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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./T.A. NO. 2291 of /19⁹⁴ Decided on : 12.12.95

Anjan Kumar

... Applicant(s)

(By Shrimati shyamala pappu Advocate)

versus

Union of India

... Respondent(s)

(By Shri V.S.R. Krishna Advocate)

CORAM

THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE ~~SHRI~~ DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not ? *42*
2. Whether to be circulated to other Benches
of the Tribunal ? *102*

[Signature]
(DR. A. VEDAVALLI)
Member (J)

[Signature]
(S.R. ADIGE)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.2291/94

New Delhi; December /2nd 1995.

HON'BLE MR. S.R.ADIGE, MEMBER (A)

HON'BLE DR. A.VEDAVALLI, MEMBER(J)

Shri Anjan Kumar,
C/o Dr. L.K.Sahay,
Bairagee More,
P.S.Delhi, Gaya,
Gaya.

.....Applicant

By Advocate Mrs. Shyamla Pappu along with Shri R.R.
Singh

Versus

Union of India through

1. The Secretary,
Union Public Service Commission,
Dholpur House,
New Delhi.
2. Chief Secretary,
Deptt. of Personal and Training,
Ministry of Personnel and Training,
North Block,
New Delhi.
3. Under Secretary,
AIS CIJ, Deptt of Personnel & Training,
Ministry of Personnel and Training,
North Block,
New Delhi

.....Respondents

By Advocate Shri V.S.R.Krishna.

JUDGMENT

By Hon'ble Mr. S.R.Adige, Member (A).

In this application, Shri Anjan Kumar has sought for a direction to the respondents to issue him the training-cum-joining letter as a successful candidate for 1992 Civil Services Examination with consequential seniority and other attendant benefits.

2. The applicant's case is that he appeared

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in the Civil Services (Preliminary) Examination, 1992 and having cleared the same he appeared in the Civil Services (Main) Examination ^{which commenced} from 6.11.92. Having passed the Main Examination, he qualified for the interview which was held on 28.4.93. Meanwhile he also appeared in the medical examination on 12.8.92 where certain medical defect was pointed out which he had removed. He states that before the re-medical examination, he received a letter dated 17.5.93 from the UPSC regarding submission of relevant documents in support of his ST certificate and in response to that he submitted all the relevant documents on 12.6.93. He further states that the Civil Services Examination's result was declared on 3.6.93 when he got 759th rank in order of merit and he received his marksheet dated 4.6.93 in which he was recommended for final appointment. Meanwhile as he did not receive the final appointment letter upto November, 1993, he approached the UPSC from where he learnt that he had been allotted Indian Information Service Group 'A'. Meanwhile his batchmates joined the training on 27.12.93. He states that he again approached the UPSC from where he learnt that his file has been sent to the Department of Personnel, but was not informed why his appointment letter was held up despite several letters addressed to the Department of Personnel and the UPSC.

3. The respondents in their reply have stated that the UPSC had desired the Department of Personnel to take a decision with regard to the applicant's claim to belong to the Scheduled Tribe Community before issuing an offer of appointment to him. The

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UPSC had pointed out that the applicant had obtained a certificate as belonging to the Scheduled Tribe 'Oraon' Community from the Addl. District Magistrate, Gaya on the basis of ST Certificate of his mother who hails from Tribal belt of Raigarh Distt. of Madhya Pradesh and belongs to Oraon Community which is recognised as ST in Madhya Pradesh. The father of the applicant was a non-tribal and belonged to Kayastha caste. The commission also stated that in such cases, the claim could be treated as valid only when the child had been staying throughout his life with his mother in the Tribal society and he was born and brought up in the social and cultural environment of that community and was accepted by that community as one of them. The respondents state that in disputed case, the opinion of the Welfare Ministry, Govt. of India, is sought and that Ministry vide their O.M. dated 9.11.94 (Annexure-RI) had stated that Shri Anjan Kumar had not been brought up in Tribal environment since his father was a non-tribal. That Ministry had therefore stated that the applicant could not be treated as belonging to the ST Community. The respondents further state that upon receipt of Welfare Ministry's advice, the UPSC in order to be fair to the applicant wrote to the Madhya Pradesh Govt. on 15.12.94 to verify the documents submitted by the applicant. The Madhya Pradesh Govt. in their reply dated 4.7.95 (Annexure-RI) stated that they got the ST Certificate produced by the applicant, verified through the Collector Raigarh who had reported that the certificate was not a true and

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correct. The applicant had never been connected with the Oraon Community of Podi Patkona village from where he claimed to hail. He had been brought up in Gumla and Gaya. The M.P. Govt. fully agreed with the findings of the Collector Raigarh. The M.P. Govt. forwarded the Collector Raigarh's report dated 28.6.95 which stated that the applicant's caste/Tribal status was verified by the Addl. Collector, Jashpur. The letter stated that the applicant's certificates were not found to be correct, and appears to have been issued after furnishing wrong information to the villagers and kins. The applicant had never been connected with the Oraon Community of Pondi Patkona. He had been brought up in Gumla and Gaya and had never faced the vicissitudes of village life in Pondi Patkona. On the basis of this inquiry, it did not appear justified to grant him ST benefit. The respondents' reply goes on to add that as the applicant was not recommended for appointment by the UPSC as an ST candidate, and since it was clear from the enquiry report that the applicant's claim to ~~be~~ belonged to the ST Community was not supported by evidence, he has no claim to be appointed to a service on the basis of Civil Services Examination, 1992.

