

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD.

CA No. 1139/96

CA No. 1139/96

Date of order: 18.9.1996.

A. Nagamalleswara Rao ... Applicant.

And

1. Union of India, Rep. by the
Secretary, Min. of Communications,
New Delhi-1.
2. Member (Personnel), Telecommunications
Board, Sanchar Bhavan, New Delhi-1.
3. Dy. General Manager, Telecommunications,
West Godavari District,
Eluru-534 050 (W.G. Dist.)
4. Divl. Engineer Telecom, Eluru,
534 050 (W.G. Dist.)

... Respondents.

Counsel for the Applicant : Shri N. Venugopala Rao

Counsel for the Respondents: Shri N.V. Raghava Reddy,
Addl. CGSO.

CORAM:

HON'BLE SHRI JUSTICE M.G. CHAUDHARI: VICE CHAIRMAN

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

ORDER

(Per Hon'ble Shri Justice M.G. Chaudhari : Vice Chairman)

The applicant, A. Nagamalleswara Rao, was working at the material time as Telephone Operator in Telecom. Circle, Eluru. He has been dismissed from service by way of punishment by order dated 29.3.89 passed by the Divl. Engineer Telecom, Eluru as the Disciplinary Authority in disciplinary proceedings held under Rule 24 of CCS (CCA) Rules, 1965. An appeal preferred by the applicant against the said order was dismissed by the appellate authority by order dated 13.3.90. Aggrieved with that order the applicant submitted a revision petition to the Member (Personnel).

of the Enquiry Officer does not show that any explanation was offered as to why the original register was not produced and that he was satisfied with the explanation and had thereafter marked the extract in evidence. No evidence to prove the authenticity of the extract has been referred to in the report. The extract therefore was not legal evidence the evidence of witness Ch. Sanyasi Rao did not remove the inherent infirmity. Although the enquiry was in the nature of a quasi criminal enquiry wherein technical rules would not strictly apply and the best to be applied is of preponderance of probabilities yet inferences to be drawn could be based on facts and/or circumstances proved by legal evidence and not in the absence of the same. The evidence of Ch. Sanyasi Rao and the extract from Z register therefore were useless and no inference could be drawn therefrom to hold the article of charge served.

13. It was argued by the applicant before the Enquiry Officer that the extract (SE.4) could not be identified by Ch. Sanyasi Rao as he had stated that he presumed the attestation of D.E.T. implied that the contents were correct. The Enquiry Officer rejected this argument by holding that the witness had identified the attested signature of D.E.T. on the extract. Thus reliance was placed on secondary evidence and inferences drawn on the basis of inadmissible evidence. The finding recorded reads thus:

" By the above said deposition, it can be concluded beyond doubt that S.E.4. i.e, extract of Z register was prepared according to the information furnished by the applicant in the application form and in this case the SPS A. Nagamalleswara Rao has furnished information about marks obtained as 86.8% in S.S.C. examination, in his application form based on which S.E.4. was prepared."

forms from the candidates. The application and its enclosures in respect of the applicant are missing from the Office of D.E.T. The marks obtained by the lowest candidate in O.C. in that recruitment is 70.60 percent. The applicant has not submitted his original certificates pertaining to S.S.C./Inter in response to letters dated 8.5.84, 2.7.84 and 15.12.84. In his letter dated 27.8.84 addressed to the J.E.Trunks, Eluru he had furnished that he studied S.S.C. in Z.P. High School, Gudur during 1976-77. It was reported by the Headmaster, Z.P.High School, Gudur by his letter dated 8.8.85 that the applicant had secured 48.6% in S.S.C. With this percentage of marks the applicant did not stand a chance for the recruitment as Telephone Operator for the II Half Year, 1980. Thus the applicant has committed misconduct of not complying with orders to furnish original certificates for verification, had furnished wrong information regarding percentage of marks in S.S.C. and exaggerated the facts at the time of recruitment in Eluru Telecom Division. Thus he did not show absolute integrity and exhibited conduct unbecoming of a Govt. servant contravening Rule 3(1) (i) and (iii) of CCS (Conduct) Rules, 1964. These allegations were contained in the statement of imputations of misconduct issued in support of the article of charge framed.

6. It will be instantly noticed that the article of charge was in much narrower terms than the allegations contained in the statement of imputations. The thrust of the charge was that the applicant had furnished wrong information regarding his marks in connection with his initial recruitment for the II Half Year, 1980 (appointed on 24.6.1980).

7. It did not take in its sweep the allegation that he had failed to submit his original certificates when

16. The basence of these led to two distinct possibilities, one, the marks certificate produced was fabricated to show exaggerated marks which were carried in the check list and Z register and two, the certificate and application had shown the true marks (48.6%) and mischief was played at the stage of making entry in the Z register. The official who himself made the entry in Z register was not examined to explain the circumstances in which the entry was made. The evidence adduced does not rule out either of the aforesaid possibilities. It could not therefore be held that the charge that the applicant had furnished wrong information regarding percentage of marks in connection with his initial recruitment has been established by evidence against the applicant. The finding of the Enquiry Officer being thus not based on any evidence it is perverse and could not be accepted by the disciplinary authority.

17. The disciplinary authority almost adopted the same reasoning as was done by the Enquiry Officer. Hence his conclusion also is untenable. Consequently the order of punishment passed by him cannot be sustained.

