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CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH.

ORIGINAL APPLICATION NO: 78 OF 1989.

Date of decision : July 5, 1990.

Shri Subas Chandra Das aged about 28 years son of late Harihar Das resident of village Darakote, P.O. Dharakota P.S. Aska Dist. Ganjam working as Postal Assistant, Kakatpur Post Office, District: Puri.

.... Applicant

- Versus -

1. Senior Superintendent of Post Offices, Bhubaneswar Division, Bhubaneswar Dist.-Puri.
2. Union of India, Represented by Post Master General, Bhubaneswar, District-Puri.

.... Respondents.

For applicant : M/s. S.S. Mohanty, R.Ch. Sahoo, Ms. S.L. Patnaik, Mr. N. Vaheed, Advocate.

For Respondents : Mr. Tahali Dalai, Addl. Standing Counsel, (Central)

C O R A M:

THE HON'BLE MR. B.R. PATEL, VICE - CHAIRMAN

A N D

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

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1. Whether reporters from local papers are permitted to see the judgment ? Yes.
 2. To be referred to the Reporters or not ? No
 3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.
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N. SENGUPTA, MEMBER (J). The applicant has asked for quashing the disciplinary proceeding initiated against him. The applicant was admittedly appointed as a Postal Assistant by order dated 4.2.1982 (Copy at Annexure-1). In April, 1985, a notice of contemplated disciplinary proceeding was served on the applicant. The applicant was in due course charged. It recited that in 1981 he enclosed a forged attested copy of false Scheduled Caste Certificate and he was selected and appointed as Postal Assistant on the basis of such forged true copy of false Scheduled Caste Certificate, thus, he contravened Rule 3 of C.C.S. (Conduct) Rules, 1964. The statement of the imputation was Annexed stating the same facts as mentioned in the charge sheet with the addition that the applicant was appointed against a Scheduled Caste quota. Subsequently, an enquiry officer was appointed and he submitted a report to the disciplinary authority Respondent No.1. The enquiry officer found that the applicant was really not a person belonging to Scheduled Caste and thus, he was guilty of the charge. The case of the applicant is that as prior to the appointment, he was not a Government servant, Central Civil Service (Conduct) Rules could not apply to him and accordingly the charge was wholly misconceived. He has further taken the ground that the charge is unintelligible and does not make any sense, therefore, it could not be

N. Sengupta

properly replied. He has further averred that Respondent No.1 has already passed an order of removal from service by way of penalty but copy of such an order has not yet been served on him, so he has been unable to prefer an appeal. Making these allegations, the applicant has sought for the relief mentioned above.

2. The Respondents in their counter have stated that the ^{- applied -} applicant, for appointment to a post of Postal Assistant reserved for Scheduled Caste Candidates and on the basis of attested copy of Scheduled Caste Certificate produced by the applicant, the applicant was selected for being appointed as a Postal Assistant in Bhubaneswar Division. The applicant subsequently, produced a document alleging the same to be the original Scheduled Caste Certificate, so he was sent for undergoing training and got an appointment. The C.B.I. authorities had some complaint made to them. When enquiries were made it was found that in fact though the attested copy was purported to have been attested by an Assistant Accountant General it was not really so done and further that no certificate was issued by S.D.O. Ghumsar, Bhanjanagar saying that the applicant belonged to Scheduled Caste. It has further been alleged by the Respondents that the applicant had moved this Tribunal earlier in O.A. 162 of 1987 praying to quash the disciplinary proceeding and that case was disposed of on 7.10.1988. In that case, this Tribunal

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passed an order to dispose of the disciplinary proceeding within a period of 120 days and in compliance with the direction of this Tribunal, after going through the concerned records and the report of the enquiry officer, the disciplinary authority on 27.1.1989 passed an order removing the applicant from Government service with immediate effect. The removal order with a copy of the enquiry report was made over to the applicant on 1.3.1989 and he was relieved from Government service with effect from the that date. A copy of the judgment of this Tribunal passed in O.A. 162 of 1987 has been Annexed as R-1 to the counter and a Xerox copy of the receipt granted by the applicant after receipt of the removal order and copy of the enquiry report has been made Annexure R-3.

3. We have heard Mr. S.S. Mohanty, for the applicant and Mr. Tahali Dalai, Additional Standing Counsel, (Central) for the Respondents, and perused the papers. From Annexure R-1 it would be found that this Tribunal did not express any opinion on the merits of the contention raised by the learned counsel appearing in that case. However, this Tribunal declined to quash the disciplinary proceedings holding that there was a prima facie case and the prayer to quash the disciplinary proceeding was rejected and admittedly no appeal has been preferred against that order of this Tribunal, the self-same relief of quashing the

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proceedings cannot be granted.

4. This might have been sufficient to dispose of the case as that is the substantial relief that the applicant has prayed for but as we find from the Annexure to the counter, already an order of removal has been passed against the applicant and from Annexure-R-2 it would be apparent that the copy of the enquiry report was supplied to the applicant along with the order of punishment. As has been held in the case of Premanath Sharma Vs. Union of India an order of removal from service passed without supplying a copy of the enquiry report to the charged officer is not sustainable, we would quash the order of removal as at Annexure-R-2 and direct that the applicant be heard. We are not giving direction to supply a copy of the enquiry report as in the meantime he has been given one. How the period from the date of removal of the applicant from service till this day would be treated, would depend on the ultimate result of the disciplinary proceeding.

5. This application is accordingly disposed of leaving the parties to bear their own costs.

..... 5.7.90
VICE-CHAIRMAN

..... 5.7.90
MEMBER (JUDICIAL)

