

01

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.998 of 1997

Present: Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. B. P. Singh, Administrative Member

Sri Dugai Mondal, village, Kirtansala
P.O. Seakul Beria, P.S. Salanpur,
Dist. Burdwan, West Bengal

.... Applicant

VS

1. Union of India, through the General
Manager, Chittaranjan Locomotive Works,
Chittaranjan

2. Chief Personnel Officer, Chittaranjan
Locomotive Works, Chittaranjan

... Respondents

For the Applicant: Mr. G. C. Mukherjee, counsel
Ms.S. Mondal, counsel

For the Respondents : Ms. U. Bhattacharyya, counsel

Heard on 15.6.1999 & 22.6.1999 : : Date of order: 03/8/1999

O R D E R

D. Purkayastha, JM

The present application filed by Shri Dugai Mondal seeking direction upon the respondents to absorb him in the post of Sanitary Cleaner by reviewing the order passed by this Tribunal on 9.3.1994 in OA 930/90 and by condoning the delay in filing this application as the applicant is diligent in pursuing the relief as sought for in the original application 930/90 by filing application before the Hon'ble High Court and the Tribunal. The case of the applicant is that he was duly empaneled for appointment as Sanitary Cleaner under the CLW. But when he was asked to appear at the interview for formation of a panel for Sanitary Cleaner in Group 'D' category, he produced his original S/C certificate at the time of interview and that was duly considered as genuine. Subsequently, however, he was asked to produce the original caste certificate by a letter dated 6.7.1990 and accordingly he produced the same. Thereafter he had

not been given any appointment to the said post although his juniors in the panel have already been appointed. Feeling aggrieved by and dissatisfied with the inaction on the part of the respondents he approached the Tribunal by filing an application bearing No.930/90. In that case, the respondents filed written reply stating interalia that his S/C certificate was not genuine and as such issuing authority i.e., SDO, Asansol was requested by a letter dated 23.9.88 to verify the genuineness of the said certificate. The SDO/Asansol requested the respondents to send the original certificate which was sent to him on 16.7.1990. The SDO, Asansol by his letter dated nil July, 1990 intimated that the certificate as produced by the applicant was not genuine and as such the said certificate was retained by the SDO for taking further action in the matter. But the Tribunal at the time of passing judgment in OA 930/90 held as follows:

"Admittedly, the certificate which the applicant has produced was not issued by the SDO, Asansol himself under his seal but was issued by the "Office of the Sub-Divisional Officer, Asansol. Therefore, we cannot treat this certificate to be a proper certificate issued under the provisions of the Constitution (SC) Order, 1950. Under that Order a SC/ST certificate has to be issued by the DM, SDO, Tahashildar etc. under their own signature and seal. The certificate in question does not bear the signature and seal of the SDO, Asansol. Therefore, it cannot be taken to be a genuine certificate issued under the relevant Constitution (SC) Order 1950. In the circumstances, we do not find any illegality in the action of the respondents in not treating the certificate as valid one and consequently not giving the applicant appointment as he has failed to produce a valid caste certificate."

And accordingly, that application was dismissed.

2. Thereafter the applicant filed a writ petition bearing Civil Order No.94300 (W) of 1994 before the Hon'ble High Court at Calcutta. That writ petition filed by the applicant has been disposed of finally by the Hon'ble High Court by passing the following order:

01 ✓

"Keeping in view the peculiar facts and circumstances of this case, I am of the opinion, that the respondent No.3, Sub-Divisional Officer, Asansol, Burdwan, may issue a certificate upon making an enquiry as to whether the petitioner is entitled to a certificate to the effect that he belongs to the member of Schedule Caste. For the said purpose, it would be open to the respondent No.3, to take into consideration all documentary and other evidence which may be produced by the parties before him including the order of Central Administrative Tribunal dated 9.3.94. The respondent No.3 shall consider the case of the petitioner at an early date and preferably within a period of six weeks from the date of communication of this order."

In pursuance of the said direction in the order of the Hon'ble High Court, the SDO, Asansol made an enquiry and issued a certificate in favour of the applicant that he belongs to the S/C community which is marked as Annexure/E to the application. After obtaining the certificate the applicant approached this Tribunal by filing this application.

3. The respondents filed written statement denying the claim of the applicant. It is stated by the respondents that the claim of the applicant on the basis of the advocate's letter dated 21.4.97 has been considered by the competent authority and the competent authority did not find any reasonable ground to consider the representation. It is also stated that after lapse of 9 years the applicant produced a caste certificate issued by the SDO, Asansol on 11.4.1997 with reference to the previous judgment dated 9.3.1994 in OA 930/90 wherein there was no direction to the respondents to give appointment to the applicant or to keep a post vacant for the him. It is also stated by the respondents that the claim of the applicant has not been accepted by them and the reply to the representation has been communicated to the applicant vide letter dated 14.7.1997, Annexure/RIII to the reply. It is also stated that all vacancies mentioned in the Employment Notice have been filled up by the suitable empaneled candidates due to exigency of the public service. No post for the open selection can be left vacant for 9 years. Therefore, the claim of the applicant is not entertainable and liable to be dismissed after lapse of 9 years.

