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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 1044 OF 96

Dated, the 19th November, '98.

BETWEEN :

Ch. Srinivas

... Applicant

A N D

1. The Director General, Telecom.
(reptg. Union of India),
New Delhi-110 001.
2. The Chief General Manager,
Telecommunications, AP,
Hyderabad 500 001.
3. The General Manager,
Telecom District,
Visakhapatnam-530 020.
4. The Dy.General Manager,
Telecom District,
Visakhapatnam-530 020.
5. The Divisional Engineer, Telecom.,
Co-axil Cable Project,
25-9-3, R.V.Nagar,
Rajahmundry-533 105.

... Respondents

COUNSELS:

For the Applicant : Mr.C. Suryanarayana

For the Respondents : Mr. V.Rajeswara Rao

CORAM:

THE HON'BLE MR. R. RANGARAJAN, MEMBER (ADMIN)

THE HON'BLE MR. B. S. JAI PARAMESHWAR, MEMBER (JUDL)

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O R D E R

(PER : HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (J))

1. Heard Mr. C. Suryanarayana, Learned Counsel for the applicant and Mr. V. Rajeswara Rao, Learned Standing Counsel for the respondents.

2. This is an application filed under Section 19 of the Central Administrative Tribunals Act. The application was filed on 27.8.96.

3. The facts in brief are as follows :

(a) In response to the notification inviting applications for filling up the posts of J.T.O., the applicant submitted his application dt. 24.5.89 with necessary testimonials and educational certificates.

(b) The applicant was selected for the post and was imparted Training at R.T.T.C., Kalyani in Batch No.154.

(c) After completion of the training the applicant was allotted as J.T.O. to CCP, Rajahmundry, under the CGMP, Madras.

(d) While the applicant was working as J.T.O., Rajahmundry the respondent authorities corresponded with the Andhra University, Waltair to ascertain the genuineness or otherwise of the educational certificates produced by the applicant and others at the time of submission of their applications.

(e) The Andhra University, Waltair through its letter dt. 28.8.90 furnished the necessary information to the respondent authorities.

(f) As regards the educational certificates and marks lists produced by the applicant, the Andhra University, Waltair informed the respondents as under :

"In this connection, I am to state that the Provisional Certificate and Marks Statement bearing Regd. No.7874 April, 88, Regd. No.18794 May, '86 and Regd. No.14963 of April, 1987 II Year of Sri Chukka Srinivas do not tally with the records of this office and Marks noted in the respective marks statements stated above appear to be tampered with".

(g) The respondent No.5 issued a major penalty charge charge memo to the applicant by his proceedings No.DE/CX/RMY/Disc.Case/3 dt. 24.8.91.
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(h) The charge levelled against the applicant reads as follows :

"Statement of article of charge framed against Sri Chukka Srinivas, Junior Telecom. Officer, O/o D.E.Telecom., Coaxial Cable Project, Rajahmundry. Sri Chukka Srinivas, S/o. Sri Satyanarayana, now working as Junior Telecom Officer in the establishment of Divisional Engineer, Telecom, Coaxial Cable Project, Rajahmundry, submitted along with his application for the post of JTO false and tampered marks list pertaining to Degree Examination of Andhra University, to gain selection by unfair and fraudulent means and thus, Sri Chukka Srinivas, failed to maintain absolute integrity which is violative of Article 3(i) (i) of CCS Conduct Rules, 1964."

(i) Further with effect from the said date the applicant was placed under suspension vide order dt. 24.8.91 (Annexure-A3) Page 15 to the O.A.

(j) In reply to the charge memo, the applicant requested the respondent authorities to prove the charge levelled against him. A detailed inquiry was conducted into the charges by the AE(Inquiries), O/o CGM, Telecom, Hyderabad. The applicant participated in the disciplinary proceedings. The Inquiry Officer submitted his report dt. 24.2.93. A copy of the Inquiry Report of the Inquiry Officer was furnished to the applicant. The applicant submitted his representation dt. 13.12.93 against the findings recorded by the Inquiry Officer.

(h) While the proceedings was in its final stages the applicant was transferred to Visakhapatnam.

(i) At this stage, the applicant approached this Tribunal in O.A. 671/94. On 5.7.94, this Tribunal disposed of the said O.A. with certain directions.

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4. On account of the transfer of the applicant to Visakhapatnam, the R-4 becomes the disciplinary authority the R-4, after considering the report of the Inquiry Officer, representation of the applicant and the records of the inquiry, by his proceedings No.GMTD/VM/Q/PE/CHS/94-95/11 dt. 10.4.95 imposed the penalty of dismissal from service on the applicant. A copy of the order passed by the disciplinary authority is at Annexure-A4, Pages 16 to 20 of the O.A.

