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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION No. 55/92

DATE OF JUDGEMENT: 14. 12 94

Between

Sri B.Narayana Rao .. Applicant

and

1. Union of India rep. by
Secretary,
Min. of Communications, New Delhi-1.

2. Telecom District Manager,
West Godavari District
Eluru-534 050

3. Divisional Engineer
Telecommunications
Eluru-534050

.. Respondents

Counsel for the Applicant :: Mr TVVS Murthy(for Mr Jayant)

Counsel for the Respondents :: Mr NV Ramana, CGSC

CORAM:

HON'BLE SHRI A.V. HARIDASAN, MEMBER(J)

HON'BLE SHRI A.B. GORTHI, MEMBER(A)

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JUDGEMENT

(As per Hon'ble Shri A.V.Haridasan, Member(J))

This is the second round of litigation between the applicant, an Ex-TOA (Telecom Office Assistant) and the respondents challenging the dismissal of the applicant from service. The applicant was appointed as Telecom Office Assistant w.e.f. 14.02.1982. The applicant was, later, called upon to produce his original certificates for verification. This was followed by another letter dated 28.04.1984, directing the applicant to produce either the original certificates or certified copies thereof, within a fort-night, informing that failure to comply with the said direction would lead the respondents proceeding under CCS(CCA)Rules. The applicant sought extension of time and the correspondence on this issue went on for sometime. As the applicant did not produce either the original or the cerified copies of the certificates, the third respondent on 12.02.1986, issued a memorandum of charges against the applicant wherein, it was alleged that the applicant had furnished wrong information in the Attestation Forms submitted by him on 20.05.1982; in as much as, the applicant had in the attestation forms stated that his date of birth was 10.08.1959 and that, he was 23 years old then, while his real date of birth as as evidenced in the letter of the Headmaster of S.D.N.S.D.S.High School, Pedakalapalli, Krishna District, where the applicant studied was 01.07.1952, and thus the applicant had exhibited lack of integrity and devotion to duty and a conduct unbecoming of a Government servant. The applicant denied the charges.

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An Inquiry was held. One of the documents requested for, by the applicant, namely, the application form submitted by him before appointment was not made available to him, on the ground that the same was not available. A statement alleged to have been submitted by the applicant on 25.8.84 which was one of the documents mentioned in the annexure (to) charge memo was also not produced. On a consideration of the evidence adduced at the inquiry in support of the charge, and also on the side of defense, the inquiry authority submitted a report finding that the applicant was guilty of the charge. Without furnishing a copy of the Enquiry Report and without giving the applicant an opportunity for making his representation, the disciplinary authority by its order dated 18.7.88 imposed on the applicant, the penalty of dismissal from service. The applicant submitted an appeal to the Director, Telecom, Guntur, the second respondent, against the order of dismissal and finding that the appeal was not disposed off inspite of lapse of sufficient time, the applicant filed OA 44/90 before this Tribunal assailing the order of dismissal from service. Finding that the action of the disciplinary authority in finding the applicant guilty of the charges without furnishing him a copy of the Inquiry Report and without affording an opportunity to make a representation, relying on the Judgement of the Full Bench in Premnath K. Sharma's case, the Tribunal disposed of OA 44/90 setting aside the order of dismissal, giving liberty to the respondent to recommence and complete the proceedings from the stage of supplying a copy of the Enquiry Report to the applicant. Thereafter, the Disciplinary authority by its order dated 7.8.90 (Annexure A-19) placed the applicant under deemed suspension with effect from 18.7.88 and by another order of the same date (Annexure A-20) directed the applicant to make a representation for its consideration, furnishing the applicant a copy of the Enquiry report. The

applicant on 7.9.90 submitted his representation in which, he questioned the action of the disciplinary authority in placing him under deemed suspension and requested for his re-instatement with effect from 18.7.88, so as to enable him to submit a proper representation against the Enquiry Report. The Disciplinary authority, on 26.9.90, passed the impugned order (Annexure A-24) dismissing the applicant from service. By another order of the same date, the applicant was informed that he would be paid subsistence allowance from 18.7.88 i.e. to 26.9.90 for the period during which, he was under deemed suspension. The applicant filed an appeal to the Telecom District Manager against this order on 9.11.90. The second respondent, who is the appellate authority by his order dated 6.2.91 (Annexure-A-26) rejected the applicant's appeal. It is aggrieved by ~~xxxx~~ the order of dismissal and the order rejecting the appeal of the applicant, that the applicant has filed this application under Section 19 of the Administrative Tribunals Act, praying that the impugned orders may be set aside

2. The respondents have filed reply statements resisting the application and refuting the material allegations averred in the application.

3. We have perused the pleadings and documents and have gone through the file relating to the Inquiry made against the applicant which were made available by the Standing Counsel for the respondents.

4. Grounds which were argued by the learned counsel for the applicant assailing the impugned orders were that the action of the disciplinary authority in placing the applicant under deemed suspension being un-sustainable, the order of removal from service passed in such proceedings cannot be sustained, that as the alleged furnishing of wrong information in ~~xxxxxx~~ if at all ~~xxxxxx~~ regard to the date of birth of the applicant ~~xxxxxx~~ done by the applicant prior to his entry into service, the charge that he

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committed a misconduct ~~unbecoming~~ unbecoming of a Government servant is not sustainable and for that reason, the impugned order cannot be supported and that the impugned order of dismissal is not based on any legal evidence.

