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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 258 OF 2007
Cuttack, this the 15th day of Sept., 2009

Sujata Das..... Applicant
Vs.
Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?


(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

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CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NOs. 258 OF 2007
Cuttack, this the 15th day of September, 2009

CORAM:

Hon'ble Mr. Justice K. Thankappan, Member (J)

Hon'ble Mr. C.R. Mohapatra, Member (A)

.....

Smt. Sujata Das, aged about 43 years, wife of Narayan Behera, formerly holding the post of Accountant in the Office of the Accountant General (A&E), Orissa, Puri Branch, AT/PO/PS/Town/Dist:Puri.

..... **Applicant**

By the Advocate(s) ... **M/s. Ms. Chitra Padhi,**
S. Behera,
Monalisa Devi

Vs.

1. Union of India represented thorough the Comptroller & Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi.
2. Accountant General (A&E), Orissa, Bhubaneswar, Dist:Khurda.
3. Senior Deputy Accountant General (Admn.), Office of the Accountant General (A&E), Orissa, Bhubaneswar, Dist-Khurda.

..... **Respondents**

By the Advocate(s).....Mr. U.B. Mohapatra, SCGSC

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ORDER

HON'BLE MR. JUSTICE K. THANKAPPAN, MEMBER(J)

In this Original Application, the applicant has challenged the penalty order of dismissal from service dated 05.12.06 and the appellate order dated 28.03.07. The applicant has also prayed for a direction to Respondent No.3 to reinstate her with all service benefits and for setting aside the article of charge and the enquiry report.

2. The brief facts which lead to filing of the present O.A. are as follows:-

The applicant was recruited through Staff Selection Commission as Clerk against a vacancy reserved for Scheduled Caste. She joined as Clerk in the office of the Accountant General (A & E), Orissa, Bhubaneswar, on 20.01.1989 and submitted a caste certificate to the effect that she belonged to the caste 'Patra Tanti'. The claim for Scheduled Caste status was on the basis of her marriage with one Sri Narayan Behera. She was subsequently promoted to the grade of Accountant on 29.09.1995. However, subsequently on verification, it was found that the applicant did not belong to Scheduled Caste community and hence on 02.09.02 an article of charge was given to her under Rule 14 of C.C.S. (CCA) Rules, 1965. Thereafter, the applicant requested for supply of documents for preparation and submission of a defence statement. However, as per inquiry conducted by the Inquiry




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Officer, it was found that the applicant did not belong to Scheduled Caste community, i.e., 'Patra Tanti'. Hence, after completing the inquiry, the Inquiry Officer gave his report. On the basis of the inquiry report, after giving notice to her, the Disciplinary Authority (Respondent No.3) imposed the penalty of dismissal from service on 05.12.2006. The applicant filed an appeal before the Appellate Authority, who as per order dated 28.03.07 rejected the appeal confirming the penalty order passed by the Disciplinary Authority. It has also come to our notice that the applicant had earlier filed an O.A. before this Tribunal, registered as O.A. No.1/07 challenging the dismissal order. However, this Tribunal as per the order dated 25.01.07, with some observations rejected the said O.A. as being not maintainable. On the basis of the direction issued by this Tribunal, the Appellate Authority considered the appeal and passed an order confirming the order of the Disciplinary Authority.

3. The applicant challenges the disciplinary order as well as the appellate order in the present O.A. The application has been admitted by this Tribunal and notice has been served on the Respondents. Respondents have also filed a counter supporting the orders passed by the Disciplinary Authority as well as the Appellate Authority.

4. Heard Ms. Chitra Padhi, Ld. Counsel for the applicant and Mr. U.B. Mohapatra, Ld. Sr. Standing Counsel for the Respondents.



5. Ms. Padhi, Ld. Counsel for the applicant raised the following contentions while assailing the orders passed by the authority.

(i) The Disciplinary Authority has not followed Rule 14 of C.C.S. (CCA) Rules, 1965, in as much as he has failed to supply all the documents relied on by him to prove the charges levelled against the applicant. In this connection the Id. Counsel invited the attention of this Tribunal to the applicant's representation dated 10.09.02. It is urged by the Ld. Counsel is that the Disciplinary Authority has illegally rejected the prayer of the applicant for supply of the copies of the documents and such an attitude of the Disciplinary Authority is against rules and procedure prescribed in sub-rule 8(a) of Rule 14 of the CCS Rules. It is also urged by the Counsel is that the applicant was not given an opportunity to defend her case as the prayer for engagement of a legal practitioner as defence assistant was rejected by the Disciplinary Authority as per order dated 27.11.2002/16.12.2002 (Annexure-A/8).

