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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

C.A No.603/93

Date of order: 23/8/2000

B.L.Ajmera, S/o Shri Chaturbhuja Ajmera, R/o House of Sh.S.P.Gandhi  
Advocate, Behind Adwait Ashram, Ramnagar, Ajmer, presently posted  
as Time Scale Clerk, Telecommunication Deptt,

...Applicant.

Vs.

1. Union of India through the Chairman, Telecommunication Board, Govt of India, Sanchar Bhawan, New Delhi.
2. Director, Telecommunication, Telephone Exchange Bldg, Udaipur.
3. Telecommunication District Engineer, Civil Lines, Ajmer.

...Respondents.

Mr.P.P.Mathur - Proxy of Mr.R.N.Mathur-Counsel for applicant.

Mr.M.Rafiq - Counsel for respondents

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

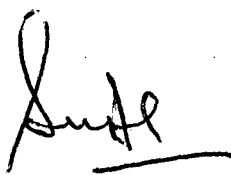
In this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes the following prayers:

(i) to quash and set aside the order of the disciplinary authority dated 20/25.2.93 (Annx.A1) and order of the appellate authority dated 30.3.87 (Annx.A2);

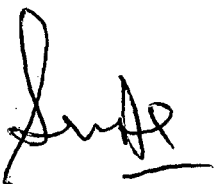
(ii) to declare the enquiry conducted is contrary to the principles of natural justice; and

(iii) to declare the charge sheet issued to the applicant is without jurisdiction.

2. Facts of the case as stated by the applicant are that he was appointed as TS Clerk after his name was screened by the respondents and he was confirmed in the year 1969. It is stated that a memorandum of charge sheet dated 29.9.81 was served upon him which was cancelled without reserving any right to reinitiate further enquiry yet another



charge sheet was issued adding one more charge. The allegations levelled in the charge sheet dated 16.7.84 that the applicant in his application form submitted for seeking appointment, furnished incorrect information to the effect that he has secured 67.6% marks in High School Examination and has also submitted false certificate and mark sheet of Higher Secondary Examination, 1963, issued by the Board of Secondary Education, Ajmer. The applicant denied all the charges. On 13.2.85, the applicant submitted an application for supplying documents but the respondents did not supply the copy and only allowed inspection of documents. It is further stated that the Enquiry Officer gave assurance to the applicant to supply the copy but the certificate/marksheet was not traceable, therefore, could not be shown to the applicant. The Enquiry Officer conducted the enquiry and submitted his report on 26.12.86 and held the applicant guilty whereupon the disciplinary authority imposed punishment of reduction to lower stage for 5 years vide order dated 30.3.87. The applicant filed an appeal on 11.5.87 and the appellate authority without issuing any notice enhanced the penalty to compulsory retirement. It is stated that the applicant submitted review to the Revisionary Authority who cancelled the order of enhancement of penalty issued by the appellate authority. Thereafter, the appellate authority issued a show cause notice dated 16.4.89 whereupon the applicant submitted a detailed reply. But the appellate authority maintained the penalty of compulsory retirement against the applicant. It is stated that the entire enquiry conducted against the applicant was in violation of the principles of natural justice, therefore ex facie illegal. It is stated that the documents could not be supplied to the applicant in spite of his repeated request and the second charge sheet issued to the applicant was completely without jurisdiction. The report of the enquiry officer is based on surmises and conjectures and the order, of the disciplinary authority and the appellate authority are illegal, arbitrary and unreasonable. Therefore, the applicant filed the O.A for the relief as mentioned above.



