

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1692/99

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Shri Govindan S. Tampi, Member(A)

New Delhi, this the 18th day of December, 2000

Ex. Constable Tej Bhan
No.10813/DAP, 10578/DAP (Delhi Police)
c/o Mrs. Avnish Ahlawat
Advocate
243, Lawyers Chambers,
Delhi High Court
New Delhi. .. Applicant

(By Mrs. Avnish Ahlawat with Shri Mohit
Madan, Advocates)

Vs.

1. Government of National Capital
Territory of Delhi, through
Commissioner of Police
Police Headquarters
M.S.O. Building
I.P.Estate
New Delhi - 110 002.
2. Additional Commissioner of Police
(Armed Police), Delhi Police
Police Headquarters
M.S.O. Building
I.P.Estate
New Delhi - 110 002.
3. Deputy Commissioner of Police
9th Bataion
Delhi Armed Police
Delhi. ... Respondents

(By Shri Ajesh Luthra, Advocate)

O R D E R (Oral)

By Shri Govindan S. Tampi, Member(A):

In this application, the challenge is against
the termination of services of the applicant.

2. The applicant, who belongs to 'Bawaria'
community filed an application on 2.7.1990 in response
to advertisement for the recruitment of Constable in
Delhi Police. He did not indicate, in his
application, as to whether he belonged to Scheduled

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Caste or Scheduled Tribe, but only mentioned in his application that he belonged to 'Bawaria' community. The respondents themselves put the Scheduled Tribe stamp on the application filed by the applicant and after scrutiny of the application and other documents, he was allowed to take up physical test, which he passed. Thereafter he was permitted to sit in the written examination on 19.7.1992. He was intimated vide letter dated 15.3.1994 that he has been selected for the post of Constable and directed to report for training on 1.6.1994. Subsequently, on the basis of some intimation given by the Deputy Commissioner of Police, 3rd Battalion, Delhi Armed police, on 15.5.1995 to the effect that individuals of Bawaria community have gained employment in Delhi Police under the Scheduled Tribe category whereas they actually belonged to Scheduled Caste, which should not have been permitted. His services were therefore terminated on 19.12.1996. His appeal against the same was accepted. A regular Departmental Enquiry was conducted and on the culmination of which the charges, having been held proved he was finally dismissed, on 28.4.1998. Appeal against this was dismissed on 15.12.1998. These orders are under challenge.

3. Heard the learned counsel for the applicant and also the respondents. Shri Mohit Madan and Smt. Avnish Ahlawat, learned counsel for the applicant indicated that he had at the time of filing the application only ^{stated} ~~indicated~~ that he belonged to Bawaria community and made no mention whatever as to whether he belonged to Scheduled Caste or Scheduled Tribe. He also did not request for any specific

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categorisation or for benefits arising therefrom. At no point of time, the applicant had engaged himself in any deceitful means for securing the appointment. Therefore the proceedings initiated by the department for removing him from the post of Constable on the ground that he belonged to Scheduled Caste and not a Scheduled Tribe were improper and deserved to be set aside. The learned counsel also produced proceedings of the Delhi Police Headquarters which showed that the matter was not free from doubt. In fact from 1952 onwards Bawaria community was being treated as Scheduled Tribe and the applicant was therefore not at all at fault, more so as he only mentioned his community in his application.

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4. Arguing vehemently on behalf of the respondents, Shri Ajesh Luthra, reiterates the pleadings that the applicant had obtained his appointment on deceitful means by a deliberate omission to indicate that he belonged to Scheduled Caste and not Scheduled Tribe. Moreover he filed his application in the counter meant for Scheduled Tribe. Allocation of roll numbers also was category-wise and the applicant should have known that his application was given Scheduled Tribe roll number, while he belonged to Scheduled ^{Cash} ~~Tribe~~ category. He had also taken relaxation in respect of the chest measurement, which was available only to Scheduled Tribe. Keeping in mind, the fact that he had filed his application in the wrong counter and that he had also obtained selection only as Scheduled Tribe and not Scheduled

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Caste, by a deliberate omission, he has been correctly dismissed and there was no reason for intervention by the Tribunal, is what ^{the counsel w} he urges.

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5. We have given careful consideration to the rival contentions of the applicants and the respondents. It is evident that the applicant had no time claimed that he belonged to Schedule Tribe while filing the application. It is very clear from the papers placed before us that he had only indicated in his application that he belonged to Bawaria community. There is no indication in his application form or any other mention by him that he belonged to Scheduled Caste candidate or Scheduled Tribe candidates to get the benefit, it cannot therefore be said that he got the appointment on deceitful means, even if it appears that he was given some relaxation meant for Scheduled Tribe. The fact that he gone to the counter meant for Scheduled Tribe to file his application does not alter the situation as being a person from the rural back-ground he could not be expected to be aware of such subtle nuances. In fact it was the duty of those concerned with the recruitment, after the applications are received, to scrutiny whether he belonged to Scheduled Caste or Scheduled Tribe and thus eligible to be appointed or not in that category. This having not been done so, it was improper for the respondents after four to five years to hold that he belonged to Scheduled Caste yet he had obtained employment on a deceitful means showing that he belonged to Scheduled Tribe. In this connection, it

