

12
12
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 406 OF 2000
Cuttack this the 20th day of Sept 2004

D. Nilakantha ... Applicant(s)

- VERSUS -

Union of India & Others Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? Yes

(M.R. MOHANTY) 20/09/2004
MEMBER (JUDICIAL)

(B.N. SORI)
VICE-CHAIRMAN

13

13

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 406 OF 2000
Cuttack this the 20th day of Sept. 2004

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R.MOHANTY, MEMBER (JUDICIAL)
...

D. Nilakanthan, aged about 50 years,
S/o. D.Balakrishna, At/PO-Kotwalsa,
PS-Kotwalsa, Dist-Vizainagaram

...

Applicant

By the Advocates

M/s. M. Misra
D.K. Patnaik
B.K. Misra
B.B. Mohanty

- VERSUS -

1. Union of India represented through Secretary, Ministry of Defence, Govt. of India, New Delhi
2. Commanding Officer, I.N.S.Chilka, At/PO-Balugaon, Dist-Khurda
3. Flag Officer, Commanding in Chief, Eastern Naval Command, Vishakhapatnam, Andhra Pradesh

...

Respondents

By the Advocates

Mr. A.K. Bose, S.S.C.

- - - - -
O R D E R

MR. B.N. SOM, VICE-CHAIRMAN: Applicant (Bhri D. Nilakanthan) formerly Upper Division Clerk (in short U.D.C.) has filed this Original Application under Section 19 of the A.T.Act, 1985, challenging the impugned order dated 31.7.2000 (Annexure-7) removing him from service by giving unreasonable weightage on a report of the Collector, Vishakhapatnam. He has also assailed the said order to have been passed in gross violation of the principle of natural justice. It is in this background, the applicant has prayed for either quashing the impugned order of removal from service

or in the alternative to modify the penalty of removal from service to any other major penalty, more particularly, to that of compulsory retirement, as he had already served 25 years in the Government, by taking a sympathetic and humanitarian view of the matter.

2. The facts of the case are that the applicant was appointed on 10.4.1978 as Lower Division Clerk (in short L.D.C.) against a post reserved for Scheduled Tribe candidate. In support of his claim that he belonged to S.T. community, he had produced a caste certificate issued by the Tahasildar, S.Kota. He was subsequently promoted to the grade of U.D.C. and while he was so working, a complaint was received by Respondent No.2 that the caste certificate produced by the applicant was a false one; whereupon the matter was referred to the Collector, Vijayanagaram for verification. The said Collector instituted an inquiry entirely behind the back of the applicant and reported that the certificate filed by the applicant was not a genuine one. The Respondents-Department served a notice on the applicant thereafter, calling upon ^{him Show cause} to ^{why} disciplinary action should not be taken against him for having produced a forged caste certificate. This was followed by initiating a disciplinary proceeding against him under Rule-14 of CCS(CCA)Rules although the reverification process had not been completed. Being aggrieved, the applicant filed O.A.No.247/92, assailing the issuance of charge sheet by placing reliance on the report of the Collector. The Tribunal, however, allowed the disciplinary proceeding to continue without publication of the final result. The O.A. was dismissed

on 7.7.1999, directing the Respondents to give reasonable opportunity to the applicant to adduce defence witness and advance argument as indicated above, before the inquiring officer, whereafter final order in the disciplinary proceeding, should be passed and the whole exercise was to be completed within 120 days from the date of receipt of the order. The disciplinary proceeding earlier initiated vide charge-sheet dated 4.11.1989 and concluded ex parte was cancelled by the Respondents vide their order dated 27.4.1999 and another disciplinary proceeding was initiated vide charge-memo dated 13.9.1999, in pursuance of the direction of this Tribunal in O.A. No.247/92. The disciplinary proceeding initiated by issuing charge memo dated 13.9.1999 was completed in a perfunctory manner and the inquiry officer completed the inquiry in a hasty manner and submitted his report. The inquiry report was a product of gross non application of mind, perverse and not based on materials on record. The applicant has also alleged that the disciplinary authority did not take into account all the relevant facts and circumstances of the case before passing the impugned order of removal dated 31.7.2000 (Annexure-7). The applicant's contention is that the finding of the inquiring officer and the decision arrived at by the disciplinary authority are based on the report given by the Collector, Vijayanagaram, which was vitiated on account of non-compliance of the principle of natural justice, as at no point of time an opportunity was provided to him before conducting the verification process at the Tahasil level. Besides that, the very

verification was made in a very perfunctory manner and
that the inquiry conducted at the grass roots level was not at all a
real fact-finding inquiry. As the inquiry made by the
Collector, Vijayanagaram suffered from such incurable
defects, the disciplinary authority could not have used
that report for coming to the conclusion that a false
or forged caste certificate had been submitted by the
applicant. Based on these grounds the applicant has
approached this Tribunal with the prayers referred to
earlier.