5. Against the order of penalty, the applicant preferred an appeal to the CGM Telecom, A.P., Hyderabad. A copy of the memorandum of appeal is at Annexure-A6, pages 21 to 26 of the O.A. R-2 is the Appellate Authority.

6. The respondent No.2 after considering the appeal and the records of the inquiry, by his proceedings No.DISC/Rule 15/Appeals/Ch.S/95-96/4 dt. 31.1.96 dismissed the appeal and confirmed the punishment imposed by the disciplinary authority.

7. The applicant has filed this O.A. praying for the following reliefs :

- to call for the records relating to the 4th respondent's order No.Q/PF-Ch.S/94-95/11 dt.10.4.95 (Annexure-4) as confirmed by the 3rd respondent's order No.Disc/R-14/Appeals/Ch.S/95-96/4, dt. 31.1.96 Annexure-A9) and to quash the same declaring -

- (a) that the applicant not having been appointed as a Govt. servant was not liable to disciplinary action under the CCS(CCA) Rules, 1965 or for alleged violation of the CCS(Conduct) Rules, 1964;
- (b) that as a consequence of the same, status quo ante has to be restored as before 24.08.91, the date on which disciplinary action was instituted against the applicant followed by his suspension;

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(c) that the applicant should be deemed to be in continuous employment as (Casual) JTO till date and entitled to his wages.

8. The applicant has challenged the impugned orders on the following grounds :

(a) The R-4 was not the proper disciplinary authority. His transfer from R-1 to Visakhapatnam ~~does not~~ ^{en} does not confirm any power on the R-4 to impose the punishment.

(b) The applicant was not at all issued with any letter of appointment as JTO.

Hence, for all purposes, he was not a Central Govt. servant and that ^{the} CCS CCA Rules were not applicable to him. Therefore, the entire enquiry proceedings held against him are void ab initio.

9. The respondents have filed a reply stating that the training imparted to him was necessary before issuing a letter of appointment; that before issuing the letter of appointment, they corresponded with the Andhra University, Waltair to ascertain the genuineness or otherwise of the educational certificates produced by the applicant; that Andhra University, Waltair had not agreed with the educational certificates produced by the applicant; that the applicant had produced false and fake educational certificates to gain entry into service in the Department; that the applicant was paid stipend during the training period and was paid salary and emoluments as that of the JTO while working at Rajahmundry; that when an inquiry is pending against a Govt. employee and if the Govt. servant is transferred then the disciplinary authority also changes; that as a result of the OM dt. 16.4.89, in which clarification was issued, the R-4 became the competent disciplinary authority to consider the inquiry report submitted against the applicant; that the R-4 was the competent officer to impose the penalty;

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that the appellate authority has considered all these facts in his order; that the applicant having received the stipend during the training period and having received salary, emoluments of that of the post of JTO and having received the subsistence allowance--during suspension is precluded from raising the contention that he is not a Govt. servant merely because the appointment letter was not issued; and that the appointment letter could have been issued only after the educational certificates produced by the applicant were authenticated by the Andhra University, Waltair.

10. The contention of the applicant that he is not at all a Govt. servant cannot be accepted and that the authorities have carefully considered the findings recorded by the Inquiry Officer and imposed proper punishment; and that this Tribunal need not consider the propriety or otherwise of the punishment imposed by the respondent authorities. The respondent authorities have taken a just decision in the case, as the applicant had produced fake educational certificates to gain employment.

11. They submit that the O.A. is liable to be dismissed.

12. It is an admitted fact that the applicant was imparted pre-appointment training and after completion of the training, he was posted as JTO at Rajahmundry. The respondents admit that before issuing the letter of appointment and appointing the applicant as JTO in the Department, they made correspondence with the Andhra University, Waltair to ascertain as to the genuineness or otherwise of the educational certificate produced by the applicant along with the application. The Andhra University, Waltair clarified that the certificate produced by the applicant don not tally and marks in the marks list appear to have been tampered with.

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13. It is on this ground ~~the~~ respondent authorities initiated disciplinary proceedings as a result of which the applicant was removed from service.

14. The learned counsel for the applicant contended that submission of educational certificate prior to the appointment does not amount to misconduct; that the appointing authorities were at liberty to scrutinise the educational certificates before empanelling the applicant in the select list; that once they selected him, it cannot be said that he has committed misconduct.

15. In support of his contention that the said act of furnishing educational certificates which later on found to be not genuine by the employer was not a misconduct as such an offence warranting removal, relied upon the decision of the Hon'ble Supreme Court in the case of M/s. Glaxo Laboratories (I) Ltd., Vs. Presiding Officer, Labour Court, Meerut and Ors, reported in AIR 1984 in SC 505 and/the case of Rashiklal Vaghajibhai Patel Vs. Ahmedabad Municipal Corporation and Anr. In those decisions, it is stated that unless either in the certified standing order or service regulations an act or omission is prescribed as misconduct does not bind the employer to fish out some conduct as misconduct and punish the workmen even though the alleged misconduct does not fall under any of the enumerated misconduct.

