

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O. A. 800 OF 1997

Dated, the 17th Feb. '99.

BETWEEN :

G. Nageswara Rao ... Applicant

A N D

1. Union of India, Rep. by
the Secretary, Ministry of Communications,
NEW DELHI - 1.
2. The Dy. General Manager,
O/o G.M., Telecom District,
Vijayawada - 520 010
Krishna District.
3. Divisional Engineer Phones (ADMN)
Office of Telecom District Manager,
Vijayawada 50,
Kirshna District.

... Respondent

COUNSELS :

For the Applicant : Mr. J. Venugopal Rao

for the Respondent : Mr. V. Rajeswara Rao

CORAM :

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

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

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

1. None for the applicant. The applicant was also absent when the O.A. was taken up for hearing. Heard Mr. V. Rajeswara Rao, Learned Counsel for the respondents.

2. We are deciding this O.A. on the basis of the material available on record in accordance with Rule 15(1) of the Administrative Tribunals (Procedures) Act, 1987.

3. The respondents issued an advertisement in 'Anchra Jyothi' (Telugu Newspaper) in its issue dt. 24.3.82 inviting applications from the eligible candidates for filling up the posts of Telecom Office Assistants. It was also stated therein that the per centage of marks secured by the last candidate in the previous recruitment was 84.2.

4. The applicant submitted his application dt. 31.3.82 for the said post along with his educational and other testimonials. After verification of the testimonials, the Divisional Engineer (Telecom) Krishna Telecom Division, Machilipatnam, appointed the applicant by his proceedings dt. 30.10.82 as Telecom Office Assistant temporarily (Annexure-A3 to the O.A). The applicant joined the duties w.e.f. 14.9.82. The appointment order was issued after deputing the applicant for pre-appointment Training.

5. On receipt of certain complaints, the department detected certain malpractices committed in the recruitment of TO/TOAs in the Division. The preliminary inquiry revealed that certain candidates had furnished incorrect particulars and gained entry into service of the Department either by furnishing false information or by adopting unfair means.

6. The applicant was one of those who had adopted such unfair practices to enter into the Department.

7. The Divisional Engineer(Telecom), Krishna Telecom Division, Machilipatnam issued a charge memo to the applicant under



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Rule 14 of the CCS (CCA) Rules, 1965 by his proceedings No.X/GNR/TOA/84-85/1 dt. 20.9.84. The misconduct alleged against the applicant reads as follows :

"Shri G. Nageswara Rao, Working as Telecom. Office Assistant, O/o D.E. Telecom., Machilipatnam, while submitting his application to the post of Telecom. Office Assistant in the P&T Department has furnished information regarding the marks obtained in SSC Examination and the school, Govt. Junier College, Yelamanchili, from which he appeared for the SSC Examination, which has been verified as incorrect.

2. The details of marks obtained as furnished in the application are also in variance with those contained in the Memorandum of Marks produced subsequently by the said Sri G.Nageswara Rao.

3. Thus the said Sri G.Nageswara Rao obtained the employment wrongfully and has exhibited lack of integrity and conduct unbecoming of a Government servant contravening Rule 3(1)(i) and 3(1)(iii) of CCS(Conduct) Rules, 1964."

8. A detailed inquiry was conducted by the Assistant Supdt.(Tel-TFC)CTO, Vijayawada.

9. The applicant participated in/inquiry. He examined the defence witnesses also. The Inquiry Officer, submitted his report on 20.4.90 recording his findings as under :

"It is clearly established that the EX-A is the application submitted by the SGS himself in response to paper advertisement (D-1).

It is also established that the true copy of SSC Roll No.24531 Serial A No.575130 April, 1972, the true copy of B.A. provisional Register No.4595 and the letter from Sri P. Perraju Sarma Lecturer-in-charge

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issued in favour of Sri G. Nageswararao also are the enclosures to EX-A.

It is also established that the selection of the SGS for the post of TOA in Krishna Telecom Division was made basing on the marks detailed in SSC Roll No.24531 April, 1972 plus bonus marks for higher qualification (D-6).

It is also established that the SSC Roll No.24531, April 1972 is not a genuine one. EX-D).

On the basis of documentary and oral evidence adduced in the case before me and in view of the reasons given above, the charge against Sri G. Nageswar Rao, the SGS obtained the employment wrongfully and has exhibited lack of integrity and conduct unbecoming of a Government Servant contravening Rules 3((1)(i) and 3(1)(iii) of CCS(Conduct) Rules 1964, stands proved beyond doubt. "

10. After considering the inquiry report, inquiry records and agreeing with the findings recorded by the Inquiry Officer, the disciplinary authority by his proceedings of even number dt. 26.10.90 imposed penalty of dismissal of the applicant from service. The penalty order is at page 31 to 38 of the O.A.

11. Without exhausting the statutory remedies available to the applicant, the applicant submitted a mercy appeal dated 30.1.92 to the President of India. The same was dismissed vide proceedings No.X/GNR/89-90 dt. 26.10.96. He approached this Tribunal in O.A. 138/93. That O.A. was decided on 7.1.97 providing an opportunity to the applicant to prefer an appeal to the competent appellate authority on or before 28.2.97 against the penalty order dated 26.10.90. The appellate authority was directed to consider his appeal on merits.

12. Accordingly, the applicant submitted an appeal dt. 27.2.97 to the General Manager. The Dy.General Manager, Respondent No.2 considered the appeal and by his proceedings No.DGM/VJ/GNR/Admin/97-98 dt. 21.5.97 rejected the appeal and confirmed the punishment.

13. Being aggrieved by the order dt. 21.5.97, the applicant has filed this O.A. for the following reliefs:-



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"To declare the action of the respondents in dismissing the applicant from service by proceeding No.X/GNR/89-90/14 dt. 26.10.1990 as confirmed in Proceedings DGM(ADMIN)/VJ/GNR/97-98/6 dt. 21.5.97, and to set aside the same as bad, illegal, arbitrary and offends Article 14, 16 and 21 of the Constitution of India apart from it violates principles of natural justice and to direct the respondents to reinstate the applicant as Telecom Office Assistant (TOA) with all consequential benefits."

14. The applicant has challenged the impugned order on the following grounds :

- (a) The Disciplinary Authority was estopped from reopening the issue after he had put in nearly 8 years of service in the Department.
- (b) The Inquiry Officer was biased towards him.
- (c) The inquiry was conducted in violation of principles of natural justice, in that —
 - (i) he failed to summon the documents for his defence;
 - (ii) the inquiry officer failed to summon the witnesses to examine in support of his defence;
 - (iii) the report of the Inquiry Officer is defective, incomplete and illegal;
 - (iv) the charge of misconduct alleged against him does not come under the purview of the CCS (CCA) Rules; and
 - (v) the alleged misconduct was not committed by him during the course of employment or in the performance of the legitimate duties.

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(d) The appellate authority has not considered his appeal dt. 27.2.97 as per the directions of this Tribunal in O.A.138/93.

(e) The appellate authority has not applied his mind to the grounds of the appeal.

(f) The order of the appellate authority rejecting his appeal is bad in law.

15. The respondents have filed a reply contending that the applicant adopted delayed tactics in the conduct of the inquiry; that the applicant had changed his defence assistant more than 3 occasions; that the inquiry authority gave sufficient and adequate opportunity to the applicant to prove his defence; that the disciplinary authority through an elaborate order considered the various grounds and agreed with the findings of the inquiry authority; that his contention that the misconduct alleged against him does not attract the provisions of the CCS (CCA) Rules is not correct; that the applicant had given false particulars with regard to his passing the SSC Examination; that he had given a mark-sheet which was not related to him; that the applicant had not secured the minimum per centage of marks required for selection i.e. 84.2; that the department has even proceeded against those officials who were responsible for making the selection of the candidates; that they relied upon the decision in the case of K. Shrirode Prehari Chakraborty Vs. Union of India (1971) 3 SCC 850 and also O.A.7766 of 97 decided on 18.11.97 against the order in O.A.1139/92 on the file of this Bench.

