

(19)

CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH : HYDERABAD.

S.A. No. 1517/96

T.A. NO.

DATE OF DECISION 12-2-97

Shaik Mohammed

(PETITIONER (S))

K. Siva

ADVOCATE FOR THE PETITIONER(S)

Union of India, rep. by  
The CAG of India  
New Delhi VERSUS  
and two others

RESPONDENT (S)

G. Parameswar Rao

ADVOCATE FOR THE RESPON-  
DENT (S).

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI, VICE CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgement ?
4. Whether the Judgement is to be circulated to the other Benches ?

  
Judgement delivered by Hon'ble Mr. Justice MG Chaudhari, VC

20

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH

AT HYDERABAD

OA.1517/96

dt.12-2-97

Between

Shaik Mohammed

: Applicant

and

1. Union of India, rep. by  
the Comptroller and Auditor General of India  
New Delhi

2. The Principal Accountant General  
Audit-I, Saifabad, Hyderabad 500463

3. The Dy. Accountant General (Admn)  
o/o the Accountant General (Audit-I) AP  
Saifabad, Hyderabad 500463

: Respondents

Counsel for the applicant

: K. Siva  
Advocate

Counsel for the respondents

: G. Parameswar Rao  
Standing counsel

CORAM

HON. MR. JUSTICE M.G. CHAUDHARI, VICE CHAIRMAN

HON. MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

## Judgement

Oral order (per Hon. Mr. Justice M.G. Chaudhari, VC )

Mr. N. Rama Mohan Rao, with Mr. K. Siva for the applicant. Mr. G. Parameswara Rao for the respondents.

1. This case is somewhat an unusual feature wherein neither law nor equity is involved, but a certain approach of the respondents which per se cannot be described as untenable but needs to be tampered with mercy. The respondents have ~~filled~~ <sup>has</sup> reply affidavit and they oppose the application. We cannot say that the respondents are not justified in opposing the application seriously.

2. The applicant was engaged on casual basis ~~as~~ Attender under the respondents' organisation on daily wage basis. The engagement was in 1981. He continued to work on that basis till the impugned order was passed on 4-1-1993.

3. The disengagement was a result of a charge-sheet being served upon him on 10-8-1989 for misconduct under Rule 3(1)(i) of CCS(Conduct) Rules, 1964 on the ground that he had submitted a fraudulent certificate when he was appointed as peon on 31-3-1983. ~~No~~ question of submitting a certificate in respect of Casual engagement initially made however arose.

4. It may be mentioned that while he was engaged as Casual worker he was appointed as peon in the office of the Accountant General (Audit) with effect from 31-3-1983. The minimum qualification for that appointment was passing 8th class. The applicant produced a certificate from a School to show that he was holding that qualification and was eligible. On that basis he was appointed. Since that was found a false <sup>to be</sup> <sub>A</sub>

certificate and he was not holding the requisite qualification to be appointed to the post of peon, the Disciplinary proceedings was initiated. The charge was held proved and ~~the removal order dated 4-1-1993 was passed. Consequently by the order dated 4-1-1993 became final as it~~ was not challenged before a Court of law.

5. It appears that similar charge-sheet was issued to 17 other employees. However, as it appeared to the applicant that their cases were being reconsidered he submitted a representation to the Comptroller and Auditor General of India praying for reappointment to Group-D post. He was informed by the impugned reply dated 28-5-1996 as follows :

"Sri Shaik Mohammed, s/o Abdul Rahman is hereby informed that the five officials mentioned in his representation to the Comptroller and Auditor General of India were re-appointed as Casual Labourers as they had tendered written apology. Meanwhile they had also acquired the minimum Educational Qualifications required for the post of Group-D and hence their services were regularised alongwith others on 5-5-1995, which was not so in his case."

6. The reply has to be read in two parts :

- i) The other persons were reappointed as Casual labourers after their apology was accepted. The applicant was ill-advised in not tendering apology likewise and therefore his case was not reconsidered for engaging again as Casual labourer. When charge was proved and that involved moral turpitude, atleast if the applicant had expressed repentence and had tendered genuine apology, the respondents could have considered his case. Since the applicant did not do so, no fault can be found with the respondents in not considering his request for reengagement as Casual labourer.
- ii) The second part of the order relates to reappointment of others, who had tendered apology, to Group-D posts. They were considered for reappointment not only because they had



✓ tendered apology but <sup>as</sup> <sup>also</sup> they had acquired the minimum qualification. The applicant not having acquired the minimum educational qualification, the question of reappointment in Group-D posts does not arise. The action of the respondents <sup>not considering his</sup> vis-a-vis him to the extent of appointment to Group-D posts cannot be interfered with.

7. As a matter of fact, by his representation the applicant had wanted to be reengaged as Casual labourer stating that he comes from a very poor family and could not pursue his education and there were severe financial constraints faced by his family. For appointment as Casual labourer, the minimum educational qualification of 8th class is not essential. There has also been no objection to his initial engagement as Casual labourer. It was, however, the adamancy of the applicant in not tendering apology, which seems to have come in the way.

8. Mr. Ram Mohan Rao, learned counsel for the applicant submitted that an indulgence can always be shown and the conduct of the applicant can be condoned with an approach ~~tempered~~ tendered with mercy as he is willing to tender an unconditional apology to the respondents now. The learned counsel submitted that such persons do not act necessarily as required at proper time as they get themselves enmeshed with advice of others who do not understand the implications and tend to exhibit confrontational attitude. He therefore urged that a sympathetic view may be taken and an opportunity may be given to the applicant to tender a written unconditional apology coupled with good behaviour and the respondents may therefore consider his case.

9. Mr. G. Parameswar Rao, learned counsel for the respondents is right in contending that means of apology

should not be allowed to be mis-used to overcome moral turpitude and dishonesty much less where there is no repentance on the part of the ~~delinquent~~ and there is no exhibition of genuine apology. He submitted that the applicant could have indicated the same to the respondents much earlier and his statement now made that he ~~is~~ genuinely repentant and is willing to tender an apology and assure future good conduct should not be taken ~~on~~ <sup>at</sup> its face value.

10. As stated above, although what Mr. Parameswar Rao has submitted has great force in it, still we ~~are~~ <sup>of the opinion</sup> ~~view that~~ there is a room for the respondents to take consideration ~~ale~~ and sympathetic view when they were merciful to others. We accordingly direct that in the event of the applicant tendering an unconditional apology expressing heart-felt regret and repentance for his past conduct in producing false educational certificate and assuring future good conduct, the respondents may sympathetically consider his case for Casual reengagement. We make it clear that we leave the matter entirely to the discretion of the respondents and may not be understood to have made a direction by this order to appoint the applicant straightaway as Casual labourer under them. The applicant should file his written apology to the respondents if so advised within a period of two weeks from today. In case he fails ~~to~~ submit the same, the respondents will be relieved of considering his case as directed above thereafter and refuse to accept the apology if it is tendered after 15 days.

11. The OA is disposed of in terms of above orders at the admission stage as the respondents have appeared and waived notice and have also filed reply. The court appreciates <sup>the</sup>

O.A.1517/96.

To

1. The Comptroller and Auditor General of India,  
Union of India, New Delhi.
2. The Principal Accountant General, Audit-I,  
Saifabad, Hyderabad-463.
3. The Deputy Accountant General (Admn.)  
O/o the Accountant General(Audit-I) AP Saifabad,  
Hyderabad-463.
4. One copy to Mr.N.Siva, Advocate, CAT.Hyd.
5. One copy to Mr.G.Parameswar Rao, SC for AG. CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.
8. One copy to D.R.(A) CAT.Hyd.

pvm