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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.Nos.440 & 441 of 2012

Cuttack this the 17th day of May, 2016

In O.A.Nos.440 of 2012

S.Veerabhadra Rao...Applicant
-VERSUS-
Union of India & Ors....Respondents

In O.A.Nos.441 of 2012

S.Ravi...Applicant
-VERSUS-
Union of India & Ors..Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? No
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? No


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
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HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

In O.A.Nos.440 of 2012

S.Veerabhadra Rao

Aged about 40 years

S/o-S.Gurunadham

At present working as Loco Pilot Goods-II,
Titilagarh

Under the Senior Divisional Mechanical Engineer

East Coast Railway

Sambalpur Railway Division

At/PO/Dist-Sambalpur

...Applicant

By the Advocate(s)-M/s.B.S.Tripathy

M.K.Rath

J.Pati

Mrs.M.Bhagat

-VERSUS-

Union of India represented through:

1. The General Manager
East Coast Railway,
Rail Vihar
At/PO-Chandrasekharpur
Bhubaneswar
Dist-Khurda
2. The Divisional Railway Manager
East Coast Railway
Sambalpur Railway Division
At/PO/Dist-Sambalpur
3. The Senior Divisional Mechanical Engineer
East Coast Railway
Sambalpur Railway Division
At/PO/Dist-Sambalpur



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4. Mr.G.Bandyopadhyay
Loco Inspector-cum-inquiry Officer
East Coast Railway
At/PO/Dist-Sambalpur
5. The District Collector & Magistrate
Srikakulam
Dist-Srikakulam (Andhra Pradesh)

...Respondents

By the Advocate(s)-Mr.D.K.Behera (res.nos.2 & 3)

In O.A.No.441 of 2012

S. Ravi
Aged about 40 years
S/o-Late Bhimudu
At present working as Loco Pilot Goods-II
Titilagarh
Under the Senior Divisional Mechanical Engineer
East Coast Railway,
Sambalpur Railway Division
At/PO/Dist-Sambalpur

...Applicant

By the Advocate(s)-M/s.B.S.Tripathy
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East Coast Railway
Sambalpur Railway Division
At/PO/Dist-Sambalpur



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3. The Senior Divisional Mechanical Engineer
East Coast Railway,
Sambalpur Railway Division
At/PO/Dist-Sambalpur
4. Mr. S.K.Biswas
Loco Inspector-cum-Inquiry Officer
East Coast Railway
At/PO/Dist-Sambalpur
5. The District Collector & Magistrate
Srikakulam
Dist-Srikakulam (Andhra Pradesh)

...Respondents

By the Advocate(s)-Mr.D.K.Behera (res.nos.2 & 3)

ORDER

R.C.MISRA, MEMBER(A):

Since the point to be decided arises out of the similar facts and circumstances, even though both the Original Applications had been heard separately, we dispose of both the matters through this common order. For the sake of convenience, facts in O.A.No.441 of 2012 are being narrated hereunder.

2. Applicant, S.Ravi in O.A.No.441 of 2012 belongs to "Bentho Oriya" community, which is recognized as Scheduled Tribe. In the year, 1998, he had been appointed to the post of Loco Pilot under the respondent-railways. Subsequently, he was promoted to the post of Loco Pilot, Goods-II in the year 2001. While working as such, a Memorandum of Charge dated 14.12.2009(A/1) was issued to him on the basis of a confidential letter dated 20.08.2005 received by the railway authorities from Mandal Revenue Officer, Tekkali indicating



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that the Benthoriya Caste Certificate issued during the year 1997, as produced by the applicant is forged one. The Article of Charge reads as under.

"That Shri S.Ravi, Loco Pilot "Goods"-II/Loco/TLG, while functioning as such, has conducted misconduct in as much as:

That Shri S.Ravi, Loco Pilot "Goods"-II/Loco/TLG, while functioning as such, has secured employment in Indian Railway Organization on the strength of fake ST Caste Certificate thereby violated Rule-3.1(i) & (iii) of Railway Service (Conduct) Rules, 1986".

3. In response to this, ^{although} applicant ^{although} submitted his explanation, but the Railway Administration chose to conduct an inquiry into the charge and in the circumstances, Inquiry Officer was appointed for the purpose. On the other hand, applicant also employed his defence counsel. Thereafter, inquiry was conducted on 3.7.2010, 10.9.2010 and on 15.5.2012, the Inquiry Officer concluded the inquiry and asked the applicant to submit his defence statement/brief defence. While the matter stood thus, the General Secretary, Srikakulam District, Benthoriya Association, made a representation to the Government of Andhra Pradesh alleging that the Revenue Officials are submitting false report to the higher authorities thereby recommending cancellation of Benthoriya Caste Certificates already issued to the claimants, without conducting proper inquiry. In consideration of the aforesaid representation of the Secretary, Benthoriya Association, Government of Andhra Pradesh, vide Memo dated 21.05.2009(A/2) ordered

