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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A. No. 510/93

Date of Decision: 30.12.1996

BETWEEN:

K. Saibabu

.. Applicant

AND

1. The Chief General Manager,
Telecommunications,
A.P. Circle,
HYDERABAD

2. The Dy. General Manager (Admn.)
Office of the Chief General
Manager (Telecom.)
A.P. Circle, Hyderabad.

.. Respondent

.....

Counsel for the Applicant: Mr. V. Venkateswara Rao

.....

CORAM:

THE HON'BLE SHRI R. RANGARAJAN: MEMBER (ADMN.)

THE HON'BLE SHRI B.S. JAI PARAMESHWAR: MEMBER (JUDL.)

JUDGEMENT

(Oral order per Hon'ble Shri B.S. Jai Parameshwar: Member (J))

The applicant in this OA filed under section 14(1) of Administrative Tribunal Act has prayed this Tribunal to call for the proceedings relating to Memo No.TA/STA/56/1-27/83 Dt.25.10.91 issued by the respondent No.2 and the proceedings relating to order in No.TA/Vigilance/DRE/56/DISC/56/2-20/91/2 dated 3.6.92 passed by the respondent No.3, to set aside the said order and to issue directions to the respondents to reinstate him into service with all consequential benefits.

The facts of the case in brief is to the following effect:-

The applicant was appointed as a lower division clerk vide Memo Dt.24.12.81. He claims to have been recruited to the said post by direct recruitment, ^{On recommendation etc., -} by Staff Selection Commission, Madras. The Staff Selection Commission, Madras had conducted examination to fill up the posts of LDCs and other posts during 1980.

The Staff Selection Commission had lost the ~~said~~ files relating to the said examination. The Staff Selection Commission in order to construct personal files requested the recruitees to furnish the details of their hall ticket number, centre, at which they sat, for the examination, the date on which they appeared for the typewriting test and other particulars. Likewise, during October, 1983 the Staff Selection Commission sought certain particulars from the applicant. Accordingly, on 12.10.83 the applicant furnished certain particulars by way of reply.

During the year 1983-84 the applicant was working as LDC under the control of the respondent No.1. The disciplinary authority found the information furnished by the applicant in his letter dated 12.10.93 was not correct. Accordingly, the disciplinary authority proposed to initiate disciplinary proceedings against the applicant.

On 7.1.84 vide Memo No.TA/STA/56/1-17/83 Dt.7.1.84 served the major penalty charge sheet on the applicant. The charge levelled on the applicant are as follows:

ARTICLE -I.

That during the period from 31.12.1981 to till date and while functioning in the office of the General Manager, Telecom., Sri K. Saibabu gave a false statement

vide his application dated 12.10.1983 that he has appeared for Clerks' Grade Examination of Staff Selection Commission, 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) (i) and (iii) of CCS (Conduct) Rules, 1964.

ARTICLE II

That the said Sri K. Saibabu did not appear and qualify in the written examination ~~for~~ (for recruitment as LDC, conducted by SSC, Madras, in August, 1980 and also did not appear for ^{the} typewriting 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., Secunderabad, but gained employment.

Thus by the above acts he behaved in a manner unbecoming of a Government servant and also failed to maintain absolute integrity violating provisions of Rule 3(1)(i) and (iii) of CCS(Conduct)Rules, 1974."

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The applicant submitted his explanation to the charge sheet. The disciplinary authority was not convinced with the explanation. Hence the disciplinary authority ^{the} nominated inquiry officer to inquire into the charges and also a presenting officer to present the case before the inquiry officer on behalf of disciplinary authority. It is to be noted that the inquiry officer and the presenting officer were drawn from the vigilance cell.

On 17.9.90 the inquiry officer concluded the inquiry and submitted his report on 19.9.90. The disciplinary authority served a copy of the report of the inquiry on the applicant on 15.7.91. The applicant submitted his reply to the report of the inquiry officer. On 25.10.91 the disciplinary authority passed the impugned order accepting the findings of the inquiry officer and imposing the penalty of removal of the applicant from service. ^{order.} Against the said punishment of the disciplinary authority the applicant preferred an appeal to the respondent No.3 on 6.3.92. The respondent No.3 concurred with the views of

It is these ^{two} ~~2~~ orders that have been challenged by the applicant in this OA.

