

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/01518/2014

HYDERABAD, this the 1st day of February, 2021

Hon'ble Mr. Ashish Kalia, Judl. Member

Hon'ble Mr. B.V. Sudhakar, Admn. Member



Smt. G. Murali Manjari @ Mangari, W/o. Sri G. Raghu,
Hindu, Aged 45 years, OS (Adhoc), R/o. Quarter Plot No. 195,
Sector II, MVP Colony, Visakhapatnam.

...Applicant

(By Advocate : Dr. P. B. Vijaya Kumar)

Vs.

1. Union of India, Rep by its General Manager,
East-Coast Railway, Bhubaneswar, Orissa State.
2. The Divisional Railway Manager,
East Coast Railway, Waltair, Visakhapatnam.
3. The Divisional Personnel Officer,
East Coast Railway, Station Road, Waltair,
Visakhapatnam.

....Respondents

(By Advocate : Mrs. A.P. Lakshmi, SC for Railways)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:



2. The OA is filed questioning the impugned order dt. 24.11.2014 issued by the 3rd respondent, wherein the applicant was advised to submit caste certificate, failing which, she would be liable for action under D & A Rules.

3. Brief facts of the case are that the applicant who belongs to the ST community, was appointed as Junior clerk in the respondents organisation on 27.5.1988 and rose to the rank of Head Clerk in 1998 on a regular basis. Thereafter, on 20.6.2003, she was posted as OS Grade-II on adhoc basis. The promotions were given based on the ST community certificate submitted by her. Respondents directed to submit a fresh community certificate on 24.11.2014 and a reply was given by her advisor on 10.12.2014. Applicant also approached the RDO to issue the community certificate afresh since her regularisation in the cadre of OS – Grade II was held up. Although, the community certificate submitted by the applicant is valid, yet the respondents denying the regularisation of her services in the OS cadre and further promotions is irregular and hence the OA.

4. The contentions of the applicant are that there is no complaint about the genuineness of the caste certificate submitted by her. Issue of caste certificate is governed by the AP (SC, ST, BCs) Regulation of Community Certificate Act, 1993 and the Rules made thereunder. Caste certificate is valid until it is cancelled. Applicant has cited the judgment of the Hon'ble High Court of A.P in support of her case. She has also filed WP No.13625

in the Hon'ble High Court at Hyderabad wherein directions were given to the State Govt. to issue the certificate in the prescribed proforma on 1.5.2015. Respondents have no power to ask for a fresh certificate when the earlier certificate is valid. Action of the respondents is violative of the Articles 14 and 21 of the Constitution.



5. Respondents while admitting the career graph of the applicant do state that she was given appointment/promotions based on her ST status. As per DOPT instructions applicant has to submit the caste certificate in the prescribed proforma. Applicant was advised on 4.2.2005 and though reminded on 19.4.2007, she has not submitted the certificate. Hence, she was not regularised in the post of the OS Grade II. The rule of law has to be upheld.

6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is about not regularizing the services of the applicant in the cadre of OS grade –II and denying subsequent promotions for not submitting the caste certificate in the prescribed proforma. The issue of caste certificate is governed by the AP (SC, ST, BCs) Regulation of Community Certificate Act, 1993. As per Rule 5 of the Act, the District Level Scrutiny Committee verifies the community certificate and accordingly submits its recommendations to the District Collector, who is the competent authority to confirm the validity or cancel the certificate. Respondents have in particular relied on DOPT memos 9.9.2005 and 24.4.1990 in regard to submission of a fresh caste certificate. We have gone through both the OMs and they deal with the verification of caste certificate. The respondents have cited other DOPT OMs 61/1978, 14/1983,



134/1985 and 132/1990 which deal with the issue of community certificate and other related matters. Respondents claim that to uphold the rule of law, the caste certificate has to be submitted afresh to avail the reservation benefit. This is only a procedural requirement and it should not in any way come in the way of granting the reservation benefits as ordained in the constitution, as long the certificate is found to be genuine. What is important is whether the applicant belongs to the ST community or not and not in which proforma, it has been submitted. It is the substance and not the form which is imperative. The competent Revenue authority has issued the caste certificate to the applicant and the same has been accepted by the respondents in granting her appointment as well as promotions over the years. Importantly, the certificate has not been cancelled. There is no dispute on this aspect and indeed, no complaint has been lodged against the caste status of the applicant. In case the respondents wish to verify the certificate, they should take actions as per AP (SC, ST, BCs) Regulation of Community Certificate Act, 1993, which they did not. As long as the certificate is held to be valid, it is not proper on part of the respondents to withhold any benefits that accrue with the submission of the caste certificate submitted. There is no right vested in the respondents to decline a benefit which has been guaranteed in the constitution for which the applicant is eligible. A change in procedure on a later date can be no ground to deny the benefit granted based on the earlier procedure, unless and until the very certificate submitted is found to be fake, which is not the case in the instant dispute.

