

Central Administrative Tribunal  
Principal Bench, New Delhi

OA No. 2382/96

New Delhi, this the 6th day of February, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman (J)  
Hon'ble Shri S.P.Biswas, Member (A)

Smt. Sunita Nautiyal,  
w/o Shri V.P.Nautiyal  
C/o Radhey Shayam,  
262/734, Kailash Nagar Gaushala,  
Thana Vijay Nagar,  
Distt. Ghaziabad. ....Applicant  
(By Sh. B.L.Madhoc proxy for  
Shri B.S. Mainee)

Versus

Union of India through  
1. The General Manager,  
North Eastern Railway,  
Gorakhpur.  
2. The Divisional Personnel Officer,  
North Eastern Railway,  
Izatnagar. ....Respondents  
(By Shri D.S. Mahendru proxy for  
Shri P.S. Mahendru)

O R D E R (Oral)

By Hon'ble Dr. Jose P. Verghese, Vice-Chairman (J) --

Shri B.L.Madhoc proxy for Shri B.S. Mainee, counsel for the applicant submits that a number of opportunities have been given to the respondents to file the counter affidavit but no reply has been forthcoming. Since this matter is covered by two decisions of the Hon'ble Supreme Court on the question of verification of the caste certificates, we are inclined to dispose of the matter at the admission stage itself.

2. The applicant was appointed in a group "D" post at Sl. No. 44 of the office order No. 624 dated 11.4.1996 issued by respondent no. 2 in the pay scale of Rs. 750-940/- The applicant was selected to the post on the

Contd...2p/-

(3)

basis of her scheduled tribe certificate issued by the then District Magistrate, Dehradun vide certificate No. 818 of 27th January, 1992. The respondents thereafter sent the said certificate for verification and after receipt of the report from the District Magistrate and on the basis of his finding that she does not belong to a scheduled tribe community, the respondents cancelled the appointment of the applicant by order dated 30th August, 1996. The applicant is challenging the above action of the respondents.

3. On behalf of the applicant it was submitted that the enquiry for the verification of her caste certificate which has been held behind her back and no show cause notice has been given and much less the procedure for verification of caste certificates laid down by the Hon'ble Supreme Court in several cases has not been followed by them.

4. There is no reply from the respondents on the file but the cancellation order dated 30th August, 1996 on the face of it shows the reason why this cancellation order was passed. On the face of the application made on behalf of the applicant and in view of the decisions of the Hon'ble Supreme Court in Kumari Madhuri Patil and Another vs. Addl. Commissioner, Tribal Development and Others reported in 1994(6) SCC page 259 and Director of Tribal Welfare, Government of Andhra Pradesh Versus Layeti Giri and Another reported in JT 1995(3) SC Page 684, we have no hesitation to record the finding that the cancellation of her appointment is not in order, since the procedure

prescribed by the Hon'ble Supreme Court for verification of the caste certificate has not been followed. In Para 7 of the Laveti Giri's case the Hon'ble Supreme court has reiterated the procedure to be adopted in such situations which is an almost repetition of the directions given in para No. 13 of Kumari Madhuri Patil's case. The said directions are re-produced herebelow:-

".....For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval which may be the following:-

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than by the officer like Taluk or Mandal level.
2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted or non-gazetted officer with particulars of castes and sub castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.
3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed atleast six months in advance before seeking admission into educational institution or an appointment to a post..
4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of department concerned, (II) the Director, Social Welfare/ Tribal Welfare/ Backward Class Welfare, as the case may be and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of Scheduled

(1)

Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in overall charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officers should personally verify and collect all the facts of the social status claimed by the candidates or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonolnies method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or "doubtful" or spurious or falsely or wrongly claimed, the Director concerned should issue show cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be mnade within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convvne the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all

evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under

Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/ matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making a claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission of the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post."

5. These directions were again reiterated in a very recent case, S. Nagarajan vs. The Distt. Collector, Salam & Others JT "997 (1) SAC P. 692.

6. After considering the entire matter and on the basis of the available material on record, we are giving the following directions:-

(i) The cancellation of appointment order dated 30th August, 1996 is quashed on the ground that the reasons stated in the said order cannot hold good, since the procedure adopted therein was not in consonance with the directions given by the Hon'ble Supreme Court;

(ii) In accordance with the directions given in the said cases, the applicant shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of caste and sub-caste, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which she originally hails from and other particulars as may be prescribed by the Directorate concerned;

(iii) As and when the said affidavit is filed, the respondents shall accept the same alongwith the caste certificate submitted by the applicant and re-instate her forthwith, provisionally, subject to verification in accordance with the procedure to be adopted.

(iv) The applicant is entitled to be re-instated/ appointed provisionally with all the benefits which are available to all other employees in the same select list except that the fate of the applicant will be finally decided after due verification, following the procedure prescribed by the Hon'ble Supreme Court.

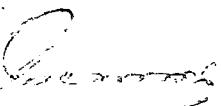
.....8p/



(11)

(v) The respondents are directed to further submit the caste certificate and affidavit for verification before the respective authorities stating the said decisions as cited above.

B. With the above observations, this OA is disposed of. No order as to costs.

  
(S.P. Biswas)

Member (A)

  
( Dr. Jose P. Verghese )  
Vice-Chairman (J)

/NA/