

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 609 OF 1993
Cuttack this the 24th day of December, 1999

D. Vasudeo Rao

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the ~~No.~~ Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
24.12.99

24.12.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)



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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 609 OF 1993
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CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

...

Sri D.Vasudeo Rao,
aged about 37 years
S/o. D.K.Dada
at present working as
Ticket Collector,
South Eastern Railway,
Khurda Road Division
At: Khurda Road,
PO: Jatni, Dist: Khurda

By the Advocates : ... M/s.K.C.Kanungo
S.Behera Applicant

-Versus-



1. Union of India represented through
General Manager,
South Eastern Railways
Garden Reach, Calcutta
2. The Divisional Railway Manager
South Eastern Railways
Khurda Road Division
At: Khurda Road
PO: Jatni, Dist: Khurda
3. Sri K.A.Venkat Raman
Enquiry Officer
South Eastern Railways
Garden Reach, Calcutta
4. Divisional Commercial Manager
South Eastern Railways,
Khurda Road Division, At: Khurda Road
PO: Jatni, Dist: Khurda
5. Chief Commercial Manager
South Eastern Railway
14-Strand Road, Calcutta-700001

...

Respondents

By the Advocates : Mr.D.N.Mishra
Standing Counsel
(Railways)

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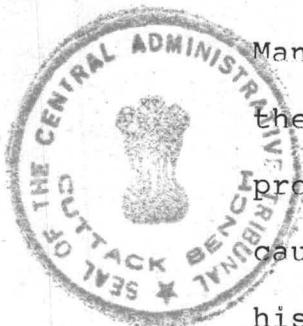
ORDER

MR.G.NARASIMHAM, MEMBER(JUDICIAL): Applicant, D.Basudeo Rao, a Bramhin by birth secured appointment under the Railways against reserved quota meant for Scheduled Tribe community on the basis of a certificate said to have been issued by the Executive Magistrate, Mandela(MP) and a Deed of Adoption dated 4.2.181 claiming that he went on adoption to a Scheduled Tribe family. In this way he joined the first posting at Khurda Road under S.F.Railways as Ticket Collector on 2.3.1984. Subsequently he was placed in a panel to appear for the selection for promotion to Grade T.T.F.'A'/Head T.C.A. in the scale of Rs.425-640/-. In the meanwhile the Vigilance Wing of Railways probed into the antecedents and could know that the case of adoption was not correct. Thereafter, as per memo dated 18.7.1986 issued by the Divisional Commercial Superintendent, Khurda Road, (now designated as Divisional Commercial Manager), i.e. Res.4, applicant was served with charge under Annexure-5 on the ground that he joined service by submitting false declaration that he belongs to Scheduled Caste community on the plea he happens to be the adopted son of one D.K.Dada of Shahdol belonging to Bonda community, and the documents submitted by him in that connection are questionable. The applicant denied the charge. After enquiry, as per rules, the Enquiring Officer by report dated 30.6.1987(Annexure-6) held the charge proved. The Divisional Railway Manager(Res.2) after going through the enquiry report, directed further enquiry(wrongly mentioned in the Original Application as fresh enquiry) on the basis of certain materials, i.e. letter dated 18.3.1992 received from Tahasildar, Mandela(Annexure-8),



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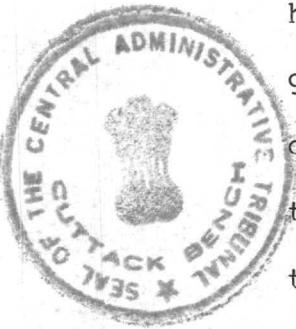
a copy of which was supplied to the applicant. The 2nd enquiry report submitted on 24.8.1992 (according to applicant ex parte) by confirming the findings of the earlier Enquiring Officer. At this stage the applicant filed O.A. 646/92 before this Tribunal for quashing the charges framed and also the reports of the enquiring officers and ^{for} other incidental reliefs. On 23.12.1992, this Original Application was admitted and as an interim measure, after hearing the applicant, the Tribunal directed the Divisional Railway Manager to issue summons to Revenue Officer, Mandala and deliver the same to the applicant for causing service on Revenue Officer and ensure his attendance before the Divisional Railway Manager, Khurda Road, who would record the evidence of the said Revenue Officer and thereafter the D.R.M. would proceed according to law. It was also observed that causing service of the summons on the Revenue Officer and his attendance was completely within the responsibility and risk of the applicant and in case the applicant did not become successful in ensuring attendance of the Revenue Officer on the date fixed before the D.R.M., the latter would be at liberty to proceed with the case and pass necessary orders according to law and that in no circumstances the case would be adjourned on account of non-attendance of the Revenue Officer. This Original Application has ultimately been disposed of on 8.3.1999 having become infructuous, on the submission of the learned counsel for the applicant. At this stage, it has to be noted that the averment in para-4(o) of the present application that this Tribunal in that O.A. on 25.12.1992 directed the D.R.M. to allow the applicant to



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 produce Executive Magistrate for personal hearing is not correct, because the record of O.A.646/92 reveals that a direction was issued to summon the Revenue Officer of Mandela and not the Executive Magistrate. Be that as it may, the D.R.M. again directed the Enquiring Officer to enquire into the matter as per the directions issued by the Tribunal. On 19.3.1993, the Enquiring Officer submitted his report (Annexure-13) to the D.R.M. holding that the adoption is not a valid one and that caste certificate issued by the Executive Magistrate was questionable. On receiving this enquiry report, the D.R.M. sent a copy of the same to the applicant asking him to represent by tentatively holding the applicant guilty and tentatively taking a decision that punishment of dismissal could be awarded(Annexure-14). On receipt of the representation from the applicant under Annexure-15, the D.R.M. in his report dated 23.9.1993 held the charge to be proved and passed order of dismissal (Annexure-16).

Thereafter the applicant filed this Original Application on 2.11.1993. In that O.A. there is no mention that he preferred departmental appeal against the punishment order of the Divisional Railway Manager. Subsequently the applicant amended the O.A. and this amendment was allowed in order dated 21.1.1998. Through this amendment he had introduced two new facts, viz., that he had preferred departmental appeal dated 9.10.1993 to Chief Commercial Manager, S.E.Railway, Calcutta under Annexure-20 and the other one is that he obtained a judgment of decree dated 2.5.1996 from Civil Court, Bilaspur(Annexure-21) in a suit instituted in the year 1996 ^{him} declaring adoption.

These facts are not in controversy.



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The case of the applicant is that on 9.7.1992 he had submitted an application before the enquiring officer to examine Shri P.K. Sukla, Executive Magistrate, Mandla, who had issued the caste certificate and also Shri L.A. Nanda, Ward Council of Mandla, Tahasildar and R.I., Mandla as witnesses on his behalf. In that application he also requested the enquiring officer to call for a report from that Executive Magistrate as to the genuineness of the certificate. The enquiring officer without considering this request, decided the enquiry ex parte on 24.8.1992 in the absence of the applicant, because of his illness and submitted his report on 31.8.1993 holding the charges as proved (Annexure-11). Thereafter on receipt of notice from the Divisional Railway Manager, along with copy of this enquiry report for submission of representation, if any, thus he was denied reasonable opportunity to defend his case. Further, after this Tribunal passed order on 31.8.1992 he had personally gone to serve notice on the Executive Magistrate and to bring him for deposing before the enquiring officer, who ultimately could come to know that the Executive Magistrate on 30.8.1988 while stationed at Raipur passed away. The report of the Tahasildar, Mandla, according to applicant, nowhere reveals that such certificate was not issued by the Executive Magistrate and all that the report reveals that no such caste certificate was issued from his office. In fact no reason has been assigned in doubting the genuineness of the said certificate issued by the Executive Magistrate. The D.R.M., who passed the impugned order of dismissal, according to applicant, is neither the disciplinary authority nor the appointing



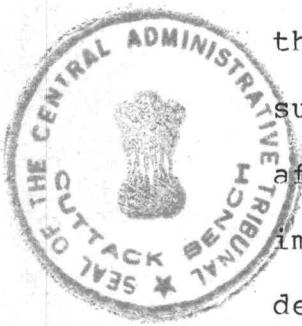
authority and as such he is not empowered under law to take a final decision in the matter. Hence order of dismissal is illegal. General Manager(Res.1) being the appointing authority is only competent to award major punishments like removal/dismissal/compulsory retirement of a railway servant. During pendency of the departmental appeal before the Chief Commercial Manager, he instituted Civil Suit 594/96 wherein it was declared that he was the adopted son of D.K.Dada and as such he is Munda(Adivasi) by caste (Annexure-21 - judgment). In view of this declaration of a competent Court, according to applicant, the entire proceeding initiated against him falls flat and can be quashed.

