

49

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.480 of 2010

Cuttack this the 28th day of February, 2017

D.Vasudeo Rao ...Applicant

-VERSUS-

Union of India & Ors. ...Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ?

S.K. Pattnaik
(S.K.PATTNAIK)
MEMBER(J)

R.C. Misra
(R.C.MISRA)
MEMBER(J)

I authorise Amish Mishra (A) to pronounce the judgment in our behalf & to sign in order
S.K. Pattnaik
28/2/17

I agree.
List for pronouncement
on 28/2/2017.
P.
27/2/2017

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.480 of 2010

Cuttack this the 28th day of February, 2017

CORAM:

HON'BLE SHRI R.C.MISRA, MEMBER(A)
HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)

Sri D.Vasudeo Rao, aged about 54 years, S/o. late D.K.Dada,
Kalyanpur Road, Purani Basti Shadhol, At/PO/Dist-Shahdol,
Madhya Pradesh, PIN-484 001

...Applicant

By the Advocate(s)- Mr.U.B.Mohapatra
S.Mishra

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railway, Rail Vihar,
Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. Divisional Railway Manager, East Coast Railways, KHurda
Road Division, At-Khurda Road, PO-Jatni, Dist-Khurda
3. Divisional Commercial Manager, East Coast Railways,
Khurda Road Division, At-Khurda Road, POI-Jatni, Dist-
Khurda
4. Chief Commercial Manager, East Coast Railways, Khurda
Road Division, At/PO-Khurda Road, PO-Jatni, Dist-Khurda

...Respondents

By the Advocate(s)-Mr.T.Rath

ORDER

S.K.PATTNAIK, MEMBER(J):

In a second round litigation, applicant challenges the
order of removal passed by the Disciplinary Authority dated
23.9.1993(A/8) and the order of the Appellate Authority dated
4.8.2009(A/13). Earlier applicant had approached this Tribunal

S.K. Pattnaik

in O.A.No.609 of 1993 and his application was dismissed vide order dated 24.12.1999. Thereafter, applicant approached the Hon'ble High Court of Orissa in OJC No.1587 of 2000. The Hon'ble High Court vide order dated 3.12.2008 setting aside the impugned order, directed the appellate authority to pass a reasoned order and that is how, the Appellate Authority vide order dated 4.8.2009(A/13) disposed of the appeal upholding the orders of removal passed by the Disciplinary Authority, which is impugned in this O.A.

Applicant's case in short runs as follows:.

2. Applicant is the natural born son of one D.V.N.Murthy, but was adopted by Shri D.K.Dada on 27.11.1960. As per local customs, an Adoption Deed was prepared bearing the signatures of natural father and the witnesses present. At the time of adoption, applicant had already been admitted in the school, for which the name of his natural father was reflected in the academic record. Applicant was born on 6.11.1954 and was adopted at the age of 6 years and 22 days. It is further pleaded by the applicant that though the father approached the school authorities for change of his natural father's name, but it was not changed, as a result of which, in the certificate issued by the Board of Secondary Education in the year 1970, the name of natural father found place. Since the previous Adoption Deed was not registered, the adopted father executed a registered Adoption Deed on 25.3.1981 (A/3). In the year 1981, applicant

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52

applied to the revenue authorities for a caste certificate and after due enquiry, it was issued to him by the Executive Magistrate, Mandala, M.P. (A/4), wherein, he has been recorded as a person belonging to S.T. category. In the meantime, being successful in a selection process, applicant joined as Ticket Collector under S.E. Railways in the year 1984. The cause of action for the present case arose on 15.7.1986 when the applicant was served with a charge memo on the allegation that even though he does not belong to S.T. community, but got his appointment under S.T. quota by virtue of a forged certificate. Applicant submitted all his documents of adoption, but the Inquiry Officer found the charges to have been proved against him. Being aggrieved by the said report, applicant filed his representation before the D.R.M., who on scrutiny, ordered for fresh inquiry vide his order dated 30.3.1993. Though the caste certificate was issued by one P.K.Shukla, Executive Magistrate, Mandala, the I.O. asked the Tahasildar Mandala about the genuineness of the said caste certificate, who reported that no such caste certificate was issued by his office. Grievance of the applicant is that the disciplinary authority without proper inquiry, only on the basis of the caste certificate removed him from service. It is stated that the DRM vide Memo dated 26.7.1993 (A/6) issued notice to the applicant to represent against the proposed punishment of dismissal from service. To this, applicant submitted his

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53

representation dated 22.8.1993(A/7) and finally, the Disciplinary Authority imposed punishment of removal from service on the applicant vide order dated 23.8.1993(A/8). In the said order, the Disciplinary Authority, i.e., D.R.M., Khurda had directed the applicant to file an appeal before the Chief Commercial Manager, Khurda, if he so desired. Applicant filed representation dated 9.10.2013 informing the DRM that he being not his appointing authority, the order of dismissal cannot be accepted. However, the applicant submitted his appeal before the Chief Commercial Manager, S.E.Railways, Calcutta against the order of removal. In the meantime, applicant filed a Civil Suit before the Civil Judge, Bilaspur for declaration of his status as adopted son of D.K.Dada which was decreed in his favour vide order dated 2.3.1996(A/10). Applicant submitted the said order before the DRM to reinstate him in service, but without any success. Since no order was passed by the DRM or the appellate authority, applicant approached this Tribunal for redressal of his grievance.

3. Respondents contested the case by filing a detailed counter. According to Respondents, applicant was appointed as Ticket Collector on 16.1.1984 and joined at Khurda Road on 2.3.1984 after undergoing the required training. During the course of his service as such, the Vigilance Department of S.E. Railways got information regarding false declaration of his caste and community by the applicant at the time of applying

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for the job and accordingly, the matter was investigated. During the course of investigation, it revealed that the applicant was born through his natural father named D.V.N.Murty, who belongs to Brahmin category. Although applicant secured the job as ST candidate on the plea of being adopted son of one named D.K.Dada belonging to ST community, he failed to submit any valid document in original in support of his claim as S.T. community. He submitted one xerox copy of alleged adoption deed made in in Hindi executed by one named D.K.Dada of Shahdol (Madhya Pradesh) as "Dattack Grahana Patra" made in non-judicial stamp paper of Rs.100 with indication that the original parent of Sri D.V.Rao being dead at his childhood, he had taken him in adoption and the said alleged document was executed on 4.2.1981 vide A/3 to this O.A.

4. Considering the gravity of the misconduct committed by the applicant A major penalty charge sheet was issued. The matter was enquired into as per the laid down provision under the Railway Servants (D&A) Rules, 1968 and on conclusion, the charges leveled against the applicant were found as conclusively proved. The DRM/KUR as the Divisional Head on being directed by this Hon'ble Tribunal vide order dated 13.12.92 passed in O.A.No.646/1992 decided the case as the Disciplinary Authority, who found the applicant not a fit person to be retained in the Railway Service and accordingly, passed a

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55

reasoned and speaking order dated 23.9.93 dismissing the applicant from railway service with immediate effect vide Annexure-A/8 to the O.A.

5. Against the order of punishment, applicant approached this Tribunal in O.A.No.609/93 and the Tribunal dismissed the said O.A. vide order dated 24.12.1999. Against this order, the applicant preferred WP (C) No.1587/2000 before the Hon'ble High Court of Orissa and the Hon'ble High Court vide order dated 3.12.2008 set aside the orders of this Tribunal and directed the Appellate Authority to pass a reasoned order on the appeal preferred by the applicant before the Chief Commercial Manager. In accordance with the orders of the Hon'ble High Court, the Chief Commercial Manager, as the Appellate Authority disposed of the appeal vide order dated 4.8.2009 upholding the orders of the Disciplinary Authority. The present O.A. has been filed challenging the same.

6. Admittedly, applicant was selected as a Ticket Collector in the year 1984 against a vacancy reserved for Scheduled Tribe category. Subsequently, the caste certificate produced by him for securing the job in the Railways was found to be false. On the basis of such caste certificate not being found genuine, the Appellate Authority, i.e., Chief Commercial Manager, East Coast Railways, Bhubaneswar, upheld the orders of dismissal dated 23.9.1993 as passed by the Disciplinary Authority. The Appellate Authority passed order on 4.8.2009 in obedience to

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the orders of the Hon'ble High Court in the Writ Petition, which is impugned in this O.A. Since this is a second round litigation and that too after remand by the Hon'ble High Court, a very short question evolves for consideration is whether a Bramhin boy adopted to a Scheduled Tribe family can get the benefit of reservation meant for that category. This legal position has long since been decided and resolved by the Hon'ble Apex Court in AIR 1996 SC 1011 (Valsamma Paul vs. Cochin University). According to Their Lordships, Dalits (SC) and Tribes (ST) suffered social and economic disabilities recognized by Articles 17 & 15 (2). Consequently, they became socially, culturally and educationally backward; the OBCs also suffered social and educational backwardness. The object of reservation is to remove these handicaps, disadvantages, sufferings and restrictions to which the members of the Dalits or Tribes or OBCs were subjected to and was sought to bring them in the mainstream of the nation's life by providing them opportunities and facilities. Their Lordships have further observed that when a member is transplanted into Dalits, Tribes and OBCs he/she must of necessity also undergo some handicaps, be subject to the same disabilities, disadvantages, indignities or sufferings so as to entitle the candidate to avail the facility of reservation. A candidate who had the advantageous start in life being born in forward caste and had much of advantageous life but is transplanted in backward caste by adoption or marriage or

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conversion, does not become eligible to the benefit of reservation either under Article 15(4) or 16(4), as the case may be. Further, Their Lordships have held that acquisition of the status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution. According to Their Lordships, recognition of the candidate by the members of the backward class would not be relevant for the purpose of his entitlement to the reservation under Article 16(4) of the Constitution. In view of such authoritative pronouncements, even if for the sake of arguments, it is admitted that the applicant was adopted at the age of six years by an S.T. community family, he would not get any benefit meant exclusively for S.T. category, especially, in public service whose reservation is only meant for that class of persons.

7. Apart from the legal hurdle, factually also the applicant could not prove that he was legally adopted by his adoptive parents as there is no convincing ancillary document of adoption; much less a registered deed containing the signatures of the natural parents and fictitious persons. The deed executed in 1989 as claimed by the applicant can only be a deed of an understanding, but no right flows from it. Even a decree obtained by the applicant on the declaratory suit of adoption before the Civil Judge, Bilaspur is binding on the

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parties to the suit only and by no means to the Railways authorities, who were not the parties to the *lis*. Therefore, there was nothing wrong on the part of the Appellate Authority in not believing the adoption of the applicant since in the school records, the name of his adopted father did not find place. Had the name of the applicant's adoptive father found place in the matriculation certificate, the matter could have been viewed from a different angle. No doubt the applicant showing himself as a member of Scheduled Tribe community obtained employment and thus, a fraud was perpetrated by him. The Department was therefore, right in getting rid of him as it would have blocked a legal quota belonging to Scheduled Tribe category.

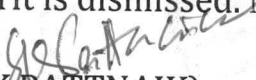
8. Learned senior counsel for the applicant argued that the order of the Disciplinary Authority is not legally tenable as he is not the appointing authority. Neither any appointment letter filed nor any rules cited to show that the disciplinary authority who has passed the orders of punishment not being the appointing authority of the delinquent employee could not have so passed. Furthermore, since such a matter had already been adjudicated in the earlier O.A. and was not accepted and the applicant himself had preferred the writ petition and as such a finding was not concurred by the Hon'ble High Court, the said plea cannot be undertaken in a second round of litigation as it is barred by the principles of constructive *res judi cata*.

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59

9. Apart from this, applicant himself had preferred an appeal before the Chief Commercial Manager, treating himself as the Appellate Authority and considering his submission, as because, the departmental appeal was pending, the Hon'ble High Court directed the railway authorities to dispose of the appeal. It cannot be argued at this stage that the Disciplinary Authority and the Appellate Authority were not the competent authorities. Since the submission of the learned senior counsel is not legally tenable, we are not inclined to grant any relief to the applicant.

10. For the reasons discussed above, the O.A. being devoid of merit is dismissed. No costs.


(S.K. PATTNAIK)
MEMBER(J)


(R.C. MISRA)
MEMBER(J)

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