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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 39

1997

~~EA=No.~~

DATE OF DECISION : 22.8.2000.

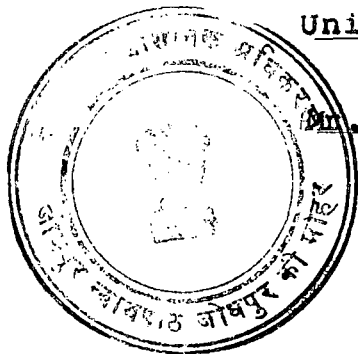
Tikam Chand Petitioner

Mr. Y.K. Sharma, Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent

Mr. R.K. Soni, Advocate for the Respondent (s)



CORAM :

The Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

The Hon'ble Mr. Gopal Singh, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(Signature)
(GOPAL SINGH)
Adm. Member

(Signature)
(B.S. RAIKOTE)
Vice Chairman

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(14)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
J_O_D_H_P_U_R.

Date of Order : 22.08.2000

O.A. No. 39/1997

Tikam Chand S/O Ishwar Dass, aged 56 years, Ex Senior
Head Shroff Divisional Cash Office, Northern Railway,
Bikaner, R/O 5-D/52, Jai Narain Vyas Colony, Bikaner-334001

... Applicant

vs

1. Union of India through General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.
2. Financial Adviser and Chief Accounts Officer (B & E) Northern Railway, Headquarters Office, Baroda House, New Delhi.
3. Chief Cashier (J.A.) Northern Railway, New Multi-storeyed Building, Near New Delhi Railway Station, New Delhi.
4. Shri S.S. Bodh Enquiry Officer, Senior Accounts Officer, (Const) Northern Railway Kashmere Gate, Delhi.
5. Shri C.L. Anand, Office Supdt., in the office of Chief Cashier (J.A.) Northern Railway, New Multi-storeyed Building, Near New Delhi Railway Station, New Delhi.
6. Divisional Accounts Officer, Northern Railway Bikaner Division, Bikaner.

... Respondents

Mr. Y.K. Sharma, Counsel for the Applicant.

Mr. R.K. Soni, Counsel for the Respondents.

CGRAM :

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

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O_R_D_E_R

(PER HON'BLE MR. GOPAL SINGH)

In this application under Section 19 of the Administrative Tribunals Act, 1985, applicant Tikam Chand has prayed for quashing order dated 12.8.1993 (Annexure A/1) and order dated 14.9.1995 (Annexure A/2).

2. Applicant's case is that he was appointed on the post of Shroff with the respondent-Railways through Railway Service Commission, Allahabad on 11.10.1962 and thereafter promoted as Senior Head Shroff in 1964. That on 04.10.1966, the Special Police Establishment, Jaipur registered a case against the applicant on the charge that he cheated the Railway Administration by getting employment as Shroff in 1962 representing falsely in his application that he belonged to Santiya Caste, which is recognised as Scheduled Caste and further that the caste certificate obtained by the applicant from the Tehsildar, Bikaner was a forged one. The Special Magistrate vide his order dated 24.9.1970, convicted the applicant for offence under Section 420 and 471 of Indian Penal Code. In appeal the applicant was, however, acquitted by the learned Additional Sessions Judge, Tonk vide his order dated 10.11.1971. Thereafter, the applicant was reinstated in service with effect from 09.5.1972 with full benefits. The applicant was again placed under suspension w.e.f. 11.9.1979 vide respondents' order dated 10.9.1979 (Annex.A/5) and he was served with a chargesheet on 26.9.1979 for the same charge for which he was proceeded against in a Criminal Court and without conducting a proper enquiry, the applicant was dismissed from service vide order dated 06.5.1980 (Annexure A/7). Appeal against the penalty of dismissal was also

