

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD.

O.A.No.317/92.

Date of Judgement : 9-3-1995

G.Ramalingeswara Rao

.. Applicant

Vs.

1. Union of India,
Reptd. by the Secy.,
Min. of Communications,
New Delhi-1.

2. Member(Personnel),
Telecommunications Board,
Sanchar Bhavan,
New Delhi-1.

3. Chief General Manager,
Telecommunications,
Andhra Pradesh,
Hyderabad-1.

4. Director, ~~and~~ Telecom.,
(Guntur Area (Guntur, Guntur Dspc.))

5. Divisional Engineer Telecom,
Bhimavaram, W.G.Dt. . . Respondents

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

Counsel for the Respondents:: Shri V.Bhimanna, Addl. CGSC

C O R A M

Hon'ble Shri A.V.Haridasan : Member(J)

Hon'ble Shri A.B.Gorthi : Member(A)

J u d g e m e n t

X As per Hon'ble Shri A.B.Gorthi : Member(A) X

The Applicant was removed from service vide order dt. 5.1.88 passed by the Divl. Engineer Telecom., Bhimavaram. The said order was impugned in this O.A. wherein the claim of the Applicant is for a direction to the Respondents to set aside the said order as also the order of the Director Telecom., Guntur rejecting the Applicant's appeal and to reinstate the Applicant in service with all consequential benefits.

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2. The Applicant was selected and appointed as Telephone Operator in 1981. At the time of applying for the said post the Applicant submitted his school certificates disclosing his educational qualifications and the marks obtained by him in S.S.L.C. After his appointment he continued to work without interruption till 1984 when he was directed to submit his original school certificates. The Applicant clarified that he had submitted them at the time when he initially applied for the post and that the original or the duplicate certificates were not available with him. He was then served with a charge memo alleging that while applying for the job of Telephone Operator he produced a false matriculation certificate and thereby gained selection for employment. During the departmental enquiry that was held he was denied reasonable opportunity to explain his defence. The contention of the Applicant is that he was not to blame for any irregularity in the selection and as such the imposition of the penalty of removal is unjustified.

3. Heard learned counsel for both the parties. We have also perused the record of the disciplinary proceedings.

4. Learned counsel for the Applicant assailed the imposition of the penalty of removal on several grounds. The essential issues raised by him are discussed in the succeeding paras.

5. The first contention raised by the Applicant's counsel is that the abnormal delay in the initiation of the disciplinary proceedings would amount to denial of

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reasonable opportunity to the Applicant. This plea cannot be accepted because initially the Applicant himself did not cooperate with the officials who asked him to furnish the original or duplicate certificates of his educational qualifications. It was only after the genuineness of the certificates submitted by the Applicant at the time of his initial selection was got verified and when it was found that it was a false certificate the Respondents took the decision to initiate disciplinary proceedings. The resulting delay cannot therefore be said to be unreasonable.

6. During the enquiry the Applicant cited four witnesses to be examined on his behalf. The Inquiry Officer permitted three of them to be examined but disallowed the request of the Applicant to examine Shri S.V.V.Raghavachari as it was considered that his examination was not essential. Two of the defence witnesses appeared before the Inquiry Officer but the Applicant avoided examining them by being absent on the dates when the said witnesses appeared. Consequently Shri Ch.Venkateswarlu alone was examined as a defence witness. The report of the Inquiry Officer reveals that the Applicant deliberately avoided examining two of the defence witnesses though they were made available. There is nothing on record to indicate as to how the non-examination of any of the witnesses could have prejudiced the Applicant in his defence.

7. As regards the allegation of the Applicant that some of the documents requisitioned by him were not given to him, the same does not seem to be tenable because the Inquiry Officer's report clearly indicated that the documents were

supplied to the Applicant. Only the D.P.C. proceedings conducted at the time of recruitment were not furnished to him and the Applicant was informed of such rejection at the relevant time. Keeping in view the facts of the present case, we are more than satisfied that the non-production of the D.P.C. proceedings would not in any way vitiate the disciplinary proceedings.

8. Learned counsel for the Applicant contended that the Applicant was innocent and that there was no evidence to substantiate the charge. In this context we find that in the application/submitted by the Applicant himself at the time of his recruitment it was stated in the handwriting of the Applicant that he had secured 430 marks in the S.S.C. Examination. In support of the application a Matriculation Certificate bearing No.302 dt. 28.6.75 purporting to have been issued by Andhra University, Waltair was attached. The said certificate on verification by Andhra University, Waltair was found to be a false one. The Applicant, after filing the O.A., furnished an affidavit dt. 15.11.92 stating that he passed his Matriculation from P.N.R. Z.P. H.S. Kaja in 1974 securing 274 marks (less the marks obtained in Hindi). There can, therefore, be no doubt that the statement of the Applicant in the application form that he had secured 430 marks in the S.S.C. Examination is false. The contention of the Applicant's counsel that the reply furnished by Andhra University, Waltair was ~~produced~~ by the departmental employee and should not have been accepted in evidence has no substance. It is settled law that the strict and sophisticated rules/do not apply to disciplinary proceedings. In any case it was not the defence

of the Applicant that he did score 430 marks in S.S.C. His defence was that he merely signed the application form without much care as to its contents. This line of defence of the Applicant was rightly rejected by the disciplinary authority because the application form was found to be in the handwriting of the Applicant. Thus, we cannot accept the plea of the Applicant ~~also~~ that ~~this~~ is a case of no evidence or that the Applicant is innocent.

