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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 509/93.

Dt. of Decision : 31.1.95.

N. Muralidhar

.. Applicant.

Vs

1. Union of India rep. by
The Chief General Manager,
Telecom A.P.Circle,
Hyderabad.
2. The Dy. General Manager (Admn.)
O/o C.G.M. Telecom., A.P.Circle,
Hyderabad.

.. Respondents.

Counsel for the Applicant	: Mr. K.S.R.Anjaneyulu
Counsel for the Respondents	: Mr. N.V.Raghava Reddy, Addl. CGSC.

CORAM:

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

O.A.No.509/93.

Dt. of decision: 31-12-1994. ⁻¹⁻¹⁹⁹⁵

JUDGEMENT

(As per the Hon'ble Sri A.B. Gorthi, Member(A))

The applicant was dismissed after a Departmental disciplinary inquiry, vide order of the Deputy General Manager (Administration) Telecom, A.P. dated the appellate authority, namely, Chief General Manager, Telecom, A.P. vide his order dt.1.6.92. The prayer of the applicant is that the aforesaid two orders be ^{be} quashed and that he be reinstated in service with all consequential benefits.

2. The applicant was appointed as L.D.C. in the office of the General Manager, Telecom on 11-12-1981. Charge Memo dt.7.1.84 was served upon him alleging that he did not appear for the Clerks grade examination conducted by the Staff Selection Commission, Madras in August 1980, that he falsely stated that he appeared for the said examination at Nizam College Centre and that he, though not a candidate selected by the Staff Selection Commission, got himself wrongfully employed. The two articles of charge read as under:-

"Article I

That during the period from 28.12.81 to till date and while functioning in the o/o the General Manager, Telecom, Secunderabad, Sri N. Muralidhar gave a false statement vide his application, dated

19.9.83 that he has appeared for Clerks' grade examination of SSC, Madras, held in August, 1980 at Nizam College, Hyderabad centre whereas the same was not one of the sub-centres for the said examination as intimated by the S.S.C., Madras vide letter No.6-12/82-SR dated 2-12-1983 and thus he not only suppressed the fact of his non-appearance at the said written examination but also deliberately gave a false statement that Nizam College was a centre whereas it was not the centre for the said examination held in 1980.

Thus by the above acts he behaved in a manner unbecoming of a Govt. servant and also failed to maintain absolute integrity in violation of provisions of Rule 3(1) and (ii) of CCS(Conduct) Rules, 1964.

Article II

That the said Sri N. Muralidhar did not appear and qualify in the written examination for recruitment as LDC, conducted by SSC, Madras in August, 1980 and also did not appear for type-writing test. As such his name did not find a place in the select list of candidates qualified for type-writing test and also in the final list of selected candidates issued for appointment as LDCs maintained by the SSC, Madras. Thus, he is not a candidate approved, selected and nominated by SSC, Madras, to be appointed as LDC in the office of the GM Telecom.

Thus by the above acts he behaved in a manner unbecoming of a Govt. servant and also failed to maintain absolute integrity violating provisions of Rule 3(1)(i) and (iii) of CCS (Conduct) Rules, 1964. "

3. During the inquiry, the applicant asked for certain documents, but access to the same was denied to the applicant on the ground that the said documents were not available. The defence witnesses asked for were allowed by the Inquiry Officer, but they did not come forward to depose before the Inquiry Officer on the plea that in the absence of the relevant record, they at the were not able to depose/enquiry. The applicant thus

contends that he was denied reasonable opportunity during the inquiry and that in any case there was hardly any evidence to substantiate the charges and the findings of the Inquiry Officer thereon.

4. The Respondents have stated in the counter affidavit that the appointment of the applicant was made on the basis of Staff Selection Commission letter No.6/16/81-SR dt.20.19.1981, which was subsequently found to be false as no such letter was issued by the Staff Selection Commission. This fact came to the notice of the Respondents when they decided to find out the order of merit in which the applicant and similarly situated 13 other L.D.Cs were placed. Whereas the applicant and other LDCs stated that they appeared for the Clerks Grade examination held in Nizam College Centre, the Staff Selection Commission maintained that they did not appear for the said examination and that in fact Nizam College was not a Centre for the examination. After verifying the facts from the S.S.C., Madras, the Respondents decided to institute disciplinary action against all such employees for wrongfully gaining and employment/for making a false statement that they appeared for the Staff Selection Commission examination at the Nizam College Centre.

5. As regards the documents asked for by the applicant, the Respondents stated that when the office was shifted from Secunderabad to Hyderabad, the relevant records of the applicant, and those of other L.D.Cs similarly situated were found missing. The Respondents

was received and that on that basis appointment orders were issued, including that of the applicant. This was stated by Sri M.L.N. Rao (PW.2) who worked as the Section Supervisor, Staff 'B' Section during the relevant period. Smt. K. Lalitha Prasanna (PW-4) stated that a vigorous search was made for the personal files of 14 L.D.Cs but they could not be traced. therefore reported the loss to her superior officers. Consequently S.S.C., Madras was requested to furnish details regarding the 14 LDCs said to have been selected for appointment in the office of the General Manager, Telecom, A.P. The most important witness for the prosecution was Shri K.S. Rao (P.W.5). He was the Asst. Director, S.S.C., Madras. After identifying the relevant documents (PEs 6 to 9) and registers (PE-10 and 11), he stated that the name of Sri N. Muralidhar (the applicant) was not in any of the lists of candidates ^{for} selection by the S.S.C., Madras.

