

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH

AT HYDERABAD

ORIGINAL APPLICATION :474/96

dt.17-4-96

Between

Smt. U. Mary Kumari

: Applicant

and

1. B. Uppalaiah, Inquiry authority
and ASP(HQS) Warangal Division, Warangal

2. The Superintendent, RMS 2 Divn.
Tilak Road , Hyderabad

3. The Post Master General
Hyderabad Region, Dak Sadan
Hyderabad

4. The Member (Personnel)
Postal Service Board, Govt. of India
Dak Bhavan, Sansad Marg,
Department of Posts,
New Delhi

5. Union of India, rep. by
its Secretary
Ministry of Communications
Dept. of Posts
New Delhi

: Respondents

Counsel for the applicant

: N. Krishna Rao,
Advocate

Counsel for the respondents

: V. Rajeswara Rao
Addl. CGSC

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

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

21

Judgement

Oral Order

(per Hon. Mr. Justice M.G. Chaudhari, V.C.)

Heard Sri B.S.A. Satyanarayana, For N. Krishna Rao, for the applicant and Sri V. Rajeswara Rao, counsel for the respondents.

2. We have carefully considered the record of the OA as also have gone through the record of earlier OA viz. 442/90. We have also heard counsel for the applicant at length. We are of the opinion that no case is disclosed for our interference and the OA is liable to be rejected for the following reasons :

i) Departmental inquiry was held against the applicant for alleged misconduct resulting in controvention of Rule 3(i)(iii) of CCS (Conduct) Rules, 1964. The inquiry was held under the provisions of CCS(CCA) Rules, 1965. The charge levelled against the applicant was that in her application dated 10-2-1981 for recruitment as Sorting Assistant in RMS Z Division, Hyderabad, for first half year of 1981, the applicant had furnished her date of birth as 1-5-1963 in order to show that she would complete the minimum prescribed age of 18 years on 1-7-1981 and thereby get the undue benefit of securing job while her actual date of birth as per her Secondary School Certificate ^{is} being 1-5-1964 and thus she had committed the misconduct. ~~She is 18 years old~~

ii) We find from the inquiry report that there was no irregular ^{act} procedure committed ~~nor there was~~ therefore any violation of Principles of Natural Justice.

iii) We notice that the applicant was given fullest opportunity to show cause at every stage of the inquiry.

✓ She had also availed ~~all~~ the benefits of another Government servant to act in her defence. She was given opportunity ~~to adduce~~ to cross examine ~~the~~ witnesses. She was also asked to make herself available for examination.

✓ After considering documentary and oral evidences adduced, ^{at the} inquiry and explanation offered by the applicant in her defence the inquiry officer recorded the findings that the charge levelled against the applicant was proved.

✓ That finding of the inquiry officer was confirmed by the disciplinary authority who in ^{his} ~~that~~ order has recorded findings supported by reasons ~~and~~ upon consideration of the evidence. The disciplinary authority consequently passed an order dismissing the applicant from the service. At that time the applicant was serving as Sorting Assistant, Kazipet RMS and she was dismissed from that post. The said order was passed on 11-2-1994. The said order was confirmed by the Appellate authority i.e. the Director of Postal Services, Hyderabad. The order dismissing the appeal and confirming the order of punishment was passed on 12-4-1994.

✓ iv) We notice from perusal of that order ^{of} whether the Appellate authority ^{that he has} ~~had~~ dealt with all the contentions raised by the applicant and has also given adequate reasons in support of his order. The applicant thereafter filed a petition to the Postal Services Board, New ^U Delhi. The ~~learned~~ Member of the Board by order dated 27-10-1995 has modified the penalty of dismissal from service to that of

compulsory retirement. The said order was passed on 27-10-1995. The applicant seeks to challenge these orders in the instant OA. She prays that these orders may be quashed and she may be directed to be reinstated in service together with all consequential benefits.

3. It is well settled that the Tribunal does not exercise jurisdiction as an Appellate forum against the order passed in a disciplinary proceeding by a competent authority. Likewise the Tribunal cannot go into the question of proportional^{-ity} or reasonableness or otherwise of the ~~quantum of~~ punishment awarded by the competent authority in such proceedings. The only limited ^{field} ~~filed~~ in which the said order can be interfered with is either the order is patently illegal or is vitiated by gross violation of principles of Natural Justice. Neither of these two grounds exist in the instant case. We find that the inquiry has been correctly proceeded with in accordance with the prescribed procedure and there is no illegality attached to it. We also found that at every stage the applicant was given ~~opportunity~~ to meet the charge levelled against her and thus there is no violation of principles of Natural Justice.

