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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 6 th day of September, 1996
Original Application No.629 of 1987

District : Gorakhpur

CORAM:-

Hon'ble Mr. S.Das Gupta, A.M.

Hon'ble Mr. T.L. Verma, J.M.

Chandra Prakash S/o Late Sri Lalta Prasad
R/o Mohalla Chhote Kaqipur,
District-Gorakhpur U.P.

(By Sri Bashist Tewari, Advocate)

..... Applicant

versus

1. Union of India through the
Secretary Union Public Service Commission,
Dholpur House, New Delhi-110011.
2. Under Secretary, Union Public Service Commission,
Dholpur House, New Delhi-110011
3. Secretary to the Government of India,
Small Industries Development Organisation,
M/O Industry, New Delhi.

(Sri K.C. Sinha, Advocate)

..... Respondents

O R D E R

By Hon'ble Mr. S. Das Gupta, A.M.

The applicant in this OA filed under Section 19 of the Administrative Tribunals Act is aggrieved by the order passed by Union Public Service Commission Respondent No.2 (hereinafter referred to as Commission) by which a decision to debar the applicant permanently from the examination and selection conducted by the Commission was conveyed to the applicant.

By way of relief he has sought quashing of the aforesaid order and offer of appointment on the post of Asst. Director Grade-I (Electronics) in Small Industrial Development

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Organisation in the Ministry of Industries with seniority and other benefits.

2. The facts of this case are that the Commission vide their advertisement No.11/84 published in the Employment News dated 17.3.1984 advertised four vacancies of the post Assistant Director Grade I(Electronics) under Ministry of Industries. One of the posts was reserved for Scheduled Caste candidates. The applicant being fully qualified for the aforesaid post applied for the same as a Scheduled Caste candidate being a member of the Bhuiya Caste. He was called for interview on 25.7.1984 in which he appeared. The applicant claims that he was finally selected for the aforesaid post by the Commission along with other candidates. He, however, received a letter dated 18.2.1986(Annexure-2) sent by respondent No.2 in which the applicant was directed to show cause why action should not be taken against him for furnishing incorrect information regarding his caste. It was alleged therein that the applicant did not belong to Bhuiya caste but to Bhuj caste which comes under backward classes. The applicant sent a representation to the Commission in which he sought to counter the allegations and submitted that he had correctly indicated in his application from that he belongs to Bhuiya caste which is categorised as a Scheduled Caste. Thereafter the impugned order was issued by the respondent No.2.

3. The applicant's case is that he and his family members belong to Bhuiya caste and this fact was confirmed in the judgement pronounced by the Additional Chief Judicial Magistrate, Gorakhpur on 14.5.1984 and the Special Judge Gorakhpur by his appellate order dated 11.12.1984. He has also submitted that the Scheduled Caste Certificate was issued by the District Magistrate, Gorakhpur on 13.1.1996. The applicant has stated that certain persons who have enmity with him and his family, have been repeatedly sending false representations that he and his family members did not belong to Bhuiya Caste which is categorised as Scheduled Caste and have been falsely obtaining benefits of

belonging to Scheduled Caste. The Govt. of U.P. had filed a criminal case against the brother of the applicant for giving false declaration as belonging to the Scheduled Caste and this case was decided in favour of the applicant's brother by the Addl. Chief Judicial Magistrate, Gorakhpur, by his order dated 14-5-1984 and was also confirmed by the order dated 11-12-1984 of the Special Judge, Gorakhpur. In addition to this, he has filed a large number of certificates issued by various persons and authorities indicating that the applicant and his family belong to Bhuiya caste and thus they are members of the Scheduled Caste.

4. The respondent No.2 has filed a counter affidavit in which it has been stated that in the application of the petitioner dated 31-3-1984 for the post of Asst. Director Grade-I, he had claimed that he belonged to the Scheduled Caste community in respect of which he submitted a copy of the certificate dated 13-1-1966 issued by the Collector Gorakhpur. The applicant's candidature was considered by the Commission against the post reserved for Scheduled Caste Community. He attended the interview alongwith other candidates. He had been earlier selected and recommended by the Commission for recruitment to the post of (i) Scientific Officer (Electrical) in National Test House and

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(ii) Research Officer (Engineering -Telecom) in the Central Water and Power Research Station, Pune. It has been further stated by the respondents that the All India Scheduled Caste and Scheduled Tribes Railway Employees Association, Northern Railway Zone Gorakhpur in their letter dated 16-8-1994 reported to the Commission that the applicant actually belonged to Bhuj Caste, which is categorised as backward caste and not a Scheduled Caste. Subsequently, the Ministry of Irrigation and Power to whom the name of the applicant was recommended, for the post of Research Officer (Engineering-Telecommunication) also sent a similar report vide their letter dated 12-9-1995 which was based on a letter dated 20-8-1995 from Upper Zila Adhikari, Gorakhpur. In view of the aforesaid report the Commission did not process further the case of the applicant. Meanwhile, the Commission had also taken up the case with the office of the Chief Signal and Telecom Engineer, North Eastern Railway, Gorakhpur where the applicant was already working and obtained a reply vide their letter dt.23.10.84 in which it was stated that the State Government had gone in Appeal against the judgement of the Addl. Chief Judicial Magistrate, Gorakhpur and, therefore, the matter being subjudice, no departmental action could be initiated against the applicant. The Commission was advised to make further reference to

