

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

Original Application No. 231 of 1995.

Allahabad this the 29th day of May 2003.

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Mr. S.K. Agrawal, A.M.

Raj Kumar Chaudhary
Son of Late Sri Chulahi Chaudhary
Resident of Village Taraini, Post Office
Sekhauni, District Mahrajganj, Posted as
Gangman, under P.W.1/Varanasi, N.E. Railway
Varanasi.

.....Applicant.

(By Advocate : Jokhan Prasad)

1. Versus.

1. Union of India
through its Secretary
Railway Department,
New Delhi.

2. The Chief Divisional Engineer Ist
North Eastern Railway,
Varanasi.

3. The Divisional Railway Manager
North Eastern Railway
Varanasi.

4. The Chief Vigilance Inspector
North Eastern Railway
Gorakhpur.

.....Respondents.

(By Advocate : Sri P Mathur)

O_R_D_E_R

(HON'BLE MR. JUSTICE R.R.K TRIVEDI, V.C.)

By this O.A filed under section 19 of Administrative Tribunals Act 1985, the applicant has challenged the order of punishment passed against him dated 9.5.1994 by which he has been removed from service. The charge against the applicant was that though he was Yadav by caste, ^{he} got himself appointed as Gangman by producing a certificate showing that he belongs to 'Tharu' caste and he is scheduled tribe. Against



the aforesaid order applicant filed the appeal which has been dismissed on 28.06.1994. The appellate Authority recorded following findings:

"The main defence of the employee is that he was born of a Tharu father and Ahir mother and subsequently brought up by an Ahir 'guardian'. He has also married a non-ST woman. Having gone through facts on record, the only confirmation of this is the witness by Village Gram Pradhan (P.P. 98 Para 6.02) that ".....S.P.S was born of an illicit relation..." Such a Awaikh situation would not confer any S.T rights on the offspring.

By social standing and conduct, Shri Raj Kumar has not suffered any denigration or injustice due to his birth (into ST). Considering that there are doubts expressed by State Officials also about his lineage, grant of such privilege to the employee defeats the very purpose of such reservations. He stands today as an accepted member of a higher caste".

2. From the aforesaid finding, it is clear that State Officials were doubtful ^{about} ~~of~~ lineage of the applicant on the finding which has been accepted by the Appellate Authority, as Sri Parmeshwar Chaudhary Pradhan of the Village Taraini filed his affidavit before Tehsildar Nawtanwa District Mahrajgunj. In para 4 of the affidavit he has stated that Smt. Shyam Rathi lived with Chulahi son of Ghonso who was Tharu by caste. He was resident of Village Dholbajwan in Nepal. She lived with him as wife and gave birth to the son who is known as Raj Kumar (Applicant). He has further stated that after 2 years of birth of Raj Kumar, Chulahi died and his mother Shyam Rathi married with Chandrika son of Danse. Applicant also lived with Chandrika. He was brought ^{Chandrika} ~~by~~ ^{is} ~~Chulahi~~. He has further stated that Raj Kumar is son of Chulahi whose caste Tharu. Thus, from the statement on oath



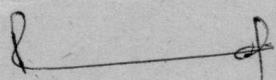
of Village Pradhan Parmeshwar Chaudhary, it is clear that applicant was son of Chulahi who was Tharu by Caste. By statement of other witnessess also, ^{it was proved that} ~~it was accepted that~~ Chulahi was ^{by} Tharu caste and applicant could not ^{have} ~~changed~~ caste because he ^{was} ~~brought up~~ ^{by personal uppers caste}. Considering the above facts the approach of the Appellate Authority was unjustified. Hon'ble Supreme Court in case of Rameshwari Devi Vs. State of Bihar reported in 2000 SCC (L&S) page 276 has ^{held} ~~established~~ on the basis of oral and documentary evidence that the deceased employee and the second spouse were living as husband and wife- Cohabitation for a long period gives rise to a strong presumption of wedlock. The mother of the applicant lived with Chulahi until his death and she had married only after his death. In the circumstances, there is no doubt about the legitimacy of the applicant that he was son of Chulahi who belonged to Tharu caste. The respondents have not considered the case of the applicant with correct prospective. ^{On} the finding that State Officials were also doubtful about the lineage the punishment ~~and the~~ could not be legally awarded.

3. For the reasons stated above, the O.A is allowed. The order of punishment dated 9.05.1994 (Annexure 1) and Appellate Authority order dated 28.6.1994 and Review order dated 1.9.1994 are quashed. The applicant shall be reinstated on the post with all consequential benefits.

No order as to costs.



Member-A.



Vice-Chairman.

Manish/-