4. In rejoinder, the applicant has contended that he belongs to the ST Community in terms of the

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applicant's mother's employer certificate, marriage certificate, his father's caste certificate and the Home Ministry's Circular dated 4.3.75 (Annexure-R1) determining the status of children belonging to a couple, one of whom belongs to ST community. It has been contended that the report submitted by the respondents along with the additional affidavit is self contradictory. It is submitted that the Caste Certificate was not issued by the Collector Raigarh, but had been issued by the Addl. Magistrate, Gaya on the basis of applicant's mother's caste Certificate and after thorough verification. It has been contended that the applicant was attached to Podi Patkona Village where he was born and was connected with Oraon community but was brought up and educated in Gumla and Gaya where his father was posted as College Lecturer. It is stated that the Govt. of India had desired the M.P. Government to report on three points, namely

- i) Whether the applicant belongs to the ST community and whether he had been accepted by that Tribal community?
- ii) Whether he has been accepted by the Oraon community?
- iii) Whether the documents produced by him were correct?

It has been contended that the Collector, Raigarh did not answer the three issues framed by the Govt. of India and had merely emphasised on the aspect of the bringing up the applicant in the Oraon community

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environment. Reference has been made to the statements given by the applicant's family members and it has been contended that various family members had also filed affidavits stating that during the course of enquiry conducted by the Addl. Collector, Raigarh their statements were not read out and made understood to them and, therefore, they did not know what exactly the Addl. Collector had recorded as being their statements, and in any case they had never stated that the applicant was not brought up in the village, or that the certificates produced by him were wrong.

5. We have heard Mrs. Shyamla Pappu for the applicant and Shri V.S.R. Krishna for the respondents.

6. At the outset, Mrs. Pappu has stated that various members of the applicant's family were present in the Court ^{during hearing} and she invited attention to the affidavits filed by them, which were taken on record to the effect that the applicant was brought up as a member of the Oraon Community and that the enquiry conducted by the Addl. Collector, Raigarh was inaccurate, and the statements purported to have been given by them in that enquiry had not been read out to them to enable them to satisfy themselves that their statements had been recorded correctly.

7. We have considered carefully the rival contentions in this case.

8. The first ground taken by Mrs. Pappu is

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that ST certificate furnished by the applicant to the UPSC with his application form is a perfectly valid one, which has not been quashed or set aside and till that certificate subsists in the eye of law, the respondents are legally bound to issue the applicant his appointment letter. To this Shri Krishna has argued that it is because the respondents were not satisfied that the ST certificate was a correct and accurate one, that they had not issued the appointment letter, and till the applicant produced a valid ST Certificate in support of his claim to ST status he cannot be issued the appointment letter. It is no doubt true that the ST Certificate furnished by the applicant has not been quashed or set aside, but on the basis of inquiries conducted by the respondents into the validity of that ST Certificate, they are not satisfied that the same is a valid one. They have before them the report of the State Govt. of M.P. based on the enquiry report of the Collector Raigarh who has categorically opined that the ST Certificate is not a correct or true one, and after obtaining the views of the Welfare Ministry who have examined the matter in the background of the guidelines issued on the subject, they are not satisfied that the S.T. Certificate is a correct and valid one. No specific relief has been sought in the OA. for quashing and setting aside the enquiry report of the Collector, Raigarh or the report of M.P. State Govt. and if based upon the enquiry report of the Collector, Raigarh and the M.P. State Govt., as well as the guidelines issued by the Welfare Ministry the respondents are not satisfied that the ST Certificate furnished by the

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correct and
applicant is a valid one and hence have not issued the appointment letter to the applicant, it cannot be said that the respondents have acted illegally or arbitrarily. Hence this argument fails.