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3. Reply was filed. It is stated that in case any official has secured employment on the basis of false certificate/mark sheet, he deserves to be dismissed/compulsorily retired/removed from service. The applicant secured employment by submitting false/forged certificate/mark sheet of Higher Secondary Examination. It is stated that the applicant was selected on the basis of 67.6% marks secured by him in the Higher Secondary Examination whereas the applicant only secured 43.8% marks in the examination. It is also stated that the charge sheet was cancelled on the basis of some technical lacunas and mere withdrawal does not ipso facto create an embargo on the powers of the disciplinary authority to issue another charge sheet. It is stated that the applicant was allowed inspection of documents and the mark sheet was not traceable, therefore, could not be shown to the applicant. The applicant was also asked to produce the original mark sheet but he did not produce the same stating that he has lost it. It is further stated that the enquiry was conducted following the procedure/rules and there was no violation of any rule/procedure while conducting the enquiry and the applicant was found guilty on the basis of evidence in the enquiry. It is stated that the order of the disciplinary authority and the appellate authority are perfectly legal and valid. Therefore the O.A filed by the applicant is devoid of any merits and liable to be dismissed.

4. Rejoinder has also been filed which is on record.

5. Heard the learned counsel for the parties and also perused the whole record.

6. The learned counsel for the applicant mainly submitted the following arguments:

a) The second charge sheet issued to the applicant is altogether without jurisdiction, therefore, the enquiry conducted on the basis of such charge sheet is ex facie illegal and not sustainable in law.

b) The applicant was not supplied with the documents which was the duty of the enquiry officer, therefore, the applicant could not produce his defence.

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c) Material evidence was not produced by the respondents and on the basis of evidence produced, the charge against the applicant is not proved. Therefore, the finding of the enquiry officer was perverse.

d) The punishment imposed upon the applicant is disproportionate to the gravity of the charges.

7. The learned counsel for the respondents has replied to the arguments of the counsel for the applicant and submitted that the enquiry officer has conducted the enquiry by following the rules/procedure and the order of the disciplinary authority was based upon the evidence on record, therefore, the order of the disciplinary authority cannot be said to be perverse. The counsel for the respondents also argued that the order of the appellate authority is also perfectly legal and valid. He argued that the applicant secured employment by furnishing false mark sheet/declaration, therefore, punishment of compulsory retirement of the applicant is not disproportionate to the gravity of the charge.

8. We have given anxious consideration to the rival contentions of both the parties and also perused the whole record.

9. In support of the contention of the learned counsel for the applicant, he has referred the following judgments.

- i) Phupati Kumar Sardar Vs. UOI & Ors, 1988(4) SLJ 625
- ii) P.Dasrathan Vs. Sub.Divisional Inspector (Postal), Karikal & Ors. (1989) 11 ATC 676
- iii) Chandra Shekar Seth Vs. UOI & Ors, (1990) 12 ATC 868.

10. On the other hand the learned counsel for the respondents has referred the following judgments:

- i) Union of India & Ors Vs. A.Nagamalleswar Rao, 1998(1) SLR 18
- ii) State of T.N Vs. Thiru K.V.Perumal & Ors, (1996)5 SCC 474
- iii) Orissa Mining Corporation & Anr. Vs. Ananda Chandra Prusty, (1996) 11, SCC 600.

11. As regards the first contention of the counsel for the applicant, on the perusal of the averments of the parties, it appears that the

second charge sheet was issued after cancellation of first charge sheet due to technical lacunas<sup>e</sup>. Therefore, it is not proper to say that no reason was given for cancellation of the first charge sheet issued. Moreover, the memorandum of charges issued vide the second charge sheet were more or less the same except difference of language, thereby caused no prejudice to the delinquent.

12. The learned counsel for the applicant has vehemently submitted that the second charge sheet issued to the applicant is altogether without jurisdiction. In support of his contention he referred the above judgments (Supra).

13. We have respectfully given due consideration to the citation as referred to by the counsel for the applicant.

14. It is an admitted fact by both the parties that the second charge sheet after cancellation of the first charge sheet and reasons for cancellation has been stated to be technical lacunas. Therefore, it can be safely said that reasons were given for cancellation of the first charge sheet. The Memorandum of charges in the second charge sheet are more or less the same, therefore, no prejudice can be caused to the delinquent by issuance of the second charge sheet.

15. Hon'ble Supreme Court in State of A.P Vs. N.Radhakrishnan, Civil Appeal No.3503/97 decided on 7.4.98, held that new charge sheet if it is verbatim reproduction of the old one is a case of only irregularity.

