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OA No.462 of 2008

Jakub Barik Applicant

Vs

Union of India & Ors. ... Respondents

Order dated 29-04-2011.

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THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (ADMN.)

AND

THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)

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The orders under Annexure-7 dated 18th June, 2004 of the Disciplinary Authority removing the applicant from service & upheld by the Appellate Authority & Revisional Authority in Annexure-A8 & 9 dated 27.6.2005 and 10.10.2007 respectively have been challenged by the Applicant in this Original Application filed under section 19 of the A.T. Act, 1985 with prayer to quash the aforesaid impugned orders and direct the Respondents to reinstate him in service with grant of all consequential service and financial benefits retrospectively.

2. A counter has been filed by the Respondents contesting the case of the Applicant. The Applicant has also filed rejoinder reiterating and supplementing some of his stand taken in the OA.

3. We have heard Learned Counsel for the respective parties and perused the records.

4. The Applicant was a Fitter General/HS II/T.No.35/P No.6096, Unit 17 of Ordnance Factory Badmal. He was issued



Memorandum of charges under Annexure-2 dated 16.7.2003 under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965). The relevant portion of Article and imputation of charges is quoted herein below:

"Articles of charges-

That the said Shri Jakub Barik, FG/HS.II/T.No.35/P.No.6096 of Unit-17 has committed gross misconduct viz.

- (i) Fraudulently obtained a Caste Certificate furnishing false information showing as Schedule Caste under Hindu religion to get a Government employment with a dishonest motive - violation of Rule 3 (1)(iii) of CCS (Conduct) Rules, 1964;
- (ii) Negligence towards his own family- violation of Rule 3-B(12) of CCS (Conduct) Rules, 1964;
- (iii) Suppression of material fact i.e. his marriage with a Christian Woman as per Christian religion and did not intimate the same to his office with an ulterior motive to hide his religion of being Christian- violation of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

Conduct unbecoming of a Government Servant- violation of Rule 3(1)(iii) & Rule 3-B(12) of CCS (Conduct) Rules, 1964."

IMPUTATION

That the said Shri Jakub Barik, now holding the post of Fitter General had been appointed as Pump Attendant/SS against a vacancy, reserved for 'Schedule Caste' as per the Reservation policy of the Government in the year 1990 based on a Caste Certificate bearing No.8-24/87, issued from the Office of Tahasildar, Titlagarh. The said certificate was submitted by him at the relevant time of joining Government Service and as per the Caste Certificate the said Shri Jakub Barik belongs to "Ganda" by Sub-caste and 'Hindu' in Religion, which is recognized as Schedule Caste. The said Shri Jakub Barik had also mentioned his caste as 'Ganda' by sub caste in Hindu

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religion while submitting Attestation forms at the time of recruitment for the post of Pump Attendant.

However, the marriage Certificate bearing No.558 dtd 22.11.2000 and the Complaint dtd Nil received from Smt. Sulakshyana Hanuman has revealed that Shri Jakub Barik had married the complainant Smt. S.Hanuman on 22.11.2000 in a Church at Bolangir in the Christian manner and custom even though he claimed to be of Hindu religion as per the attestation forms and caste certificate submitted by Shri Jakub Barik at the time of recruitment in Government Service at Ordnance Factory Badmal. The above Complaint from Smt. S.Hanuman has unequivocally revealed that the status of Shri Jakub Barik as Schedule Caste (Ganda) under Hindu Religion and his marriage as per Christian tradition are contradictory to each other.

On a reconciliation of the above the Tahasildar, Titlagarh has got the matter verified/required through an enquiry and vide order dtd 21.06.2003 has cancelled the earlier Caste Certificate No.8-24/87 issued on 13.04.87, as the verification revealed that the candidate's claim is false and confirmed that Shri Jakub Barik is belonging to Christian Community and he is Christian. Moreover, the said Shri Jakub Barik, FG has himself admitted before the Inquiring Authority on 28.05.2003 that he is belonging to Christian Community and his religion is Christianity.

Thus, from the above it is evident that Shri Jakub Barik had fraudulently obtained a Caste Certificate, showing as 'Ganda' under Hindu Religion even though belonging to Christian religion, furnishing false information and submitted the same at the time of recruitment in Ordnance Factory Badmal to get a Government employment with a dishonest motive violating the provision of Rule 3(1)(iii) CCS (Conduct) Rules, 1964.

The said Shri Jakub Barik, Fitter General of OFBL has shown gross negligence towards his own family and acted in a manner unbecoming of a Government Servant by neglecting and deserting his wife thereby failed to maintain a responsible and decent standard of

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conducting his private life violating the provisions of Rule 3-B(12) of CCS (Conduct) Rules, 1964.

The said Shri Jakub Barik, Fitter General of OFBL has married to one Sulakhyana Hanuman of Bolangir on 22.11.2000 in a Church in the Christian manner and custom. Though the marriage took place on 22.11.2000 the said Shri Jakub Barik has neither given any intimation about his marriage to his office nor endorsed her name in official document like GPF/CGEGIS/Gratuity nominations and details of family etc. till the missive bearing No.2009/LB/OFBL dt.8.8.2002 which was sent to him advising him to nominate his wife Smt. S.Hanuman in all the official documents to avoid any future complication. The above acts and omissions on part of the said Shri Jakub Barik, Fitter General amount to suppression of material fact to his office with an ulterior motive to hide his religion of being Christian and securing employment against SC quota, even though he was not eligible for SC quota benefits and violation of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964."

The order of punishment under Annexure-7 dated 18th

June, 2004 reads as under: -

" A copy of the Inquiry Report datd. 24.12.2003 submitted by the IO appointed to inquire into the charges levelled against Shri Jakub Barik, Fitter General/MC/P No.6096 of Unit-17 in Charge Sheet Memorandum No. 1505/180/JB/Vig/OFBOL/03 dt.16.07.03 was sent to Shri Jakub Barik, P.No.6096 vide this Office letter of even number dt.08.01.2004. Shri Jakub Barik, FG was given an opportunity of making his representation on the above said Inquiry Report vide this Office letter number of even number dtd. 08.01.2004. The said Shri Jakub Barik has submitted a representation/reply dtd. 24.01.2004 on the said Court of Inquiry Report.

2. On careful consideration and examination of the Inquiry Report dtd. 24.12.2003, representation dated 24.1.2004 of SHRI Jakub Barik on the Court of Inquiry report and other records available viz. Prosecution

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documentary evidence relied in the charge sheet memorandum dtd. 16.7.03 the undersigned applying its mind is satisfied that the following article of charges levelled against Shri Jakub Barik, Fitt. General, P No.6096 vide this office Memorandum number of even number dtd. 16.7.2003 are established as proved violation of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

- (i) Fraudulently obtained a Caste Certificate furnishing false information showing as Schedule Caste under Hindu religion to get a Government employment with a dishonest motive.
- (ii) Suppression of material fact i.e. his marriage with a Christian Woman as per Christian religion and did not intimate the same to his office with an ulterior motive to hide his religion of being Christian.

3. The undersigned has, therefore, come to the conclusion that Shri Jakub Barik, Fitter General of Unit-17/OFBadmal, is not a fit person to be retained in service and therefore hereby imposes the penalty of '**Removal from Service**' with immediate effect on the said Shri Jakub Barik."

5. From the above it is seen that the removal from service of the applicant was on two counts one was for producing false caste certificate and the other one for suppression of material fact i.e. his marriage with a Christian Woman and no intimation of the same to his office. In so far as submission of caste certificate is concerned it is seen that against the order cancelling the caste certificate of the applicant he has approached before the Hon'ble High Court of Orissa in WP (C) No.13783 of 2008. The Hon'ble High Court of Orissa disposed of the matter on 13.4.2009. Relevant portion of the order reads as under:



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"Heard Mr. Routray, Learned Counsel for the Petitioner and the Learned Additional Government Advocate for the Opposite Parties.

By means of this writ petition the petitioner has prayed for quashing of the order dated 21.6.2003 (Annexure-2) passed by the Tahasildar, Titilagarh canceling the caste certificate granted to the petitioner by the said Tahasildar on 13.4.1987 and the order dated 13.3.2007 passed by the Sub Collector, Titilagarh (Annexure-4) dismissing R.M.C. Appeal No. 16/1 of 2003 preferred against the aforesaid order of the Tahasildar.

That Tahasildar after due enquiry cancelled the caste certificate issued to the petitioner on the ground that the petitioner belongs to Christian community and his religion is Christianity and therefore, he does not belong to Scheduled Caste.

It may be mentioned that the Hon'ble Apex Court in Kumari Madhuri Patil v Additional Commissioner, Tribal Development, AIR 1995 SC 94 inter alia directed that all the State Governments shall constitute Committee for verification and scrutiny of caste certificates. Accordingly, the State Government in S.T. & S.C. Development by resolution dated 2nd May 2006 have constituted a State Level Scrutiny Committee under the Chairmanship of Director, S.T. & SC cum Additional Secretary/Join Secretary to Government SC & ST Development Department, Director, OBC representative of Revenue Department, Deputy Director, SCSTR & TI and research Officer (SCP, PCR) of ST & SC Development Department to take up verification/scrutiny of the Scheduled Caste/Scheduled Tribe certificates issued. Therefore, the power to verify/scrutinize the caste certificates issued has been vested with the State Level Committee.

In the counter affidavit filed on behalf of opposite party Nos.2 and 3 it is stated that the matter has also been referred to the State Level Committee. A plea has been taken that till the State Level Committee comes to the conclusion that the petitioner belongs to SC he cannot be treated as a SC and therefore, the cancellation was justified.

Considering the facts and circumstances and in view of the decision of the apex court referred to above, we quash the impugned orders as contained in Annexure-2 and 4 and direct the Tahasildar, Titilagarh to wait for the decision of the State Level Committee and thereafter act accordingly. If the Committee comes to the conclusion that the petitioner does not belong to SC and obtained the caste certificate by fraudulent means, prosecution may be launched against him."

6. Nothing has been brought on record that the Committee has meanwhile given any finding on the caste certificate of the applicant. The authorities have every right to take action against the applicant in accordance with the order of the Hon'ble High Court i.e. after receipt of the report of the Committee. Hence ground No.(i) of the order of punishment is not sustainable in the eyes of law.


7. In so far ground No.ii of the order of removal from service i.e. suppression of material fact i.e. his marriage with a Christian Woman as per Christian religion and ~~did~~ not intimating the same to his office with an ulterior motive to hide his religion of being Christian is concerned, we are of the view that imposition of the punishment of removal on this ground shocks the judicial conscience and, as such needs reconsideration by the authorities.

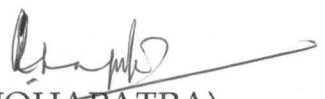
8. For the reasons stated above, after hearing learned counsel for both sides, the orders under Annexure-7 dated 18th of

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the Disciplinary Authority removing the applicant from service & upheld by the Appellate Authority & Revisional Authority in Annexure-8 & 9 dated 27.6.2005 and 10.10.2007 respectively are hereby quashed. The matter is remitted back to the Disciplinary Authority for reinstatement of the applicant to service but without any back wages as no record has been placed by the applicant that during the period from removal he was not in any employment else where. The order shall be complied with by the Respondents within a period of 60(sixty) days from the date of receipt of copy of this order.

9. In the result this OA stands disposed of. No costs.


(A.K.PATNAIK)
Member (Judicial)


(C.R. MOHAPATRA)
Member (Admn.)