9. The Applicant's counsel raised the plea of non-compliance with Rule 14(18) of the CCS(CCA) Rules, 1965. The said rule requires that the delinquent employee should be questioned by the Inquiry Officer on the conclusion of his case on the circumstances appearing against him in the evidence for the purpose of enabling him to explain such circumstances. The record does indicate that the Inquiry Officer did not question the Applicant on the conclusion of the defence case. There is no doubt that Rule 14(18) of the CCS(CCA) Rules, 1965 has not been complied with in this case. When there is an infarction of any of the rules or procedure, it should be examined whether non-compliance of the said rule would have prejudiced the delinquent employee in his defence and whether such omission would vitiate the entire disciplinary proceedings in the instant case, the evidence adduced ~~at~~ the inquiry was such that it would be difficult to come to the conclusion that mere non-questioning of the Applicant ought to vitiate the inquiry proceedings. Learned counsel for the Applicant placed reliance on the judgement of the Supreme Court in The State of Punjab Vs Bhagat Ram, 1975(1) SLR 2. In that case, the petitioner was denied due opportunity to cross-examine the witnesses produced against him. It was accordingly felt that the petitioner was denied reasonable opportunity. In the case before us,

the Applicant was not only given full opportunity to cross-examine the witnesses but was also allowed to examine the defence witness and make his defence brief.

10. The Applicant's counsel contended that even presuming that the Applicant furnished a false S.S.C. Marks List, it could not be termed as 'misconduct' under the service rules as he did not by then join government service. We cannot accept this contention because the Applicant's misrepresentation was relating to his securing a position in government service and it would certainly cast a stigma on his reputation as a Govt. servant. In S.Govinda Menon Vs. U.O.I. & Anr. AIR 1967 SC 1274 it was held as follows:-

"In our opinion, it is not necessary that a member of the Service should have committed the alleged act or omission in the course of discharge of his duties as a servant of the Government in order that it may form the subject-matter of disciplinary proceedings. In other words if the act or omission is such to reflect on the reputation of the officer for his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for that act or omission even though the act or omission relates to an activity in regard to which there is no actual master and servant relationship. To put it differently, the test is not whether the act or omission was committed by the appellant in the course of the discharge of his duties as servant of the Government. The test is whether the act or omission has some reasonable connection with the nature and condition of his service or whether the act or omission has cast any reflection upon the reputation of the member of the Service for integrity or devotion to duty as a public servant."

11. In view of the above, we cannot find any irregularity in the Respondents' decision to charge the Applicant with misconduct under Rule 3(1)(i) and (iii) of the CCS (Conduct) Rules, 1964.

12. It was further contended by the Applicant's counsel that the Respondents were estopped from terminating the services of the Applicant after having duly selected him and given him employment. Such a plea is clearly untenable

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Where a candidate obtains employment by wilful misrepresentation of his qualifications, he cannot question the right of the employer to inquire into the truth or otherwise of his representation. The principle of estoppel is inapplicable and cannot be raised by the Applicant.

13. Having heard learned counsel for both the parties and having carefully perused the inquiry proceedings we are of the considered view that the finding of the Inquiry Officer is reasonable and that the penalty imposed by the disciplinary authority is just and legal.

14. In the result, we find no merit in the O.A. and it is hereby dismissed. No costs.

transcr
(A.B.Gorthi)
Member(A).

A.V.Haridasan
(A.V.Haridasan)
Member(J).

Dated: 9 May 95

Amrit 16-3-85
Deputy Registrar (Judl.)

br.

Copy to:-

1. Secretary, Ministry of Communications, Union of India, New Delhi-1.
2. Member (Personnel), Telecommunications Board, Sanchar Bhavan, New Delhi-1.
3. Chief General Manager, Telecommunications, A.P.Hyd-1.
4. ~~Deputy Telecom Controller Area, Guntur~~
Divl. Engineer Telecom., Bhimavaram, W.G.Ot.
5. One copy to Sri. T.V.V.S.Murthy, advocate, CAT, Hyd.
6. One copy to Sri.V.Bhimanna, Addl.CGSC, CAT, Hyd.
7. One copy to Library, CAT, Hyd.
8. One spare copy.

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DA 317/92

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

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

AND

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

DATED : 9/3/95

ORDER/JUDGEMENT

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

O.A. NO.

in
317/92

Admitted and Interim directions issued

Allowed

Disposed of with Directions

Dismissed

Dismissed as withdrawn

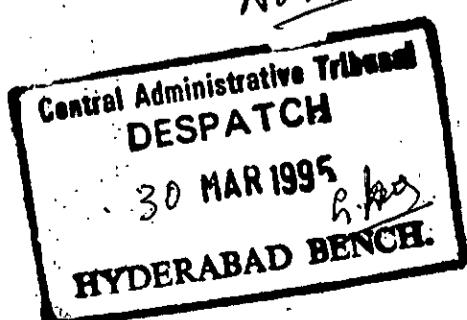
Dismissed for Default.

Rejected/Ordered

No order as to costs.

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