

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

CIRCUIT SITTING AT NAINITAL (UTTRANCHAL)

Dated : This the 14th day of May 2004.

Original Application no. 06 of 2003 (U).

Hon'ble Mr. Justice S.R. Singh, Vice-Chairman
Hon'ble Maj Gen K K Srivastava, Member (A).

Hari Narain, S/o Late Kunj Bihari Ram,
R/o 39 Rajpur Road,
DEHRADUN.

... Applicant

By Adv : In person

V E R S U S

1. Union of India through the Secretary to Govt. of India,
Ministry of Environment & Forests, Paryavaran Bhawan,
C.G.O. Complex, Lodi Road,
NEW DELHI.
2. The Director General,
Indian Council of Forestry Research & Education,
P.O. New Forest,
DEHRADUN.

... Respondents.

By Adv : Sri A Gopal

O R D E R

Maj Gen K K Srivastava, AM.

In this OA, filed under Section 19 of the A.T. Act, 1985, the applicant has prayed to set aside the decision dated 28.1.2002 (Ann A14/2), dismissal order dated 28.6.1999 (Ann A11), order dated 16.12.2002 (Ann 14/1) and appellate order dated 20.12.1999 (Ann 14/3) with direction to the respondents that the applicant shall be deemed to have been reinstated in service with all consequential benefits. The applicant has prayed for direction to the respondents to pay the arrears of pay and allowances and also to pay arrears of pension and other retiral benefits, gratuity

leave encashment etc with penal rate of interest @ 18% p.a..

2. The facts of the case, in short, are that the applicant was appointed as Technical Assistant Grade I in the pay scale of Rs. 60-110 p.m. on 30.11.1960 against the post reserved for Scheduled Tribe (in short ST). He was confirmed as Technical Assistant Grade I in 1962. In January 1964, the applicant was promoted as Research Asstt. Gr. II in the pay scale of Rs. 150-380 against the post reserved for ST. On 31.1.1976, the applicant was directly appointed as Research Assistant Grade I in the pay scale of Rs. 210-700 against the post reserved for ST. On 27.2.1982 he was promoted as Research Asstt. Grade I (Selection Grade Group 'B' non-Gazetted) in the pay scale of Rs. 1640-2900 against the post reserved for ST. In May 1983, there was a complaint challenging status of the applicant as ST. ^{Lin} The applicant was suspended ~~1987~~ on account of pendency of criminal investigation. The suspension order was revoked on 11.04.1988 on account of order dated 11.4.1988 passed by the Central Administrative Tribunal, Principal Bench, New Delhi. Earlier the applicant had filed OA no. 208 of 1986 for promotion to the post of Research Officer against the post reserved for ST w.e.f. 22.10.1979. The same was dismissed vide order and judgment of this Tribunal dated 23.1.1990. On 21.3.1991 the applicant was promoted as Research Officer in Central Civil Service Gazetted Group 'B' post against post reserved for ST. In December 1993 a D.P.C. for promotion to Group 'A' was held and sealed cover procedure in respect of the applicant was adopted. In between on account of the complaint regarding status of the applicant as ST, investigations were carried out. On 01.05.1996 the Chief Judicial Magistrate (in short CJM) Jhalawar, after the service of notices on all the parties concerned

3.

accepted the second time final report. Copy of the CJM order dated 01.05.1996 was communicated by D.M. Jhalawar on 25.10.1996 to respondents no. 1 & 2. The promotion of the applicant which was kept in sealed cover was released with retrospective effect from 21.3.1994 as Scientist SC against the post reserved for ST. However, the applicant was served with the charge sheet on the same matter on 18.11.1997. The applicant was to superannuate on 30.6.1999. The applicant was dismissed from service vide order dated 28.6.1999 with immediate effect with further order of Confiscating his all pensionary benefits by publishing the dismissal order in local News Paper 'AMAR UJALA' dated 29.06.1999, published from Dehradun. The applicant filed an appeal before the Appellate authority on 07.08.1999, which was rejected vide order dated 20.12.1999. The applicant filed a detailed representation before respondent no. 3 on 12.11.2001 (Ann 15). The same has been rejected vide impugned order dated 28.01.2002. Hence this OA which has been contested by the respondents by filing counter affidavit.

3. The applicant who appeared in person submitted that once the order of CJM, Jhawalar (Rajasthan) was passed on 01.05.1996 the respondents had no right to hold a contrary view that the applicant did not belong to ST community. The applicant further submitted that it was on account of the order of CJM Jhalawar that the applicant was promoted on 15.11.1996 as Scientist SC against the post reserved for ST. Dismissing ^{is} the applicant just before two days of his superannuation is illegal and this action of the respondents cannot stand in the eyes of law in view of the final report submitted by the police authorities and accepted by CJM, Jhalawar.

4. The applicant further argued that the appellate order

4.

dated 20.12.1999 is un-reasoned and non speaking and has been passed without application of mind. The applicant also submitted that the dismissal order dated 28.06.1999 passed by the disciplinary authority shall not be deemed to have been merged in the appellate order dated 20.12.1999 as the order of dismissal was passed and issued by the authority having current duty charge of the post of respondent no. 2. Therefore, both the orders are wholly illegal and also without jurisdiction and authority and, therefore, an illegal order cannot be held to be merged in the appellate order dated 20.12.1999.

5. The applicant finally submitted that he is entitled for relief which can be considered and granted by the Court.

6. Opposing the claim of the applicant the respondent's counsel urged that in response to the ~~xx~~ to the advertisement released in August 1960 the applicant declared his caste as 'BHIND' which was stated by him as a very backward community of ST. However, at the time of his appointment in November 1960, he produced a certificate dated 01.11.1960 from District Magistrate (in short DM) Jhalawar, in which he is stated to be a member of 'BHIL' community, a ST of Rajasthan.

