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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 168 OF 2007
CUTTACK, THIS THE ~~10~~¹⁹ DAY OF September, 2009

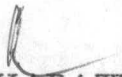
Bihari Charan Parida.....Applicant


Vrs.

Union of India & OrsRespondents

FOR INSTRUCTIONS

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


(C.R. MOHAPATRA)
MEMBER (ADMN.)


(K. THANKAPPAN)
MEMBER (JUDL.)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 168 OF 2007
CUTTACK, THIS THE 10th DAY OF September, 2009

CORAM :

HON'BLE MR. JUSTICE K.THANKAPPAN, MEMBER(J)
HON'BLE MR. C.R.MOHAPATRA, MEMBER(A)

.....

Sri Bihari Charan Parida, aged about 38 years, son of Sri Chandramani Parida, of village Palasuni, At present- Tulasipur, P.S. Banki, Dist-Cuttack.

... Applicants

By the Advocates -

M/s. Milan Kanungo, S.K.Mishra,
Y.Mohanty, B.B.Pamda.
A.Pattnaik.

-Versus-

1. Union of India represented through its General Manger, East Coast Railway, At/PO/PS- Bhubaneswar, At-Chandrasekharpur, Dist-Khurda.
2. Senior Divisional Engineer, (Co-Ordination) At-Khurda Road, East Coast Railway, Dist-Khurda.
3. Assistant Divisional Engineer, East coast Railway, At Balugaon, Dist- Khurda.
4. Senior Divisional Personnel Officer, At-Khurda Road, East Coast Railway, Dist. Khurda.
5. Collector, Cuttack, At/PO/Dist-Cuttack.
6. Tahasildar, Banki, Village-Tulasipur, PS-Banki, Dist-Cuttack.

... Respondents

By the Advocates - Mr. R.S.Behera (For R-1,2,3, and 4)
Mr. A.K.Bose, (For R-5 and 6)

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ORDER

Shri Justice K. Thankappan, Member (J):-

Aggrieved by the dismissal from service as per the order dated 29.08.2006, confirmed by the Appellate Authority as per the order dated 22.12.2006, the applicant has filed this O.A. The main prayers of the applicant in this O.A. are as follows:

- (i) To quash the Order of dismissal dated 22.12.2006 under Annexure-7 passed by the Respondent No.2.
- (ii) Reinstate the petitioner in service with retrospective effect from 25.8.2006.
- (iii) Direct the Respondents not to consider the aforementioned gap from date of dismissal till date of reinstatement as break in service.
- (iv) Direct the Respondents to give consequential benefits and arrear salary from the dismissal date till the date of reinstatement.

2. Few facts relevant for the disposal of the O.A. are as follows:

On the strength of a community certificate issued by the Tehsildar concerned, the applicant got appointment in a reserved post in the Railways as Trackman in the East Coast Railways, on 16.05.1997. While so, on the basis of certain doubt arisen regarding the veracity of the community certificate

produced by the applicant to get appointment in the post, reserved for STs, the Chief Vigilance Officer inquired the matter with the concerned Tehsildar. As per the inquiry conducted by the concerned Tehsildar, the Tehsildar found that the community certificate issued to the applicant showing that he belongs to 'Sabar' community, one of the communities prescribed as ST community of the Orissa State, is not correct and actually the applicant belongs to 'Odachasa' community, a community included in the list of Other Backward Community. On the basis of the finding entered by the Tehsildar, the Tehsildar concerned cancelled the community certificate given to the applicant on 21.11.2005. On the basis of the cancellation of the community certificate issued to the applicant, the Railway authorities, namely, the Assistant Divisional Engineer, Balugaon, issued a show cause notice on 03.08.2006 to the applicant calling upon to explain why disciplinary proceedings will not be initiated against him under Rule 14(ii) of the Railway Servant (Discipline and Appeal) Rules, 1968. On receipt of said show cause notice, the applicant filed his explanation on 07.08.2006 taking the stand that the cancellation order of the Tehsildar concerned has been stayed by the Hon'ble High Court of Orissa in Writ Petition No. 2609/06.

However, as per the order dated 25.08.2006 the Assistant Divisional Engineer, Respondent No.3, dismissed the applicant from service. The said order of dismissal has been challenged by the applicant before the Sr. Divisional Engineer, East Coast Railways, Khurda Road. However, as per the order dated 22.12.2006, the dismissal order passed by the disciplinary authority has been confirmed. Under the above circumstances, the applicant has filed this O.A.