9. Sri K.S. Krishna Murthy who appeared as DW-1 stated that the appointment order in respect of the applicant was issued on the assumption that letter No.6/16/81-SR, dt.20.10.81 purported to have been issued by the S.S.C., Madras was genuine. He also categorically brought out that S.S.C., Madras denied that the said letter was issued by the Commission. The record further leaves no room for doubt that Nizam College, Hyderabad was not a centre for the Clerks Grade examination and therefore the contention of the applicant that he took his examination in Madrasa Alia which is an adjunct of the Nizam College is an after thought.

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10. From the above we find it difficult to accept the plea of the learned counsel for the applicant that there was no evidence at all to substantiate the articles of the charge against the applicant. It is well settled that the scope of judicial review of departmental disciplinary inquiry does not extend to reappraisal of evidence. In State of Haryana V/s Ratan Singh 1977 SCC (L&S) 298 it was held by the Supreme Court that the sufficiency of evidence in proof of finding by a domestic Tribunal is beyond scrutiny of the Court/Tribunal. The same aspect has ^{been} reiterated in Govt. of Tamil Nadu V/s A. Rajapandian 1994 (5) SLR 745, wherein the Supreme Court further elaborated that the preponderance of probability and not proof beyond reasonable doubt is the requirement at a disciplinary enquiry in determining the guilt or innocence of the delinquent employee.

11. The enquiry proceedings sufficiently established that the applicant was not a candidate selected by the S.S.C., Madras. As regards the contention of the applicant's counsel that the applicant could not be said to be a party to the fraud, if any, it is worth noticing that the initial offer of appointment to the applicant stated clearly that the applicant was allotted by the S.S.C., Madras and the said letter of offer of appointment contained the residential address of the applicant. The said residential address of the applicant could not have come into the ^{of} possession of the respondents unless applicant himself had not played his part. Though direct evidence in this regard is lacking, the circumstantial evidence sufficiently connects the applicant to the alleged misconduct.

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(12)

12. Admittedly, the respondents were not able to furnish the various documents demanded by the applicant. These included ~~for~~ original application, if any, and such other relevant documents. During the enquiry, evidence has been lead to show that the documents were found missing when the office was shifting its location. It is also the case of the respondents that ~~only~~^{the} personal files of 14 LDCs who were similarly involved in the allegation of fraudulent employment were only missing. In these circumstances, neither any ~~adverse~~ inference can be drawn against the Disciplinary Authority for the non-production of the documents, nor the applicant would be justified in attempting to take advantage of the situation. Notwithstanding the non-production of the documents asked for by the applicant, the evidence on record sufficiently establishes his guilt, as already observed. It cannot also be said that the applicant was prejudiced in his defence by the non-availability/non-production of the documents asked for by him. The documentary evidence to which reference was made by Sri K.S.Rao, PW-5, more ^{than} adequately established the fact that the applicant was not a candidate selected by the S.S.C.

13. The applicant asked for Sri M.G. Jilani, the then Dy.General Manager of Telecom to be examined as defence witness. Two other defence witnesses cited by the applicant were duly examined but when Sri Jilani was approached, he expressed his inability to depose before the enquiry officer on the plea that he did not have access to the records. In any case it is

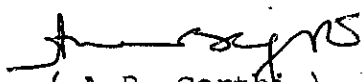
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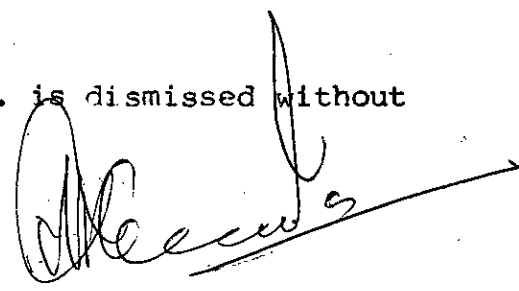
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evident that the only part played by Mr. Jilani was to issue the Order of appointment dt.11.12.81. The said Order purports to have been issued on the authority of the S.S.C., Madras letter No.6/16/81-SR, dt.20.10.81. There was sufficient independent and cogent evidence at the enquiry that the said letter was not issued by the S.S.C. From this point of view, it cannot be said that the non-examination of Mr. Jilani as a defence witness would be fatal to the proceedings.

14. After carefully examining the entire record and having heard the learned counsel for both the parties at length, we are unable to come to the conclusion that the enquiry suffered from any such infirmity or irregularity as would vitiate the disciplinary proceedings or the resultant penalty of dismissal awarded by the disciplinary authority.

15. In the result, the O.A. is dismissed without any order as to costs.


(A.B. Gortel)
Member (A)


(A.V. Haridasan)
Member (J)

Dated 31-1-1995


DEPUTY REGISTRAR(J)

kmv

To

1. The Chief General Manager, Telecom A.P. Circle, Union of India, Hyderabad,
2. The Deputy General Manager, (Admn.)
O/o C.G.M. Telecom, A.P. Circle,
Hyderabad.
3. One copy to Mr. K.S.R. Anjaneyulu, Advocate, CAT, Hyderabad.
4. One copy to Mr. N.V. Raghava Reddy, Addl. CGSC, CAT, Hyderabad.
5. One copy to Library, CAT, Hyderabad.
6. One spare copy.

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TYPED BY
CHECKED BY

COMPARED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

THE HON'BLE MR.A.V.HARIDASAN : MEMBER(3)

AND

THE HON'BLE MR.A.B.GORTHY : MEMBER(4)

DATED : 31.1.95

ORDER/JUDGEMENT.

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

in
O.A.No. 509/93

Admitted and Interim directions
issued

Allowed

Disposed of with Directions

Dismissed ✓

Dismissed as withdrawn

Dismissed for Default.

Rejected/Ordered

No order as to costs.

No spare copy

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