7. The respondents in their counter affidavit have stated that the applicant was born on 01.07.1939 in Ghazipur (UP) and studied there from 1945 to 1954, in which year he passed 10th Std. He passed Intermediate (Science) also from Ghazipur in 1956. The name of the applicant's father is Shri Kunj Bihari Ram and his permanent home address and also that of his

father is 'Lal Darwaza' Ghazipur. The respondents have further stated that the applicant did not reside anywhere except at Ghazipur for more than one year. He worked as temporary Lower Division Clerk (in short LDC) in the District Opium Office, Jhalawar for less than a year in two spells during the period from April to October 1960. The antecedents of the applicant were verified from District authorities of Ghazipur in January 1961. The applicant while furnishing another attestation form at the time of joining, after his selection for a direct recruitment post of Research Assistant Grade I, reserved for ST candidates, changed his place of birth as Jhalawar (Rajasthan) and also his permanent home address as Mohalla Mangalpur, Jhalawar (Rajasthan). Therefore, in view of the action on the part of the applicant himself it is established that the applicant belongs to Ghazipur and, therefore, is not a ST. Therefore, the action of the respondents is legal and no interference is called for.

8. We have heard the applicant in person and learned counsel for the respondents, carefully considered their submissions and closely perused records as well as pleadings.

9. The applicant has raised a large number of points going to the root of the matter in his appeal dated 07.08.1999 (filed alongwith MA 1016/93). This appeal is running into 29 pages and has referred to good number of departmental rules and few references of judicial precedents of even Apex Court. This memo of appeal has been disposed of by rejection order of Appellate Authority dated 20.12.1999. A bare perusal of this appellate order shows that the authority concerned has failed to consider a good number of points raised in memo of appeal while formulating the points for determination

in appeal.

10. The appellate authority has given its conclusion in sub paragraphs 1 to 3. Firstly it has not given any reason coming out of consideration of records by the authority. It has in sub-clause (i) noted that "points (a), (b), (c), (e), (f), (i), (j) and (l) are factually incorrect" but surprisingly enough the appellate authority has not given any cogent reason for reaching this conclusion. It is noteworthy that a large number of points even noted by the appellate authority for determination of (a), (b), (c), (e), (f), (i), (j) and (l) have been disposed of simply noting down 'factually incorrect'. The other points no. 2 & 3 have also been simply disposed of in an arbitrary manner without application of mind on the facts of the case as well as the totality of circumstances.

11. The representation dated 12.11.2001 against the appellate order met the same fate by the impugned order dated 28.01.2002 (Ann A14/2 pg. 25) which is only giving the conclusion but not the reasons. The order referred above does not give any glimpse of mind of the ^{appellate} ~~authorities~~ on the facts of the case. In this view of the matter the impugned order, not being in accordance with law, deserve to be set aside.

12. In the present case the whole controversy centres around only on one fact that whether the applicant belongs to a particular caste which has been covered in the list of ST. It is not disputed by the respondents that the caste 'BHIND' as stated by the applicant is covered under the ST. So now the next important point remains to be considered that whether the applicant belongs to the aforesaid caste 'BHIND' or not. In this context the applicant has brought on record that

twice the investigations conducted by the responsible authorities concerned i.e. Police, final report was submitted mentioning therein the facts and circumstances which corroborated the stand of the applicant that he belongs to 'BHIND' caste. The DM Jhalawar (Rajasthan) vide order dated 03.04.1998 (filed alongwith MA 1016/93) had definitely given a finding in favour of the applicant in respect of his assertion of the caste and moreover this fact of caste of applicant has also been corroborated by the order dated 01.05.1996 passed by CJM, Jhalawar. This order has also been filed alongwith MA 1016/93. The respondents authorities have not brought anything on record challenging the authenticity and the validity of the aforesaid order and as such the same deserves acceptance by us.

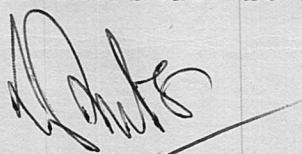
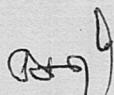
13. A man in India is born in a caste and like dots of the leopard cannot change the same. In this case the applicant had brought on record the certificate of caste dated 01.11.1960 issued by the relevant competent authority and the same has not been set aside by any superior authority in accordance with law.

14. The conduct of the respondent authorities has not been ~~not~~ fair as on one hand some enquiries were being conducted against the applicant on the point of caste and on the other hand he was even promoted vide order dated 11.11.1996 as Scientist SC. This promotion order is based on the orders of the DM as well as of the Civil Authorities and we take a view that after promoting the applicant in a higher grade the authorities had accepted the case of the applicant in respect of his caste certificate. It is also noteworthy that no adverse remark has come on record against the applicant in

respect of his integrity and good work in performance of his long service running into more than three decades. The action of the respondents in dismissing the applicant just before two days of his superannuation smacks of arbitrariness and also colourful exercise of power which cannot be given legal sanction. Such an illegal and arbitrary action of the respondents cannot sustain in the eyes of law and therefore liable to be set aside.

15. In the facts and circumstances and our aforesaid discussions, the O.A. is allowed. Orders dated 16.12.2002, 28.1.2002, 20.12.1999 and 28.06.1999 are quashed. The applicant shall be deemed to be in service till 30.6.1999 i.e. date of superannuation and shall be entitled for all post retiral benefits which include pension, DCRG, commutation of pension, leave encashment etc.

16. There shall be no order as to costs.


Member-A
Vice-Chairman

/pc/