3. The Respondents-Department have opposed the
prayer of the applicant by filing a detailed counter. They
have raised the objection that the O.A. is not maintainable
as the applicant has not exhausted the statutory remedy
under the CCS(CCA)Rules, 1965. Therefore, his statement
made at Para-6 of the O.A. is factually incorrect. On
the merit of the case, the Respondents have stated that
the applicant having been selected against the S.T. quota
for the post of L.D.C. based on production of a false caste
certificate, on an information received by the Respondents,
the matter was referred to the concerned civil authorities
for verification of the caste certificate. In consequence
thereof, the Collector, Vijayanagaram vide his letter dated
9.6.1991 confirmed that the certificate submitted by the
applicant was not genuine, but a forged one. It was in
these circumstances that the Respondents-Department
decided to initiate the disciplinary proceedings against
the applicant under the relevant rules. The concerned
District Collector had also forwarded a copy of the Govt.

of Andhra Pradesh O.M.Dated 15.9.1973, according to which submission of false SC/ST certificate makes a person liable to be prosecuted U/s. 182 and 420 of Indian Penal Code (I.P.C.) On receipt of the report from the District Collector, the applicant was given ample opportunity to produce all the relevant papers and to establish the genuineness of the certificate that he had submitted in support of his claim. They have reiterated that the disciplinary authority had applied his mind and considered the report of the inquiring officer, relevant records and the representation submitted by the applicant before passing the order removing the applicant from service vide Annexure-7.

4. We have heard the learned counsel for both the sides and perused the records placed before us.

5. The short point in this O.A. is whether the applicant had submitted a false caste certificate for securing employment under the Central Government against a S.T. quota vacancy as L.D.C. The case of the applicant is that he belongs to Kondakapu community, which is a S.T. ^{that in his} community. He has submitted in his defence/School Leaving Certificate (in short S.L.C.) (Annexure-R/4) it is recorded that he belongs to Kondakapu community. The Respondents have repudiated the claim by stating that the school authorities are not competent to issue caste certificate and for this purpose, the competent authority under the law is the District Collector of the concerned District where the community resides. They have, by

submitting the report of the Collector, Vijayanagaram thrown light on the issue. The District Collector wrote as follows :

....After the enquiry, the Mandal Revenue Officer, Kothavalasa has reported that there is no individual with the name Sri Dummu Neelakanthan, S/o. Balakrishna either in Kothavalasa or in hamlet village. Then the Mandal Revenue Officer, S.Kota was asked to verify the connected records relating to R.Dis.3586/77 dt. 5.8.77 wherein the certificate appears to have been issued by the then Tahasildar, S.Kota. But on verification of the connected registers and record of Mandal Revenue Officer's Office, S.Kota the disposal bearing the above number relates to another subject "Inams" and the file was closed as L.Disc. It is also revealed that Sri T.V.S.Frasad had worked as Tahasildar during the above period. His signatures in the cash accounts in the office and on the Cast Certificate issued to Sri Dummu Neelakanthan did not tally. The signature on the certificate produced by the individual was not as "P.V.Rama, which is not in the name of the then Tahasildar, S.Kota.

In the above circumstances, it is conducted that the Caste Certificate(ST) produced by Sri Dummu Neelakanthan, S/o. Balakrishna is not genuine but a forged one. The photostat copy of the Caste Certificate sent with reference

From the report of the Collector, it becomes clear that the Mandal Revenue Officer had categorically that reported/no individual by the name 'Sri Dummu Neelakanthan' S/o. Balakrishna, father of the applicant, was found residing either in Kothavalasa or in hamlet village. Further it was categorically stated that the alleged certificate submitted by the applicant for proving his caste/community claimed to have been issued by the then Tahasildar, S.Kota was on inquiry found to be relating to a certificate issued on another subject, called, 'Inams' and that the said file had been closed as L.Disc.

- 7 -

and the signature appearing on the certificate produced by the applicant was a forged one, which was not in the name of the then Tahasildar, S. Kota. The applicant, in support of his claim has not been able to produce any material before the inquiring officer to prove the genuineness of his certificate nor did he appear before the concerned authority at the Mandal level or District level to establish his credential. It is not in dispute that a community called Koddakapu is declared as S.T. But the question raised here is that whether the family of the applicant belongs to this Koddakapu community. The case of the Respondents is that the certificate produced by the applicant under the signature of Tahasildar, S.Kota was a forged one and that the family members of the applicant were neither the inhabitants of village Kothabala or of the hamlet village. The certification of the district authorities being so specific and categorical, the applicant has not been able to prove that his family did reside in Kothabala or in hamlet village. Having not been able to prove his claim that he belongs to Koddakapu community, the applicant could not have derived the benefit/concession out of the reserved quota under the Constitution and therefore, he is liable to departmental/criminal action for such violation. In fact there is an admission of his guilt in his application when he, while seeking relief, submits that the Tribunal may allow the O.A. by quashing the order of removal dated 31.7.2000 or in the alternative to modify the penalty from removal of service to any

2

- 8 -

ether major penalty. Claiming concession for appointment in Govt. Departments under the provision of Reservation by producing forged certificate(s) is punishable under Section 182 and 420 IPC and it is in this background, the authority competent is to take a decision whether the concerned employee against whom such an allegation has been brought and proved to be true to be true is eligible to be retained in service any more. The applicant, in the instant case, secured a job under the Central Government, reserved for S.T. community candidates. In other words, had he not been considered under the relaxed standard, he could not have been taken in Govt. service. That being the position of law, and the applicant having been found guilty of producing a forged certificate to secure a job under the Govt. of India under reserved quota vacancy, the punishment that he deserves is one of removal from service, because, he must be dispossessed of the employment to which he has no right under the Constitution. Removal from service, however, does not disentitle him for service under the Government subsequently and hence, in our considered view, the Respondents have rightly imposed on him the punishment of removal from service.

6. For the reasons discussed above, we see no merit in this Original Application, which is accordingly dismissed, leaving the parties to bear their own costs.

for
20/09/04
(M.R.MOHANTY)
MEMBER (JUDICIAL)

BJY

N.S.
(B.N. SOR)
VICE-CHAIRMAN