4. The learned counsel for the applicant vehemently ~~argued~~ that the chargesheet was issued after a lapse of about nine years after the applicant had been appointed and this inordinate delay vitiated the entire ^{proceeding} ~~procedure~~. Secondly, he submitted that ever since 1982 till the date on which the order of dismissal was passed, the applicant has had an unblemished record of service.

Thirdly, the counsel submitted that she is a lady and also belongs to Scheduled Caste community and therefore deserves better consideration at the inquiry. Fourthly, there was no preliminary inquiry held and the source on or the basis ^{on} of which disciplinary inquiry was initiated was also not disclosed. That also vitiated the procedure. Then the copy of the documents desired by the applicant were not supplied to him and that amounts to violation of principles of Natural Justice.

The learned counsel next submitted that the defence witness was not dropped by the applicant but by the inquiry officer and that also introduced an element of illegality in the procedure. ~~We shall~~

5. We shall briefly deal with these points. However, before doing so we may mention that the grounds raised in the OA inter alia are as follows :

- i). The respondents ought to have entertained the benefit of doubt as there was no allegation against the applicant that the SSC certificate was forged by her.
- ii). Without giving reasonable opportunity to submit her reply, the respondents had unilaterally proceeded to frame the charge and decided to hold the inquiry.
- iii). There was no preliminary inquiry preceding the initiation of disciplinary proceedings and the source of inquiry was ^{not} disclosed.
- iv). The charge levelled against her is ^{and} a decade old allegation has no substance or supporting material.
- v). There is no allegation or charge of misconduct during the period she has been in service till the framing of the charge.

vi) The defence note was not considered by the first respondent ^{and} that the observations of the Tribunal in earlier case were not followed, and
vii) Lastly, the charge has been ~~wrongly~~ held as proved against the applicant.

6. The grounds urged by the applicant and her counsel are to some extent ~~ere~~ overlapping.

6. In the absence of any period of limitation being prescribed to initiate disciplinary proceedings, mere circumstances that the inquiry was initiated after the alleged misconduct was noticed is no ground to render the inquiry illegal. In that connection it may be mentioned that in her application for recruitment dated 10-2-1981, the applicant had stated her date of birth as 1-5-1963. However, the ~~the~~ date of birth was recorded as 1-4-1964 in the bio-data of her service book. In view of this discrepancy, a verification was carried out and it was discovered that the applicant had given the date wrongly in her application. That apart in earlier OA.442/90, the contention about delay had been raised, ^{with} that has been dealt in paragraph 5 of the order dated 9-11-1993. However, the inquiry was not quashed on that ground, which means that that contention was rejected. The applicant cannot re-agitate that question in the instant application. Even otherwise we do not find any merit in that contention.

7. It may be that between 1982 and till the order of dismissal was passed, the applicant may have had ^{an un-}blemished ~~no~~ record of service. That alone, however, was not the criterion. ^{Since} One of the charges was held proved because the implication

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of the proof of the charge is that the conduct of the applicant on 10-2-1981 was ^{not} without blemish. Simply because subsequently her conduct has been good ^{that does} will not wipe out the impact thereof. Showing any mercy to the applicant on that ground would be laying premium on ^{her dishonest} the disciplinary conduct. Hence, we are not impressed by this contention also.

8. The circumstances that the applicant happens to be a woman and belonging to SC community does not confer upon her any concession ^{to be} of being dishonest. ~~This fact has been~~ proved and there ^{is} ~~has been~~ no merit in the submission ^{based} placed on this ground.

9. The inquiry was initiated under CCS(CCA) Rules read with CCS(Conduct) Rules. The Rules do not provide for any preliminary inquiry to be conducted as part of the disciplinary proceedings. Even if therefore no preliminary inquiry was held or the source of initiation of the disciplinary inquiry disclosed that does not amount to any breach of procedure ~~more does it~~ vitiate the impugned order. That apart, ~~there from~~, factually speaking, before the disciplinary inquiry was commenced a notice had been given to the applicant dated 8-3-1990 calling upon her to show cause as to why action should not be taken against her for furnishing incorrect date of birth in her application dated 10-2-81. The applicant had filed her representation in ^{answer} respect thereto. However, while doing so she wanted copies of ~~certified~~ ^{certain} records to be supplied to her. However, the relevant record on which the findings of the inquiry officer ^{is based} ~~was passed~~ was made available to her at the inquiry. Even if those copies

97

which she wanted were not supplied that does not amount to any illegality in the proceedings. Moreover, in her reply the applicant had not categorically denied nor admitted the content of the allegation proposed to be made against her and it raised some grounds of ~~some~~ insignificance. The inquiry shows that during the course of inquiry, she was supplied with the copies of the documents listed in the annexure to the memo of charge and she had inspected the documents alongwith the defence assistant. There is, therefore, no substance in this contention.

10. The contention that as there was no allegation of forgery, there was no basis to initiate inquiry ^{has} is no substance as we are concerned only with the charge that was framed and nothing more and there was no substance that the applicant was not given reasonable opportunity to raise her defence at the inquiry. The inquiry report states that after prosecution evidence was offered, the applicant was asked to submit defence statement. She cited one S.P. Seshagiri Rao, as the witness, but did not wish to examine herself as a witness. She also did not submit her defence statement. In the circumstances, the inquiry officer has given cogent reasons as to why the said witness was ^{not} necessary to ^{be} called ^{to} clarify whether verification of the record had been done initially.

Although several opportunities were given, the applicant did not submit her defence statement. When she was proposed to be examined by the inquiry officer on the point appearing in the evidence and was so informed, she



avoided the same on the ground that her defence assistant was not available despite the fact ^{that} she was given liberty to seek assistance of another Government servant but instead she filed a representation and thus did not avail ^{the} the opportunity. On these ~~facts~~ ^{we} cannot hold that the reasonable opportunity was denied to the applicant so as to result in violation of principles of Natural Justice.

11. It is incorrect to submit that the inquiry authority had not considered the defence note, ^{in any event} that ground is not available to her ^{now} ~~need~~ to be urged after ~~an~~ ^{the} appeal ^{and was rejected} ~~in additional decisions~~, ^{also} we do not find that in any manner the order of the Tribunal in earlier OA was disregarded ^{in any manner}. On the other hand each authority had referred to that order. That order while dismissing the OA merely directed ^{the} ~~any~~ disciplinary authority to take in-to consideration the relevant factors, viz. inordinate delay in initiation of the ^{proceeding} ~~procedure~~ and ~~satisfactory~~ service rendered by the applicant during the period of nine years of her service and nothing more. That ~~has~~ ^{the} precisely been done and indeed the ~~Court~~ ^{Board} has respected these observations by modifying the penalty of dismissal into that of compulsory retirement even after observing that though the applicant is undeserving but having regard to the satisfactory service for over a decade and on humanitarian consideration a lenient view was taken.

12. Thus we find no merit in any one of the contentions either urged ~~in~~ ^{by} the OA or by the learned counsel during the course of argument and we are unable to see any illegality in the decision passed by the authorities concerned

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on ~~passed~~ on adequate appreciation of the evidences which cannot be interfered with by us.

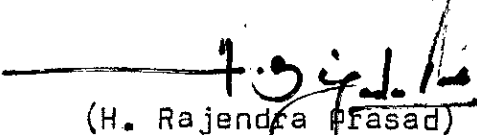
13. We have shown some indulgence in permitting the learned counsel to urge some of ^{the} ~~these~~ grounds considered above which were not open to be urged in view of the dismissal of the earlier OA and have indicated our reasons for not accepting them.


14. Mr. V Rajeswara Rao, learned counsel for the respondents supported ^{passed} the orders ~~proposed~~ by the authorities below and vehemently argued that the points now sought to be urged are not open to be urged in view of the decision in earlier OA and that as observed by the Tribunal in the earlier order, the relevant circumstances have been taken into account by the authorities below and thus there is no ground on which the orders can be said to have been ~~shown to be~~ vitiated.

These submissions of the learned counsel have been kept in mind in the course of the foregoing discussion.

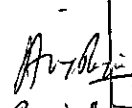
15. Thus, we do not find any merit in the OA and it is liable to be rejected at the admission stage.

16. In the result, the OA is rejected.


(H. Rajendra Prasad)
Member (Admn.)


(M.G. Chaudhari)
Vice Chairman

Dated : April 17, 96
Dictated in the Open Court


Deputy Resident (D) &c.

100

-10-

To

1. Sri B.Uppalshah, Inquiry Authority and
ASP(HQS) Warangal Division, Warangal.
2. The Superintendent, RMS 2 Divn.
Tilak Road, Hyderabad.
3. The Postmaster General, Hyderabad Region,
Dak Sadan, Hyderabad.
4. The Member(Personnel)
Postal Service Board, Govt.of India,
Dak Bhavan, Sansad Marg, Dept.of Posts,
New Delhi.
5. The Secretary, Union of India,
Ministry of Communications,
Dept.of Posts, New Delhi.
6. One copy to Mr.N.Krishna Rao, Advocate, CAT.Hyd.
7. One copy to Mr.V.Rajeswar Rao, Addl.CGSC.CAT.Hyd.
8. One copy to Library, CAT.Hyd.
9. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

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

AND

THE HON'BLE MR. H. RAJENDRA PRASAD :M(A)

Dated: 17-6-1996

ORDER/JUDGMENT

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

in

O.A.No.

T.A.No.

474/96
(w.p.)

Admitted and Interim Directions
issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for Default

Ordered/Rejected.

No order as to costs.

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