4. Mr. Mukherjee, learned advocate appearing on behalf of the applicant strenuously argued before us stating inter alia that the applicant cannot be held responsible for delay in obtaining caste certificate and he pursued the matter through a Court for obtaining the relief against the arbitrary action of the respondents. Since the applicant was empaneled against the vacancy of the S/C quota and it was denied for unsustainable reason and thereby it was the duty of the respondents to appoint him against the post for which the applicant was selected because the S/C certificate produced by him at the time of selection was found genuine one with intervention of the Hon'ble High Court. The applicant has no fault. He also refers to the judgment of the Tribunal wherein it is mentioned that the respondents received memo from the SDO, Asansol intimating that the said certificate was not genuine one. However, the aforesaid letter of the SDO could be not produced by the respondents before the Tribunal either at the time of hearing of the earlier OA or at the time of hearing of this present OA. As per direction of the Hon'ble High Court due enquiry was made and it is found that the applicant belongs to the scheduled caste community. Since the applicant was found genuine as he belongs to the S/C community, therefore, he has right to get the appointment on the basis of the said panel. The respondents at the instance of the third party denied the employment to him without any proper verification from the SDO concerned. The respondents could have verified the genuineness of the certificate from the SDO, but instead of making that verification they denied the appointment on the basis of false allegation brought by some party. Mr. Mukherjee has also drawn our attention to the letter dated 14.7.1997, Annexure/RIII to the reply, by which the respondents refused the appointment of the applicant. It is mentioned in the said letter, Annexure/RIII to the reply, that since there was no direction from the Tribunal to provide employment, they did not

consider the appointment of the applicant. Therefore, the applicant is entitled to get the benefit of the judgment in respect of the status which was denied to him at the instance of the third party. On the other hand, learned advocate for the respondents has argued that all the posts for which panel was prepared, have been filled up according to the administrative exigency and the applicant claimed the said post now after 9 years after allowing the caste certificate on 11.4.97, Annexure/RII to the reply. So, after 9 years the applicant cannot claim appointment on the basis of the panel which has expired long back. Hence the application is devoid of merit and liable to be dismissed.

5. We have considered the submissions of the learned counsel of both the parties and gone through the records. It remains undisputed that the applicant belongs to S/C community and he appeared in the selection test against the post meant for S/C community and it is found that he was empaneled but on the basis of the allegation made by the third party his appointment against the quota of S/C candidate has been denied on the ground that the certificate produced by the applicant was not found to be genuine. It is found that after the judgment passed by the Tribunal in OA 930/90 filed by the applicant, the applicant had approached the Hon'ble High Court to substantiate his claim that he belongs to S/C community and it is found that after direction given by the Hon'ble High Court an enquiry was made and the competent authority found that the applicant really belongs to the S/C community and they issued a fresh certificate on 11.4.1997. We have gone through the judgment of the Tribunal passed in OA 930/90 on 9.3.94. In para 6 of the said judgment it is mentioned that the applicant produced the certificate on 11.7.1990 and the same was sent to the SDO, Asansol on 16.7.90. Thereafter the respondents received a memo from the SDO intimating that the said certificate was not genuine one.

However, the aforesaid letter of the SDO was not produced before us. And it is also found from para 7 of the said judgment that the said certificate produced by the applicant was issued by the office of the Sub-Divisional Officer, Asansol but it was not signed by the Officer i.e., SDO himself and for that he was denied the employment. The claim of the applicant that he was selected for the post meant for the S/C community has not been refuted by the respondents in their counter. It is seen the SDO's initial letter regarding genuineness of the certificate of the applicant could not be produced by the respondents at the time of hearing of the original application No.930/90,, thereby it was said that the said certificate was issued by the office of the SDO, Asansol, but it was not signed by the SDO, concerned. It was due to some technical error and irregularity in the matter of seal and signature of the SDO concerned the applicant was denied the employment on the basis of said selection. In view of the aforesaid circumstances, we are of the view that the applicant was denied the employment in the public service on the basis of the false statement or allegation made by the third party to the authority and consequently he was denied his livelihood for the reason which was ultimately found not sustainable. The facts remain that the applicant produced the certificate at the material time, but due to false allegation made by the third party, he did not get the appointment and ultimately it is found that his claim as S/C candidate for the purpose of appointment is found genuine. Having regard to the facts and circumstances we are of the view that it would be travesty of justice to the applicant if he is denied the appointment on the ground stated in the letter dated 14.7.97, Annexure/RIII to the reply. The applicant cannot be denied his livelihood for the reason which was found unsustainable ~~in~~ in the matter of public employment due to intervention of the Hon'ble High Court. Such denial of employment in Govt. service under

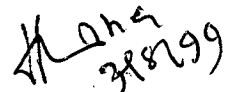
the present circumstances, would be an indirect indulgent to the person who made false complaint against him with a view to deprive him from lawful employment in service. Admittedly, the applicant ultimately got the relief by the intervention of the Hon'ble High Court, wherein the Hon'ble High Court directed the SDO, Asansol to enquire into the matter and to issue certificate after proper verification. Now the applicant has become overaged, and he would not get Govt. service due to overage.

6. Under the said peculiar facts and circumstances of the case we are of the view that the applicant ought to have been considered for appointment by the respondents on the basis of the certificate dated 11.4.1997 (Annexure/RI) issued by the SDO, Asansol but having not done so, the acts of the respondents as reflected in the letter dated dated 14.7.1997 (Annexure/RIII) can be said to be arbitrary, illegal and the said order is liable to be quashed. Accordingly, we set aside order dated 14.7.97 (Annexure/RIII) and direct the respondents to consider the case of the applicant for employment in service as per his selection in order to do complete justice to the applicant. And be it mentioned that if no vacancy is available for appointment of the applicant in the cadre for which he had been selected, a supernumerary post should be created by the respondents within three months from the date of communication of this order and the applicant should be accommodated against that post. Accordingly with this direction we dispose of the application awarding cost of Rs.1000/- to be paid by the respondents to the applicant.



(B. P. Singh) 3/8/99

MEMBER (A)



(D. Purkayastha)

MEMBER (J)