

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 511 OF 93

TAX NO.

DATE OF DECISION

12.1.1995

Mr. Nathulal B. Paul

Petitioner

Mr. K.K. Shah

Advocate for the Petitioner (s)

Versus

Union of India and ors.

Respondent

Mr. N.S. Shewde

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. N.B. Patel, Vice Chairman

The Hon'ble Mr. K. Ramamoorthy, Member (A)

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

Nathulal B. Paul
 C/o Western Railway Employees'
 Union, Western Railway,
 Mehemedabad.
 (Advocate Mr.K.K. Shah)
 Vs.

.. Applicant

1. Union of India,
 Through
 The General Manager,
 Western Railway,
 Headquarter Office,
 Churchgate, Bombay.
2. Divisional Railway Manager/
 A.D.R.M. (II)
 Divisional Office,
 Western Railway,
 Pratap Nagar, Baroda.
3. Senior Divisional Engineer (N)
 Divisional Engineer Office,
 Western Railway, Baroda.
4. Assistant Engineer,
 Western Railway
 Anand.

.. Respondents

(Advocate Mr. N.S. Shewde)

Dt. 12.1.1995

ORAL JUDGMENT

O.A. No.511/1993

Per : Hon'ble Shri N.B. Patel, Vice Chairman

The applicant, who belongs to some village in Uttar Pradesh, was employed as a casual labourer in the year 1980. In 1983, a special screening test was to be held confined to only Scheduled Caste and Scheduled Tribe persons employed as casual labourers. The test was to be held for the post of Gangman. The applicant produced a certificate (copy whereof is to be found at Annexure-A8) purporting to have been issued by ~~the~~ Tahsildar, Gunnar, Badaon district, indicating that the applicant was a member of a Scheduled Tribe.

On the strength of this certificate, the applicant was called for screening test and he was found suitable for the post of Gangman. Somehow, in 1985 or thereabout, it was felt that the certificate (Annexure-A8), mentioning that the applicant was a member of Scheduled Tribe and purporting to have been issued by Tahsildar of Gunnar, was a "fictitious" certificate. A charge-sheet was, therefore, issued to the applicant and the said charge-sheet is to be found at Annexure-A. The charge against the applicant was that he did not belong to any Scheduled Tribe and the certificate Annexure-A8 produced by him was a fictitious certificate. Inquiry was taken up and it resulted in the passing of the order dated 23.7.1992 (Annexure-A1) whereby the Disciplinary Authority found that the charge against the applicant was proved and awarded to the applicant punishment of removal from service. This order of the Disciplinary Authority was taken by the applicant in appeal and thereafter in revision also. The appeal and revision application both met the same fate. In other words, the finding that the charge was proved was confirmed and the punishment of removal from service was also confirmed. It may be noted that, initially, the applicant challenged in the present application only the orders passed by the Disciplinary Authority and the Appellate Authority but, during the pendency of this OA, he has challenged the order passed by the Revisional Authority also as, it appears, the Revisional Authority has passed the order during the pendency of the present OA.

2. The contention of the applicant is that there was absolutely no evidence before the Inquiry Authority to show that ~~he~~ did not belong to a Scheduled Tribe and that the certificate (copy at Annexure-A8) produced by him was a fictitious certificate.

3. The respondents resist the OA on the ground that all necessary procedural steps to ensure reasonable opportunity to the applicant were taken during the course of the enquiry and the finding that the certificate Annexure-A8 was a fictitious certificate is based on evidence and this Tribunal has no jurisdiction to interfere with that finding either on the ground of the credibility of the evidence or on the ground of its adequacy.

4. No contention has been raised before us that the applicant was not given sufficient opportunity to defend himself at the enquiry. However, the contention is that this is a case of no evidence whatsoever to come to the conclusion that the certificate (copy at Annexure-A8) is a fictitious certificate. There cannot be any doubt that if the case is one of no evidence to substantiate the charge levelled against the delinquent, this Tribunal has jurisdiction to make a judicial review of the order passed in the enquiry and to set aside the order, if the contention, that ^{the} conclusion is based on no evidence, is acceptable.

