

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

10

O.A. No. : 84/1996

Date of Order : 20-10-98.

Hari Shankar S/o Shri Daya Ram by caste Dhanka, aged 23 years r/o Raika Bagh, 1st Bank Colony, Near Milita Hospital Road, Jodhpur.

..Applicant.

Versus

1. Union of India through the General Manager,
N. Rly., Baroda House, New Delhi.
2. DY. CHief Mechanical Bhgineer, Work Shop, N. Rly,
Jodhpur.

..Respondents.

Mr. S.K. Malik, counsel for the applicant.

Mr. S.S. Vyas, counsel for the respondents.

CORAM :

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. N.P. Nawani, Administrative Member.

PER HON'BLE MR. A.K. MISRA :

The applicant has filed this OA with a prayer that the order Annexure A/1 dated 30.9.1995 be quashed and the respondents be directed to give appointment to the applicant from the date persons mentioned in Annexure A/3 dated 30.12.1992 and below the applicant were appointed with all consequential benefits including seniority.

2. Notices of the OA were given to the respondents who have filed their reply to which no rejoinder was filed by the applicant.

3. It is alleged by the applicant that he belongs to Dhanka caste which is a ~~caste~~ belonging to Scheduled Tribe. On the

2/1

11

request of the applicant, Tehsildar, Jodhpur, an authority competent to issue caste certificate, issued certificate dated 29.11.1989 to the applicant whereby certifying the applicant to be belonging to Dhanka caste of Scheduled Tribe. It is further alleged by the applicant that the respondents Railways invited applications for filling the post of Khalasis from amongst the persons belonging to Scheduled Tribe. In response thereto, the applicant applied for the post of Khalasi and was duly selected by the respondents. The applicant's name is empanelled at serial No. 6 of the panel dated 30.12.1992 Annexure A/3. It is also alleged by the applicant that respondents referred the case of the applicant and few others to the Collector, Jodhpur for verification of caste certificate. In reply the respondents were informed that the caste certificate issued by the authority is genuine. However, the applicant was informed by the respondents that the name of the applicant has been deleted from the panel Annexure A/3 as a result of inquiry in respect of caste certificate. Consequent to this action, the applicant was not appointed to the post he was interviewed for. Hence the O.A.

4. The applicant has challenged the action of the respondents on the grounds that no notice was given to the applicant before the impugned order Annexure A/1 was passed, that the respondents have wrongly discarded the caste certificate issued by the competent authority which in fact was binding on them and the applicant was given no opportunity to participate in the inquiry and put forward his contention.

5. On the other hand, the respondents have stated that the certificate submitted by the applicant in support of his claim that he belongs to Dhanka Caste of Scheduled Tribe Community, was found suspicious because applicant's father Daya Ram who is employed in Carriage and Wagon Department of the respondents department belongs to Bagri caste of Scheduled Caste Community as per his service record and is availing privileges admissible to Scheduled Caste candidate. Since the father belongs to Scheduled Caste Community, the son can not belong to a Scheduled Tribe Community and that is why the Collector was requested to make inquiry in this matter. However, the District Collector, Jodhpur communicated that the certificate issued was genuine one and no inquiry whatsoever was made by the Collector in this regard as requested by the

30/11/

respondents. It is further alleged by the respondents that those persons were given appointment in respect of whom there were no complaints of filing false caste certificate but the applicant can not claim to be appointed on that ground. It is also alleged by the respondents that the vigilance department of the Railways had also conducted an inquiry in the matter. On coming to the conclusion of falsity of the caste certificate, their names were directed to be removed from the panel and consequently name of such persons including that of the applicant was removed from the panel, no notice was required to be given before the removal of the name of the applicant from the panel. The certificate issued by a Tehsildar was based on the application of the applicant with supportive documents but that does not mean that the applicant in fact belongs to the Scheduled Tribe Community. By no stretch of imagination it could be accepted that if the father of the applicant belongs to Scheduled Caste Community, the son would belong to Scheduled Tribe Community. The applicant has not availed the departmental remedies in respect of Annexure A/1. Therefore, the OA is not maintainable.

6. We have heard the learned counsel for the parties and gone through the case file.

7. It was argued by the learned counsel for the applicant that there was no reason with the respondents to dis-believe the caste certificate issued by the Tehsildar who is competent authority to issue such certificate. He has cited 1997 Supreme Court Cases (L&S) 1825, R. Kandasamy Vs. Chief Engineer Madras Port Trust, 1998 (3) ATJ page 314 R.Rajagopal Vs. Regional Provident Fund Commissioner, Chennai, 1996(1) ATJ, 460 G. Sumathi Vs. Union of India and 1988 (2) SLJ, page 600 V. Baghavathy Vs. District Collector and Others.

8. On the other hand, learned counsel for the respondents has argued that the father of the applicant who is an employee of the Railways is listed as Scheduled Caste candidate. Therefore, his son who is applicant in the instant case can not belong to Scheduled Tribe Community. Moreover, the contentions of the respondents have not been challenged by way of rejoinder. Therefore, the same can not be disputed. There has been a detailed vigilance inquiry also in the matter and consequent thereto the

[Signature]

13

claim of the applicant that he belongs to Scheduled Caste community has been found to be wrong. He has further argued that the rulings cited by the learned counsel for the applicant are distinguishable on facts and do not render any help to the applicant in the matter.

9. We have considered the rival arguments and rulings cited by the learned counsel for the applicant. So far as the rules propounded in these rulings, there can not be any dispute. However, the rulings are not applicable in the instant case because of factual difference. In 1997 SCC (L&S) 1825, the caste certificate issued by the Tehsildar was not accepted by the appointing authority on the ground that the caste certificate should have been issued by the Revenue Divisional Officer as per the Government order dated 11th November, 1989. In this context it was held by Hon'ble the Supreme Court that Caste certificate issued by the Tehsildar prior to 11th November, 1989 was valid and has to be acted upon by the appointing authority but no such controversy is involved in this case. Hence, the principal laid down in this ruling is not helpful to the applicant.

10. In 1998(3) ATJ page 314, the applicant was initially appointed as L.D.C. against Scheduled Caste Quota in the Central Secretariat Clerical Service. Subsequently, the applicant was relieved from the said department and had joined the Regional Provident Fund Office where he was asked to submit community certificate afresh from Revenue Divisional Officer. The Revenue Divisional Officer refused to issue the certificate and it is in this context it was held by the Tribunal that the certificate issued by the Tehsildar up to 11.11.1989 was to be followed and the applicant can not be directed to produce a fresh certificate from Revenue Department. The certificate issued by the Tehsildar shall continue to be in force till cancelled. Obviously no such controversy is involved in this case. Therefore, the rule as laid down in this ruling also does not help the applicant.

11. In 1996(1) ATJ, page 460, the services of the applicant were terminated during probation period on the ground that she had submitted a bogus certificate of caste at the time of her appointment. In this context it was held that the termination from service was a penalty. It was further held that the competent

20/4

authority has to hold an inquiry giving full opportunity to the person concerned when community certificate is cancelled on the ground of falsity. In this case, the applicant had produced a caste certificate that she belongs to Konda Reddy community which is a scheduled caste community. When inquiry was posed to the Revenue Divisional Officer, Mattur, he stated that he had not issued such certificate during his tenure to any Konda Reddy community candidate and it is on this information the certificate presented by the applicant was held to be bogus. But in the present case, the facts are that the applicant claims himself to be a Scheduled Tribe candidate on the basis of the certificate presented by him whereas his father who is in employment of the respondents is a Scheduled Caste candidate. There is no such question of non issue of certificate etc. It is in view of the present facts that the certificate is not acted upon by the respondents. The facts of the case narrated above and the facts of the case in hand are quite different to each other. Hence, this ruling also does not help the applicant.

from

12. In 1988(2) SLJ (CAT) page 600 on inquiry to the Collector it was reported by the Collector that the caste certificate was not genuine. However, the caste certificate was not cancelled by the Collector. It was in this context it was held that unless the caste certificate is cancelled it has got to be acted upon and for cancellation of the caste certificate procedure has to be followed as laid down in the case of S.P. Sakthi Devi Vs. Collector of Salem and Ors. In the instant case, neither the certificate has been held to be bogus nor has been cancelled. It is a question of not acting upon the certificate as on the basis of certificate, applicant claims himself to be a Scheduled Tribe candidate whereas his father is a Scheduled Caste candidate.

13. If arguments of the learned Advocate for the applicant, which are based on the rulings cited above, are to be accepted, it would mean that the applicant shall have to be treated by the department on the basis of the caste certificate as Scheduled Tribe candidate whereas his father would be treated in the same department as Scheduled Caste candidate on the basis of his caste status in the service record. In our opinion such sort of anomaly can not be allowed to be created. giving appointment to the applicant on the basis of caste certificate which he has produced

200

15

would mean that a wrong is perpetuated. This can never be the intention of law and law laying authorities. If the father belongs to Scheduled Caste community, his son naturally would belong to Scheduled Caste community. This can not be imagined that a son would be a Scheduled Tribe candidate when his father is a Scheduled Caste candidate.

14. We have also gone through the departmental vigilance file from which it appears that the father of the applicant had been treated as per his caste status a Scheduled Caste candidate and has availed benefits available to such candidate. This fact has not been controverted or disputed by the applicant either by way of rejoinder or otherwise. Therefore, we are of the opinion that the department has rightly come to the conclusion that a son of a Scheduled Caste candidate can not be Scheduled Tribe candidate for the purpose of appointment. The department has acted according to the facts of the case in deleting the name of the applicant from the panel. From the departmental vigilance file it also appears that father of the applicant was instrumental in getting the application of the applicant forwarded to the concerned authorities for consideration and appointment. Thus, it is clear that father and son both were somehow trying to secure the appointment on the basis of wrong caste certificate or wrong caste categorisation.

15. In our view, rejection of the candidature of the applicant for appointment and deleting his name from panel by the respondents was perfectly in order and no notice in our opinion was required to be given to the applicant before the action was taken by the respondents.

16. In our opinion, the OA deserves to be dismissed and is hereby dismissed with no order as to costs.


(N.P. NAWANI)

MEMBER (A)


28/10/99
(A.K. MISRA)

MEMBER (J)