9. The next ground taken is that the Home Ministry's letter dated 4.3.75 on the legal status of children lays down that in the case of marriage between a Tribal and a non-tribal, the main factor for consideration is whether the couple were accepted by the tribal society to which the tribal spouse belonged, and in this particular case the acceptance was complete. Hence the applicant, who was born of that union had to be deemed as belonging to the ST community, and the qualification in that letter that such a situation could normally happen only when the husband was a member of the ST (which in the present case he is not) amounted to gender discrimination. It must be noted that what has been referred to above is contained in Annexure II to that letter, but Annexure I has not been annexed, although the letter dated 4.3.75 expressly refers to two notes (Annexure I & II) setting out the legal position on the subject. In so far as the point about gender discrimination is concerned, it must be stated that the contents of the said Annexure II have not been specifically impugned or challenged. The pith and substance of that Annexure II is that it is the acceptance by the Society of the children born out of a marriage between a member of the ST with an outsider, which is the main determining factor (irrespective of whether the tribe is matrilineal or patrilineal)

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and whether the child was accepted as a member of the ST community or not. This in the ultimate analysis is a question of fact, which can be determined only after recording of detailed evidence and its subsequent evaluation. Respondents' counsel Shri Krishna has pointed out and correctly in our opinion that such an undertaking lies outside the jurisdiction of the Tribunal, and it is open to the applicant to approach the appropriate legal forum for that purpose.

10. The next ground taken by the applicant is specifically in respect of the report of the M.P. State Govt;, based on the enquiry report of the Collector, Raigarh. It has been contended that the M.P.Govt. had reported that the ST Certificate issued to the applicant was not a correct and true one but that Certificate was not issued by a M.P. State Govt. Official (Collector, Raigarh) but the Addl.District Magistrate, Gaya based on the applicant's mother's Certificate after thorough verification. It is stressed that the applicant was very much attached to the village where he was born(Podi Patkona Village) and was connected with the Oraon Community, and it is only for school education which was not available in Podi Patkona that he shifted to Gumla and later to Gaya where his father was a College Lecturer. In this connection, Smt.Pappu has stressed that the interpretation sought to be given by the M.P.State Govt. and its functionaries would condemn tribal youths to remain tethered to their villages a-ll then lives, which surely could not be the intention

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behind Govt. efforts to give reservation in Govt. jobs to them. It has also been contended that the Collector Raigarh's report does not address itself to the three points, on which the Govt. of India had specifically sought a reply from the M.P. State Govt. and wrongly states that the applicant rarely visits the village, and does not have living relation with the villagers of his community, although his parents after the marriage have been regularly visiting the village. It has been further contended that the applicant has been accepted as a Member of the Oraon Community as would appear from the statements of various family members of the applicant. It has been stated that the statements made by the witnesses during inquiry and recorded by the Addl. Collector Raigarh were not read back to them to verify their correctness, and the statements of the Sarpanch, Chowkidar etc. were not recorded. It is stressed that the statements before the Addl. Collector were made out of fear, and it is denied that any of them who deposed before the Addl. Collector during inquiry ever said that the applicant had never been brought up in the village and the certificate issued by him was wrong. In this connection, as stated earlier, various persons who claimed to be family members of the applicant were present in Court during hearing and filed affidavits denying the statements attributed to them in the inquiry before the Addl. Collector, Raigarh and stating that the applicant had been accepted as a member of the Oraon Community and was

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therefore entitled to ST status.

11. The M.P. Govt. has not been impleaded as a party before us, and neither has the forwarding letter of the M.P. State Govt. dated 4.7.95; the Collector Raigarh's letter dated 28.6.95 or the Addl. Collector Jashpur Nagar enquiry report dated 26.6.95 been specifically impugned for being quashed and set aside. In any case the CAT Act does not give the Tribunal jurisdiction over the M.P. State Govt. or its officials. The fact that in our order dated 24.4.95 we had noted the submissions made by the respondents' counsel that the inquiry into whether the applicant belonged to the ST Community or not, was underway and had called upon the respondents to take with the M.P. State Govt. the expeditious conclusion of that inquiry, cannot be said to imply that the Tribunal has jurisdiction over the M.P. State Govt. when the CAT Act itself gives it none. Mrs. Pappu has argued that the CAT has replaced the High Court in service matters relating to Civil posts under the Union, by virtue of which the Tribunal has jurisdiction in such matters, but respondents' counsel Shri Krishna has correctly pointed out that the Tribunal's jurisdiction over the MP Govt. cannot be assumed, when the CAT Act itself expressly gives it none. Furthermore, the issuance of an SC/ST Certificate itself may not be

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a service matter for such a certificate has a wide variety of uses, only one of which is for the purposes of seeking reservation in Govt. employment.

12. In the overall facts and conspectus of the case therefore, we are unable to grant the relief prayed for by the applicant and this O.A. is dismissed without costs, but leaving it open to the applicant, if so advised to approach the authorities concerned afresh after establishing his claim to belong to the ST Community in the competent forum. *Procedural*

A. Veda Valli

(DR. A. VEDAVALLI)
MEMBER (J)

S. R. Adige

(S. R. ADIGE)
MEMBER (A)

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