Union of India

Vs

A. Nagamalleshwar Rao

(S. C. Agarwal, G. T. Nanavati JJ)

18.11.1997

JUDGMENT

NANAVATI, J.

1.Leave granted.

2.The Union of India is challenging in this appeal the order passed by the Central administrative tribunal, Hyderabad Bench in O.A.No.1139 of 1992.

3.The respondent was appointed as a Telephone Operator on 24th June, 1981 by the Divisional Engineer, Telecom, Eluru on provisional basis. By an order dated 20th May, 1983 he was appointed on regular basis. On 8th May, 1984, the respondent was called upon to produce his original SSC marks certificate for verification. He replied by stating that he had submitted it along with his application for appointment and it was not returned to him. In spite of repeated demands he did not submit either the original certificate or a duplicate certificate. The Divisional Engineer, therefore, became suspicious and made an inquiry from the Head Master of the school from which the respondent had passed in SSC Examination. He was informed that the respondent had secured only 48.6% marks. The respondent had represented earlier as disclosed by the entries made in the Z register, that he had secured 79.80% marks. As the respondent was thus found to have obtained the employment wrongfully and in contravention of Rule 3(1)(i)(iii) of the CCS (Conduct) Rules, 1964, a departmental inquiry was held against him. The charge was held proved and an order of dismissal was passed against him on 29th March, 1989. Appeal filed against the said order was dismissed by the Director (Telecom), Guntur Area. His revision application to the Telecommunication Board also failed. He, therefore, filed the above said O.A.before the Tribunal.

4.The Tribunal on appreciation of the evidence of Sanyasi Rao, who was examined before the inquiry officer to prove the practice and procedure followed in making entries in the Z register, held that his evidence was "useless and no inference could be drawn therefrom to hold the article of charge proved". As regards the extracts produced from the Z register with respect to the entry relating to the respondent, the Tribunal held that it could not be relied upon as it was secondary evidence and in the absence of any evidence to prove authenticity of the said extract, it was no evidence in the eye of law. The Tribunal was of the view that although such a departmental inquiry is a quasi-criminal inquiry wherein technical rules do not strictly apply and the test to be applied is of preponderance of probabilities, yet inferences can be drawn from the acts and/or circumstances proved by legal evidence and not in the absence of it. It also observed that "inference however cannot take place of proof as the distance between 'might have been made' and 'made' has not been bridged by the prosecution by adducing direct evidence". The finding records by the inquiry Officer based upon the evidence of Sanyasi Rao and the extract of entry from the Z register that the said entry was made on the basis of information furnished by the respondent was held by the Tribunal as

bad on the ground that the original application made by the respondent and the certificate produced by him were not available for perusal by the Inquiry Officer as they were found missing from the record and there was no material to show that the respondent had caused them to disappear. The Tribunal preferred to rely upon the version of the respondent that he had submitted correct information in his application form and also the original certificate showing that he had obtained 48.6% marks. Taking this view of the evidence it held that the finding that the charge was proved was based upon no evidence and, therefore, the consequential order of punishment deserved to be quashed.5.It was contended by the learned counsel for the appellant, and in our opinion rightly, that the approach of the Tribunal was erroneous as it had proceeded to examine the inquiry proceedings as if it was hearing an appeal in a criminal case. Sanyasi Rao was an officer working in the office of the Divisional Engineer (Telecom) and was conversant with the practice and procedure followed in that Office in making entries in the Z register. Merely because he had no personal knowledge about the practice prevailing in 1980 and the entry relating to the respondent, his evidence could not have been regarded by the Tribunal as no evidence. The Tribunal had committed an error of law and also exceeded its jurisdiction in holding that the extract which was produced from the Z register was not legal evidence and could not have been relied upon by the Inquiry Officer. The Tribunal failed to appreciate that the register was maintained in the Office of Divisional Engineer as an official record and it was thus in the nature of a public document. It was duly authenticated by a competent officer. The Tribunal after stating that the strict rules of procedure and proof do not apply to a departmental inquiry, committed an error in applying the same in this case. It is really surprising that in spite of the clear position of law in this behalf and as regards the jurisdiction of the Tribunal in such cases, the Tribunal thought it fit to examine the evidence produced before the Inquiry Officer as if it was a court of appeal.6.Another flaw in the order passed by the Tribunal is that it failed to appreciate that if the respondent had stated in his application form that he had obtained 48.6% marks or had produced the certificate disclosing the correct percentage of marks obtained by him then he would not have been selected at all as the candidate who had secured 70.6% marks was the last one to be appointed. The Tribunal also failed to appreciate that in spite of being repeatedly called upon to produce either the original certificate of marks or a duplicate copy, the respondent had failed to produce the same for verification on one pretext or the other. The Tribunal also failed to appreciate that but for the fraud committed either by the respondent himself or by him along with other a false entry of marks could not have been made in the register and that the original application form and the certificate could not have disappeared from the records of the Office.7.Thus in view of the admitted facts that the respondent had secured only 48.6% marks and the last candidate who could be appointed had secured 70.6% marks and the other evidence produced before the Inquiry Officer, it becomes quite clear that the respondent did not deserve to be appointed and could not have been appointed but for the mistake committed by the concerned officer of the fraud committed by the respondent. Therefore, the order of termination cannot be said to be improper or bad and the Tribunal was in error in holding otherwise.8.We, therefore, allow this appeal, set aside the order passed by the Tribunal and dismiss the O.A. filed by the respondent. There shall be no order as to costs