16. In the instant case, second charge sheet was issued after cancellation of the old one and reasons for cancellation have also been given. Therefore, we are not convinced with the argument of the learned counsel for the applicant that the second charge sheet is altogether without jurisdiction and the enquiry conducted on the basis of such charge sheet is ex facie illegal and not sustainable in law.

17. The next argument of the counsel for the applicant was that the applicant was not supplied with the documents which was the duty of the enquiry officer and because of this the applicant could not produce his defence. In the reply filed by the respondents it has been stated that

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the applicant was allowed inspection of the documents and original application and the mark sheet was not traceable therefore, could not be shown to the applicant. It is also stated that the applicant was asked to produce the original mark sheet but he did not produce stating that it has lost.

18. In Food Corporation of India Vs. Padma Kumar Bhuvan, 1999 SCC (L&S) 620, it was held by Hon'ble Supreme Court that the applicant has to establish that what prejudice has been caused him on account of non supply of documents.

19. In this case, the applicant has failed to establish the fact that what prejudice has caused to him for non supply of the documents. Therefore, the departmental proceedings cannot be vitiated on the basis of this ground.

20. The next contention of the counsel for the applicant that material evidence was not produced and there was no evidence on record to sustain to hold that the applicant was guilty for the charge levelled against him and the findings of the enquiry officer are perverse.

21. We have given anxious consideration to the contention of the learned counsel for the applicant and also perused the whole record.

22. In B.C.Chaturvedi Vs. UOI, (1995) 6 SCC 750, it was held that the Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or whether conclusion or findings reached by the departmental enquiry is based on no evidence.

23. In Kuldeep Singh Vs. Commissioner of Police & Ors, 1999(1) SLR 283, Hon'ble Supreme Court held that normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of guilt is based on no evidence it would be perverse finding and would be amenable to judicial scrutiny. The findings recorded in domestic enquiry can be characterised as perverse if it is shown that such a finding is not supported by any



evidence on record or is not based on any evidence on record or no reasonable person could have come to such findings on the basis of that evidence.

24. In Apparel Export Promotion Council Vs. A.K.Chopra, 1999(2) ATJ SC 227, it was held that once the finding of fact based on appreciation of evidence are recorded - High Court in writ jurisdiction may not normally interfere with those findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and or legally untenable.

25. On a perusal of whole evidence produced before the enquiry officer in the instant case the finding of the enquiry officer cannot be characterised as perverse and one fact was established fully that the applicant secured employment on the basis of 67.6% marks obtained in the higher secondary examination of 1963 whereas he only secured 43.8% mark in Higher Secondary Examination of 1963.

26. On a perusal of the whole record, we are also of the opinion that the order of the disciplinary authority and the order of the appellate authority who has imposed the punishment of compulsory retirement upon the applicant is not in any way illegal, arbitrary, unjustified and against the principles of natural justice. We are also of the opinion that Rules/procedures have been followed while conducting the departmental enquiry on the charges levelled against the applicant. Therefore, the enquiry proceedings conducted by the enquiry officer cannot be held in any way in contravention of rules and procedure and against the principles of natural justice.


27. The other contention of the counsel for the applicant has been that the punishment imposed upon the applicant is disproportionate to the gravity of the charge. It has been established against the applicant that he secured the employment on the basis of 67.6% marks in the higher secondary Examination, 1963 whereas he has only secured 43.8% marks. Therefore, looking to the gravity of the charges established against the applicant, we are of the opinion that the punishment imposed by the

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appellate authority is not disproportionate to the gravity of the charge. Therefore, we do not find any basis to interfere.

28. On the basis of the foregoing, we are of the opinion that the applicant has no case for interference by this Tribunal and this O.A is devoid of any merit, which is liable to be dismissed.

29. We, therefore, dismiss the O.A with no order as to costs.

  
(N. K. Wani)

Member (A).

  
(S. K. Agarwal)

Member (J).