2. The Department in their counter filed on 18.2.1999 aver that after the 2nd enquiring officer submitted his enquiry report holding ~~the~~ charge as proved and after the disciplinary authority issued notice to the applicant to submit representation if any, the applicant filed Original Application 646/92 and on hearing the applicant, this Tribunal on 23.12.1992 directed Respondent No.2 of that application, i.e. Divisional Railway Manager to issue summons to the Revenue Inspector, Mandla and deliver the same to the petitioner for causing service and as per the direction of the Tribunal it was the responsibility of the applicant to ensure attendance of the Revenue Inspector, Mandala before the enquiring officer. Accordingly summons was issued on the Revenue Inspector, Mandla, and not to others as directed by the Tribunal and the matter was remanded to the enquiring officer for recording evidence. There was further



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 direction of this Tribunal that even if the applicant did not become successful in ensuring attendance of the Revenue Inspector on the date fixed, then the proceeding could proceed according to law. In compliance of the direction of this Tribunal the applicant was handed over with the summons for causing service on the R.I. for his attendance on the date fixed. On the date fixed, the applicant produced death certificate of one Prafulla Kumar Sukla, issued by the Superintendent, Settlement Office, Raipur. On that date enquiry was taken up and the applicant was directed to submit his final defence statement within seven days, if he likes. The applicant submitted his defence dated 12.3.1993 before the enquiring officer and the enquiring officer, after going through the defence statement, completed the enquiry and submitted report to the D.R.M.(Res.2), who ultimately, after giving opportunity to the applicant, passed the impugned order of dismissal. Before filing the departmental appeal, applicant had preferred Original Application No.609/93 and on this ground the application is liable to be dismissed.

As to the copy of the Adoption Deed dated 25.3.1981 under Annexure-1, the stand of the Department is that the same would not prove adoption under law, because by then the applicant was already 26 years of age and i.e., not within 15 years of age as required under Hindu Adoption and Maintenance Act. In regard to certificate issued by the Vice President, Municipal Council, Mandla, dated 15.7.1981(Annxure-2) that certificate is not a caste certificate as it reveals that the applicant was brought up by D.K.Dada. The certificate stated to have been issued by the Executive Magistrate is not a genuine

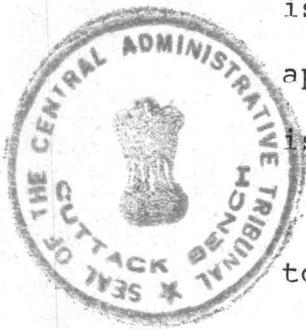


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in the sense it does not contain any Case Number or File Number. Even though such a certificate might have been issued by the Executive Magistrate, particulars of reference of such certificate would have been maintained in the Office of the Tahasildar, Mandla, who in his report clearly stated that no such certificate had been issued.

Divisional Commercial Manager, who framed the charges is inferior to D.R.M. Divisional Commercial Manager is the controlling authority of the Ticket Collectors and T.T.Cs and as such under law he can also frame the charges and D.R.M. being the higher authority is the disciplinary authority. Contention of the applicant that General Manager is the competent authority is not correct.

 The applicant was given all possible opportunities to defend his case. Even after adjournment by the enquiring officer enabling him to produce the defence witnesses, he did not produce any witness and therefore, the enquiry was completed. Hence it is not correct to say that enquiry was held ex parte.

On these grounds respondents pray for dismissal of this application.

3. We have heard Shri K.C.Kanungo, learned counsel for the applicant and Shri D.N.Mishra, learned Standing Counsel appearing for the respondents. Also perused the records.

4. Law is well settled that this Tribunal cannot assume the role of an appellate authority in a disciplinary proceeding. All that this Tribunal is to see whether the procedure adopted in the proceeding does not

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contravene any statutory provision and that principles of natural justice have not been violated. This being the position we cannot take note of the decree passed by the Civil Court, Bilaspur in Suit no.594/96 under Annexure-21 declaring that the applicant to be adopted son of D.K.Dada. Moreover, this suit was instituted in the year 1996, i.e. 3 years after filing of this Original Application. Though the Railways did not accept his case of adoption and started this proceeding, which ultimately resulted in dismissal in the year 1993, yet for the reasons best known to the applicant, he did not implead the Railways as defendants. The only defendants in this Suit is D.K.Dada, who in fact as per Deed of the year 1981, admitted that he had taken the applicant in adoption. Thus this judgment being a judgment in personem and not binding on the respondents cannot be made use of in this proceeding and that too by this Tribunal as an additional evidence.

