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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 203 of 1997

1.6.1999
DATE OF DECISION.....

Md Bilayat Hussain

(PETITIONER(S))

Mr J.L. Sarkar, Mr M. Chanda and
Mrs S. Deka

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India and others

RESPONDENT(S)

Mr. A. Deb Roy, Sr. C.G.S.C.

ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE MR JUSTICE D.N. BARUAH, VICE-CHAIRMAN
THE HON'BLE MR G.L. SANGLYINE, ADMINISTRATIVE MEMBER

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

Judgment delivered by Hon'ble Vice-Chairman



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.203 of 1997

Date of decision: This the 1st day of June 1999

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

Md Bilayat Hussain,
Village & Post Office - Balikuri,
Distt. Barpeta, Assam.Applicant
By Advocates Mr J.L. Sarkar, Mr M. Chanda
and Mrs S. Deka.

- versus -

1. The Union of India, through the
Chief Post Master General,
Assam Circle,
Guwahati.
2. The Chief Post Master General,
Assam Circle,
Guwahati.
3. The Director of Postal Service,
Assam Circle,
Guwahati.Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

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O R D E R

BARUAH.J. (V.C.)

The present application has been filed by the applicant challenging the Annexure F order dated 28.3.1996. By the said Annexure F order the services of the applicant were terminated. The applicant has also challenged the Annexure-H appellate order dated 26.3.1997. Besides, the applicant has also challenged the action of the respondents asking him not to attend duties with effect from 18.4.1992.

AB

2. The facts are:

At the relevant time the applicants was working as Extra Departmental Branch Postmaster and posted at Balikuri Branch Office, Nalbari, Barpeta Division. The contention of the applicant is that at the time of his appointment he furnished all informations regarding his date of birth, qualification etc. He had also produced certificates, namely School Certificate as a proof of his age and on the basis of those informations, particulars had been entered into his service book. The applicant states that at that time he submitted the original school certificate issued by the Headmaster, Kokila High School and this has been mentioned in paragraph 4.2 of the original application. We quote herein the relevant portions of the said paragraph:

".....He was appointed as EC-BPM w.e.f. 1.2.60 in Balikuri, Branch Office and was put off duty w.e.f. 18-4-92 on the ground of contemplated disciplinary proceeding, and has been removed from service by order dated 28-3-96 after departmental proceedings. The applicant was appointed w.e.f. 1-2-1960 after verification of his age. He was 22 years 2 months at the time of appointment. He had submitted his original School Certificate at the time of appointment and kept an attested copy. His age was recorded on the basis of the said Certificate and the same was not returned to him. The same was also not in dispute for long years. Your applicant read in Kadong M.E. School upto Class-VI and thereafter in Kokila High School upto Class-VIII and submitted the School Certificate of Kokila High School. His age was 11 years 3 months as on 1-1-49 and this age was recorded by office in his records of service and continued as such."

Thereafter the applicant was asked to put off duty with effect from 18.4.1992 as a disciplinary proceeding was contemplated. Later on, the Superintendent of post offices issued Article of charge and the statements of imputation.

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As per the said application charge was filed that the asking him to show "cause" as to why disciplinary action should not be taken against him. As per the charge the applicant committed misconduct and failed to show absolute integrity in contravention of Rule 17 of P & T ED Agents (Conduct and Service) Rules, 1964. The applicant duly replied to the show cause by Annexure A letter dated 26.5.1993. The applicant stated as follows:

".....That sir, I was appointed by the Sr. Supdt. of Pos Gauhati as EDBPM Balikuri on 1.2.60 and thus I worked for a period (period) of 32 years 2 months. In time of my appointment definately I submitted required documents i.e. certificate etc. to the satisfaction of the Department.

That sir, there is no complaint against my service or any adverse remark against me from the Officers who visited my office during my service of 32 years."

He also stated in the subsequent paragraph as follows:

"..... I am very much regret if the certificate which I submitted in response to your letter No.A2/ED seniority list of 17.7.91 is alleged to be false....."

3. Thereafter enquiry was conducted and the enquiry officer found him guilty of the charge. Accordingly he was removed from service. Being aggrieved, the applicant preferred an appeal before the Appellate Authority, namely, Chief Postmaster General, Assam Circle. The appeal was also dismissed. While disposing of the said appeal the Appellate Authority observed as follows:

".....The order sheet shows that the appellant or the Defence Assistant did not challenge this document during oral enquiry. Order Sheet No.6 for oral hearing of 11-4-94 and order sheet No.7 of oral hearing dated 29-6-94 also show that the appellant as well as the Defence Assistant never questioned this vital document. In the absence of any objection from the appellant as well as the Defence Assistant, the authenticity of this vital document remained unchallenged. If this document was actually never submitted by the appellant as claimed by him in the appeal, the appellant or the Defence Assistant should have challenged this document during the course of oral enquiry. As the appellant and his Defence Assistant failed to do so, the

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Inquiring Authority naturally considered this document as valid document in support of the allegations levelled against the appellant. It is also significant to note that the appellant failed to explain in his written brief dated 12-12-94, his representation dated 23-8-95 and also in the appeal under consideration why he failed to challenge this document during the oral enquiry....."

Being aggrieved the applicant filed this present application.