II. It is also evident from the facts of the case, that the applicant has approached the Revenue authorities to issue the caste certificate in the proforma prescribed and also filed a WP bearing the number 13625/2015 wherein a direction has been given by the Hon'ble High Court to the State Govt. to issue the certificate. Thus the applicant has taken all necessary and possible steps which she could take, to get the certificate issued as desired by the respondents. Hence, she cannot be found fault with. In fact, respondents could have supplemented her efforts by approaching the revenue authorities to issue the certificate as required. As a model employer, this is the minimum expected by hapless lady employee like the applicant. This would serve the dual purpose of obtaining a fresh certificate in the proforma prescribed and in the process, the genuineness of the certificate would have been tested. In case it was found that the certificate was bogus, it would have been open to the respondents to proceed against the applicant appropriately as per rules/law. Every action has a positive angle to it, which the respondents should always attempt to explore, in Organizational interest. Without taking such an initiative, penalising the applicant is unfair and that too, when she was not at fault.



III. In fact, Hon'ble High Court of Andhra Pradesh in W.P. No.24635 of 2013 dated 24.9.2013 has observed that when there is no disciplinary action or a Judicial proceeding pending, doubting the social status of the petitioner is incorrect. In the instant case there are no elements of disciplinary action or judicial proceedings pending against the applicant nor was the certificate found to be fake and hence the benefits that accrue to the applicant for being an 'ST' employee have to be undoubtedly

extended,. This is the law which has to be followed and not what the respondents propounded in their reply. It is the substantial aspect of an issue which is more important than the procedural facet, as held by the Hon'ble Supreme Court in Supreme Court of India in State Rep. by Inspector of Police, CBI vs. M. Subrahmanyam on 7 May, 2019 in Criminal Appeal No (s). 853 of 2019 (arising out of SLP (Crl.) No(s). 2133 of 2019), as under:



8. *In Bihar State Electricity Board vs. Bhowra Kankanee Collieries Ltd., 1984 Supp SCC 597, the Court opined:*

“6. Undoubtedly, there is some negligence but when a substantive matter is dismissed on the ground of failure to comply with procedural directions, there is always some element of negligence involved in it because a vigilant litigant would not miss complying with procedural direction..... The question is whether the degree of negligence is so high as to bang the door of court to a suitor seeking justice. In other words, should an investigation of facts for rendering justice be peremptorily thwarted by some procedural lacuna?”

9. The failure to bring the authorisation on record, as observed, was more a matter of procedure, which is but a handmaid of justice. Substantive justice must always prevail over procedural or technical justice. To hold that failure to explain delay in a procedural matter would operate as res judicata will be a travesty of justice considering that the present is a matter relating to corruption in public life by holder of a public post. The rights of an accused are undoubtedly important, but so is the rule of law and societal interest in ensuring that an alleged offender be subjected to the laws of the land in the larger public interest. To put the rights of an accused at a higher pedestal and to make the rule of law and societal interest in prevention of crime, subservient to the same cannot be considered as dispensation of justice. A balance therefore has to be struck. A procedural lapse cannot be placed at par with what is or may be substantive violation of the law.

Thus the action of the respondents in denying the relief sought by the applicant is incongruent to the legal principle laid down by the Hon'ble Apex Court in the above judgment.

IV. Therefore, in view of the aforesaid circumstances, we hold that it was incorrect on part of the respondents in not regularising the services of

the applicant as OS Grade-II and denying further promotions. Hence, we direct the respondents to regularise her services in the cadre of OS Grade-II from the date she is eligible as per rules and grant further promotions on a notional basis, if found otherwise eligible on the dates she is due for promotion as per rules and law. It is made clear that the applicant is not eligible for any back wages on being granted promotions on a notional basis, if found otherwise eligible, as per rules/law.



V. With the above directions, the OA is disposed of with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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