

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.326/2004

New Delhi, this the 3<sup>rd</sup> day of May, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN  
HON'BLE SHRI S.A.SINGH, MEMBER (A)

Dr. Homeshwar Tongbram  
Quarters No.3, Type-II  
Minto Road  
New Delhi - 110 002. .... Applicant

(By Advocate: Sh. S.D. Singh)

Versus

1. Union of India  
through its Secretary  
Government of India  
Ministry of Health & Family Welfare  
(Department of Health)  
Nirman Bhawan  
New Delhi - 110 011.
2. Shri Y.K.Talwar  
Dy. Secretary to the Govt. of India  
Ministry of Health & Family Welfare  
(Department of Health)  
Nirman Bhawan  
New Delhi - 110 011.
3. Under Secretary  
Ministry of Health & Family Welfare  
(Department of Health)  
Nirman Bhawan  
New Delhi - 110 011. .... Respondents

(By Advocate: Sh. J.R.Sharma, proxy for Sh. V.S.R.  
Krishna )

ORDER

Justice V.S. Aggarwal:-

Applicant was appointed as Special Grade-II (Surgeon) in Non-teaching Specialist, Sub-cadre of Central Health Services. He was taken as Scheduled Tribe candidate. By virtue of the impugned order of 20.1.2004, the appointment of the applicant was terminated. He seeks quashing of the said order and directing the respondents to continue him in service.

*(S Ag)*

[ 2 ]

2. Some of the relevant facts are that 26 castes were declared to be Scheduled Tribe in the State of Manipur. The applicant submitted an application for issuance of Caste Certificate because, according to him, he belongs to Simte community being a Scheduled Tribe. The Executive Magistrate after making due inquiries, had issued the Caste Certificate. The applicant had contended that interview on basis of that was taken treating him as a Scheduled Tribe candidate and he joined the post of Special Grade-II (Surgeon) in the Non-Teaching Specialist, Central Health Services.

3. A notice had been issued to the applicant dated 26.10.1999 wherein it had been mentioned that on verification, it has revealed that he did not belong to Scheduled Tribe community. Applicant submitted a detailed representation supported by his documents.

4. Applicant contends that Deputy Commissioner, Chaura Chandrapur had submitted a verification report to Respondent No.3 and made it clear that applicant belongs to the Scheduled Tribe by both. In addition to that, the applicant in response to the letter that was received on 28.7.2000, had sent a communication and had made it clear to the respondents that he had no objection in undergoing the highly sensitive test of DNA comparison, as suggested. Meanwhile, the applicant was promoted to the post of Specialist Grade-II (Senior Scale). He again wrote a letter on 20.5.2003 pointing out that verification had been conducted by the authorities and it was found



[ 3 ]

that he belonged to Scheduled Tribe community. Applicant contends that despite that, the impugned order has been passed. Hence, the present application.

5. The application has been contested. It has been asserted that while the name of the applicant was recommended, the Commission advised the Ministry to verify the veracity of the Caste Certificate of the applicant. The appointment was provisional and subject to his Caste Certificate. A reference was made to the Deputy Commissioner, Chaura Chandpur, Manipur. It was written that it could not be established that the Sub-Divisional Magistrate had issued the Scheduled Tribe certificate to the applicant.

6. The Deputy Commissioner, Churachandpur, Manipur to whom a reference was made again on 4.1.2000 for verification of Caste Certificate had sent another letter of 26.7.2000 stating therein that applicant was Scheduled Tribe by birth though he was raised in a non-Scheduled Tribe environment. The Deputy Commissioner, Churachandpur again wrote a letter dated 28.7.2000, wherein he informed that DNA Test was required to confirm natural mother/father of the applicant. He had withdrawn the letter of 26.7.2000. Respondents contend that applicant did not agree to bear the cost of the DNA Test.

A handwritten signature in black ink, appearing to read "S Ag" followed by a cursive line.

7. On behalf of the applicant, it was urged that he was born as Scheduled Tribe but was brought up in an environment which was not of Scheduled Tribe. The learned counsel even contended that applicant has no objection in undergoing the DNA test.

8. The Supreme Court in the case of GAYATRILAXMI BAPURAO NAGPURE v. STATE OF MAHARASHTRA AND OTHERS, (1996) 3 SCC 685 held that need for greater care before granting or rejecting any claim for Caste Certificate is required. Vital documents must be appreciated.

9. Further in the case of KUMARI MADHURI PATIL AND ANOTHER v. ADDL. COMMISSIONER, TRIBAL DEVELOPMENT AND OTHERS, (1994) 6 SCC 241, the Supreme Court held that caste is determined on basis of his birth.

10. In the present case, as referred to above, there was a controversy as to if the applicant is a Scheduled Tribe or not.

11. It is true that onus lies on the applicant to show that he is a Scheduled Tribe. The sequence of events show that Deputy Commissioner of the concerned District had earlier written that applicant was a Scheduled Tribe but on 28.7.2000, he had withdrawn the letter of 26.7.2000 and suggested for DNA test.

18 Aug

[ 5 ]

12. The applicant's counsel during the course of the submissions stated that the applicant had no objection to undergo the DNA test but he was not ready to bear the cost thereto. It is this controversy which prompted even the respondents to conclude that applicant is not undergoing the DNA test.

13. Since it was stated that the mother of the applicant was available and she is a Scheduled Tribe, the present application is disposed of with the following directions:

a) Applicant shall undergo the DNA test. The State should bear the initial expenses. Applicant shall be responsible to make available the necessary persons for the said test. Otherwise it shall be presumed that he is not willing to undergo the same.

b) If the DNA test is in favour of the applicant, the State shall bear expenses otherwise the applicant would be liable to bear the expenses which can be recovered in accordance with law. In case the applicant is held to be a Scheduled Tribe, necessary action shall be taken in accordance with law.