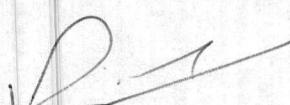
5. We find that there is ample substance in the contention that, in the present case, there was really

speaking no evidence to hold the charge substantiated. What happened in the case was that, prior to initiating the enquiry, some letter was addressed to the District Magistrate of Badaon asking him about the genuineness or otherwise of the certificate (Annexure-A8) and, in reply to that letter, the ~~Collector~~ ^{District Magistrate} had written a letter dated 23rd June, 1988 (copy whereof is to be found at Annexure-A11). In this letter, the District Magistrate of Badaon, referring to the Railway letter to him dated 8th June, 1988, stated that the caste certificate, ~~is~~ ^(Copy of) Annexure-A8 which is said to have been issued in favour of the applicant on 15.12.1982, was found to be "fictitious after enquiry". It is also stated in this letter of the District Magistrate that, on enquiry, he had found that the applicant belongs to Gadaria caste which is recognised as a backward caste in Uttar Pradesh. The letter does not state whether Gadariya caste or the caste or sub-caste to which the applicant might be belonging is a Scheduled Tribe. Be this as it may, what the District Magistrate's reply states is that ^{the} certificate on the strength of which the applicant had secured entry to the screening test was found to be a "fictitious" certificate after some enquiry held or caused to be held by the District Magistrate. It was frankly ~~considered~~ ^{conceded} by the learned Railway Counsel Mr. Shevde before us that this reply of the ^{the} Collector was ~~not~~ only evidence at the enquiry on the basis of which the conclusion, that Annexure-A8 was a fictitious certificate, is based. There was no evidence to show as to whether the District Magistrate himself had made any enquiry or had caused ^{it} to be made by some of his subordinates and as to whether any statement of the Tahsildar who had issued the certificate at Annexure-A8 was recorded or not.

The applicant had absolutely no opportunity to traverse the version of the District Magistrate in the letter that the certificate was a "fictitious" certificate.

Further more, the evidence consisting of the District Magistrate's reply Annexure-A11 is clearly open to the charge of having been obtained at the back of the applicant. The applicant had absolutely no opportunity to subject the persons, on the basis of whose statement the Collector had issued the reply Annexure-A11, to cross-examination. We, therefore, find that the Disciplinary Authority has committed a grave error in treating this District Magistrate's reply as evidence against the applicant and also in holding on its basis that the certificate was fictitious. At best, the reply of the District Magistrate reveals that some enquiry was held and it was on the strength of that enquiry that the District Magistrate had found that the certificate was a fictitious certificate. Whatever enquiry was held by the District Magistrate was at the back of the applicant and even in that enquiry, which may be referred to as delegated enquiry, the applicant had absolutely no opportunity to show that Annexure-A8 was a certificate signed and issued to him by the Tahsildar whose signature that certificate purports to bear. In the circumstances, therefore, we have no hesitation in concluding that the finding of guilt recorded against the applicant is based on no evidence or on no permissible evidence in the sense that the applicant had no opportunity to meet that evidence and to show that the certificate produced by him was a genuine certificate.

6. In conclusion, therefore, we allow the OA and set aside the orders Annexure-A1, Annexure-A2 and Annexure-A23 i.e. orders passed by the Disciplinary Authority and confirmed in appeal and revision by the Appellate and Revisional Authority. The respondents are directed to reinstate the applicant in service at the earliest and, in any event, not later than within 15 days of the date of the receipt of a copy of this judgment. We, however, leave it open to the respondents to hold a fresh enquiry against the applicant on the same charge from the stage of recording of evidence. If the respondents decide not to hold any enquiry against the applicant, the nature of the period between the date of removal of the applicant from service pursuant to the impugned order and his reinstatement in service will be decided by them by a speaking order. If they decide to resume the enquiry, then also they will pass a speaking order determining the nature of the period between the date of removal of the applicant from service and the date of his reinstatement pursuant to this order. There will be no order as to costs.



(K. Ramamoorthy)
Member (A)



(N.B. Patel)
Vice Chairman

sr

Date	Office Report	ORDER
16-2-95		<p><u>M.A.137/95</u></p> <p>Heard. M.A. allowed. Extension of time granted upto 4-4-1995. M.A.137/95 stands disposed of accordingly.</p> <p> (K.Ramamoorthy) Member (A)</p> <p> (N.L.B. Patel) Vice Chairman</p> <p>mp/ssh</p>