

(3)

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

OA No.1559/89.

New Delhi, this the 19th day of April, 1994.

SHRI J.P.SHARMA, MEMBER(J).

SHRI S.R. ADIGE, MEMBER(A).

Bhanwar Singh,
S/o Shri Hardhayan Singh,
Constable No. (1415 Security),
Security Police Lines, New Delhi.

...Applicant

By advocate : Shri N. Safaya.

VERSUS

1. Union of India,
through Secretary,
Ministry of Home Affairs, North Block, New Delhi.

2. Lt. Governor,
Raj Niwas, Delhi.

3. Commissioner of Police, Delhi,
I.P.Estate, New Delhi.

4. Deputy Commissioner of Police,
H.Q. I.P.Estate, New Delhi.

...Respondents

By advocate : Ms. Maininder Kaur.

O R D E R (ORAL)

SHRI J.P.SHARMA :

The applicant was promoted as Head Constable by the order dated 27-1-79 w.e.f. 12-3-73 on the basis that he belonged to Scheduled Tribe category. He was also confirmed in that rank from 17-4-88 by the order of 14-5-79. Subsequently, on the basis of anonymous complaint received by the respondents, it was found that the order of promotion was erroneously passed in his favour treating the applicant as a reserved category candidate belong to S.T. community. A show cause notice, therefore, was issued to the applicant and by the impugned order dated 5-2-81, the promotion was cancelled and the applicant was reverted to the rank of Constable. The applicant preferred an appeal as well as revision

against the aforesaid order without success and, therefore, filed the application in July, 1989, praying for the relief that the impugned order dated 1-11-80 (?) be quashed and the applicant be restored to its original rank and position.

2. The respondents opposed the grant of the relief on the ground that the Constable Bhanwar Singh does not belong to the S.T. community as he is Kumar by caste. Even after promotion in S.T. category, the applicant did not disclose this fact. He was issued a show cause notice and the order has been withdrawn under under FR 58-A. The applicant has since been given promotion as Head Constable (Executive) during the pendency of the application.

3. The applicant has also substantiated the averments in the application by filing rejoinder.

4. We heard the applicant's counsel at length. The age of the applicant in July, 1989 was about 55 years and in normal course as he did not suffer any casualty in service or health, he must have retired sometimes in July, 1992 as Head Constable.

5. The first contention of the learned counsel for the applicant is that the principles of natural justice have been violated in not furnishing to the applicant the information which he volunteered from the respondents regarding show cause notice dated 27-10-80. It is a fact that the applicant in his reply dated 5-1-81 has prayed for supply of certain documents but the same had not been made available to the applicant though some of them were given to the applicant. The contention of the learned counsel is seeing to the education of the applicant, it is expected to understand the technical terms and give an effective reply to the show cause notice. In fact, the short controversy involved in the matter was regarding the alleged erroneous promotion of the applicant to the post of Head Constable from a retrospective date by the order passed in 1979. The respondents

in the reply have clearly stated that the applicant was not fit for promotion in general category and it was only a modified application of the rules, as applied to S.T. category, the name of the applicant was entered in the List 'C' (II). This has been done only because inadvertently or the concerned dealing person in ^{that he} cannivance reported the case of the applicant before DPC ^{belongs to} S.T. category. The applicant in the original application and the learned counsel during the course of the arguments have dealt with these points exhaustively but it is not denied that the caste to which the applicant belong does not fall in the category of S.T. mentioned in the Constitution of India. Lengthy arguments were advanced regarding the principles of natural justice and non-observance of the same in letter and spirit in disposing of the representation of the applicant/reply to the show cause notice would not in any way meet the requirement of the same visualised by the applicant or his counsel. FR 31(a) clearly lays down that erroneous promotion made under a mistaken belief of fact or law can be drawn under the various presidential orders issued and under the same F.R., there are ^{also} Government of India decisions in that respect. The emphasis of the learned counsel that certain documents ^{were} not necessarily required as observed by the competent authority in the impugned order ^{and as such do not} violates the principles of natural justice. He has referred to the case of INDER PRAKASH VS. DEPUTY COMMISSIONER OF POLICE reported in 1979 RAJDHANI LAW REPORTER p.523. We have given an anxious consideration to the law laid down. That case belonged to a student who got admission in a medical college on the misrepresentation of being belonging to a caste falling under S.T. category. That misrepresentation ^{by that petitioner} was detected when the concerned student had advanced in medical ^{studies} by 3 years. The authorities wanted to undo the admission of that student but the High Court turned down that order. Here the case is of an employee where there cannot be any analogy between the

^{were not supplied to}
the applicant but those

two cases. In view of this fact, we don't find any breach of the natural justice in this case. The learned counsel, however, referred to the decision of the Hon'ble Supreme Court in the case of BOARD OF HIGH SCHOOL AND INTERMEDIATE EDUCATION VS. CHITRA SRIVASTAVA reported in AIR 1970 SC p.1039. The principles of natural justice cannot be extended to such an extent as to totally nullify the statutory requirement or the administrative instructions. There are different guidelines for giving promotion on the reserved category seats and that is only open to those who by virtue of their birth in a particular caste fall in S.T. category.

6. The learned counsel also argued on the point that since the applicant has worked for more than 7 years as Head Constable and further the applicant has also passed the inter school course which is a pre-requisite for next promotion of A.S.I., then on the principles of equity what he has gained by this length of service should not have been undone by this impugned order. In this connection, the learned counsel for the applicant has placed reliance on the case of ROOP KISHAN JHARU VS. UNION OF INDIA reported in SLJ VOL.2 1986 p.78 and on the same journal at page 258, ANITA BOSE VS. UNION OF INDIA. In the former case, the fixation of pay was considered and the benefit was withdrawn without giving a show cause notice. The Tribunal held that no order disadvantageous to a person can be passed without hearing ^{/to pass order after} him and the Tribunal directed ^{Issue of a show cause notice.} In the latter case, the petitioner has worked on officiating basis for a period of 3 years and thereafter he was sought to be reverted on the ground that he was not eligible for promotion. Both these cases do not have anything in common with the case in hand. Here the post is of reserved category on which a general category candidate can only be appointed after de-reserving the post. If,

by mistake, or by casual reporting by the dealing authority, the promotion has been effected which is not in accordance with the statutory requirements, then the same can be withdrawn under F.R.31(A).

7. We have also considered this aspect sympathetically but if a junior is promoted on the basis of certain mistake committed by the authorities, though the applicant or petitioner may not be at fault, it affects the right of so many persons senior to such petitioner as he cannot be allowed to make a march over them or a mistake committed by the Department. The learned counsel pointed out that none of those persons is before the Tribunal. It is not necessary. The Tribunal has to see while giving a verdict as to what would be the effect of its decision.

8. In view of the above facts and circumstances, we don't find any substance in this case. The same is dismissed as devoid of merit. No costs.

Adige
(S.R.ADIGE)

MEMBER(A)

Sharma
(J.P.SHARMA)

MEMBER(J)

'KALRA'