16. The main misconduct alleged against the applicant is that he had furnished incorrect information with regard to his pass in the SSC Examination while submitting the application dt. 31.3.82. At the time of submitting his application, the applicant had stated

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to have appeared for the SSC Examination at the Govt. Junier College, Elamanchili and had secured 393 marks with Roll No. 2.531. During the preliminary inquiry it was disclosed that he had appeared for the SSC Examination through Zilla Parishad High School, Nidumolu with Roll No. 28740 and had secured only 264 marks.

17. The contention of the applicant is that the alleged misconduct does not come under the purview of the CCS (CCA) Rules cannot be accepted. Because unfair means adopted by a candidate to gain entry into the service can also be considered as misconduct. If such a contention of the applicant is accepted then any person may enter into the department by ^{unfair} ✓ means. Hence, we are not prepared to accept his contention. Therefore, we reject his contention out-rightly.

18. The applicant had stated that Inquiry Officer failed to summon the documents requested by him and also to summon the witnesses. In fact, he has examined his witnesses. Those were the officials of the department who had verified the educational testimonials at the time of his interview. It may be noted that at the time of initiating the disciplinary proceedings he was given an opportunity to show cause. At that time by his letter dt. 2.11.84 addressed to the Dy.GM(Telecom), Machilipatnam, he had categorically stated that he passed the SSC Examination in June, 1971 from the Zilla Parishad High School, Nidumolu with Roll No. 028740. Further he stated that in connection with his application for the post of Telecom Assistants, he had approached the then appointing authorities through his elders viz. K. Venkateswara Rao ^{on} his brother-in-law and others and went to say that the authorities concerned themselves took blank signed application from him with a passport size photograph

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and that his SSC Examination marks were incorporated. Further he stated that the authorities had subjected him to oral tests in almost all the subjects mentioned. With this explanation, it is abundantly clear that he had not furnished the correct information along with his application at 31.3.82. He has not stated that he had secured 84.2% marks which was the minimum per centage of marks required for selection to the post of TOA.

19. The applicant contended that the Inquiry Officer had not given sufficient opportunity. On going through the reply filed by the respondents, we are not convinced to accept the contention of the applicant. In the light of the decisions relied upon by the respondents in their reply, we are convinced that no injustice or prejudice has been done in the conduct of the inquiry.

20. The applicant has not rebutted any of the averments made by the respondents in the reply. Therefore, we are convinced that the inquiry was conducted in accordance with the rules.

21. The last grievance of the applicant is that the appellate authority has not applied his mind to the grounds alleged by him. We have perused the order of the appellate authority. The appellate authority has considered almost all the grounds taken by the applicant in the memorandum of appeal. The appellate authority is not expected to pass an order like a judgment in the Court. He has to consider the grounds and give reasons. We are convinced and satisfied with the order of the appellate authority

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and we do not find any irregularity in the said order.

22. In that view of the matter, we find no merits in this O.A. and the O.A. is liable to be dismissed.

23. The O.A. is accordingly dismissed. No order as to costs.


(B.S. JAI PARAMESHWAR)

MEMBER (J)

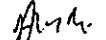
17.2.99


(R.RANGARAJAN)

MEMBER (A)

Dated, the 17th

Feb. '99.


17.2.99

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Copy to:

1. HDHNC
2. HHRP M(A)
3. HOSJP M(J)
4. D.R.(A)
5. SPARE

Typed By
Compared by

Checked by
Approved by

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD.

THE HON'BLE MR. JUSTICE D. H. NASIR:
VICE - CHAIRMAN

THE HON'BLE H. RAJENDRA PRASAD
MEMBER (A)

THE HON'BLE R. RANGARAJAN
MEMBER (A)

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

DATED: 17/2/99

ORDER/JUDGMENT

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

IN

R.A.NO.: 800/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

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