3. This O.A. has been admitted by this Tribunal and notice has been ordered to the Respondents directing them to file reply statement within a specified time. Subsequently, Tehsildar concerned, the 5th Respondent has filed his separate reply statement and Respondent Nos. 1 to 4 have also filed their reply statement. In the above reply statements, the stand taken is that as the applicant had produced false certificate regarding his social status and thus committed the misconduct coming under Article 14(ii) of Railway Servants Conduct Rules, 1968. It is also the stand taken in the reply statement that the applicant himself admitted before the authorities that he did not belong to 'Sabar' community, but belonged to 'Odachasa' community, which is not narrated as Scheduled Tribe community of the State. That apart, the Respondents 1 to 4 in their counter reply

have taken the stand that the applicant was given ample opportunity to defend his case and only after giving sufficient time to substantiate his case, if any, the order of dismissal has been passed by the Disciplinary Authority. It is the further stand taken in the counter filed on behalf of Respondent Nos. 1 to 4 that the applicant never challenged the cancellation of earlier certificate issued by the Tehsildar before this Tribunal and hence the order now passed by the Respondents is perfectly correct and is legal.

4. We have heard Mr. M.Kanungo, Ld. Counsel for the applicant, Mr. A.K.Bose, Ld. Counsel appearing for the State of Orissa and Tehsildar, the 5th Respondent and Mr. R.C.Behera, Ld. Counsel appearing for Respondents 1 to 4.

5. The case of the applicant before this Tribunal is that the certificate issued by the Tehsildar has been cancelled by the same officer in an arbitrary manner and he has no power to cancel the certificate issued by the same authority. Even if any doubt arose in the case, an inquiry should have been conducted by the competent authority to establish the genuineness of the claim put forward by the applicant. The further case of the Ld. Counsel for the applicant is that the Railway authorities have not given due weight to the order passed by the Hon'ble High

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Court of Orissa in Writ Petition No. 2609/06 in which the Hon'ble High Court stayed the cancellation order passed by the Tehsildar and without considering the above order passed by the Hon'ble High Court of Orissa, the present order of dismissal has been passed by the Railway authorities, and on that ground itself this Tribunal has to interfere with the order passed by the Railway authorities dismissing the applicant from service.

6. Ld. Counsel for the Respondents answering the contentions of the Ld. Counsel appearing for the applicant, submitted that since the community certificate issued by the Tehsildar, Banki, has been cancelled on inquiry made by the Tehsildar after issuing show cause notice to the applicant and hence the action of the Respondent Railways is justifiable. The proceedings itself has been initiated as per Rule 14(ii) of the Railway Servants (D&A) Rules, 1968. The Respondents have considered the explanation furnished by the applicant to the show cause notice and as there was no material before the authorities to postpone the inquiry or the proceedings, the 3rd Respondent passed the dismissal order as per the order dated 25.08.2006. The Respondents 1 to 4 were not parties in the writ petition and notice was also not served on them. In the writ petition the District Collector concerned and the Tehsildar only

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were made parties and if so the order of dismissal passed by the Respondents is justifiable. As per Rule 14 of the Railway Servants (D&A) Rules, the authorities have got the power to even dispense with the inquiry. A full-fledged inquiry is not contemplated when Rule 14 is invoked by the authorities. If so, no procedure for inquiry for passing the punishment order has been violated by the Respondents.

7. The Respondents, Railway-authorities started inquiry against the applicant on the basis of verification of the community/caste certificate produced by the applicant by the Vigilance Wing of the Railways with the Tehsildar concerned and it is clear from the cancellation order passed by the Tehsildar dated 21.11.2005 that the applicant does not belong to 'Sabar' community, a community prescribed as ST community of the State whereas the applicant belongs to 'Odachasa' community, which is shown as one of the communities coming under the category OBC/SEBC of the State. However, the conclusion arrived at by the Tehsildar, who cancelled the earlier certificate, will depend on the decision to be taken by the Hon'ble High Court of Orissa in Writ Petition No. 2609/06. Admittedly, the Railway authorities were not parties to the proceedings before the Hon'ble High Court of Orissa.

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However, it is discernible from the order passed by the Hon'ble High Court that only the Tehsildar, Banki, and the District Collector concerned were parties to the proceedings. However, the said order passed by the Hon'ble High Court of Orissa has been brought to the notice of the Respondents even prior to the impugned order of dismissal was passed. If so, even though we are not interfering with the order passed by the Railways, the impugned order, it can be put in^o operation only after the conclusion of proceedings pending before the Hon'ble High Court of Orissa in Writ Petition No. 2609/06. We are also not aware as to what are the grounds urged by the applicant before the Hon'ble High Court of Orissa challenging the cancellation order passed by the Tehsildar. However, we are of the view that even though the Railways are not parties in the Writ Petition pending before the Hon'ble High Court of Orissa, their action initiated against the applicant is based on the cancellation of the community certificate issued by the Tehsildar concerned which is under the consideration of the Hon'ble High Court of Orissa.

8. In the above circumstances, without considering the jurisdiction of the Tehsildar to issue cancellation order of the earlier certificate, we dispose of this O.A. on the basis of

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finding already entered subject to the final outcome of the Writ
Petition No. 2609/06. Ordered accordingly.

3. The O.A. is disposed of with no order for costs.

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(C.R. Mohapatra)
MEMBER (ADMN.)

K. Thankappan
(K. Thankappan)
MEMBER (JUDL.)

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