In support of his contention that the Divisional Railway Manager had no power to impose the order of dismissal, the applicant could not cite any authority or rule, because, the case of the Department is D.R.M. being the higher authority than C.C.M. has that power. Hence we do not agree with the applicant that this proceeding needs to be quashed on this ground.

As the pleadings reveal, specially as per the averments made in the counter, which has not been controverted by the applicant through any rejoinder, we are satisfied that the applicant at every stage had been afforded opportunity to defend himself. If the applicant deliberately absented himself without producing



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his witnesses, he must thank himself. In fact the Department had to obey the direction of this Tribunal passed in O.A.646/92 on 31.12.1992 as referred above and as per that direction proceeding was closed. We are, therefore, not in agreement with the contention advanced on the side of the applicant that principles of natural justice have been violated.

Both the enquiring authority and the disciplinary authority held that the certificate said to have been issued by the Executive Magistrate under Annexure-1 is a questionable one because the same does not contain any reference of File No. or Case Number. Even the Tahasildar, Mandla, submitted report saying that no such certificate was issued from his office. Even assuming the disciplinary authority's ~~arriving at~~ ^{that} appreciation of evidence in this connection is wrong, this Tribunal, being the appellate authority cannot reappraise the evidence. Still, we see from the reasoning/appreciation of this part of evidence by the disciplinary authority is correct. Because, it has been laid down in **M.H.A.Circular No.35/1/72-RU(SCT.V)**, dated 2.5.1975 and **No.BC 12025/2/-76 SCT. 1**, dated 22.3.1977 as mentioned under Appendix 4 of Swamy's Compilation of Reservations and Concessions for SC/ST and so on (1999 Edition) at Page 189 that great care has to be exercised in dealing with the cases where a person claims to be S.C. on the ground that he has been adopted by a Scheduled Caste person and the validity of adoption has to be clearly established before any caste certificate can be given and it is for the party to prove his claim by cogent reliable evidence. In other words, as per ~~the~~ guidelines issued in this



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circular, the authority competent of issuing caste certificate must be clearly satisfied with the persons seeking certificate has in fact been adopted by the community for which such certificate is needed. This satisfaction of the authority can be arrived at only after an enquiry.

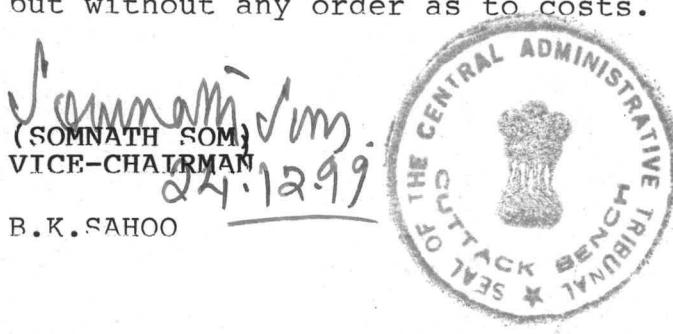
In other words an enquiry is a pre-requisite for issuing such caste certificate. The certificate under Annexure-3 said to have been issued by the Executive Magistrate, nowhere reveals that it was issued after an enquiry was conducted. Besides, reference of any Case Number or File Number being absent, the certificate also curiously silent about the age of the ward, his natural father's name etc. Hence viewed from this angle, this certificate under Annexure-3 cannot be held to be genuine.

It is true that this O.A. was filed in the year 1993 and there was no mention of preferring departmental appeal, but in the amended application filed subsequently there is clear mention of preferring departmental appeal prior to filing of this Original Application and this has not been specifically denied in the counter. Hence on this score, the application cannot be rejected.

5. For the reasons discussed above, we do not see any merit in this application which is accordingly dismissed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

B.K. SAHOO



24.12.99
(G.NARASIMHAM)
MEMBER (JUDICIAL)