18. The appellate authority unfortunately has also not gone into the points urged by the applicant and adopted the same approach as was taken by the disciplinary authority and Enquiry Officer and assumed that the evidence of Ch. San-yasi Rao and the extract of Z register were sufficient to hold the charge to have been proved. Indeed at one place he has stated " Had the applicant got any doubt about the extract he could have requested for production of Z register itself in the enquiry" overlooking that the burden was upon the prosecution to produce the same and not upon the applicant and that the applicant had all along been objecting to the production of merely the extract; and at another

14. This conclusion is far fetched, strained and untenable. It has been arrived at in an involved manner. Neither original application made by the applicant for the post in 1980 nor the certificate were available for the perusal of the Enquiry Officer as admittedly these were missing from the custody of the respondents. It is pertinent to note that there was no allegation levelled and that the applicant had caused the disappearance of the said record from the office either by himself or in collusion with any other official or officials or was responsible for these being found missing. With the assertion of the applicant that he had given correct information that could not be rejected on the basis of the extract of Z register showing more marks. It could not be held from the evidence that the applicant had the knowledge of the entry made in the Z register as reflected in the extract produced or that it was so made at his instance.

15. The fact as to whether the applicant had or had not submitted the original mark list alongwith his application could be tested from the departmental instructions whether requiring it to be produced or not alongwith the application or it was merely required to be shown at that stage and submitted for verification later on when called for but no such endeavour was made either by the Presenting Officer or the Enquiry Officer himself. For that matter applicant could have placed some material before the Enquiry Officer but he also did not do so. Be that as it may, the fact remains that the prosecution did not conclusively establish that it was not produced. Moreover, when the respondents have stated in the statement of imputations that the original application and certificate were missing it necessarily follows that these had been produced.

Standing Counsel informed us that a C.B.I. enquiry is in progress, that a vigilance enquiry was made, that about 21 officials were dismissed who had approached this Tribunal, that two cases have been remanded for fresh enquiry by the Supreme Court, two cases including the instant cases are pending and the remaining cases were dismissed by this Tribunal. The magnitude of the situation undoubtedly is serious and the needle of suspicion could therefore easily point to the applicant. However, no person can be punished merely on suspicion. As stated earlier, there was no allegation much less a charge levelled against the applicant that he had been a party to any conspiracy to manipulate the record and derive dishonestly unfair advantage therefrom. There is not an iota of material produced to implicate the applicant even on probability. In such surcharged situation the authorities concerned with statutory disciplinary proceedings have to act very cautiously and carefully to avoid the possibility of an innocent official being penalised. Each case is required to be decided on the merits of the case and legal evidence as may be produced uninfluenced by the circumstance that a racket has been discovered and many persons are likely to be concerned with it.

21. We have therefore dealt with the instant case strictly on its own merits uninfluenced by extraneous factors. We have come to the conclusion that this is a case of no evidence and in the interest of justice we are constrained to interfere. We cannot easily erase the impression from our minds that the applicant himself seems to have fallen a victim to the suspicion of the respondents based upon the discovery of a

another place stating " At the time of issuing the charge sheet itself, it was mentioned in annexure II that the application and its annexures were missing from the Office of D.E.T. So the Z register was presented in the enquiry". We fail to understand the underlined observation as the Z register had not been actually produced. It can only mean that he was treating the 'extract' as the Z register itself. This would clearly be wrong. Placing sole reliance on evidence of Ch. Sanyasi Rao and the extract of Z register he has drawn the conclusion "hence the contention of the applicant that the charge against him was not proved because no document in which he furnished wrong information could be presented in the enquiry is not at all tenable " is itself not tenable. The reasoning given by the appellate authority leads to the inference that it is based upon cursory consideration of the matter and not on serious application of mind to the legal issues raised by the applicant and to the absence of any cogent evidence sufficient to hold the charge proved. The appellate order therefore cannot be legally sustained;

19. In sum, we hold that since the order of punishment is based on no evidence it is perverse and is liable to be quashed.

20. After hearing the learned counsel for both the sides at length and on perusal of material brought to our notice (which is not strictly relevant to the subject matter of the charge in the instant O.A.) We gather that there was a big racket unearthed in which some officials were involved in manipulating the records, causing loss of the record, marks/pass certificates produced with forged/fake marks so as to facilitate recruitment to various posts in Telecom. Department. Indeed the learned

ricket. The respondents however have failed to convert the suspicion into a fact on the basis of any evidence.

22. In the light of the foregoing discussion following order is passed:-

O R D E R

- (i) The impugned orders namely the order of dismissal of the applicant from service dated 29.3.89 passed by the 4th respondent and the appellate order dated 13.3.90 passed by the 3rd respondent confirming the order of dismissal are hereby quashed and set aside.
- (ii) The applicant will be entitled to the benefits consequent upon quashing of the impugned orders as may be available to him in accordance with the law.
23. The O.A. is accordingly allowed. No order as to costs.

DEPUTY REGISTRAR (JUDL)

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY

[Signature]
न्यायालय अधिकारी
COUNT OFFICER

केन्द्र : २०१

(Certified to be true copy of the original)

दिनांक २६/११/९६

HYDERABAD BENCH