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is relevant to refer to two of the communications from Delhi Police Headquarters, dated 12.10.1999 and 14.10.1999. They are reproduced as below:

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OFFICE OF THE JOINT COMMISSIONER OF POLICE
ARMED POLICE : DELHI

"During the meeting on 11.10.99, Spl. C.P./Administration mentioned that cases have come to notice where 'Bawaria' community has been treated as Schedule Tribe in some cases and Schedule Caste in other cases. PHQ intends to make a consolidated reference to Govt. of India in this regard. All such cases where 'Bawaria' community has been treated as Scheduled Tribe in the U.T. of Delhi/NCT of Delhi may be referred to PHQ for necessary action as after examining the position, the PHQ has come to the conclusion that 'Bawaria' community in the U.T. of Delhi/NCT of Delhi falls under the category of Scheduled Caste."

sd./
(Dr. Chandra Prakash)
Joint Commissioner of Police
Armed Police : Delhi

ALL DCsP/DAP BNs.

No.8779-89/AP /PHQ dated 12.10.99

Copy to Addl. C.P./A.P.

OFFICE OF THE COMMISSIONER OF POLICE : DELHI


Subject:- Scrutiny of service record - Police
Personnel belonging to Bawaria community.

Kindly refer to this Hdqrs. confidential U.O.No.F.XIII/12(6)/97 (P-11)/701-40/P.Br.(AC-III) dated 8.1.90 and No.F23469-23510/P.Br.(AC-III) dated 13.9.99 on the above subject.

In order to take up the matter with the Govt. of India, Ministry of Home Affairs, the following actions may be taken:-

1. The details of all cases of persons belonging to Bawaria community who have been shown as Scheduled Tribe in your Distt./Unit should be sent to this Hdqrs. within 2 days i.e. by 15.10.90 positively. The detailed information pertaining to 80 candidates as has come to notice in OA filed by Constable Krishan Kumar as communicated vide this Hdqrs. reference No.F.XIII/12(6)/97(P-II)/22677-740/P.Br.(AC-III) dated 27.8.99 must be communicated in this information.

2. Since the case for one time exception is to be considered for not taking action against Police Personnel belonging to Bawaria community and had claimed themselves to be belonging to Scheduled Tribe


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category, Distt./Unit DCsP must be ensured that none is left but from the list and must certify the same in their reply to PHQ.....

3. No departmental action against members of Bawaria community may be taken till such time that a policy decision is taken and we communicate the same to the Distt./Units after taking up with the Ministry of Home Affairs. If any action has already been initiated, it will be held in abeyance till further orders. This, however, will not apply in cases where on enquiry, any forgery in the caste certificate has come to notice.

While sending the information of Sl. No.1 above, the same may be sent in the following category:-

i) Candidates of Bawaria community who submitted certificates of belonging to Scheduled Tribe category, have been treated as S.T. category candidates by Delhi Police.

ii) Candidates who got service mentioning them as SC/ST category who have been treated as S.T. category by the department.

iii) Candidates who got service belonging to Bawaria community as Scheduled Caste but treated as Scheduled Tribe by the department.

iv) Candidates of Bawaria community who got service as belonging to Scheduled Castes who have been treated as S.C. by the deptt.

v) Candidates who secured appointment claiming to be from Bawaria community in whose case subsequent enquiries reveal that such certificate was not issued by the competent authority and the certificate was a forged one.

This may be given TOP PRIORITY.

Sd/-
(S.NITHIAKANDAM)
DCP/LIC(HQ)

FOR ADDL. COMMISSIONER OF POLICE:E
DELHI

All DCsP/Distts./
Units including PTC &
F.R.R.O. & DCP/HQ
(Inspr./CR/PHQ), Delhi/
New Delhi.

No.25239-290/P. Br. (AC-III) dated 14.10.1999

Copy for similar necessary action to CA/PHQ.
Inspr./Personnel, Estt., Ch. Roll Branch & I/C
R.Cell/PHQ.

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It is evident from the above that the Delhi Police themselves were not earlier sure of the status of Bawaria community as Scheduled Caste or Scheduled Tribe and were in the process of seeking a clarification from the Union Government. Department also had decided not to proceed departmentally against the members of the community, except in cases where forgery in caste certificate is noticed. In the instant case, no forgery or other misdemeanour has been shown as proved. In fact the individual concerned has produced genuine caste certificate but the respondents have as their own placed as his Scheduled Tribe status and benefits thereunder. He cannot be faulted for that. Respondents action in terminating his services was improper, malafide and deserves to be set aside.

6. In the above view of the matter, the application succeeds and is accordingly allowed. The entire proceedings culminating in the The impugned orders terminating the services of the applicant are quashed. The respondents are directed to reinstate the applicant in service with all the consequential benefits, including his seniority, ^{and} promotion, if due, within three months from the date of receipt of a copy of this order. We also direct the respondents to pay to the applicants Rs.3000/- (Rupees Three Thousands Only) towards the cost of this application.

(GOVINDAN S. TAMPI)
MEMBER (A)

(V. RAJAGOPALA REDDY)
VICE CHAIRMAN (J)

/RAO/