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16. The Hon'ble Supreme Court in the above case in para 23 has observed that -

"Some misconduct neither defined nor enumerated and which may be believed by the employer to be misconduct ex-post-facto would not expose the workman to a penalty. It cannot be left to the vagaries of management to say ex-post-facto that some acts of omission or commission nowhere found to be enumerated in the relevant Standing Order is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant Standing Order but yet a misconduct for the purpose of imposing penalty".

17. Thus the learned counsel for the applicant submits that the principles laid down in the cases cited above are strictly applicable to the case of the applicant as the applicant was not at all issued with a letter of appointment before serving him memorandum of charges, and at best he be regarded as a Casual J.T.O.

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18. The decisions referred to above are clearly distinguishable. The Hon'ble Supreme Court considered in those cases, the standing orders issued by the employer under the provisions of Industrial Disputes Act.

19. It may be noted that the applicant being an employee of the Govt. of India is governed by ^{the} CCS (CCA) Rules. The Rules do not define the word "Misconduct". The Hon'ble Supreme Court in the case of State of Punjab and Ors. Vs. Ram Singh reported in AIR 1992 S.C. Part-2, Page 2189 enumerated misconduct that may be attributed to a Govt. employee in paras 4 & 5. What the Hon'ble Supreme Court has stated is as under :

"4. Misconduct has been defined in Black's Law Dictionary, Sixth Edition at page 999 thus :-

"Atransgression of some established and definite rule of action, forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness."

Misconduct in office has been defined as :

"any unlawful behaviour by a public officer in relation to the duties of his office, wilful in character. The term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

P. Ramanatha Aiyar's the Law Lexicon, Reprint Edition 1987 at p. 821 "misconduct" defines thus:-

"The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be

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construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskillfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected."

5. Thus it would be seen that the word 'misconduct' though not capable of precise definition, its reflection receive its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral torpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty, the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined services and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order."

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The point for consideration is whether the

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respondents were justified in issuing the memorandum of charges to the applicant when even the letter of appointment was not issued to him appointing him as JTO. The applicant contends that he is not a Central Govt. employee as such, because the respondents had not issued him a letter of appointment. On the other hand, the respondents submit that the applicant had drawn the stipend during the training and salaries and other benefits when he was posted at Rajahmundry and Visakhapatnam as JTO and also received subsistence allowance during the period of suspension. He was working at Rajahmundry and Visakhapatnam discharging the duties of a JTO.

21. They submit, that before issuing the letter of appointment they made enquiries with the Andhra University and found that the educational certificates produced by the applicant along with the application were not genuine. Thus they submit for all intents and purposes, the applicant must be regarded as a Central Govt. employee governed by the CCS CCA Rules.

22. Rule 2(h) of the CCS CCA Rules defines the Govt. servant as under :

"2(h) "Government Servant" means a person who -

- (i) is a member of Service or holds a civil post under the Union, and includes any such person on foreign service or whose services are temporarily placed at the disposal of a State Government or a local or other authority;
- (ii) is a member of a Service or holds a civil post under a State Government and whose services are temporarily placed at the disposal of the Central Government;
- (iii) is in the service of a local or other authority and whose services are temporarily placed at the disposal of the Central Government;"

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23. As against this, the learned counsel for the applicant contended that in view of the fact that he had drawn the emoluments of the post of a JTO while undergoing training and working at Rajahmundry and Visakhapatnam, he may be regarded as a Casual JTO and that therefore, the CCS CCA Rules 1965 are not applicable to a casual employee.

24. We are not persuaded to accept the said contention of the applicant. The very fact that the applicant was imparted pre-appointment training and was posted to discharge the duties and functions of JTO at Rajahmundry and Visakhapatnam, he must be regarded for all purposes as a Govt. employee. He is governed by ^{the} CCS CCA Rules. He cannot contend that he is not at all a Govt. servant merely ~~on~~ the ground that the letter of appointment was not issued by the authority. Issuance of a letter of appointment in this case was only a formality which had to be completed by the authorities after ascertaining the genuineness or otherwise of the educational certificates produced by the applicant.

25. In fact, the respondent authorities should have been more careful before imparting the pre-appointment training to the applicant and posting him to Rajahmundry and Visakhapatnam as JTO. They were under the impression that the educational certificates produced by the applicant were genuine and they were carried away by the educational certificates and testimonials produced by the applicant to take a decision to impart the pre-appointment training and to post him to the places at Rajamundry and Visakhapatnam.

26. In the facts and circumstances available in the case, **it** cannot be regarded that the applicant is not at all a Govt. servant. Further the contention of the applicant that he was only a casual employee discharging the duties of a JTO also cannot be accepted. Casual Labourers are employed only for

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discharge of the works of menial nature like sweeping, cleaning, farash, etc. He was asked to discharge the functions of an official. It can be either temporary or probationary of permanent nature. Therefore, he cannot be regarded as a casual employee.

27. Furnishing false educational certificates to gain entry into the department is a misconduct. That misconduct can be inquired into by the employer. Merely, because certain process in the stages of issuing letter of appointment had not been completed, the applicant ~~cannot~~ be absolved of his misconduct.

28. In the first instance, the applicant was appointed as JTO at Rajahmundry. While he was working as JTO at Rajahmundry, memorandum of charges was issued.

29. The applicant submitted his explanation requesting the respondent authorities to prove the charges levelled against him. They have produced a copy of the letter received from the Andhra University. The applicant had not been able to rebut the documentary proof produced by the respondent authorities in the disciplinary proceedings.

30. When the respondent authorities charged the applicant that he had produced false and fake educational certificates to gain entry into Govt. service and also when they produced the letter received from the Andhra University wherein the respondent authorities had clearly stated that the marks list produced by the applicant had been tampered with, the applicant has not placed any iota of evidence worth the salt to rebut the said material.

31. Therefore, in our opinion the contention of the applicant cannot be accepted.

32. It is to be noted that earlier the applicant had approached this Tribunal in O.A. 671/94. In the said O.A.

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the applicant had challenged the order dt. 11.5.94 relieving the applicant (under suspension), and repatriating with further stipulation that the applicant would continue to be under suspension not only during the repatriation period but also after he joined as JTO in the CGMT's office at Hyderabad. In the said O.A. the applicant never raised the plea that he was not at all a Government servant and was to be regarded only as a casual J.T.O. When that is so he cannot be permitted now to contend that he was not at all a Government servant and that he has to be regarded as a Casual JTO.

33. The disciplinary authority at Visakhapatnam passed the impugned order of dismissal of the applicant from service. The applicant had challenged the competency of the disciplinary authority at visakhapatnam to pass the impugned order. The respondent authorities in their counter had disputed the said contentions of the applicant by relying on the OM No.F 39/1/69/Estt/A dt. 16.4.69 (Annexure-R/7) of the reply) to contend that the said OM clarified certain points, when a Government servant when facing the disciplinary proceedings is transferred. The OM clarified that it was not necessary for the disciplinary authority at the transferee place to start de novo proceedings by framing and delivering fresh charges to the concerned official. He can very well carry on with the inquiry proceedings where the transfer of the employee is effected. If, however, he is transferred to another service then the procedure under rule 12 4(b) of the Rule 1965 to be followed.

34. In the instant case, the applicant was transferred from Rajahmundry to Visakhapatnam. The disciplinary authority

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at Visakhapatnam had passed the impugned order of punishment. We find no reasons to agree with the contention of the applicant that the disciplinary authority at Visakhapatnam was not competent to impose the penalty.

35. These are the two main contentions raised by the applicant in challenging the impugned orders.

36. We find both the contentions are not acceptable. There are no merits in this O.A.

37. Hence, the O.A. is liable to be dismissed. Accordingly, the OA is dismissed leaving the parties to bear their own costs.


(B.S. JAI PARAMESHWAR)
MEMBER (J)


(R. RANGARAJAN)
MEMBER (A)

Dated, the 19th November, '98

19-11-98
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Copy to:

1. The Director General, Telecom, Union of India, New Delhi.
2. The Chief General Manager, Telecommunications, A.P., Hyderabad.
3. The General Manager, Telecom District, Visakhapatnam.
4. The Dy.General Manager, Telecom District, Visakhapatnam.
5. The Divisional Engineer, Telecom, Co-Axial Cable Project, 25.9.3, R.V.Nagar, Rajahmundry.
6. One copy to Mr. SC. Suryanarayana, Advocate, CAT, Hyderabad.
7. One copy to Mr. V. Rajeswara Rao, Addl. CGSC, CAT, Hyderabad.
8. One copy to Mr. HBSJP, M(J), CAT, Hyderabad.
9. One copy to D.R(A), CAT, Hyderabad.
10. One duplicate copy.

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7/12/98

II COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

AND

THE HON'BLE SHRI S.S. JAI PARAMESHWAR :
M(J)

DATED: 19/11/98

ORDER/JUDGMENT

M.A./T.A/C.P.NO.

in

O.A.NO.

1044/98

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR

