IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT HYDERABAD

O.A.No.1011 of 1999 & O.A.No.1007 of 1999

DATE OF DECISION: 5-1-2000.

Between:

1. G.Komaraiah.(Applicant in OA.1011/99) ....Applicants
2. M.Venkatesh (Applicant in OA.1007/99)

a n d

1. Principal General Manager,
   Hyderabad Telephone District,
   Suryalok Complex, Gunfoundry,
   Hyderabad-500 001.

2. Sub-Divisional Officer (SDO) Phones,
   Department of Telecommunications,
   BHEL, MIG, R.C.Puram,Hyderabad-32.

3. Sub-Divisional Engineer (STaff),
   O/o Principal General Manager,
   Telecommunications, Hyderabad
   Telecom District, Surya Lok Complex,
   Gunfoundry, Hyderabad-500 001.

4. Assistant General Manager (Human
   Resources Development) (for short
   AGM HRD), O/o Principal General
   Manager, Telecommunications, Surya
   Lok Complex, Gunfoundry, Hyderabad-500 032.

5. K.Sunder Rao, SDE (Legal Cell), O/o
   Principal General Manager, Telecom,
   Hyderabad Telecom District, Surya Lok
   Complex, Gunfoundry, Hyderabad-500 001.

....Respondents
(in both OAs)

COUNSEL FOR THE APPLICANT(IN BOTH OAs)::Mr.BSA.SATYANARAYANA

COUNSEL FOR THE RESPONDENTS(IN BOTH OAs:Mr.V.Rajeshwar Rao

CORAM:

THE HON'BLE SRI JUSTICE D.H.NASIR,VICE CHAIRMAN

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: O R D E R :

(PER HON'BLE SRI JUSTICE D.H.NASIR,VICE CHAIRMAN)

1. The applicant in this O.A.(OA.No.1011/99) is seeking a declaration to be made by this Tribunal that the termination from service in pursuance of the enquiry report is illegal and void and consequently the Memos dated 27-6-1998 and 2-2-1999 and the consequential order dated 22-2-1999, deserve to be quashed and set aside. Consequently the respondents are sought to be directed to take the applicant back into service,treating the entire period of absence from 22-2-1999 till the date of judgment as on duty with all consequential benefits and to conduct a fresh enquiry in terms of the Circular dated 15-4-1999 issued by the Respondent No.1.

2. The applicant was initially engaged as unapproved casual mazdoor in the respondent organisation with effect from 1-6-1986. Temporary status was conferred upon him on 1-5-1994 and from that date the respondents had been paying salary to the applicant at the minimum scale of Group 'D' plus increment for every completed year of service and other admissible allowances.

3. Further according to the applicant, Respondent No.2 issued a show cause notice to him on 22-6-1998 (Annexure-2 to OA) proposing to remove him from service on the ground that his Mazdoor Card indicating number of working days etc., was found to be false and fabricated. The applicant submitted his reply to the show cause notice denying the

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allegations made against him. However, he was orally directed by Respondent No.2 not to attend duty with effect from 5-8-1998.

3. The alleged oral order of the respondent No.2 along with show cause notice were questioned by the applicant before this Tribunal by filing OA.No.1299 of 1998. By an interim order dated 6-10-1998 in the aforesaid OA, the respondents were directed to continue to allow and not to prevent the applicant from performing his duties till further orders. Since the respondents did not comply with the same, the Tribunal made the following observations:-

> "At the first instance, all of them shall appear before Sri K.Sunder Rao, who is the Law Officer of Hyderabad Telephone District and immediately after the applicants present themselves before the said Law Officer, it will be his (Law Officer's) duty to ensure that all the applicants are posted at the appropriate places and are not prevented from discharging their duties till the final disposal of the OA."

4. An observation was made in the said OA on 23-11-1998 that the interim direction given by the Court shall not create any constraint on the respondents to initiate disciplinary action against the applicant if it was found necessary.

5. The learned Counsel Mr.BSA.Satyanarayana for the Applicant submitted that an enquiry was conducted against the applicant. However, without Presenting Officer the enquiry was conducted in one breath. The applicant was

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denied opportunity to take the help of the Defence Assistant. It is contended by the learned Counsel for the Applicant that in deliberate violation of the Orders contained in Circular dated 15-4-1991 issued by the respondent No.1, the enquiry was conducted by some Enquiry Officer who was appointed by Respondent No.4.

6. The learned Counsel Mr.BSA.Satyanarayana also pointed out that a false complaint against some of the concerned incumbents was filed after the Tribunal had finally disposed of the Batch of OAs on 23-11-1998. The said complaint was filed on 18-12-1998 with malafide intention of escaping from the liability of conducting the departmental inquiry.

7. The applicant is challenging the Orders dated 27-6-1998, 2-2-1999 and 22-2-1999 of Respondent No.2 terminating the services of the applicant as the same were violative of the Circular dated 15-4-1999 issued by R-1, according to the applicant. The same was also violative of the principles of natural justice and contrary to the Judgment of this Tribunal in OA.No.1299 of 1998, dated 23-11-1998 and therefore, the same is liable to be quashed and set aside. It is alleged by the applicant that the action of the respondent No.2 was motivated by an illegal urge of short circuiting the process of enquiry with a malafide intention to dismiss the applicant. It is also alleged that the respondents' action was violative of Articles 14 and 16 of the Constitution of India, inasmuch as equal protection of law was denied to the applicant and equal

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employment opportunity was also denied to the applicant and that the applicant was subjected to hostile discrimination in comparison with many other similarly situated employees.

8. Further according to the applicant, the objective of the impugned enquiry" was not to know the truth but to protect the real culprit behind the racket as discernible from the action of R-4 and R-5. The impugned order is therefore liable to be set aside according to the learned Counsel for the Applicant and that full fledged enquiry may be directed to be conducted strictly in accordance with law and procedure as laid down by DOT.

9. Having given my anxious consideration to the main allegation that thedepartmental enquiry in question was not conducted in accordance with law and in utter disregard of the principles of natural justice, I find the following situation clearly emerging from the same:-

(a) Earlier OA.No.1299 of 1998, dated 23-11-1998 was disposed of with a direction that the respondents should ensure that proper procedure was followed in the case of the applicant and other persons who were placed in the same situation. The respondents were also directed to proceed with the disciplinary action in accordance with law and in accordance with rules for conducting departmental enquiry. The applicant was also directed to cooperate with the proceedings of the enquiry and not to cause the disciplinary proceedings to be protracted on any flimsy grounds;

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(2) The Enquiry Officer recorded the following findings in his report dated 11-1-1999 appearing at page 23, Annexure-6 to the OA:-

(a) The Unit Officer the SDOP, BHEL MIG RC Puram, Hyderabad was addressed, vide Lr.No.SDE(Staff)/ Bogus Mazdoor Cards/98/dated 7/12-10-98 with a copy to Sri G.Komaraiah to his last known address calling the said G.Komaraiah to attend an inquiry on 23-10-1998 at 14.00 hrs at the office of SDE (Staff) R.No.214, Suryalok Complex, Gunfoundry, Hyderabad, so as to give him an opportunity to see all the documents and records referred to in the show cause notice;

(b) It is further stated in the enquiry report that Sri G.Komaraiah did not attend the enquiry.

(c) A letter dated 1-12-98 addressed by the Unit Officer to the SDE(Staff) with regard to the continuation of the enquiry as per the Tribunal's direction was received. The Unit Officer was once again addressed with a copy to Sri G.Komaraiah to depute Sri G.Komaraiah for enquiry on 10-12-98 at 14.00 hrs in the office of the SDE(Staff) Room No.214 office of the PGM TD, Suryalok Complex, Gunfoundry, Hyderabad. Sri G.Komaraiah attended the enquiry on 10-12-98 and the proceedings were recorded. Accordingly a detailed enquiry was conducted and completed on 10-12-98 at 14.30 hrs in the office of the SDE(Staff) Room No.214 office of the PGM TD, Suryalok Complex, Gunfoundry, Hyderabad;

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(d) The applicant was given full opportunity and freedom to thoroughly verify the difference in the original document of the department and the document submitted by him and to state his observations. He has seen all the related documents and records and also understood all the questions clearly. The proceedings were recorded and were seen by Sri G.Komaraiah at the end of the enquiry he was shown all the original documents with regard to the allegations. He stated that he understood all the questions put to him by the Enquiry Officer without any difficulty.

10. The Enquiry Officer in his findings states that on the strength of the original departmental records produced by the Recruitment Section, the document submitted by Sri G.Komaraiah were carefully compared and verified along with the replies given by Sri G.Komaraiah to the specific questions during the enquiry and the Enquiry Officer came to the conclusion that -

(a) The documents namely Mazdoor Card bearing No.488 submitted by Sri G.Komaraiah was differing from the Department Mazdoor Card which is also agreed by Sri G.Komaraiah and hence the Mazdoor Card submitted by Sri G.Komaraiah is bogus and fabricated;

(b) Similarly the annextures to the order dated 2-5-1994 claiming status of TSM by Sri G.Komaraiah have been carefully

compared with the original documents produced by the SDE(Rectt) and it was concluded that the document produced by Sri G.Komaraiah was fabricated and bogus;

(c) The transfer order dated 3-11-1997 issued by AGM, Legal submitted by Sri G.Komaraiah was shown to him. From the records produced by the Recruitment Section, SDE(Legal Cell) stated that the transfer order was not released from his Section. Sri G.Komaraiah in the enquiry stated that he had not worked in the Legal Cell. Hence, it was concluded that the order is a fabricated one;

(d) The number of days in the Mazdoor Card submitted by Sri G.Komaraiah was shown attested by Sri T.L.Narasimham, SDE CC.II for the period 1-6-86 to 31-10-97. From the records produced by the Recruitment Section, Sri T.L. Narasimham stated that the signature in the photo and days particulars in the Card were not signed by him. Hence the days particulars submitted by Sri G.Komaraiah from 1-6-86 upto 31-10-97 were fabricated and and bogus;

(e) The pay slip for October, 1997 submitted by Sri G.Komaraiah was shown to him. According to the records produced by the Recruitment Section AO Pay (Main) stated that the pay slip for October,1997 was not issued by his office. Thus the pay slip was fabricated and bogus.

(f) Sri G.Komaraiah agreed that his name was not found in the Mazdoor Card Issue Register of the Department. Hence, the Mazdoor Card submitted by him was not issued by the Department.

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11. After going through the records submitted by Sri G.Komaraiah and the original documents of the department produced by the Recruitment Section and the enquiry proceedings as also after recording the findings as stated above, the Enquiry Officer arrived at a conclusion that the allegations levelled against Sri G.Molaraiah stood proved beyond doubt.

12. The applicant submitted a representation dated -nil- appearing at Annexure-VIII at page 27 of the OA stating that the enquiry report said to have been submitted by the Enquiry Officer was neither in accordance with law nor in accordance with rules and that it was not in accordance with the Orders of the Tribunal in OA.No.1299 of 1998, dated 23-11-1998. It was evident on its face that the provisions of either law or rules were not complied with. The applicant further submits in the said letter that he was not conversant with the rules of law and in such a case it was the duty of the Enquiry Officer to explain to him that he was entitled to take assistance of the Defence Counsel or AGS. The applicant further submitted in the said letter that all his submissions were not recorded in the inquiry report asexplained to him by his Advocate.

13. Moreover, according to the applicant, the appointment of the Enquiry Officer was not done by the disciplinary authority but by the AGM(HRD), office of the PGM, TD, Hyderabad, instead of the disciplinary authority. Further according to the applicant, as stated in the said letter, the whole enquiry was reduced to a farce and empty formality.

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The applicant was denied reasonable opportunity right from the beginning. Further according to the applicant, he was denied salary for the month of September and October,1998 which was nothing but holding the enquiry under duress.

14. Thereafter in the concluding part of his letter the applicant states that any action against him in pursuance to the perfunctory enquiry would be subject to legal remedies which he was going to pursue in addition to the reply. He further states that the whole process of enquiry was questionable and was liable to be taken note of for Contempt of Court. The applicant therefore made a request in the said undated letter addressed to SDOP/BHEL MIG, Hyderabad to conduct a fresh enquiry giving him full reasonable opportunity as specified in Rule 14(8) to 14(23) and Article 311 of the Constitution of India.

15. By an Order dated 22-2-1999 the disciplinary authority informed the applicant that he had examined the enquiry report and the submissions made thereon in detail and held that the charges levelled against the applicant were proved against him. He further states in his order that in view of serious nature of misconduct committed by him(applicant) and considering the findings of the Enquiry Officer, he decided that the applicant's services shall stand terminated.

16. It is also pertinent to note that by letter dated 3-2-1999 the disciplinary authority while forwarding a copy of the enquiry report dated 31-12-1998 stated that

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it was decided to award penalty on the basis of findings and proved charges and that an opportunity was given to the applicant by the said letter to make any further submissions in that regard within a week. It is further stated in the second paragraph of the said letter dated 3-2-1999 that in case no representation was received from the applicant within the above period, it would be presumed that the applicant had no submissions to make to the disciplinary authority and further action would be taken accordingly.

17. The facts and circumstances of the case being as stated above gives us an impression that the departmental enquiry against the applicant was carried out with undue haste. On behalf of the respondents it was submitted by the learned Standing Counsel that in exercise of the powers conferred by Sub-Rule (2) of Rule (3) of the Central Civil Services (Classification, Control and Appeal) Rules,1957 (now 1965), several classes of Government servants were wholly excluded from the operation of the said rules and as far as the persons employed in the Ministry of Communication, Department of Posts and Telegraphs are concerned, seven different classes of employees were so excluded. The said list covers the monthly rated staff paid from Contingencies other than those brought on to regular establishment, monthly rated, work charged and other employees not on regular establishment, daily rated staff paid from Contingencies, daily ated workmen paid by the

day, week, month etc.,. The relevant extract of said rule has been produced by the respondents as Annexure-II to their reply statement.

18. On the other-hand, the applicant has produced along with his OA a Circular dated 15-4-1991 (Annexure.A-I, page 14 to OA) in which it is mentioned as follows:-

> "Itis therefore reiterated that whenever any Unit Officer has to take action against a Casual Mazdoor and issue orders of removal as a result of certain allegations against him, an enquiry should invariably be conducted following almost the same procedure as under CCS(CCA)Rules 1965, but without quoting any rule".

It is further stated in the said Circular dated 15-4-1991 that the following procedure was required to be followed in such cases:-

(1) Charges have to be framed and a Charge Sheet has to be issued clearly mentioning the charges, preferably in the language known to the Casual Mazdoor;

(2) An enquiry has to be conducted duly issuing notices to the delinquent Casual Mazdoors and all other concerned after receipt of a written explanation to the charge sheet;

(3) Every reasonable opportunity has to be afforded to the delinquent casual mazdoor to defend himself.

In view of the above directions given in the Circular dated 15-4-1991, the word does not lie in the mouth of

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the respondents to say that the detailed procedural requirements were not required to be followed in such cases.

19. The Enquiry Officer in his report made several observations and arrived at several conclusions which we have already reproduced earlier. In his report he states that a detailed enquiry was conducted and completed on 10-12-1998 at 14.30 hours. However, the subsequent contents of the report submitted by the Enquiry Officer do not give us satisfaction that "a detailed enquiry was conducted". No witnesses were examined on behalf of the respondents to ascertain whether the documents in question were concocted and fabricated. Merely on the admission allegedly made by the applicant the Enquiry Officer jumped at the conclusion that the same were got up. It is pertinent to note that the entire report and the findings of the Enquiry Officer are based on the admissions allegedly made by the applicant. However, in the reply statement it is categorically stated on page.3, para.1 that the applicant failed to explain how he got the fake documents but pretended innocence. This statement made in the reply affidavit is contrary to the observations made by the Enquiry Officer that the documents were found to be bogus and fabricated on the basis of the admissions to that effect made by the applicant. The respondents could have advanced an argument that a detailed enquiry was not found necessary in view of the fact that the falsity of the documents was determined on the basis of the alleged admissions made by the applicant, but such

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is not the case of the respondents. The Enquiry Officer merely chose to make a statement that a detailed enquiry was conducted for arriving at his findings which is not correct.

20. In his representation made by the applicant, which appears at page 27 of the OA, Annexure-A-8, the applicant expresses his grievance that his submissions were not recorded in the Enquiry Report and that he was denied reasonable opportunity right from the beginning. He further makes a statement that he was denied salary for the month of September and October, 1998, which according to the applicant amounted to holding the enquiry under duress.

21. It is also pertinent to note that the respondents in their reply affidavit have gone to the extent of saying that "when the case pertains to fraudulent production of false and fabricated records, the enquiry may not necessarily involve with oral enquiries alone". However, during the course of arguments the learned StandingCounsel did not make any effort to substantiate this statement made in the reply affidavit. No doubt, the gravity of the charges levelled against the applicant cannot be undermined and infact in such cases it is necessary to ensure that sufficient evidence was brought on the record of the Enquiry Proceedings for arriving at the conclusion that the documents were false and fabricated and that the applicant committed a fraud. It is also stated in the

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concluding part of para 4 of the counter affidavit that the respondent-department had every right to conduct enquiry into the fraudulent acts of the applicant to gain undeserved employment. We have no hesitation in fully agreeing with this submission made by the learned Standing Counsel for the Respondents. However, under the anxiety of dispensing with the services of any employee who is charged with committing fraudulent acts, no short circuit method could be adopted by the department. Unless sufficient opportunity is given to the delinquent as provided under the rules which wehave already discussed above, the delinquent cannot be subjected to any punishment.

22. I am infact of the opinion that meticulous care should have been ~~tkane~~ taken by the respondent-department to ensure that no procedural lapse is committed so that no fault could be found with the department on the ground that sufficient opportunity was denied to the delinquent in violation of the rules concerning the departmental enquiry in which major penalty could be imposed.

23. It is also pertinent to note that the respondents on one hand plead that the department provided all reasonable opportunity to the applicant to defend his case, the Department has no compunction in making a statement in paragraph 9 of the reply affidavit that <u>there was no necessity to conduct full fledged enquiry</u> (emphasis supplied) as contended by the applicant.

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24. While therefore I am one with the department to ensure that the guilty should not be left unpunished and no lenient view could be taken in fraud cases like this, at the same time it is also necessary to ensure that the prescribed procedure is not short circuited in the anxiety to bring home the charges levelled against the delinquent.

25. I am therefore constrained to hold that the impugned action of termination of the applicant cannot be upheld ~~merely~~ sheerly on account of the fact that the grievance procedure prescribed for major penalty could not have been dispensed with and infact the same should have been meticulously followed ~~and~~ having regard to the fact that the respondents ~~have~~ are accused of having failed to purge them of the allegation that sufficient opportunity was not afforded to the applicant.

26. ~~The~~ Hence the enquiry proceedings in question and the impugned Order No.X/DC/Mazdoor/BHEL/98/7, dated 22-2-1999 as described in Clause (c) of paragraph.8 concerning the relief sought by the applicant are hereby quashed and set aside and the applicant ~~are~~ is directed to be reinstated into service forthwith, but not with any backwages.

27. The questions of law and facts arising for our consideration in the present OA also arise for consideration in a cognate matter bearing OA.No.1007 of 1999 and therefore, the said OA.No.1007 of 1999 is also allowed for the same reasons as stated in the body of this Judgment. Consequently the applicant of the said OA is also directed to be reinstated into service forthwith, but not with any back-wages.

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28. It is, however, made clear that the respondents shall not be precluded from conducting full fledged enquiry against the applicants in accordance with law.

29. The OA.No.1011 of 1999 and No.1007 of 1999 are accordingly allowed; however, with no order as to costs.

(D.H.NASIR)
VICE CHAIRMAN

DATED: this the 5th day of January, 2000.

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DSN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

IST AND IIND COURT

COPY TO:

1. HDHNJ
2. HRRN M (ADMN.)
3. HBSJP M (JUDL.)
4. D.R. A(DMN.)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

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

THE HON'BLE MR.R.RANGARAJAN
MEMBER (ADMN.)

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

* * *

DATE OF ORDER: 5/1/2000

~~MA/RA/CP~~.NO.

IN

OA. NO. 1011 and 1007/99

~~ADMITTED~~ AND INTERIM DIRECTIONS ISSUED

ALLOWED

CP CLOSED

RA. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS