

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH: ALLAHABAD

original Application No.592 of 1997.

Tuesday, this the 23rd day of November, 2004.

Hon'ble Mrs. Meera Chhibber, J.M.
Hon'ble Mrs. Roli Srivastava, A.M.

Gajodhar Prasad (Gond)
S/o late Sri Bhudi Lal
R/o Village Manodharpur,
P.O. Trivediganj,
District Barabanki.
presently working as U.D.C.,
Ordnance Equipment Factory,
Kanpur.

....Applicant.

(By Advocate : Shri Rakesh Verma)

Versus

1. Union of India Ministry of Defence
through its Secretary, New Delhi.
2. General Manager,
Ordnance Equipment Factory,
Kanpur.
3. Administrative Officer,
Ordnance Equipment Factory,
Kanpur-1.
4. Gopi Chand Kuril,
U.D.C./L.B. Section
Ordnance Equipment Factory,
Kanpur-1.

....Respondents.

(By Advocate : Shri A. Mohiley)

O R D E R

By Hon'ble Mrs. Meera Chhibber, J.M. :

By this OA, the applicant has sought only ~~the~~ one
relief that a direction be given to the respondents to
pay him arrears of salary on the post of U.D.C. since
12.8.1995 alongwith other benefits permissible under
the law till the date his promotion order was cancelled
vide order dated 23.9.1997.

....2.

2. It is submitted by applicant that he was promoted as U.D.C. vide order dated 12.8.1995 (page 17) as S.C. candidate. He had taken over the charge immediately thereafter and continued to perform the duties of U.D.C. till 23.9.1997 when his promotion order was cancelled.

3. It is submitted by applicant that since he had worked on the post of U.D.C. from 12.8.1995 to 23.9.1997, he is entitled to get the salary of U.D.C., whereas he was paid the salary of only L.D.C. even though he performed duties as U.D.C.

3. Counsel for respondents submitted that even though applicant was promoted as U.D.C. w.e.f. 12.8.1995 against the reserved vacancy for S.C. quota, but since a complaint was received that applicant belonged to Goria Caste, which is basically under the Kahar community, he, thus, belonged to O.B.C and not S.C. category. Accordingly, applicant was given an opportunity on 25.5.1995 because no S.C. certificate was found available on his Service Book. In reply, applicant submitted he had already submitted the original caste certificate in the year 1973 and incase another caste certificate is required, he may be given some time for furnishing the same. He ultimately furnished S.C. certificate issued by the Tehsildar, Kanpur Nagar on 25.10.1995, according to which he belonged to Gond (Pasi) community, which is recognised as S.C. under the relevant Act. The case was referred to the D.M., Kanpur Nagar for investigation by the respondents. The report was received from the D.M., Kanpur Nagar on 18.9.1996, wherein it was stated that Sri Gajodhar Prasad belongs to the caste of Kahar, which is included in the OBC list of U.P. As far as ancestral address was concerned, he stated since applicant belonged to District Barabanki, the matter may be got checked from the D.M., Barabanki also. The matter was accordingly referred to the D.M., Barabanki, who gave his report received on 3.5.1997 stating therein that Sri Gajodhar Prasad had neither lived in Village Manodharpur

Tehsil Haidergarh, District Barabanki, nor he is living, hence they are not in a position to furnish the report on the caste status of Sri Gajodhar Prasad.

5. In order to cross check the report of the D.M., Barabanki, the individual was again asked on 12.5.1997 to give his ancestral address, and applicant once again gave his ancestral address as village Manodharpur, Post Hasanpur, Tehsil Haidergarh, District Barabanki. With these documents, the matter was again referred to the D.M., Barabanki on 13.6.1997 for re-verification, but the D.M. re-confirmed on 27.7.1997 that the individual had neither lived in village Manodharpur Tehsil Haidergarh, District Barabanki, nor he is living there.

6. In view of the above reports, a show-cause notice was issued to the applicant on 6.8.1997 calling-upon him to explain as to why his promotion, which was reserved against the post of S.C. should not be cancelled as his claim to be a member of S.C. community has been found to be false. In reply, applicant referred to the same documents, which have already been found fake and false. Therefore, since it was found clear that Sri Gajodhar Prasad is not a member of S.C. community and he was not entitled for promotion against the vacancy reserved for S.C. community, therefore, his promotion dated 14.8.1995 published in the Factory order Part II no. 1359 was cancelled by order dated 23.9.1997.

7. Counsel for respondents further submitted that this order of cancellation of promotion was challenged by applicant by filing O.A. no. 1087 of 1997 before this Tribunal, but the said O.A. was dismissed being devoid of any merit vide order dated 23.10.1997. He thus, submitted that once his promotion order itself had been cancelled on the ground that applicant had submitted a fake document

that he belonged to S.C. community, whereas, infact he belongs to Kahar community and the order by which his promotion was cancelled has already been upheld by the Tribunal. The relief as prayed ~~is~~ by him ^{in the O.A. B} cannot be given to him because that would amount to re-awarding ^{a person B} who had taken promotion by misleading the department and by fraudulent means. He, therefore, prayed that O.A. may be dismissed.

8. Counsel for applicant, however, submitted that ^{passed by J.S.L.} he has already challenged the order dated 23.10.1997 before the Hon'ble High Court of Allahabad and the matter is still pending. He has annexed the order dated 12.2.1998 of the Hon'ble High Court of Allahabad passed in Writ Petition no. 5412 of 1998 to show that notice was issued to the ^{further B} respondents. Counsel for the applicant submitted that since his certificate which was issued by Tehsildar, had not been cancelled by the competent authority, therefore, it cannot be said that he had submitted a fake and false certificate.

9. We have heard both the counsel and perused the pleadings as well.

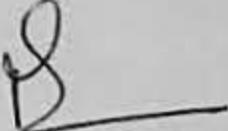
10. From the detailed order passed by the respondents while cancelling the promotion order of the applicant, it is clear that the applicant's conduct has not been trust worthy and even otherwise once the order had been upheld by this Tribunal, we cannot go into the correctness of the view taken by the co-ordinate Bench of the Tribunal as that would be contrary to the judicial discipline. Infact, once the promotion order was cancelled and the order has been upheld by the Tribunal, we do not think at this stage we should be passing any order on the question of grant of ^{However since B} salary to the applicant ~~because~~ he has already filed a



writ petition before the Hon'ble High Court, where the matter is pending. If we express our views, applicant would have to file another writ petition in the Hon'ble High Court of Allahabad. Therefore, in order to save the extra burden on the applicant, we think it would be appropriate if this O.A. is disposed of by making an observation that once the writ petition is decided by the Hon'ble High Court, the question of grant of salary would be ~~dependant~~^{be} on that decision. After the writ petition is finally disposed of by the Hon'ble High Court of Allahabad, the respondents shall pass a detailed order with regard to the claim of the applicant made by him.

11. With the above observations, the O.A. stands disposed off with no order as to costs.


MEMBER (A)


MEMBER (J)

GIRISH/-