(ii) The Disciplinary Authority has violated the provisions of Sub-rule (16), (17) & (19) of Rule 14 of the CCA Rules as the inquiry has been completed hastily and sufficient time has not been given to the applicant to prove her case.



(iii) The Appellate Authority, while disposing of the appeal, has not considered the observation made by this Tribunal in its order dated 25.02.97.

To substantiate the above arguments, the Ld. Counsel relied on the judgements of the Hon'ble Supreme Court reported in the case of Siemens Engineering and Manufacturing Co. of India Ltd. V. Union of India (AIR 1976 SC 1785) and in the case of State of U.P. V. Shatrughan Lal, 1999 (1) SLJ 213 (SC) and the judgement of the C.A.T., Ahmedabad Bench in the case of K.R. Saiyed V. Union of India & Ors, O.A. No.93 of 1959; date of judgement 11.08.1994 (Sl. No.240 of Swamy's Case-Law Digest 1994/2).

6. Resisting the above contentions of the Ld. Counsel appearing for the applicant, the Ld. Counsel for the Respondents, Mr. U.B. Mohapatra, relying on the counter affidavit, contended that none of the grounds urged by the Ld. Counsel for the applicant is relevant in this case and the punishment order is in full compliance with Rule 14 and other Provisions of the CCA Rules. The Ld. Counsel for the Respondents relied on paragraph 6 of the counter in which it is stated as follows:-

"That the brief facts of the case leading to file the present Original Application is that the applicant (Smt. Sujata Das) was recruited through Staff Selection Commission as a 'Clerk' against a vacancy reserved for Scheduled Caste.




Smt. Das joined the office of the Accountant General (A&E), Orissa on 20.01.1989 and submitted a Scheduled Caste Certificate issued by the Sub-Collector, Keonjhar to the effect that she belonged to the Caste 'Patra-Tanti'. While undertaking service verification at a later date, it was observed that the caste certificate in favour of the applicant (Smt. Das) was issued on the basis of the caste status of her husband Sri Narayan Behera, who belongs to Scheduled Caste, Sub-Caste being 'Patra Tanti'. But while verifying the service particulars of the applicant's father - Late Anath Bandhu Das and her brother, while were available in the office of the Accountant General (Audit), Orissa, it revealed that the applicant belongs to General Caste being her sub-caste "PATRA", but not "PATRA TANTI". As per Para - 12(2) read with Appendix-16 Brochure on Reservation of SCs & STs and the G.I. MHA Circular No 35/1/75-SCT.1 dated 22.03.1977, no person who is not a Scheduled Caste or Scheduled Tribe by birth will be deemed to be a member of Scheduled Caste or Scheduled Tribe merely because he or she marries to a person belonging to a Scheduled Caste or a Scheduled Tribe. In the instant case, since Smt. Das was not a SC by birth, but fraudulently managed to obtain the Scheduled Caste Certificate on the basis of the caste status of her husband, the matter was taken up with the collector & District Magistrate, Keonjhar. After making due inquiry into the matter, the Sub-Collector, Keonjhar, cancelled the Caste Certificate dated 01.02.1989 issued in favour of Smt. Sujata Das, wife of Narayan Behera of Atoper, Dist-Keonjhar and communicated the same vide Memo No.2062 dated 16.03.2000. Since the caste certificate was cancelled without noticing Smt. Das, she filed an appeal against the order of the Sub-Collector, Keonjhar, regarding cancellation of such caste certificate issued in her favour before the Collector & District Magistrate."

Mr. Moapatra, also contended that the disciplinary orders passed by the authorities are in accordance with the Rules and the Inquiry Officer came to the conclusion that the charge levelled against the applicant has been proved and on the findings entered by the Inquiry Officer, the Disciplinary Authority imposed the penalty of dismissal from service. In



support of his contention, the Id. Counsel relied on the judgements of the Hon'ble Apex Court in the case of G. Sundarasan Vrs. UOI (1995) 4 SCC 644, in the case of R. Vishwanatha Pillai Vrs. State of Kerala reported in (2004)2 SCC 105, and in the case of Superintendent of Police Vs. R. Valasina Baby reported in (2007) 2 SCC 335. The Id. Counsel also relies on another judgement in the case State of Tripura and others Vrs. Namita Majimdar (Barman) (Smt.) reported in CA No.5895 of 1997-98 SCC(L&S) 526.