5. The contention of the applicant's counsel that for the reason that the ~~impugned~~ order by which the applicant was placed under deemed suspension is not legal and for that reason the order of dismissal has to be held unsustainable is, absolutely untenable. When the order of dismissal is set aside by the Tribunal on technical grounds that there was violation of principles of natural justice under provisions of Sub-Rule(4) of Rule 10 of CCS(CCA)Rules, the disciplinary authority is competent to issue an order to the effect that the employee is ~~deemed to be under~~ ~~for the purpose of~~ suspension from the date of removal from service. Therefore, the order placing the applicant under deemed suspension is perfectly in conformat with rules. Further, even if it is presumed that there is any irregularity in issuing such an order placing the applicant under deemed suspension, that does not affect the validity of the order of penalty imposed, after consideration of the Inquiry Report in the light of the representation submitted by the applicant in pursuant to the directions contained in the Judgement of the Tribunal and therefore, there is no ~~infirmity~~ infirmity with the impugned order on this score.

6. The learned counsel for the applicant argued that even if ~~xxx~~ it is admitted that the attestation form was submitted by the applicant in which an incorrect information regarding the date of birth was furnished, it cannot be said that the applicant exhibited conduct unbecoming of a Govt. servant, or that, he exhibited lack of ~~xxx~~ integrity and devotion to duty because, on the date on which the alleged attestation form was submitted by him, he was not a Government employee. This argument also has no merit because, in the

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attestation form itself, it was made clear that if any information submitted by the applicant was found to be incorrect, his services were liable to be terminated. The law is well settled that if a certificate produced by the employee for securing employment is found to be not genuine, the appointment is liable to be terminated. In this case, the impugned order of removal from service was issued after a duly held inquiry, giving the applicant fair and reasonable opportunity to establish his innocence if he was innocent. Therefore, there is no merit in the contention of the learned counsel for the applicant that the charge sheet as unsustainable that the and the order of penalty is illegal and unsustainable.

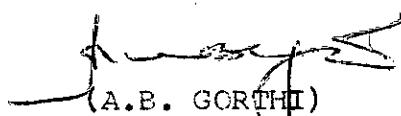
7. The last argument of the learned counsel that the applicant has admitted that he has no dispute about the testimony of the Headmaster of the S.D.N.S.D.S. High School Pedakalapalli Krishna District who was examined as PW1. There is no evidence to show that the applicant had furnished any false information and that for this reason, it is to be held that the finding that the applicant had furnished false information in regard to his date of birth has not been established at the inquiry, and therefore, it is a case where ~~there is~~ absolutely, no evidence at all to bring home the guilt of the applicant. This argument also is very feasible and devoid of merit at all, as the applicant at the inquiry has admitted that he has no dispute in regard to what was deposed by PW2, the Headmaster of the School in which the applicant ~~studied~~ studied. The Headmaster had in his deposition unambiguously stated that the date of birth of the applicant as per school records was 1.7.1952. Going by the attestation form Ex.P2 the date of birth of the applicant has been shown as 10.08.1959. Even the DW2 examined on the side of defense, at the inquiry, has admitted that the attestation form at PEX.2 was submitted by the applicant and the attestation form contains the signature of the applicant and this signature tallied with the admitted

signatures of the applicant in the official records ~~.....~~
~~.....~~ In the attestation form
Ex. 2, the applicant had furnished his date of birth as
10.08.1959 which is against his real date of birth ~~10.07.1952~~.
If the applicant had furnished the correct date of birth
which is 01.07.1952, he would not have been eligible for
appointment in 1982, as he would have by then, crossed
the upper age limit. Even DW1 and DW2 in their statements
have admitted that the information furnished in the attestation
forms cannot in material details be inconsistent with the
details furnished in the application form. Therefore,
the applicant cannot take advantage of the fact that the
application form submitted by the applicant ~~was~~ when he
applied for the post is not available with the respondents.
It has come ~~up~~ during the course of arguments that in case of
several employees recruited during the particular year, there
has been several cases in which false date of birth and false
statement of marks were furnished and that the relevant documents
were found missing in the official file. Therefore, the mere
fact that the ~~application form is missing~~ will not save the
applicant from the situation because, the attestation form
containing his signature establishes that before entry into
getting
service, for the purpose of employment, the applicant had furnished
incorrect date of birth, while it has been established
by the testimony of the Headmaster of the school in which he
studied that the real date of birth of the applicant was 1.7.1952.
Therefore, the argument of the learned counsel for the
applicant that the finding that the applicant is guilty of
furnishing incorrect details in his attestation form is perverse
cannot be accepted at all. The evidence on record is sufficient
to establish the misconduct for which the applicant was
charge-sheeted.

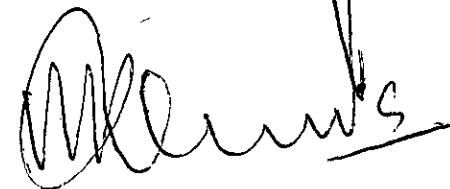
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8. In the result, in the light of what is stated in the fore-going paragraphs, we do not find any merit in this application. Therefore, we dismiss the same, leaving the parties to bear their own costs.



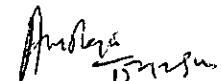
(A.B. GORTHI)
Member (Admn)



(A.V. HARIDASAN)
Member (Judl.)

Dated: 14 - 12 1994

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Deputy Registrar (Judl.)

Copy to:-

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

Rem/-