4. In due course the respondents have entered appearance and filed written statement. In the written statement, the respondents took somewhat contradictory defence. In paragraph 3 of the written statement the respondents have stated as follows:

"..... the contention of Md Bilayat Hussain is not tenable because he submitted school certificate from Rupasi High School at the time of his appointment as it is evident from the copy of attested school certificate done on 30-07-91. No school certificate either from Kadarg ME School or from the Kokila High School were received in this office. Had he read in the said school he should have submitted certificate from those two schools instead of Rupasi High School in response to SPOs, Nalbari letter No.A2/ED/Seniority list dated 17-7-91....."

But at the same time the respondents while giving the background of the case in the written statement have stated as follows:

"After relinquishment from the charge of EDBPM Balikuri SO the said Md. Bilayat Hussain submitted a representation alongwith another school certificate issued by the Headmaster Kadog H.E. where his date of birth has been shown as 11-11-31 and educational qualification had been shown as ready upto class-VI (six). But in the previous school certificate, the educational qualification of the ED official had been shown as read upto Class-IX(Nine) at Ruposi High School Choklako."

5. We have heard both sides. On various occasions Mr A. Deb Roy, learned Sr. C.G.S.C. was requested to produce the records. He submits that he made all endeavour to receive the records, but to no avail. On being asked, he informs this Tribunal that the office is situated in

Guwahati. We find no reason why the records could not be produced.

6. The Enquiry Officer in his report has observed as follows:

"The presenting officer has not been able to discuss the points in establishing the article of charge framed against the the (sic) S.P.S. He has narrated the article of charge simply in his written brief."

He further observed:

".....The prosecution witness Shri N.K. Saha had confirmed that the xerox (attested) copy of school certificate issued by the Head master Ruposi High School, P.O. Chakehaka (Sorbhog) dated 29/4/58 was verified by him with the school authorities. The present Head master of Ruposi High School has confirmed non availability of records to have been issued the said certificate on 29/4/58 to Md Bilayat Hussain while he was contacted by the S.D.I.(P)/Barpeta (P.W. No.1) on 12/1/91....."

However, the Enquiry Officer observed that the certificate issued by the Headmaster, Ruposi High School was false and fabricated and he has never submitted such certificate. However the enquiry officer came to the conclusion that it was the duty of the applicant to establish correct date of birth by producing genuine certificate during the course of inquiry. While he was charged of producing false certificate he failed to produce the original certificate during the course of the enquiry and therefore the charge was proved. At the conclusion the enquiry officer observed thus:

"....it is crystal clear that Md Bilayat Hussain, BPM Balikuri (now put off) had submitted a false certificate to the Supdt. of Pos/Nalbari on 31/7/91 which was subsequently refused by him....."

7. Mr J.L. Sarkar, learned counsel for the applicant submits before us that the original certificate of Kadong M.E. School upto Class VI and the certificate upto Class VIII of Kokila High School at the time of appointment. The



applicant.....

applicant specifically mentioned in his application that the said certificate submitted before the authority was never returned. Mr. Sarkar further submits that this statement has not been denied while replying to the averments made in para 3 of the written statement. The enquiry officer was wrong in coming to the conclusion that the charge was fully proved on the ground that the applicant failed to produce the original certificate. Mr. Sarkar further submits that the original certificates having been submitted before the authority there was no scope for submitting original certificate afresh, thus the enquiry officer committed error of law and the conclusion arrived at by the enquiry officer was not based on records. Mr. Deb Roy has made an attempt to support the case of the respondents. However as the records are not with him, he is not in a position to make any submission in this regard. When asked about the statement made by the applicant in the OA that the original certificate was submitted to the authority as stated in paragraph 4.2 of the application, this has not been categorically denied and therefore Mr. Deb Roy finds it difficult to support the action of the respondents. The records are not available before us. On the face of it we find that the enquiry was not conducted properly and in such enquiry no punishment can be awarded. Therefore, we set aside the Annexure F order dated 28.3.1996.

8. The Appellate Authority also did not scrutinise the matter properly which is evident from the observation of the Appellate Authority. We quote the relevant portion of the Appellate order:

".....If this document was actually never submitted by the appellant as claimed by him in the appeal, the appellant or the Defence Assistant should have challenged this document during the course of oral enquiry."

9. On perusal of the records we find that this observation is not factually correct, therefore we also

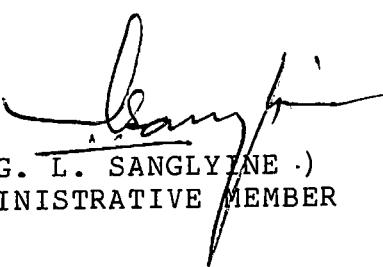


..set

set aside the impugned Annexure-H order dated 26.3.1997.

10. In view of our observation regarding Annexures F & H in our opinion the order of putting off duty in respect of the applicant is illegal and arbitrary. The applicant is therefore deemed to be on duty during the period from the order of removal till he is allowed to resume duty. However, it is made clear that the departmental authority may proceed with the enquiry afresh.

11. With the directions made above the application is disposed of. No order as to costs.


(G. L. SANGLYINE)
ADMINISTRATIVE MEMBER


(D. N. BARUAH)
VICE-CHAIRMAN

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