Gopal Singh

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rejected on 20.11.1980. Feeling aggrieved, the applicant filed a Civil Suit No.309/83 in the Court of Additional Civil Judge, which stood transferred as TA No. 1834/86 before this Tribunal; T.A. No.1834/86 was decided by this Tribunal on 30.12.1988 and enquiry report and impugned punishment orders were set aside and the respondents were directed to hold fresh enquiry in accordance with law within a period of six months of that order. When the applicant was not re-instated in service consequent upon the orders of the Tribunal dated 30.12.1988, the applicant filed an O.A. No.468/89. In terms of Tribunal's order dated 29.1.1990 in O.A. No.468/89 the applicant was to be treated under deemed suspension w.e.f. 06.5.1980. Thereafter, a fresh chargesheet dated 16.3.1990 was served upon the applicant, without cancelling the earlier chargesheet dated 26.9.79. The applicant agitated this issue before the Principal Bench of the CAT., vide O.A. No.1974/90, which was dismissed on 17.7.1992. Special Leave Petition No.331/93, on the same issue was also dismissed by the Supreme Court on 01.3.1993 with the observation " the authorities are directed to complete the enquiry within three weeks from the receipt of this order. It is understood that the authorities will proceed only with the new chargesheet." Enquiry under chargesheet dated 16.8.1990 was initiated on 03.12.90, and on conclusion of the enquiry the penalty of dismissal from service was imposed upon the applicant vide disciplinary authority order dated 12.8.1993 (Annexure A/1). Appeal thereof was rejected vide A.A. order dated 14.9.1995 (Annexure A/2). Feeling aggrieved, the applicant has filed this O.A. mainly on the following grounds :

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- (i) The applicant was already proceeded against in a Criminal Court for the same charge and acquitted. Therefore, the respondents are estopped to proceed against the applicant for the same charge.
- (ii) The charge was sought to be proved on the basis of verification report dated 04.9.'79 of the D.M. Bikaner. However, original of this report dated 0.4.9.'79 was not produced in the enquiry despite many directions of the Enquiry Officer. Therefore, this is a case of no evidence.
- (iii) The respondents were required to complete the enquiry within three weeks from the receipt of the Supreme Court order dated 01.3.93 in SLP No. 331/93. However, departmental enquiry concluded on 31.12.93 i.e., after nine months of the order of the Supreme Court and the penalty was imposed on 12.8.'95 i.e., one year and eight months after conclusion of the enquiry.
- (iv) Though the charge has not been proved in the enquiry as per the Enquiry Report, however, the disciplinary authority has taken the charge to be proved and imposed the punishment.
- (v) The orders of the disciplinary authority and Appellate Authority are not speaking orders.
- (vi) Enquiry Report was not made available to the applicant before imposing the penalty.



3. In the counter, the respondents have stated that the application is hit by limitation and barred by res judicata and, therefore, not maintainable. It is stated by the respondents that the orders of the Appellate Authority was passed on 14.8.1995, and the application has been filed on 11.9.'96 i.e. more than a year after the cause of action arose. It has further been stated by the respondents that the applicant had approached various courts six times earlier

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praying for the same relief and hence, the application is barred by res judicate. On merits, respondents have contested the application on the basis of letter dated 08.8.1991 of ADM Bikaner and verification report dated 04.9.1979 of Distt. Magistrate, Bikaner, wherefrom it can be seen that the applicant does not belong to scheduled caste. It has, therefore, been prayed by the respondents that the application deserve dismissal.

4. We have heard the learned Counsel for the parties, and perused the records of the case carefully.

5. It is seen from records that the Appellate order was conveyed to the applicant vide letter dated 14.9.1995, and received by the applicant on 22.9.1995. This O.A. has been filed on 11.9.1996. Thus, the application has been filed within one year of the date when cause of action arose to the applicant. The application is, therefore, not hit by limitation. Similarly, it is seen from records that the applicant had approached various Courts earlier on different grievance and seeking different relief. The present application challenges the order of the disciplinary authority dated 12.8.1993, and order of the Appellate Authority dated 14.9.1995. Thus, cause of action has arisen because of these two orders and by way of relief their annulment has been sought. These orders were never challenged earlier. We are therefore, of the opinion that the application is not barred by res judicate. Arguments adduced by the respondents in regard to limitation and res judicate are, therefore, not sustainable and deserve to be rejected and are hereby rejected.

Counsel for

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6. In the Criminal Case where the applicant was acquitted, the applicant was charged with the crime that he cheated the Railway Service Commission and the certificate purporting to have been given by the IInd Class Magistrate, Bikaner is bogus and forged one. In the chargesheet dated 26.9.1979, the applicant was charged with the following misconduct :

*Statement of charges framed against Sh. Tikam Chand, Sr. Hd. Shroff (under suspension)/BKN.

That the said Shri Taikam Chand, Sr. Hd. Shroff (under suspension) originally appointed as Shroff in scale Rs.110-180 promoted as Sr. Hd. Shroff in scale Rs.210-580 cheated the Railway Administration by getting employment as Shroff in 1962 representing falsely in his application for the post that he belonged to Scheduled Caste and further used a forged certificate of his being a Scheduled Caste to secure employment through Railway Service Commission. Thus, he has violated Rule 3(i) (ii) and (iii) of Railway Servant Conduct Rules, 1966."

Further, in the chargesheet dated 16.8.1990, the applicant was charged with the following misconduct :

"STATEMENT OF CHARGES FRAMED AGAINST SHRI TIKAM CHAND, HEAD SHROFF (UNDER DEEMED SUSPENSION), DIVL.CASHIER'S OFFICE, N.R.LY./BIKANER :

That the said Shri Tikam Chand, Head Shroff (placed under deemed suspension w.e.f.5.5.80) originally appointed as Shroff in Scale Rs. 110-180 (AS) promoted as Sr. Head Shroff- (redesignated as Head Shroff) got employment as Shroff on 10.11.1962 against Scheduled Caste quota representing falsely in his application to Rly. Service Commission, Allahabad that he belonged to Scheduled Caste Community after having used a Scheduled Caste Certificate purported to have been obtained by cheating the then Tehsildar, Bikaner."

7. It would be seen that the applicant has been charged for the same misconduct in chargesheet dated 10.9.1979, and 16.8.1990 for which a Cr. Case was registered against him, the charge being that he obtained Government job by submitting bogus and forged scheduled caste certificate. As has been mentioned above that the applicant was acquitted in the Cr.

C. P. Singh

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Case. We consider it appropriate to extract below relevant portion of the order dated 11.10.1971 of the learned Addl. Sessions Judge, Tonk :

* The real point for determination is whether the appellant is Santhia or not. The evidence led by the prosecution does not say that Santhia cannot be a Swami or in other words a person who write himself a Swami cannot be treated as Santhia. On the contrary the statement of PW 6 Gopaldas :
हमारी जाति में स्वामी सांबद्धिया बैरागी व साधु
वगैरह लिखते हैं this establishes that Santhia can write himself as Swami. This witness of course has been declared hostile but the accused appellant has a right to claim benefit out of the statement of this witness, P.W. 7 Satianarain Swami has deposed :
मुझे पता नहीं कि पमार, गुजर, चौधरी व भोजी चौधरी स्वामी हैं। He is also unable to say whether Dhanna Bansis' are scheduled caste or not. P.W. 8 Mohandas has deposed that he is 'beragi Sadhu' by caste and that 'हम जो वंश के बैरागी हैं' The fourth Varna is of Soodras which has been clarified by him in cross examination. Finally he has admitted यह बात सही है कि साधु आदि में राजपूतों की जाति है। From the statement of these witnesses there is scope to draw an inference to the effect that Santhia can write himself as Swami. Under these circumstances it cannot be said that the prosecution has proved beyond any manner of reasonable doubt that the accused appellant is not a Santhia and that mere writing suffix "Swami" it is not conclusively established that the appellant is not a member of scheduled caste.

The next charge for which the accused appellant has been convicted is one punishable under section 471 IPC. The allegation against the accused is that the certificate Ex-P.16. purporting to have been issued by Tehsildar, Bikaner stating that the accused belongs to Santhia caste, (which is a recognised caste), is forged. In this connection, PW.4, Mangal Singh, who is said to have issued this certificate

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has denied his signatures on the certificate. He has further deposed that Ex-P.16 was never issued from his office because there is no entry to this effect in the register maintained in his office with regard to the issue of the certificate. PW.5 Heera Singh deposes about the manner in which the record is maintained in Tehsil.

I have myself perused the signatures of Ex-P. 16 and the Specimen signatures taken before the Magistrate; I am of the view that the signatures on Ex-P.16 quite tally with the specimen signatures of Shri Mangal Singh DW-5 Mr. A.N. Ganokar has also opined that the dispute signatures on Ex-P.16 are written by one and the same person who wrote standard and specimen signatures. I see no reason to differ with the opinion of Shri Ganorkar. Under these circumstances, it cannot be said that the accused appellant either forged an certificate or used any forged certificate or having reason to believe the same to be forged. The conviction of the appellant under these circumstances for offence under Section 471 I.P.C. is hed in law and cannot be maintained.

The result, therefore, is that this appeal is accepted. The sentence of the accused appellant for offence under Section 420, 471 IPC is set aside and he is set at liberty. The fine, if paid, be refunded to him.*

8. The applicant having been acquitted by the learned Additional Sessions Judge, Tonk of the charge of procuring Government job on the basis of a forged certificate, we are of the opinion that the respondents were estopped from proceeding against the applicant for the same charge in the light of the law laid down by Hon'ble the Supreme Court 1999 (3) Supreme 376 - Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd., & Anr.

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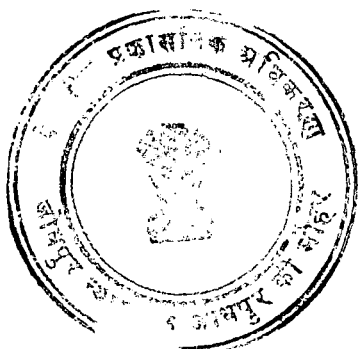
9. Secondly, as per the enquiry report the charge against the applicant did not stand proved. However, the disciplinary authority in his order dated 12.8.1993 has taken the charge as proved and imposed the punishment. Here, we consider it appropriate to extract the relevant portion of the Enquiry Report and the orders of the disciplinary authority.

"(i) Extract from Enquiry Report

CONCLUSION

As already discussed in length, that the chargesheet has two aspects to be looked into.

- (i) That the defendant has misrepresented himself as Scheduled caste.
- (ii) That he had obtained certificate fraudulently.



In the light of above points this enquiry does not have the magistrial authority to investigate the charges which should have been dealt with the civil authorities. Moreover, this enquiry does not establish whether the defendant and obtained the certificate fraudulently or he had cheated ADM by misrepresenting himself as Scheduled Caste. Hence, being simply DAR investigation this enquiry does not have the power and means to establish the fact whether the certificate was obtained by misrepresentation. Moreover, proper authority should be requested to investigate the matter in the light of later developments. But this fact has been established beyond doubt that the letter of ADM Bikaner is not bogus. And the content of this letter cannot be set aside."

(ii) Extract from the order dated 12.8.93 of the D.A

Whereas the Article of charge against Shri Tikam Chand that he cheated the Railway Administration by getting employment representing falsely that he belonged to SC Community after having used a Scheduled Caste Certificate purported to have been obtained by cheating the then Tehsildar, Bikaner stands proved from the evidences/documents obtained from Civil Authority vide ADM (City), Bikaner letter No.828 dated 8.8.91 and from the Enquiry Officer's Report.

AND whereas it is considered that the conduct of the said Shri Tikam Chand which has proved him guilty is such as to render his further retention in the Public Service undesirable.

C. P. Singh

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NOW, therefore, the undersigned in exercise of the powers conferred by Rule 10(5) of the R.S. (D&A) Rules, 1968 and third amendment Rule, 1978 hereby DISMISSES the said Shri Tikam Chand from service w.e.f. 12.8.1993 (FN) ."

10. It may be mentioned that the letter dated 8.8.1991 of the Additional District Magistrate (City) Bikaner was never cited as document in the list of documents by which article of charges were sought to be proved, in the charged-sheet. Moreover, this document was produced in the enquiry at the instance of the Enquiry Officer, but the same was not taken on record. Further, this letter dated 08.8.1991 of ADM (City) Bikaner talks of the verification report dated 04.9.1979 of District Magistrate, Bikaner, wherein it was held that the applicant did not belong to Scheduled Caste. We will discuss the verification report dated 04.9.1979 subsequently. Suffice it to say that the verification report dated 04.9.79 did not have any lacunae so as to necessitate calling for additional document (letter dated 08.8.1991) in terms of note below Rule 9(18) of the Railway Servants (Discipline & Appeal) Rules, 1968, extracted below :

"(18) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer, if any, to produce evidence not included in the list given to the Railway servant or may itself call for new evidence or recall and re-examine any witness and in such cases the Railway servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Railway servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Railway servant to produce new evidence if it is of the opinion that the production of such evidence is necessary in the interest of justice.

Note :

New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally."

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11. Coming to the verification report dated 04.9.79 of the District Magistrate, Bikaner, it is seen that this report was quoted as a document by which charge against the applicant was sought to be proved, in the chargesheet dated 26.9.1979 and 16.8.1990. However this document was never produced during enquiry proceedings despite repeated requests of the applicant and directions of the enquiry officer. The explanation given by the presenting officer that the verification report dated 04.9.'79 were not available in the Court as the same has since been destroyed along with other old records. In this connection, it is pointed out that the verification report dated 04.9.'79 was addressed to the Chief Cashier, Northern Railway, New Multi-storey Building, New Delhi and as such a reference to Court records was not at all necessary. The original document should have been available with the respondents. The alleged verification report dated 04.9.'79 was reportedly in response to respondents' Confidential letter dated 28.4.'79, then why this verification report was endorsed to one Shri Prabhu-Dayal, Secretary, Scheduled Caste Uplift Union, Bikaner is beyond comprehension. Moreover, this verification report dated 04.9.'79 was cited as document in the chargesheet dated 26.9.'79 and 16.8.'90, the question of destroying such a document should not arise. Thus, non-availability of this verification report dated 04.9.'79 with the respondents leads us to believe that no such document existed and the applicant has been falsely implicated. Moreover, the verification report dated 04.9.'79 was obtained by the respondents behind the back of the applicant as the applicant was never associated with the verification of his caste status.

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12. It is also a fact that the Scheduled Caste certificate issued to the applicant on 15.5.1961 was never cancelled by the appropriate authority. Further, the applicant has produced another Scheduled Caste certificate dated 23.12.1982 issued by District Magistrate, Bikaner (Annexure A/2) to the respondents, but the same has never been challenged. The applicant has also produced a Scheduled Caste certificate dated 10.1.1996 issued by Tehsildar, Bikaner vide Annexure A/44. This certificate has also not been contested by the respondents.

13. It is also a fact that the enquiry report was not made available to the applicant before imposing the penalty as required in terms of Ramjan Khan case. The enquiry report was given to applicant alongwith the order of punishment dated 12.8.1993 (Annexure A/1).

14. It is also seen from the records that the findings of the disciplinary authority are at variance with the findings of the Enquiry Officer. But reasons for disagreement have not been recorded nor these findings have been communicated to the applicant so as to enable him to put up his defence against the findings of the disciplinary authority.

15. In Kasi Rajan Vs UOI (1996) 32 ATC 27(Mad) it has been held that disciplinary action could not be taken against a Government employee on the allegation that caste certificate produced by him was not valid, unless the certificate was cancelled by the competent authority. Further, in G. Sumathi Vs UOI (1996) 34 ATC 459 (Mad) it has been held that :

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"The certificate cannot be validly cancelled without holding enquiry in which the person concerned is given opportunity to peruse documents, cross-examine witnesses and to produce evidence. The Collector in the present case, sending a report that the certificate produced by the applicant was bogus because the form of certificate produced by the applicant was not in use at the time when the certificate was purported to have been issued, and that the Revenue Divisional Officer (RDO) had stated that he had not issued any certificate of the community to which the applicant claimed to belong, to anyone during his tenure- Held, these were only general statements- A detailed enquiry was necessary in which the applicant had to be given opportunity inter alia to cross-examine RDO."

16. As has been discussed above, the applicant was first proceeded against in a Criminal Court in 1966 and having failed in their mission the respondents served a chargesheet on the applicant on 26.9.1979, and without going through the prescribed procedure imposed the penalty of dismissal vide order dated 06.5.1980. When this penalty order was set aside by the Tribunal, the chargesheet dated 26.9.'79 was revived, but no proceedings were started and a fresh chargesheet dated 16.8.'90 was served upon the applicant which again resulted into penalty of dismissal of the applicant and has led the applicant to this Tribunal. Now, we have to see whether the charges framed vide chargesheet dated 16.8.'90 are proved in the case. No witness is examined in support of these charges. It appears from the enquiry report that one Shri Usman Ghani was present during enquiry. But the Enquiry Officer himself says that he was not treated as witness and he further states that he had facilitated the enquiry officer to reach certain conclusions. It is not known from the enquiry report, how his presence facilitated to the Enquiry Officer to come to a particular conclusion. The fact also remains on record.

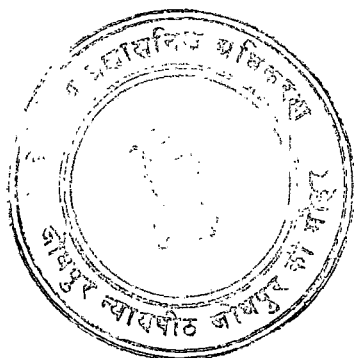
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that the ~~said~~ person Uman Ghani was not examined as witness. Apart from that, the only evidence from the department was Annexure R/1 dated 08.8.1991, a letter written by Additional District Magistrate, Bikaner, stating that the District Magistrate, Bikaner, vide his letter dated 04.9.'79 had stated that the applicant does not belong to SC Community. The said letter dated 04.9.'79, is not produced in this case. However, one Xerox copy of the same is produced. The said Xerox copy is now filed in this case as Annex. R/2. That was only a correspondence between the Chief Cashier and the office of the District Magistrate, Bikaner, stating that the applicant does not belong to SC Community. But nobody has been examined to prove these Annexure R/1 and R/2. Copy of Annexure R/2 appears to have been ~~sent~~ to one Prabhu-dayal, General Secretary, scheduled caste uplift Union, Bikaner. It is not known why such communication was required to be made to that Union. If some officials from the office of the District Magistrate were to be examined, this fact could have been clarified. As we have stated that Annexure R/2 itself is a Xerox copy and per se, it is not ~~admissible~~ ~~in~~ evidence. At the most Annexures R/1 and R/2 are ~~xxx~~ official correspondence, by way of reply to certain persons, but they are not orders determining status of the applicant whether he belongs to scheduled caste community or not. If there were to be an order of Magistrate determining the caste of the applicant ~~as SC~~, that would be the best evidence in the case and such an evidence is not produced during enquiry. The Enquiry Officer himself stated in his report that the enquiry did not establish whether the defendant had obtained the certificate fraudulently or he had cheated ADM by mis-representing himself as scheduled caste. He further stated that he has no power to investigate into that and that could be done only by the

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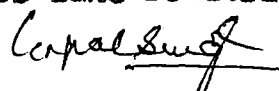
competent authority. Having said so, he concludes that the letter of ADM, Bikaner, cannot be said to be bogus document and the contents of the said letter cannot be set aside. In these observations, he did not notice that the ADM, Bikaner, had not determined the status of the applicant whether he belongs to Scheduled Caste Community or not. He simply wrote a letter stating that the District Magistrate, Bikaner vide his letter dated 04.9.'79 had stated that the applicant does not belong to SC. The conclusion part of the enquiry report, we have already extracted above. From this fact, it is clear that this is a case of no evidence. The two letters, Annexure R/1 and R/2, per se cannot be construed to be the evidence without somebody speaking ^{to} the contents of these documents. In fact, it has been the specific case of the applicant that the District Magistrate, Bikaner has never conducted any enquiry as to his status whether he belongs to SC or not by giving him an opportunity. If any official of the District Magistrate, Bikaner, were to be examined, the applicant would have an opportunity to cross-examine him. It is a settled principle of law that a document cannot be accepted proved, unless somebody is examined, and such person is subjected to ~~the~~ cross-examination. Thus, in our considered opinion, we find that Annexure R/1 and R/2 could not have been relied upon by the Enquiry Officer or by the Disciplinary Authority as evidence in support of the charges. Moreso, when there is already findings recorded by the Sessions Judge, that the certificate produced by the applicant regarding his caste is not a bogus one. In fact, in the Criminal case also the only case of the department was that the applicant had produced a bogus caste certificate stating that he belongs to SC. Learned Sessions Judge, clearly held that the certificate produced by the applicant

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was not bogus. In view of such a finding already recorded by the competent court, there was heavy burden on the department to prove that the applicant in fact does not belong to SC and he has produced a bogus certificate in order to secure a job. As we have already stated above that they have not proved this fact. In other words, this is a case of no evidence and on the material produced on record, the department has not proved the charges framed against the applicant. The Disciplinary Authority and the Appellate Authority simply stated that the charges are proved only on the basis of the Enquiry report. But from going through the Enquiry report, we find that there is no clear finding that the charges are proved. In fact, the Enquiry Officer himself concluded the the enquiry stating that "this enquiry does not establish whether the defendant had obtained a certificate fraudulently or he had cheated ADM, by mis-representing himself as Scheduled Caste." This findings has not been disagreed by the Disciplinary Authority. In this view of the matter, we have to hold that charges are not proved and hence, the impugned orders are liable to be set aside. Accordingly, we pass the the order as under :

17. The Original Application is allowed. Impugned orders dated 12.8.1993 and 14.9.1995 at Annexure A/1 and A/2 are quashed and set aside. The applicant would be reinstated in service within one month from the date of this order. The period from the date of dismissal to the date of reinstatement in terms of this order will be treated as duty and the applicant would be entitled to full back wages. The applicant would also be entitled to all consequential benefits like seniority, promotion, pension etc. No costs.


(GOPAL SINGH)
Adm. Member


(B.S. RAIKOTE)
Vice Chairman

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