

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. NO. 225 OF 1991

~~T.S. NO.~~

DATE OF DECISION 14-6-1994

Punja Magan Ghelia, Petitioner

Mr. R.R. Tripathi, Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondents

Mr. Akil Kureshi, Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. K. Ramamoorthy, Admn. Member.

The Hon'ble ~~MR~~ Dr. R.K. Saxena, Judicial Member.

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

}

no

Punja Magan Ghelia,
Village Rana Kirsara,
Tal: Ranavav,
Via. Rana Kandoran,
Dist: Junagadh.

..... Applicant.

V/s.

1. Union of India,
(Director General of Posts
and Telegraphs, New Delhi)
2. Post Master General,
Gujarat.
3. Asst. Supdt. of Post Offices,
Central Sub Division,
Jamnagar.

..... Respondents.

Advocates: Mr. R.R. Tripathi for the applicant.
Mr. Akil Kureshi for the respondents.

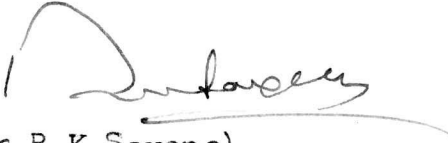
ORAL ORDER


O.A.No. 225/1991

Date: 14-6-1994.

Per: Hon'ble Mr.K.Ramamoorthy, Admn. Member.

Neither the applicant nor his counsel
present. The case is dismissed for default.


(Dr.R.K.Saxena)
Member (J)


(K. Ramamoorthy)
Member (A)

vtc.

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**O.A. NO.** 225 of 1991**~~T.A. NO.~~**DATE OF DECISION 06/04/1995.Shri Punja Magan Ghelia

Petitioner

Shri R.R.Tripathi

Advocate for the Petitioner (s)

Versus

Union of India & Others

Respondent

Shri Akil Kureshi

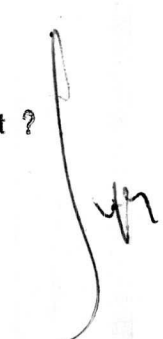
Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. V.Radhakrishnan, Member (A)

The Hon'ble Mr. Dr.R.K. Saxena, Member (J)

JUDGMENT

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Punja Magan Ghelia,
Village Rana Kirsara,
Tal: Ranavav,
Via: Rana Kandoran,
Dist: Junagadh

Applicant

(Advocate: Mr.R.R.Tripathi)*

Versus

1. Union of India,
(Director General of Posts
and Telegraphs, New Delhi),
2. Post Master General (Gujarat)
3. Asst. Supdt. of Post Offices,
Central Sub Dn., Jamnagar

Respondents

(Advocate: Mr. Akil Kureshi)

j u d g e m e n t

O.A. No.225 of 1991.

Dt: 06/04/1995.

Per: Hon'ble V.Radhakrishnan, Member (A)

Heard Mr.R.R.Tripathi and Mr.Akil Kureshi Learned
councils for the applicant and the respondents respectively.

The applicant competed in the examination of special
recruitment of Postman(ST) Category), held by the Respondents
and came out successful. He was appointed on a temporary
post of Postman. When the Respondents verified the caste
certificate produced by the applicant, it was found that
it was not issued by the Revenue Authority and it was
not properly filled in. The applicant was asked to
furnish the fresh caste certificate from Revenue
Authority. He produced xerox copy of the same certificate

countersigned by the Mamalatdar. He gave another certificate subsequently. The applicant was advised that a certificate already produced cannot be corrected and he was asked to produce fresh certificate from Mamalatdar. The Respondents also made reference to the S.D.M. Porbandar enclosing the caste certificate given by the applicant for verification. The copy of this letter was also endorsed to the applicant. The Mamalatdar wrote to the Respondents that he has issued caste certificate on the basis of the certificate issued by the T.D.O. Vanvad. Reply was received from the sub Divisional Magistrate stating that the Rabari community is not included in the Scheduled Tribes notified by the State Government. The Respondents then terminated the services of the applicant under provisions of Sub Rule (i) of Rule 5 of C.C.S.(Temporary Service) Rules 1965. The applicant approached this Tribunal being aggrieved by the termination order issued on him. The case of the applicant is that he has got necessary proof to show that he belongs to Chraminess of Barda Jungle of the Rabari Community, and the Rabari Community of that area is included in the S.Ts in the Notification issued by the Government of Gujarat. Further, the termination order issued by the Respondents was as a measure of punishment without giving any opportunity to him to state his defence and also against the principles of natural justice, and hence he requests for following reliefs:

- a) The order at Annexure A-5 may be declared ab initio void, and of no effect whatsoever. In the alternative to quash and set aside the order Annexure A-5 as arbitrary, illegal, unconstitutional, and against the principles of natural justice and of no effect whatsoever.

- b) To treat the applicant as having continued in service on the post of Postman, as if the order at Annexure A-5 was not passed at all.
- c) To reinstate the petitioner in service with all back wages, continuity of service, seniority future promotions etc.
- d) Any other appropriate relief and /or remedy deemed just and proper, including the costs of this application.

The Respondents in their reply stated that the applicant had given a false statement regarding his caste status at the time of his appointment. Even though he did not belong to ST, he had produced an incomplete certificate. The S.D.M., whom the matter was referred has also reported that the Rabari Community to which the applicant belongs is not included in the schedule of STs issued by the State Government. It is also stated that copy of the letter issued to the S.D.M. was also endorsed to the applicant, but no action was taken by him to produce proper certificate. Once the respondents came to know that the applicant did not belong to the ST category, his services were terminated as the post was reserved for ST community and the service of the applicant was terminated by recourse to Sub Rule (i) Rule 5 of CCS(TS) Rule 1965 which was perfectly in order. They have denied, that the termination was against principles of natural justice, as the applicant was given more than one chance for producing the proper certificate. The applicant also did not represent before the SDM, even when a copy of the letter addressed to SDM by the Respondent was given to him. There is no need of giving any opportunity of hearing under CCS(TS) Rules 1965, as it is a discharge simplicitor. He has also not represented against the termination to the higher

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authorities and straight away approached the Tribunal. Accordingly, they have prayed for the rejection of the applicant.

During arguments, Mr. Tripathi, Learned Advocate for the applicant, vehemently pointed out that even though the termination order was apparently innocuous, the Tribunal has to lift the veil and see behind it. The Respondents had initiated action against the applicant for production of false caste certificate and without giving an opportunity to him or proceeding against him under the disciplinary rules, they have resorted to termination of his services under ~~the~~ the Temporary Services Rules. The termination casts a stigma on the applicant and having been issued without show cause notice is bad in law and required to be quashed. Mr. Kureshi, Learned Advocate for the Respondents stated that the action of the Respondents is quite proper in that they have discharged the applicant under Temporary Service Rules after giving one month notice and the wording of the order does not cast any stigma on the applicant, and hence it is not necessary to give an opportunity of hearing to him before discharging him under the Temporary Service Rules.

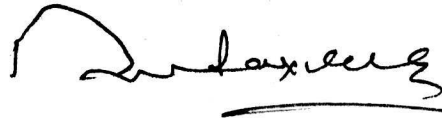
After hearing the arguments and going through the records, we find that the basic reason for termination of the services of the applicant is the alleged submission of wrong caste certificate. It is true that the termination order does not cast any stigma and is apparently Discharge Simplicitor, but the Tribunal

has to go behind the reasons for the termination and there is no doubt in the present case, the discharge is due to the alleged submission of false caste certificate. Even though the copy of the letter to the S.D.M. was endorsed to him, he was not given the SDMs report to enable him to rebut the same. In other words, the inquiry against the applicant was done behind his back. This clearly goes against the principles of natural justice as no opportunity was given to him to submit his case and prove that he actually submitted correct certificate. The proper course for the Respondent would have been to institute regular departmental inquiry as per the CCS, CCA Rules 1965./ Hence, the termination order is bad in law and requires to be quashed Ann.A-5). We accordingly do so. The next question is to be considered is regarding his reinstatement and backwages. We do not think that he should be reinstated straight away as it depend on the result of the inquiry. As reinstatement cannot be ordered at this state, the question of backwages does not arise. In this connection, Mr. Kureshi, Learned Advocate, for the Respondents referred to, the State of Haryana Vs. Jagdish Chander decided by the Hon'ble Supreme Court 1995(1) SCS LJ 258, wherein, the Apex Court had issued directions to the authorities to give an opportunity to show cause to the employee concerned, consider his objection and pass appropriate orders accordingly. We feel that the similar course of action in this case would be the proper course. Accordingly, the Respondents are directed to hold the inquiry and give an opportunity to the applicant to defend himself and then pass

appropriate orders. On the basis of the result of the inquiry, necessary reliefs need to be moulded. Accordingly, we pass the following order.

ORDER

The order of termination is quashed and set aside. Annexure A-5. The respondents are directed to hold the inquiry against the applicant giving an opportunity to him to defend himself and pass appropriate orders within the period of 12 weeks from the date of receipt of this order. No order as to costs.



(Dr. R.K. Saxena)
Member(J)



(V. Radhakrishnan)
Member (A)