The applicant challenged the orders on the grounds that the respondent No.2 is not competent to impose the penalty, that the inquiry was held in violation of principles of natural justice, that the inquiry officer ~~was~~ biased towards him, that the inquiry officer rejected his request for

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for inspection and supply of copies of documents that one K. Narsimhalu UDC, who was not at all connected with the inquiry was permitted to act as ^{the} presenting officer without any authority of law. That the inquiry officer and Presenting officer were drawn from the vigilance cell that these officers exhibited total identification with the prosecution in many ways during the inquiry, that the inquiry officer freely acceded to the request of presenting officer, that the inquiry officer could not conduct his duties impartially, that the inquiry officer failed to furnish the documents which were relied upon to substantiate the charge.

The respondents have filed the counter affidavit stating that the applicant gained employment wrongfully without being sponsored by the Staff Selection Commission, Madras, which is a recruiting agency for the posts of clerks and stenographers in the Central Government, that the Staff Service Commission had lost certain files during 1980 that in order to restructure the personal files the Staff Selection Commission sought certain informations from the recruits that accordingly the applicant furnished the information through his letter Dt.12.10.93 that the information furnished by the applicant through the said letter was incorrect, that the applicant could not satisfy himself that he had appeared for the written test examination and also typewriting test that the applicant claimed to have written the examination at Nizam College, Hyderabad but the said college was not ^{one of} the centres for the examination conducted during August, 1980 that the applicant had not at all appeared for the typewriting test, that the applicant was not an approved candidate for nomination by the Staff Selection Commission

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That the inquiry officer conducted the inquiry after adhering to the principles of natural justice that during the inquiry the applicant had indirectly admitted that he had never claimed to have attended the examination conducted by the staff service Commission in August 1980 and not appeared for the typewriting test that the disciplinary authority after examining the entire record and also considering the representation Dt.15.7.1991 submitted by the applicant found the findings of the inquiry officer to be appropriate and apt that accordingly the orders were passed.

That the applicant was not sponsored by the Staff Selection Commission for the post of LDC that the allegations made by the applicant against the inquiry officer and presenting officer are far from truth that there is no prohibition from appointing the officer from the vigilance cell to conduct the inquiry into the charges that the inquiry officer duly considered the request made by the applicant that between 22.6.82 and 24.6.88 the regularly appointed presenting officer namely Sri M. Rameswar Rao was away from headquarters that during the said period K. Narsimhalu was directed to act as the presenting officer that as per Sub-rule 14 of Rule-14 of CCS (CCA) Rules, a substitute presenting officer can be sponsored during the absence of a presenting officer, that therefore, K. Narsimhalu was appointed as a presenting Officer as per rule that it is with the discretion of the disciplinary authority to appoint any officer as the inquiry officer that having regard to the facts and circumstances of the case, it is amply established that the applicant had neither appeared for the examination conducted by the Staff Selection Commission during August 1980 and was not at all sponsored and selected by the Commission for the post of LDC that there is ample and sufficient evidence to prove the charges against the applicant that the authorities have properly considered the findings recorded by the Inquiry officer and passed the impugned orders and

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and that there are no grounds to set aside the impugned orders.

Heard Shri V. Venkateswara Rao learned counsel for the applicant and Sri N.R. Devaraj, learned counsel for the Central Government.

The learned counsel for the applicant strongly criticised the manner ⁱⁿ at which the inquiry officer conducted the disciplinary proceedings against the applicant. He submitted that the inquiry was conducted in utter violation of the principles of natural justice. He further relied on the decision of the Honourable Supreme Court of India in the case of Chandrama Tiwary Vs Union of India reported in AIR 1988, Supreme Court p.117. He relied on the said decision in support of his contentions that the inquiry officer should have furnished the copies of documents during the course of inquiry and that the inquiry officer rejected his prayer.

As against this, the learned counsel for the respondents submitted that the inquiry was conducted adhering to the principles of natural justice that the applicant could not place any material to show that he had appeared to the written examination conducted by the Staff Selection Commission and during 1980 and had appeared to the typewriting test that the inquiry was intended to ascertain whether the particulars furnished by the applicant through his letter Dt.12.10.93 were in fact correct or not. Further he submitted that the applicant ~~indirectly~~ in his representation Dt.15.7.91 had indirectly admitted that he had not appeared for the written examination conducted by the staff Selection Commission during August 1980 and that therefore there are no reasons to quash the orders.

