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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

ORIGINAL APPLICATION NO. 221/2006
JODHPUR THIS DAY/THE 06th March 2009

CORAM :

**HON'BLE MR. N.D.RAGHAVAN, VICE CHAIRMAN
HON'BLE MR. SHANKAR PRASAD, MEMBER [A]**

Karan Pal Nayak S/o Shri Bhanwar Lal Nayak, aged about 34 years, resident of C/o Sh. moti Ram Prajapat, House no. 36, Agarcand Fatehchand Colony, Loco Road, Jodhpur (Raj) working as Technician - II (A.C.), Electrical Work-shop, North Western Railway, Jodhpur (Raj).

.....Applicant

For Applicant : Mr. Hemant Jain, Advocate.

Vs.

1- Union of India through the General Manager, North-Western Railway, Jaipur (Raj).

2- The Deputy Chief Mechanical Engineer (Workshop), North Western Railway, Jodhpur (Raj).

3- The Electrical Engineer (Workshop), North Western Railway, Jodhpur (Raj).

For Respondents : Mr. Salil Trivedi, Advocate.

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ORDER

[PER SHANKAR PRASAD, MEMBER(A)]

Aggrieved by the issuance of notice dated 21.09.2006 (Annex.A/2) asking him to show cause as to why disciplinary proceedings should not be initiated against him and the order dated 19.09.2006 (Annex./1) placing him under suspension, the applicant has preferred the present O.A. He seeks quashing of these orders.



The case of the applicant in brief is that he was appointed as a substitute Khalasi vide order dated 25.06.1998 (Annex.A/3). He had been issued a Caste Certificate by Tehsildar, Bikaner indicating that he is a member of Scheduled Tribe (Annex.A/4). He has also been

promoted as Technician Grade-III (Annex.A/5). This order shows him as belonging to Scheduled Tribe. He has now been placed under suspension and issued the show cause notice. The applicant was not associated with the preliminary enquiry. This Bench in **Bhagwana Ram Vs. Union of India & Ors.** have held that ~~decision about change~~ caste certificate cannot be forfeited after 12 to 15 years; more so, when notice was issued by the D.M., Bikaner before canceling the certificate. The case of one **Om Prakash** was dropped after issue of notice. Similar issues were involved in OA 259/1992 **Basant Kumar vs. Union of India** & O.A. 299/2003 **Bhagwana Ram Vs. Union of India & Ors.** These decisions were not challenged and have become final.

No rejoinder is filed.

3- The respondents have stated in their reply that the suspension has since been revoked. It was stated that as the applicant has challenged the show cause notice, the O.A. is premature. A subsequent verification made from D.M., Bikaner shows that 'Nayak' community belongs to Scheduled Caste and not to 'Scheduled Tribes'.

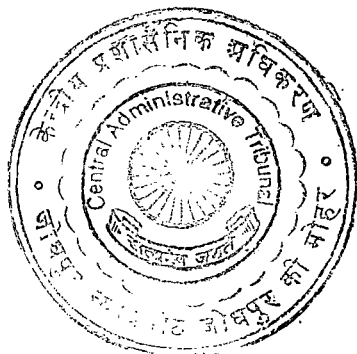
4- We have heard the learned counsels.

5- The learned counsels have placed reliance on the following decisions :

(a) The decision of Hon'ble Rajasthan High Court in S.B. Civil Writ Petition 137/2002 **Rajasthan Pradesh Nayak Mahasabha Vs.State of Rajasthan & Anr.**

(b) The decision of Hon'ble High Court in S.B. Civil Writ Petition 5067/2004.. without noticing the earlier decision.

(c) The decisions of this Tribunal in :- *S*



- (i) OA 259/1992 *Basant Kumar Vs. Union of India and Ors.*
(ii) OA 299/93 *Bhagwana Ram Vs. Union of India and Ors.*
(iii) OA 220/2006 *Dr. Anand Kumar Vs. I.C.A.R. & Ors.*

6- The Tribunal in the last mentioned decision, *Dr. Anand Kumar* (supra), held :-

"In our considered opinion, Anex.A/1 letter dated 7.12.2005 from the Tehsildar (Revenue), must be considered as an information to the respondents. Since the applicant has secured his job as a ST on the basis of certain valid grounds, his status cannot be changed merely on the basis of the report of the Tehsildar. We, therefore, direct that the applicant shall be given sufficient opportunity before arriving at any conclusion in respect of his status regarding caste. According, we dispose of this O.A. with the direction that the applicant shall be given a notice before any further action is taken on the Annex.A/1 letter dated 7.12.2005 and he shall also be communicated the result of the inquiry, if any, conducted in this regard."

7- This Tribunal exercises the power of judicial review. There should, therefore, ordinarily be either a final order or a representation which has remained undecided. For all, one knows the respondents may accept the explanation given by the applicant to this show cause notice.

8- We are of the view that O.A. is premature. The applicant should file his reply raising such contentions as may be deemed appropriate. We have no doubt that if such a representation is submitted, the respondents shall consider it objectively and dis-passionately keeping in mind the law laid down by the Apex Court / Hon'ble Rajasthan High Court. No costs. *Thus this O.A. is dismissed as premature.*

Shankar Prasad
(Shankar Prasad)
Member (A)

N.D. Raghavan
(N.D. Raghavan)
Vice Chairman

RILEY
~~12/13/09~~

Recd. Copy
Special Agent
13/2/09

Part II and III destroyed
in my presence on *SJM*
under the supervision of
section officer (J) as per
order dated 07/07/15

[Signature]
Section officer (Records)