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that pending finalization of the issue, the status quo should be maintained in already issued Benthoriya Caste Certificates and no certificate be cancelled when the status quo orders are in operation. Accordingly, District Collector, Srikakulam was directed to take necessary action in the matter. Consequent upon this, applicant submitted a representation dated 26.5.2011(A/3) to the District Collector & Magistrate, Srikakulam with a request to indicate the railway authorities not to take any further action against him since the matter is pending with the Government of Andhra Pradesh and status quo orders are in force. As it reveals from the O.A., two letters have been addressed vide A/4 and A/5 dated 2.6.2011 and 15.7.2011 respectively, to the railway authorities from the O/o. Collector, Srikakulam in keeping with the order of the Government of Andhra Pradesh wherein status quo, as contained in Memo dated 21.05.2009(A/2) had been directed to be maintained.

4. Grievance of the applicant is that despite all those material information having been provided to the Inquiry Officer by his defence counsel, he is being pursued to submit his defence statement/brief defence and finding no other alternative, he has approached this Tribunal in this Original Application, lest, the authorities should take coercive action against him on conclusion of the disciplinary proceedings. In



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the above backdrop, applicant has sought for the following relief.

- i) To pass appropriate orders quashing the memorandum of charge sheet dated 14.12.2009 in Annexure-A/1.
- ii) To pass such further order/orders as may be deemed just and proper in the facts and circumstances of the case and allow this O.A. with costs.

5. The main thrust of the O.A. is that since the Government of Andhra Pradesh have issued instructions on the issue of Benthoriya Caste Certificate and directed status quo to be maintained and that the caste certificates already issued should not be cancelled pending finalization of the matter, it was unreasonable - rather arbitrary on the part of the Inquiry Officer to proceed further in the matter.

6. Respondent-railways have filed their counter opposing the claim of the applicant. While not disputing the factual aspects of the matter, it has been submitted that the instructions issued by the Government of Andhra Pradesh do not restrict the railway authorities to proceed against the applicant, who has secured job in the railways by dint of a fake caste certificate. According to respondents, Government of Andhra Pradesh have ordered to maintain status quo where caste certificates have already been issued. But, that does not mean that the railway authorities are not empowered to conduct inquiry in a case where the signature of the authorities



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on the Benthoriya Caste Certificate produced is found to be forged at a later stage.

7. Applicant has filed rejoinder to the counter in which it has been stated that the remarks of the Mandal Revenue Officer, Tekkali to the effect that the signature of the Gram Panchayat Sarpanch on the S.T. caste certificate is forged cannot be accepted in view of the fact that the Government of Andhra Pradesh have ordered status quo to be maintained in already issued Benthoriya Caste Certificate with an observation that Mandal Revenue Officials are submitting false report to the higher officials recommending cancellation of Benthoriya Caste Certificate without conducting proper enquiry.

8. We have perused the pleadings and heard the learned counsel for both the sides in extenso. We have also gone through the written notes of submission filed by the parties.

9. From the pleadings of the parties, the moot question to be answered is whether the railway authorities are within their rights to proceed further in the departmental proceedings notwithstanding the instructions issued by the Government of Andhra Pradesh in Memo dated 21.05.2009(A/2).

10. Before coming to decide the matter on merit, we would like to note that this O.A. came up for admission on 11.6.2012. On that date, this Tribunal, while admitting the O.A., as an interim measure, directed ^{that} status quo as on the date in so far as disciplinary proceedings initiated against the applicant is

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concerned shall be maintained and this interim order is in force as on date.

11. Now, coming to the merit of the matter, we would like to indicate that the charge leveled against the applicant is that he has secured employment in the Indian Railway Organization on the strength of a fake S.T. Caste Certificate thereby violated Rule-3.1(i) & (iii) of Railway Service (Conduct) Rules, 1986 and therefore, he is liable to be proceeded against departmentally.

12. On the other hand, the main-stay of authority of the applicant is that the Government of Andhra Pradesh, having ordered vide Memo dated 21.05.2009(A/2) that pending finalization of the issue, the status quo should be maintained in already issued Benthoriya Caste Certificates and no certificate be cancelled when the status quo orders are in operation. Backed by this, applicant has retaliated the action of the respondent-railways in proceeding against him departmentally.

13. We have considered these aspects of the matter threadbare. In a disciplinary proceedings matter, the nature and gravity of charge are of vital importance. Applicant has been issued with a Memorandum of charge because of production of a fake Benthoriya Caste Certificate which is recognized as Scheduled Tribe wherein the signatures of the concerned authorities have been found to be forged. It is not a case where the railway-authorities are not recognizing the applicant as an Scheduled Tribe category, he being hailed from

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Bentho Oriya Community. Rather, it is a case where the genuineness of the caste certificate having been called in question, inquiry is being conducted. Even conceding for the sake of argument, if the Government of Andhra Pradesh finalized the matter by directing that the Bentho Oriya Caste Certificate already issued in favour of the claimants should hold good and need not be cancelled, then, a point arises from within to be considered is whether the caste certificate so issued could legally be valid or tenable irrespective of the fact that the same has been issued containing the forged signature of the authorities. Answer to this unequivocally is in the negative. To make the matter more illustrative, we would like to put it in other words that ***"certificate issued containing the signature of the proper authorities"*** and on the contrary, ***"certificate issued containing forged signatures of the authorities"*** are of two different and distinct attributes, which by no stretch of imagination can attract similar treatment and in such a situation whereas the former carrying a hall mark is considered and accepted beyond doubt, the latter requires a ^{probe}~~probit~~. In this regard, the employer is always within its domain to verify the genuineness or authenticity of any certificate or testimonial at any point of time and to this extent, nothing can prevent or prohibit the authorities from doing so. In the instant case, the crux of the issue lies on the genuineness of Bentho Oriya Caste Certificate and it is the rule of law which empowers the

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authorities to probe into the matter in order to come to a conclusion that the applicant has not adopted any unfair means for the purpose of securing job in the Railways. Instructions issued by the Government of Andhra Pradesh, in our considered view, are as a measure of safeguards in so far as legality of issuing Benthoriya Caste Certificate declaring a particular class or category of persons to be belonging to Scheduled Tribe community, is concerned and not on the authorities issuing such certificates whose signatures are found to be forged. Therefore, by no stretch of imagination, the instructions issued by the Government of Andhra Pradesh, as aforesaid, can take away the authority exercisable by the railway administration in the matter of conducting an inquiry in order to come to a conclusion on the genuineness or otherwise of the caste certificate so produced. Therefore, rightly, the railway authorities have not questioned the legality of such caste certificate being issued in favour of the applicant. Their point of view based on which a fact finding inquiry is being conducted is regarding genuineness of caste certificate which is alleged to be fake one inasmuch as the signature of the authorities concerned has been forged, let alone, Benthoriya Caste.

15. From the above analysis, we answer the point in issue that the railway authorities are within their rights to proceed further in the departmental proceedings notwithstanding the instructions issued by the Government of Andhra Pradesh in

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Memo dated 21.05.2009(A/2) and on the other hand, applicant should establish his bona fide.

16. The respondents have distinguished the issue on which the charge sheet was framed. It is the specific issue of suspicion of forgery of the caste certificate issued in 1987 which needed to be inquired into, notwithstanding the subsequent development that the Government of Andhra Pradesh and Collector, Srikakulam had intimated to the railway authorities that pending a final decision on the matter of recognition of Ben^hho Oriya as S.T. community, no action should be taken for cancellation of the certificates that have already been issued. The letter of Principal Secretary, Social Welfare Department, Government of Andhra Pradesh dated 21.5.2009 is intended to maintain status quo with regard to the position, pending a final decision on the issue. As on to-day, it is not known what ^{was} final ⁺ decision in the matter which needs to be verified. Whether the final decision if taken will have any impact on the pending departmental proceeding is, of course, another matter, since the charge against the applicant is that the certificate issued in his favour is a forged document. The process of inquiry has to be undertaken with due objectivity, after taking into account all the relevant facts, documents and depositions. It will be very important for the authorities to ensure that principle of natural justice is observed, and reasonable opportunity is granted to the applicant to plead his case. The record reveals that as on the

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date when the O.A. was admitted, and status quo was directed to be maintained as an interim measure, the Inquiry Officer had concluded the inquiry and directed the applicant to submit defence statement/brief defence. There is no reason why the applicant would not submit his defence statement. A disciplinary proceeding is quasi-judicial in nature. The Tribunal cannot direct that a charge sheet should be quashed, unless it is found at the outset that the charge sheet was entirely vague, or it was issued by an authority who is not competent to do so. Otherwise, if on a charge sheet a process of inquiry has been initiated, the process should continue as per the statute and the principles of law relevant in the matter. Whatever defence the applicant likes to put forth, should be made before the authorities who are statutorily empowered to consider his matter. These points of defence if agitated before the Tribunal would not create any justification for the Tribunal to step out in the matter, and interdict the charges in an over-enthusiastic move without giving opportunity to the disciplinary authorities to follow the process of inquiry in accordance with statutory provisions. Therefore, in the present case, we find no ground whatsoever to restrain the disciplinary authorities from continuing with the process of inquiry into the charges framed against the applicant. We, however, direct that the respondent-authorities shall observe all principles of natural justice, give

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adequate opportunity to the applicant to present his case in accordance with the provisions of the statute.

17. We do not therefore, find any justifiable ground to grant the relief sought for by the applicants. Both O.A.Nos. 440 & 441 of 2012 are therefore, dismissed along with the aforesaid observations, with no order as to costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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