary evidence. In view of the fallacy in regard to the said plea of the applicant, even the learned counsel for the applicant had not submitted that no witness who is not cited in the charge-memo, can be examined even if there is justification to examine him/them.

In the rejoinder it is stated that the applicant was not permitted to cross examine the additional witnesses that is the witnesses who were not cited in the charge memo, and he had put only some questions to them as he was asked

to do so by the enquiry officer. But such a plea was not taken even before the enquiry officer.

It is also pleaded in the rejoinder that these additional witnesses were examined in the first instance and then the applicant was not allowed to cross examine and then they were again examined later to fill up the gaps. But when the copies of the statements of these witnesses which were recorded during the investigation were supplied to the applicant, it is open to him to cross examine those witnesses if they had come up with any additional facts which were not in their statements. But no argument was advanced in regard to the same even though such a plea was taken in the rejoinder.

Shri M.V.S. Reddi was examined only in regard to the punishment that was imposed on Shri S. Appalaraju. His evidence is also in the nature of corroboration for the said Shri S. Appalaraju himself had admitted that an imprisonment for one year was not sufficient for the punishment for his alleged role in the examination, that is on the basis of the allegation that he was not instructed to do so. The learned counsel for the applicant submits that it is for the court to accept or reject the said evidence of Mr. S. Appalaraju and it is not for the court to rule on the

to decide as to whether any witness cited has to be examined or not. But of course it is open to the delinquent to examine such witness as a defence witness if he feels that he is going to speak in his favor. If the witnesses cited are not examined with oblique motive, the said fact also has to be taken into consideration for appreciating the evidence on record. The reasons for not examining those two witnesses are given by the respondents. There is nothing to suggest that with oblique motive they were not examined. Hence it is not a case where the evidence on record has to be scrutinised by the Tribunal when those two cited as witnesses were not examined.

(2) We refer to the first contention of the applicant now. The evidence of Shri E.S.R. Murthy and the other invigilators who were examined was believed when it is stated that it is Shri S. Appalaraju who handed over paper-IV with ~~xxx~~ roll number APA-111/85 to Shri E.S.R. Murthy (supervisor), and he entertained a doubt when it contained papers with many folds and then he compared the handwriting in the answer script with the handwriting of the applicant in the hall ticket and it was found that they varied. Thus it establishes that by the time paper-IV of applicant was handed over to the supervisor in the last 15 minutes of the period of examination, the answer scripts contained sheets in the handwriting of another and the G.E.Q.D. opined that they were not in the handwriting of the applicant. Even the case of the applicant is that the answer scripts sent to the G.E.Q.D. are not in his handwriting. Hence there is no need to examine the G.E.Q.D. when it was admitted by the applicant that the answer scripts examined by the G.E.Q.D. are not in his (applicant's hand writing.)

Out of the six invigilators, three were from Postal and the other three were from Telecom. The invigilators who were from postal, deposed that the applicant was not in the rows for which they were the invigilators. Though the applicant pleaded that he handed over the answer script of Paper-IV to the invigilator he had not stated the name of the invigilator. The appellate authority commented that the applicant

before cross examining that witness. Further just as in this case if a request is made even at the commencement of the enquiry, it will not be a surprise to the delinquent. It will be a surprise if such a request is made after the witnesses cited are examined, and there cannot be any scope for a plea that these corroborative witnesses are examined to fill up the gap when such a request is made even before the witnesses cited were examined. Anyhow as observed, there is nothing in Rule 14(15) to indicate that a request for adducing additional evidence oral or documentary-can be entertained only after the witnesses cited are examined and/or the documents mentioned in the charge memo. are marked, and it depends upon the facts in each case. We feel that if the purpose of examining additional witnesses is to corroborate the evidence of the witnesses already cited, or if it is a case of request for additional documentary evidence, if the evidence of the witness cited in the charge memo. is on the basis of such documents, it is just and fair to make such a request even at the commencement of the enquiry so that it may not come as a surprise to the delinquent and he can prepare himself for proper defence and there will not be any scope of giving any room to plead that such addl. evidence is only for filling the gap.

There is no infirmity in giving permission to examine the additional witnesses, and even in examining them even before the supervisor, the witness cited in charge memo was examined, especially when there was no protest to the effect that the additional witnesses should not be examined before Shri E.S.R. Murthy was examined.

Only five out of the six invigilators were examined. It is stated that the other invigilator, Shri Srinivasan retired from service, and the other TOA Shri P. Bhavanarayyan who was drafted for the clerical assistance at the examination resigned by the date of the enquiry, and hence they were not examined in the enquiry. It may be noted that they also were cited as witnesses as they too signed in the report given by Shri E.S.R. Murthy on 11-7-85. It is well established that it is for the presenting officer

nor he had allowed anyone to be so before he handed over the same to the invigilator. Thus it is not a case of the surmise or conjecture when it was held on the basis of the said material that the answer scripts in the handwriting of another were in the paper-IV of the applicant when he handed over the same.

6. Of course the only evidence in regard to papers II and III of the applicant is that by the time they were handed over to the supervisor they contained the scripts in the handwriting of another and not that of the applicant. There is no material to show to whom the applicant had handed over the answer scripts. But in view of the material on records in regard to paper-IV of the applicant, and as the applicant had not stated the name of any to indicate that someone was interested in spoiling his career, it was inferred that even the applicant himself placed the answer scripts in the handwriting of others in the papers II and III handed over by him with roll number APA-111/85.

7. Assuming that it is not open to make such inference with regard to papers II and III of the applicant, it will not make any difference in regard to the punishment in view of the nature of the misconduct in regard to paper-IV.

8. Hence we do not find any ground to interfere with the punishment awarded to the applicant. Accordingly the O.A. is dismissed. No costs.

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HRRN

Sd/-
HVNRJ

Sd/-xxxx
Dy. Registrar (Judl)
CERTIFIED TO BE TRUE COPY
Date: 21/11/95
Court Officer:
Central Administrative Tribunal
Hyderabad Bench
Hyderabad

knew all the invigilators from Telecom. by name for they are the higher authorities and if in fact he had given the answer script to the invigilator he could have given the name of the invigilator when it was stated by the witnesses that the said paper was handed over by Shri S. Appalaraju to the supervisor. The statement of Shri Appalaraju that Shri Moinuddin, an invigilator from postal side had given it to him and when Shri Moinuddin denied it, the enquiry officer held that the version of Shri Appalaraju was not true. It is one of the appreciation of evidence, and the said finding was not perverse. So it is not a matter for consideration by the Tribunal in a proceeding under Article 226.

It was also pleaded before the enquiry officer and other authorities that when it is stated that the total number of paper sheets given to the examinees and the sheets of answer scripts received tallied it has to be held that the answer sheets in the roll number of the applicant were substituted by someone out of grudge. But the applicant admitted that he had made some rough notes during the examination in regard to paper-IV and he destroyed them. So it is commented by the appellate authority that it disclosed that the applicant could secure some other blank sheets.

Though the applicant stated that someone out of grudge might have inserted the answer sheets in the hand writing of someone else by removing his answer scripts, he had not stated the name of any who is said to have got the grudge against him. It is clear from the accepted evidence that it is Shri Appalaraju who handed over the answer scripts in regard to paper-IV of the applicant to the supervisor. The version of the applicant that he handed over the same to an invigilator was not believed. Hence it can be reasonably inferred that the applicant handed over the same to Shri Appalaraju. It is not the case of the applicant that Shri Appalaraju bore grudge against him. Then it can be stated beyond reasonable doubt that that had replaced the sheets in the paper-IV of the applicant.

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To

1. The Director, Telecommunications,
Hyderabad Area, Hyderabad.
2. The Deputy General Manager (P&T)
Hyderabad Telephones, Hyderabad.
3. The General Manager, Telecom Dist.
Suryalok Complex, Hyderabad-33.
4. The Govt. of India, Ministry of Communications
Dept. of Telecommunications, New Delhi-1.
5. One copy to Mr. B. Narasimha Sarma, Advocate,
3-6-779, Himayatnagar, Hyderabad.
6. One copy to Mr. N. V. Raghava Reddy, Addl. CGSC, CAT, Hyd.
7. One copy to Library, CAT, Hyd.
8. One spare copy.
9. Copy to All Reporters as per standard list of CAT, Hyd.