In view of the various contentions raised by the learned counsel for the parties the following points arise for our consideration:

(a) Whether the applicant proves that the disciplinary proceedings were conducted against him in violation of principles of natural justice?

(b) Whether the impugned orders are liable to be interfered with by this Tribunal? and

(c) To what order.

OUR FINDINGS:-

(a) No

(b) No

(c) As under

REASONS:

(a) The applicant challenged the disciplinary proceedings on the grounds that the inquiry officer and the presenting officer were drawn from the vigilance section. There is no order or hard and fast rule not to entrust the disciplinary proceedings to officers who worked in the vigilance cell. It is entirely in the discretion of the disciplinary authority to appoint and nominate the inquiry officer. Further the duties of the presenting officer are only to assist the inquiry officer in conducting the inquiry on behalf of disciplinary authority. The presenting officer will not have any role to reach any conclusion during the inquiry. In the absence of the regularly appointed presenting officer, the Disciplinary authority may make any change and post a suitable person to assist the inquiry officer. In this case it is specifically stated that the regularly appointed presenting officer Sri M. Rameswar Rao was away from the headquarters

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between 22.6.82 and 24.6.88 and that, therefore, it was necessitated for the disciplinary authority to post Shri K. Narsimhalu to act as presenting officer. It is further stated that no formal orders are necessary from the disciplinary authority. The respondents have explained the circumstances under which they posted K. Narsimhalu to act as ^{the} presenting officer. No reply is filed to the counter. The contention of the applicant that the officers drawn from vigilance cell ~~can~~ not act impartially cannot be accepted. The applicant has not been able to show how he was prejudiced by appointing the inquiry officer and presenting officer drawn from the vigilance cell. Hence this ground fails.

The next contention of the applicant is that he was not allowed to inspect the documents and were not furnished the copies of the documents. Under the rules he has to inspect and verify the documents of the inquiry records. While verifying the records the delinquent employee is ^{entitled} ~~eligible~~ to take notes of the documents. In case the documents are material for the purpose of his defence then he should make an application to the inquiry officer for furnishing the copies of the ^{said} documents. In the instance case it was not explained by the applicant as to what documents ~~the copies of~~ which ~~were required~~ and whether the ~~documents~~ ^{were} material documents. It is noted such a contention was not made by the applicant while furnishing his reply to the report of the inquiry officer. It is submitted on behalf of the respondents that the applicant was given all the opportunity to go through the documents of the inquiry. In the absence of clear explanation from the applicant as to what documents were material for his ^{or for Cross Examination,} defence and whether the inquiry officer was justified in refusing to issue the copies. We cannot accept

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the vague contention of the applicant. Even in the case relied upon by the learned counsel for the applicant it has been observed as follows:-

" If a document has no bearing on the charges or if it is not relied by the inquiry officer to support the charges, or if such document or material was not necessary for the cross-examination of witness during the inquiry the officer cannot insist upon the supply of copies of such documents, as the absence of copy of such document will not prejudice the delinquent officer."

It is on these lines we expected from the applicant to state clearly as to which of the documents he had felt material and which of the documents the enquiry officer failed to furnish the copies. Hence the contention of the applicant that the inquiry officer has not furnished the copies of the documents cannot be accepted.

Even in para-4 (page-8) of the application the applicant has not stated what were the documents he felt material for his defence or for crossexamination of the witnesses. If he had elaborated those documents we would have been in a position to ascertain whether the inquiry officer was not justified in rejecting his prayer. or whether there ~~was~~ any reason of prejudice to him.

It is stated that the inquiry officer acceded to every request of the presenting officer. The applicant has not explained in what way he ^{was} prejudiced thereby. The applicant has not stated whether the request made by the presenting officer were prejudicial to his interest.

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In case the presenting officer had made any such request he should have filed memo of objections to the said request. Merely because the inquiry officer acceded to every request of the presenting officer the same cannot prejudice the case of the applicant.

