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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.892/2001

New Delhi this the 6th day of March, 2001.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.R.ADIGE, VICE-CHAIRMAN (A)

Smt. Sunita Nautiyal
W/o Shri V.P.Chander Nautiyal
Ex.Peon, Personnel Branch
North Eastern Railway
Itanagar
Presently R/o 163-B Railway Colony
Kasganj, District Etah
U.P. ... Applicant

(By Shri B.S.Mainee, Advocate
with Mrs.Meenu Mainee, Advocate)
-versus-

1. Union of India
through General Manager
North Eastern Railway
Gorakhpur.
2. The Divisional Personnel Officer
North Eastern Railway
Izatnagar. ... Respondents

(By Shri B.S.Jain, Advocate)

O R D E R (ORAL)

S.R.Adige

Applicant seeks a direction to the respondents to reinstate her as per the directions contained in Tribunal's order dated 6.2.1997 in OA No.2382/1996 filed by her earlier with all consequential benefits, and to regularise her in service.

2. Heard both sides.

3. Applicant was selected to the post of Peon which is a Group 'D' post on the basis of her ST certificate issued by the then District Magistrate

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Dehradun on 27.1.1992, and was appointed as such vide Office Notice No.624 dated 11.4.1996. Respondents thereafter sent the said certificate for verification, and after receiving report from the District Magistrate and on the basis of his finding that she did not belong to ST community, ^{by 7} ~~respondents~~ cancelled the aforesaid appointment by an order dated 30.8.1996.

4. Applicant challenged the aforesaid action of the respondents in OA No.2382/1996. On her behalf, it was submitted that the enquiry for the verification of her caste certificate has been held behind her back, and no show cause notice was given and, much less the procedure for verification of caste certificate as laid down by the Hon'ble Supreme Court in several cases ~~had not~~ been followed by the respondents.

5. The Tribunal by its order dated 6.2.1997 quashed the respondents' order dated 30.8.1996 cancelling the applicant's appointment. She was directed to file an affidavit duly sworn and attested by a competent gazetted officer giving particulars of caste and sub-caste, tribe, tribal community, parts or groups of tribes or tribal community, the place from which she originally hailed from and other particulars as may be prescribed by the Directorate concerned, and as and when the said affidavit was filed, the respondents were directed to accept the same alongwith the caste certificate and reinstate her forthwith,

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provisionally, subject to verification of its contents in accordance with the prescribed procedure. Upon such provisional reinstatement, applicant was held entitled to all the benefits, except that the final decision in her case was to be taken after due verification of the caste certificate.

6. Applicant submitted the aforesaid caste certificate on 27.8.1997, but her grievance is that the respondents did not reinstate her even on provisional basis, and it is against this inaction of the respondents that the applicant has filed the present OA.

7. In this connection, our attention has been invited to Railway Board's letter dated 19.5.1979, relevant portion of which has been extracted in the reply of the respondents. The purport of that circular is that no person who was not a Scheduled Caste/Tribe by birth will be deemed to be a member of the Scheduled Caste/Scheduled Tribe merely because he/she had married a person belonging to a Scheduled Caste/Scheduled Tribe. Conversely, a person who is a member of the Scheduled Caste/Scheduled Tribe would continue to be a member of the Scheduled Tribe as the case may be even after his/her marriage with a person not belonging to a Scheduled Caste/Scheduled Tribe.

8. Pleadings reveal that applicant herself has stated that her father late Shri Bhattu Ram Saimwal

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belonged to general category. She claims ST status on the basis of her marriage to Shri V.P.Chander Nautiyal who belonged to Johansari community which is a Scheduled Tribe category, but manifestly in the light of the Railway Board's circular dated 19.5.1979 which incidentally has not been challenged in the present OA, such a claim has to be negatived.

9. When we asked Shri Mainee why the applicant filed this OA nearly 4 years after the Tribunal's order dated 6.2.1997, and the applicant filing the affidavit pursuant to that order on 27.8.1997, Shri Mainee stated that the applicant was in ^{the} family way and hence could not file the OA earlier. While the Tribunal might have considered intervening in this matter if applicant had approached it within the time permissible under the Administrative Tribunals Act, 1985, clearly the delay in filing the present OA ^{mitigates} ~~was~~ ^{not} ~~held~~ ^{any} against such intervention. Furthermore, we note that though the OA was itself filed on 29.1.2001, it was ^{listed} ~~pressed~~ after nearly 3-1/2 months on 12.4.2001. Even thereafter no serious attempt was made to press the OA and it is only on 16.5.2001 that applicant's counsel appeared to press the same.

10. Indeed what the applicant is actually seeking in this OA is action against respondents for not complying with Tribunal's order dated 6.2.1997 directing them to reinstate her on provisional basis. Such a prayer might have come within the compass of a

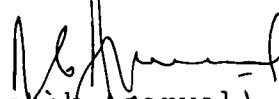
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contempt petition, had it been made within time, but clearly it is because no such contempt petition was pressed and in the meantime, the period of limitation for filing the contempt petition had elapsed, ^{that} ~~when~~ the applicant had [^] approached the Tribunal through the present OA.

11. In the light of the foregoing, we find ourselves unable to intervene in the matter and the OA is, therefore, dismissed. No costs.


(S.R. Adige)
Vice Chairman (A)


(Ashok Agarwal)
Chairman

/sns/