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Upper Zila Adhikari for further details. The Commission, therefore, decided to wait until ~~until~~ the decision of the Appellate Court was available. Subsequently, the Commission made a reference to the Zila Adhikari, Gorakhpur to ascertain the outcome of the said Appeal and the latter informed by letter dated 4-11-1985 and 22-11-1985 that the Appeal of the State Government had been dismissed but the applicant would not get any benefit out of the dismissal of the Appeal as he belongs to ^{Bhuiya} Bhuiya Caste which was not a Scheduled Caste. The Commission, therefore, decided to seek explanation of the applicant in the matter. The explanation submitted by the applicant was found unsatisfactory and, therefore, the impugned order was passed debarring the applicant from ^{all} examinations and selections conducted by the Commission.

5. The applicant has filed a rejoinder affidavit in which he has reiterated his contention in the OA. He has also annexed certain Affidavits sworn by local persons in support of the contention ^{that} L the applicant belongs to Bhuiya Caste.

6. We have heard learned counsel for both the parties and perused the record carefully.

7. The entire controversy relates to whether the applicant belongs to Bhuiya Caste and if not, whether he

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is guilty of any misrepresentation in his application submitted to the Commission.

8. Admittedly, the applicant had in his possession a certificate issued in 1966 by the then District Magistrate Sri Mewa Ram which clearly stated that he belongs to Bhuiya community which is a Scheduled Caste. Appendix 15 to the Brochure on Reservation to Scheduled Castes and Scheduled Tribes in Services, Seventh Edition, published by the Department of Personnel and Training, Govt of India, gives a list of the authorities empowered to issue certificate of verification. The first authority which is indicated in the list is the District Magistrate. Thus, admittedly, the applicant has possessed a certificate regarding his belonging to Buiya Caste issued by a competent authority under the Rules. There is nothing on record to indicate that this certificate was cancelled by a competent authority. From the record it appears that all that happened was that certain complaints were made against the applicant's brother for having obtained undue benefit by misrepresenting himself as member of the Scheduled Caste and on the basis of such complaint, a criminal prosecution was initiated against him. The Addl. Chief Judicial Magistrate, Gorakhpur, who tried this case gave an unequivocal finding that the accused and his family members belong to Bhuiya Caste and dismissed the criminal case. The State Govt. had filed an Appeal against this decision. The Appeal was dismissed and the order of the Adal C.J.M. was

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confirmed. We are aware that a decision in a criminal case cannot have a declaratory value. In other words, merely because the applicant's brother was acquitted in a criminal case in which the allegation was that he did not belong to Bhuiya caste and had obtained the benefit thereof, would not establish that the applicant belongs to Bhuiya Caste, but, this fact taken together with the fact that a certificate which was issued by the competent authority in 1966 and has not been cancelled so far, would indicate that the applicant belongs to Bhuiya Caste unless, proven otherwise. If the State Government had conducted an enquiry and had come to a conclusion that the applicant had obtained the Caste certificate from the then District Magistrate by mis-representation, then the proper course of action would have been to cancel the aforesaid certificate after giving a notice to the applicant. As long as that is not done, the status of the applicant as a member of the Bhuiya community remains unchanged.

9. In view of the foregoing, we hold that the impugned order issued by the Commission is not legally sustainable. The same is quashed. In case the applicant was selected for the post of Assistant Director (Grade I (Electronics) in the Industrial Development Organisation, he shall be offered appointment on such post forthwith in case a vacancy is readily available or, in case no vacancy is available at present, as soon as a vacancy becomes available, the respondent Nos. 1 and 2 shall, however, be at liberty to cause an inquiry to be made through the agency of the State Govt., in accordance with law, as to whether the applicant really belongs to Bhuiya Caste or Bhuj Caste. The right of the applicant to hold the post of Assistant Director Grade I and the seniority of the applicant on that post with

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reference to the date of his selection shall remain subject to the outcome of such inquiry and further action taken thereon by the competent authority prescribed in Appendix 15 to the Brochure on Reservation to Scheduled Castes and Scheduled Tribes in services, seventh Edition, published by the Department of Personnel and Training, Government of India.

10. This application is accordingly disposed of leaving the parties to bear their own cost.

Y. Bhama
Member-J

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Member-A

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