It is stated that the inquiry officer was biased towards him. In our opinion the allegations of bias is as vague as it could be. He has not stated in what manner the inquiry officer had developed bias towards him. ~~In case,~~ He had made such a request to the disciplinary authority, that the disciplinary authority felt that the same was not substantiated even in this application. He has not explained clearly as to how the inquiry officer was biased towards him. Whether the said bias had any bearing to reach to conclusion in his report. Therefore, the allegation of bias in our opinion is not substantiated.

Disciplinary proceedings are neither civil trial nor criminal trial. Strict rules of evidence are not applicable to the disciplinary proceedings. Preponderance of probabilities is the guiding factor in the disciplinary proceedings. Disciplinary proceedings are intended to give an opportunity to the delinquent employee to prove his innocence. The charges in this case were framed only on the basis that certain particulars furnished by the applicant in his reply Dt.12.10.93 were not correct.

The applicant could have placed material before inquiry officer that what he stated in his explanation Dt.12.10.93 were true facts. In fact, during the course of arguments the learned counsel for the respondents went to the extent of saying that he would concede the prayer of the applicant provided he produces the hall-ticket through which he appeared for the written examination during August, 1980 or any document to show that he had undergone typewriting test. Therefore, the charges levelled against the applicant were such that the applicant should have placed some material before the inquiry officer to prove his

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innosance. The applicant cannot sit tight-lipped and say that the disciplinary authority has not substantiated the charges. Proof beyond reasonable doubt is not essential ^{ce} ~~in~~ the disciplinary proceedings.

Having considered the other grounds on which the applicant challenged the conduct of the disciplinary proceedings we feel that there are no merits in the contention of the applicant that the disciplinary proceedings were held in violation of principles of natural justice. The grounds narrated above are not sufficient to hold that the inquiry was vitiated on any of the grounds. We are fully convinced that the inquiry was conducted fairly ^{and that} ~~that~~ the rules and principles of natural justice were not violated. That the contention of the applicant amounts to a trespasser insisting upon the owner of an immovable property to evict him according to ^{the} provisions of law.

It is the case of the respondents that the applicant got ^{the} ~~a~~ job in the Central Government by practicing fraud on the department. The applicant is not able to state as to whether he had appeared for the written examination which was conducted in August 1980 and whether he ^{had} appeared for the typewriting test. Hence we find no reasons to accept any of the contentions of the applicant.

For these reasons we hold point (b) against the applicant.

Point (b) :-

After submission of the inquiry report to the disciplinary authority the disciplinary authority considered the findings recorded by the inquiry officer and also the explanation submitted by the applicant. The disciplinary authority was satisfied that the applicant had fraudlently entered into service.

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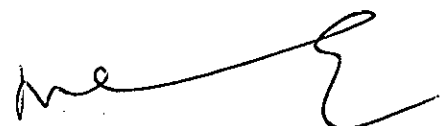
The disciplinary authority reached the conclusion that the applicant had not written the examination conducted by the staff selection commission during August, 1980. Nizam College, Hyderabad was not one of the centres in which examination was conducted by the Staff Selection Commission. The applicant had not appeared for the typewriting test.

Considering all these factors the disciplinary authority found it proper to impose the penalty of removal from service. In fact the disciplinary authority has taken lenient view taking into consideration the future career of the applicant.

The applicant preferred an appeal to the respondent No.1 who rejected the appeal by his order Dt.3.6.92. We find that both the impugned orders are justified in the circumstances of the case. There are no illegalities or infirmities in the said order. There are no grounds to quash the impugned orders.

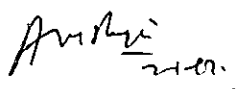
For the above said reasons there are no merits in this OA. The same is liable to be dismissed. Accordingly, the OA is dismissed. In the circumstances of the case, no orders as to costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)
30.12.96


(R. RANGARAJAN)
MEMBER (ADMN.)

Date: Dec 30 96

KSM


D.R. (J)

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O.A.NO.510/93

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THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

Jai Ramesh M(A)

ORDER/JUDGEMENT
R.A/C.P./M.A.NO.

in

O.A.NO. 570/93.

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED
DISMISSED AS WITHDRAWN
ORDERED/REJECTED
NO ORDER AS TO COSTS.

YLKR

II COURT