7. On hearing the contentions of the Id. Counsel appearing for the parties and on perusing the records produced in the O.A, the questions to be decided by this Tribunal, are as to whether the dismissal of the applicant from service is justifiable or not, and whether the inquiry proceedings suffer from any infirmity for not following the Provisions of the CCA Rules. We shall consider the arguments of the Id. Counsel for the applicant with regard to the alleged irregularity in drawing up the inquiry report by the Inquiry Officer. Before entering into this aspect, it is advantageous to see Annexure-A/1 charge dated 02.09.02 framed against the applicant. There was only one charge against the applicant that she was recruited through SSC as Clerk against a vacancy reserved for Scheduled Caste and she joined the service and was subsequently promoted as Sr. Accountant. The initial appointment itself of the applicant was on the basis of a Caste Certificate produced by her claiming



Scheduled Caste status on the basis of her marriage with one Sri Narayan Behera who belongs to 'Patra Tanti', a Scheduled Caste community of the State of Orissa. It is specifically stated in the charge that the caste certificate issued by the Sub-Collector, Keonjhar, is a false one and subsequently the Sub-Collector, Keonjhar, as per Rule 8(2) of Orissa Caste Certificate for Scheduled Caste and Scheduled Tribes Rules, 1980 cancelled the Scheduled Caste Certificate of the applicant on the ground that the applicant is not a member of Scheduled Caste by birth and her claim was on the basis of her marriage with a Scheduled Caste person. On the basis of the above cancellation order issued by the Sub-Collector, the charge has been framed against her alleging that the applicant was found to have acted in a manner unbecoming of a Government servant and failed to maintain absolute integrity thereby violating Rule 3 (I) (i) and (iii) of the Central Civil Services (Conduct) Rules, 1964. On the basis of the above charge, a notice was also issued to the applicant with necessary documents to hold an inquiry under the provisions of CCA Rules. The main contention of the Counsel for the applicant is that though the applicant was served with a charge memo, without considering the charge memo, the Inquiry Officer did not give copies of all the necessary documents to the applicant. It is to be noted that as per the orders issued by the Government of India regarding verification of Scheduled Caste and Scheduled Tribe status, it is the duty of the officers to verify the claim of such applicants. The verification is based on the

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guidelines for issuing Scheduled Caste and Scheduled Tribe certificates as per the Govt. of India, M.H.A. Circular No.35/1/72-RU(SCT.V), dated 02.05.1975 and No.BC.12025/2/76-SCT.I dated 22.03.1977. The above guidelines have been relied on by the Department to reject the claim of the applicant as Scheduled Caste. The relevant portion of the said guidelines is reproduced below:-

“No person who was not a Scheduled Caste or a Scheduled Tribe by birth will be deemed to be a member of a Scheduled Caste or a Scheduled Tribe merely because he or she married a person belonging to a Scheduled Caste or Scheduled Tribe. Similarly a person who is a member of a Scheduled Caste or a Scheduled Tribe would continue to be a member of that Scheduled Caste or Scheduled Tribe as the case may be, even after his or her marriage to the person who does not belong to a Scheduled Caste or a Scheduled Tribe”.

The Ld. Counsel for the applicant submitted that even in spite of representation dated 10.09.02 (Annexure-A/2), copy of the said Government order / circular was not supplied to the applicant by the Department and it is a violation of the principles of natural justice. Admittedly, the said circular is a public document. If so, non-supply of the said document by the authorities does not amount to infringement of any rule regarding supply of documents. That apart, the applicant herself admitted in her written statement that she does not belong to Scheduled Caste community, i.e., 'Patra Tanti' by birth, but she married one Sri Narayan Behera, who belongs to the Scheduled Caste community,



i.e., 'Patra Tanti'. If so, even if the circular has not been supplied, it is an admitted fact before the Inquiry Officer that the applicant does not belong to Scheduled Caste by birth. Hence, we hold that the contention that the non-supply of such document has vitiated the orders imposed, is untenable.

§. The next contention of the applicant is that the Inquiry Officer had not given much time to the applicant to prove her case. What is her case? Her case is that she married one Sri Narayan Behera belonging to Scheduled Caste Community and she obtained the caste certificate from the Sub-Collector. After being selected through SSC, the applicant had joined the post of Clerk in the office of Accountant General (A&E), Orissa, Bhubaneswar. The appointment itself was against a post reserved for Scheduled Caste. If the Caste Certificate produced by the applicant is not admissible as true Caste Certificate, the very entry itself in the service against a reserved post is irregular and illegal. If so, the time taken of the procedure adopted by the Inquiry Officer to conclude the enquiry and submit his report finding the applicant guilty of misconduct has not vitiated the inquiry report in any way, as the applicant is not prejudiced by the conclusion of the inquiry either on the same day, or after some days, or months. The case before the Inquiry Officer, even if proved by the applicant, is that she had



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married a Scheduled Caste man, but by marrying a Scheduled Caste man she cannot claim a status of Scheduled Caste.

9. The other contention of the applicant is that the Inquiry Officer has not followed the procedure prescribed in sub-rules (15), (16), (18) and (19) of Rule 14 of the CCS (CCA) Rules. Though the Ld. Counsel contended in that way, she failed to prove the violation of any Rule by the Inquiry Officer with substantial evidence. As we have already held, the charge against the applicant is that she obtained an employment on the basis of a false Scheduled Caste certificate or rather she tried to infiltrate the Scheduled Caste Certificate followed by marrying a Scheduled Caste man. Even if the defence of the applicant is taken into consideration, the only case the applicant canvassed is that she married a person belonging to Scheduled Caste community. As per the provisions of the Constitution (Scheduled Castes) Order, 1950, the Constitution (Scheduled Tribes) Order, 1950 and the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, a person shall be held a member of SC and ST, as the case may be, if he belongs to a caste or tribe, which has been declared under the provisions of aforesaid Orders for the area to which a person belongs, or ordinarily resides. It is clear from the provisions contained in the aforesaid Orders that a person not belonging to Scheduled Caste or Scheduled Tribe community by birth, cannot be considered as SC or ST even by adoption or by marrying a



person belonging to such community. Apart from that, the applicant has not disputed the cancellation of certificate given by the Sub-Collector holding that the applicant does not belong to the SC community, either before the Inquiry Officer or before the Disciplinary Authority. Her claim for such status is based on marriage with a SC person. If so, the alleged violation of the procedure, or the conclusion of the inquiry within a short time, is not at all to be considered as grounds for holding that the conclusion arrived at by the Inquiry Officer is vitiated. In this view of the matter, the order of dismissal of the applicant from service, as the community certificate produced by her has been cancelled, is justified. This conclusion is fortified by the decisions of the Hon'ble Apex Court in the case of R. Vishwanatha Pillai Vrs. State of Kerala (2004)2 SCC 105, as well as the latest judgements of the Hon'ble Supreme Court reported in Yogesh Ramachandra Naikwadi V. State of Maharashtra & Ors., JT 2008 (5) 368, and in the case of State of Maharashtra V. Milind JT 2000 (Supp.3) SC 213. In Milind's case (supra), the Hon'ble Apex Court held as follows:-

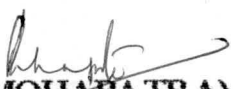
" Respondent 1 joined the medical course for the year 1985-86. Almost 15 years have passed by now. We are told he has already completed the course and may be he is practising as a doctor. In this view and at this length of time it is for nobody's benefit to annul his admission. Huge amount is spent on each candidate for completion of medical course. No doubt, one Scheduled Tribe candidate was deprived of joining medical course by the admission given to Respondent 1. If any action is taken against Respondent 1, it may lead to depriving the service of a doctor to the society




on whom public money has already been spent. In these circumstances, this judgement shall not affect the degree obtained by him and his practicing as a doctor. But we make it clear that he cannot claim to belong to the Scheduled Tribe covered by the Scheduled Tribes Order. In other words, he cannot take advantage of the Scheduled Tribes Order any further or for any other constitutional purpose.

In Vishwanath Pillai's case (supra), the Hon'ble Apex Court following Milind's case, permitted one of the applicants therein, who had been admitted to an Engineering Degree College against a seat reserved for a scheduled caste and whose caste claim was negatived, to be allowed to take his degree with the condition that he will not be treated as a Scheduled Caste candidate in future either for securing employment or other benefits on the basis of the cancelled caste certificate.

10. In the light of the above findings and the principles laid down by the Hon'ble Apex Court, we are of the view that the O.A. is devoid of any merit. Consequently, the O.A stands dismissed without any order for costs. Ordered accordingly.


(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER