

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 488/97

FRIDAY, THIS THE 7TH DAY OF JANUARY, 2000.

C O R A M

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K. Babushetty S/o Kunhanna Banta, Mamatha Nivas,
Near Gudde Temple, Post Kudlu,
Kasaragod District.

..Applicant

By Advocate Mr. P.V. Mohanan

Vs.

1. The Union of India represented by
Secretary, Department of Posts
New Delhi.
2. The Postmaster General,
Northern Region, Kerala Circle,
Calicut.
3. The Director of Postal Services,
Northern Region, Calicut.
4. The Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram.

..Respondents

By Advocate Mr. George Joseph, ACGSC

O R D E R

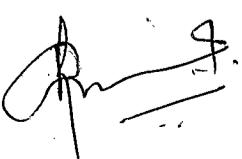
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

This O.A. has been filed by the applicant for the
following reliefs:

- "(i) To call for the records leading to Annexure A5
and A7 and set aside the same;
- (ii) To direct the Respondents to reinstate the
applicant in service as Deputy Post Master with all
consequential benefits with effect from 8.3.1996.
- (iii) Any other appropriate order or direction as
this Hon'ble Tribunal deem fit in the interest of
justice."



2. In this O.A. the applicant stated that he belonged to Marati community which was included as Scheduled Tribe community under the Presidential order issued under Article 342 of the Constitution of India and Act 108 of 1976. The applicant applied in May, 1967 for the post of Clerk in response to the notification of the P & T Department issued on 17.4.1967. He was selected and appointed to the post of Clerk on 11.9.67 against a general vacancy. According to him he was not appointed against a reserved vacancy nor included in the reservation roster maintained for S.T. community. Applicant claimed that roster on reservation was first introduced in Central Government departments by O.M. dated 24.4.70 and his appointment was as early as 1967, the question of appointing him on 40 point roster did not arise. He produced caste certificate issued by the Tahsildar dated 2.5.67 as directed by the Department. By memo dated 12.12.89 the Senior Superintendent of Post Offices, Quilon directed the applicant to produce a fresh community certificate from Tahsildar countersigned by the District Magistrate. The applicant in his explanation dated 12.12.89 stated that he had already submitted caste certificate and the Tahsildar had declined to issue a fresh certificate. Applicant's explanation was rejected by order dated 25.1.90 in which it was stated that if caste certificate was not produced the applicant would be treated as unreserved and the concession granted to him would be withdrawn. Aggrieved by this order applicant filed O.A. 142/90 which was allowed by this Tribunal by A1 order dated 23.8.90. By A2 memorandum dated 29.9.93 enquiry under Rule 14 of Central Civil Service (CCA) Rules 1965 was initiated by the Director of Postal Services for the charges mentioned therein. The applicant submitted his explanation against the charges levelled against him. The



enquiry was commenced on 15.12.93. The Enquiry Officer by A3 proceedings dated 4/5.1.96 submitted the enquiry report. The applicant submitted A4 detailed representation. According to the applicant the Enquiry Officer had found that the charges that applicant had secured employment producing the false community certificate as Scheduled Tribe (S.T.) was not proved. Further, applicant claimed that he was not served notice proposing to impose the penalty against him and was denied an opportunity of being heard before the punishment was imposed. He submitted that the disciplinary authority without considering his explanation disagreed with the finding of the Enquiry Officer and by A5 order dated 8.3.96 imposed on the applicant the penalty of 'removal from service' with immediate effect. Applicant submitted A6 memorandum of appeal dated 11.4.96 to the appellate authority - the Postmaster General. By A7 proceedings dated 18.9.96, the appellate authority modified the punishment of compulsory retirement from service from the date of the original order. Aggrieved by A5 and A7 orders, the applicant filed this O.A.

3. Applicant challenged the impugned orders on the following grounds:

(i) According to the applicant the nature of the caste and community status of the applicant was dealt with in a cavalier manner in that neither the Tahsildar nor Collector conducted an enquiry as regards caste and community of the applicant. No anthropological study had been conducted. The Collector without conducting a detailed enquiry by proceedings dated 24.10.90 cancelled the community certificate issued by the Tahsildar on 2.5.67 after 23 years

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for the reason that name of the community had not been stated in the said certificate. According to the applicant in the certificate dated 18.7.67 issued by the Tahsildar the applicant belonged to Marati community which was recognised as S.T. In any case without conducting a detailed enquiry the District Collector by letter dated 24.10.90 cancelled the certificate issued by the Tahsildar on 2.5.67. The applicant claimed that the certificate dated 18.7.67 issued by the Tahsildar remained unchallenged.

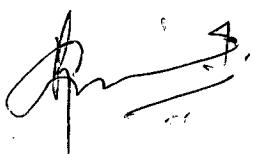
(ii) According to the applicant it was a case of 'no evidence' and thus the finding of the disciplinary authority and appellate authority were to be set aside on the ground of 'no evidence'.

(iii) The punishment imposed on the applicant was shockingly disproportionate on the charges levelled against him.

(iv) Applicant was appointed as Clerk in May, 1967 against the vacancy notified for the 1st half of 1967. He was not recruited against a vacancy reserved for S.T. The roster was operated only in 1968 and that it was conclusively proved that the applicant was not recruited against a reservation point for S.T. Therefore, he claimed that he could not be said to have gained unfair advantage and grabbed the vacancy set apart for S.T. So long as the charge was not proved the whole enquiry proceedings would have to be dropped and the applicant should have been exonerated from the charges levelled against him.

(v) The Disciplinary authority without issuing notice for the proposed penalty had imposed the penalty of removal from service.

(vi) The enquiry proceedings was vitiated due to violation of the principles of natural justice and that despite demand, the relevant documents were not produced. The Tahsildar who issued the certificate had not been examined



nor the Senior Superintendent of Post Offices had been examined. The applicant was denied a fair opportunity of being heard.

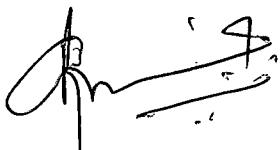
(vii) Applicant held a civil post. The Director of Postal Services, Northern Region, Calicut was not a competent authority to impose a major penalty of removal as the applicant was appointed to Lower Selection grade prior to the divisionalisation of the cadre by an officer of the rank of Postmaster General. No adhoc disciplinary authority was appointed by Presidential order. Thus the order of penalty was without jurisdiction.

(viii) The order of the disciplinary authority did not contain reasons and thus it was unfair.

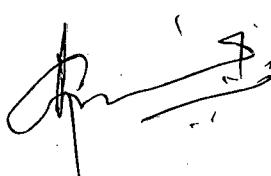
(ix) Applicant had put in 28 years of service. The service of the applicant was not adjudged unsatisfactorily. There was no adverse entry in the ACRs. Thus public interest demanded that a penalty of compulsory retirement should not be imposed.

(x) Annexure Al interparty judgment governed the field. The order passed by the Chief PostMaster General initiating disciplinary proceedings against the applicant was quashed by the Tribunal. The continuation of the departmental proceedings was thus ~~contumacious~~.

(xi) The select list of Clerks of the first half of 1967 would prove that the applicant was selected against general vacancy. Despite demand, the select list was not produced nor the advertisement of the post in the Indian Express dated 17.4.67. The Senior Superintendent of Ernakulam who had to prove the roster point was not produced and examined. The District Collector Kasaragod who cancelled the caste certificate issued by Tahsildar in May, 1967 was not examined. This caused serious doubt on the enquiry proceedings.



4. Respondents filed reply statement resisting the claim of the applicant. According to respondents the applicant applied for the post of Postal Clerk in the Ernakulam Postal Division of the erstwhile Posts & Telegraphs Department on 8.5.67 claiming that he belonged to S.T. community. In support of this he produced a community certificate dated 2.5.67 issued by the Tahsildar, Kasaragod. He was appointed on 25.1.68 as a Postal Clerk. The appointment was treated as made against Roster Point No. 21 in the Special Representation Roster required to be filled up by a S.T. candidate and the appointment was treated as belonging to S.T. community for extending all service benefits in the matter of promotion applicable to S.T. etc. Thus the applicant became eligible for accelerated promotion and other service benefits available to S.T. employee. On receipt of a communication from the Commissioner for SC/ST, New Delhi casting apprehension about his claim to be S.T., the matter was referred to the District Collector, Kasaragod for a thorough probe. The District Collector, Kasaragod after proper enquiries having satisfied that the applicant did not belong to S.T. community cancelled the original community certificate issued by the Tahsildar, Kasaragod ab initio as per his proceedings dated 24.10.90. Therefore, the Superintendent of Post Offices, Tirur division issued a notice to the applicant for production of a fresh community certificate in view of the cancellation of the original caste certificate issued by the Tahsildar. Applicant was transferred from Ernakulam to Tirur Postal Division. The applicant did not respond to this communication. The District Collector, Kasaragod by R7 letter dated 28.3.92 further informed the Postmaster General, Northern Region, Calicut that the applicant actually belonged to Bunta community which was not included in the approved list of SC/ST in Kerala.



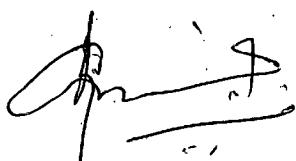
Thereupon, the applicant was proceeded against Departmentally under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 by the Director of Postal Services, Northern Region, Calicut. The charge against the applicant was that he secured the employment as Postal Clerk producing false caste certificate showing that he belonged to S.T. The enquiry was conducted in the manner prescribed in the statutory Rule 14 of the CCs (CCA) Rules, 1965 extending all the opportunities to the applicant to defend the case. The enquiry officer had held the charge of production of false community certificate by the applicant at the time of his initial recruitment had been proved. According to the respondents applicant had approached the Tribunal prematurely without exhausting the remedy of Review Petition to the Member, Postal Services Board, New Delhi. Respondents produced R1 application submitted by the applicant for the post of Postal Clerk dated 8.5.67 in which he had furnished his community as 'Marati' and R2 community certificate from Tahsildar, Karnataka dated 2.5.67 to strengthen his claim that he belonged to S.T. community. They submitted that in R1 the place of birth of the applicant was shown as Kudlu village, Kasaragod Taluk, Cannanore District of Kerala State and not erstwhile South Canara District of Mysore State as contained therein. The applicant's parents belonged to 'Bunta' community as mentioned by the District Collector, Kasaragod in his proceedings dated 24.10.90 (R3). They submitted that his community was shown as S.T. in Special Reservation Roster (R4) maintained at Ernakrulam Postal Division and in all the service records it was shown in the Roster that his appointment was made to adjust point 21 of the roster which was to be filled up by a candidate belonging to ST community.

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According to respondents had the applicant not been appointed another candidate belonging to S.T. community would have been appointed against Roster point 21 to extend the benefit of reservation in Govt. service as guaranteed in the Constitution. According to respondents Special Representation Roster for granting due quota of reservation for SC/ST was introduced in Govt. as per Ministry of Home Affairs OM dated 27.4.62. They also submitted that the Special Representation Roster was called 100 Point Roster and not 40 point Roster as stated by applicant. The 40 point Roster was the one maintained for ensuring reservation in promotion from one cadre to another. According to respondents no anthropological study was considered necessary in this case to determine the community of the applicant. The study was necessary only in complicated cases in which it was difficult to determine the caste status of a person. Sri Narayana Shetty, Tahsildar, Kasaragod who was examined as a witness on behalf of the applicant had deposed in unambiguous terms that the applicant belonged to 'Bunta' community which was not included as S.T. in Kerala. The Revenue authorities were able to issue caste certificate after local enquiries. This Tribunal in its order dated 26.4.96 in O.A.673/95 had held that the determination of community status or judicial review of such determination did not lie in the jurisdiction of the Tribunal. According to the respondents if the selection of the applicant was in merit quota as contended by him then there was no need for furnishing a community certificate showing that the applicant belonged to S.T. community and that the applicant had submitted the community certificate from Tahsildar, Kasaragod along with the application for the post of Postal Clerk with the intention to avail the relaxations applicable to S.T. in the matter of selection and on the strength of the false certificate he had irregularly

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availed the relaxations also in the matter of initial selection and subsequently in the matter of further promotions. There was no provision for service of notice on the applicant before imposition of the penalty. They submitted that a copy of the inquiry report was served on the applicant and his further representation dated 10.2.96 was obtained prior to the imposition of the penalty by the disciplinary authority. The disciplinary authority had taken into consideration the representation of the applicant before imposing the penalty. Since the applicant had not specifically requested for personal hearing at that stage, as per the statutory rules, it was not mandatory to suo moto allow a personal hearing to the applicant. He was granted a personal hearing by the appellate authority and the second respondent on 13.6.96 who had modified the original penalty of removal from service of the applicant to that of compulsory retirement from service. Appellate authority duly considered the points raised in A6 appeal and also those raised by the applicant at the time of personal hearing. In A7 appellate order the second respondent had clearly discussed and evaluated all these points convincingly without leaving any point unanswered or unattended. No fresh point had been adduced in this O.A. They further submitted that as held by the Hon'ble Supreme Court in AIR 1989 SC 1185 the Tribunal has no authority to go into the adequacy or otherwise of evidence as also quantum of punishment in a disciplinary matter. According to them the Director of Postal Services is the appointing authority competent to impose all penalties mentioned in Rule 11 of the CCS (CCA) Rules, 1965 as per part IV of Schedule of Administrative powers of officers relating to General Civil Services Class III to which the applicant's cadre belonged. They submitted that the O.A. was devoid of merits and was liable to be dismissed

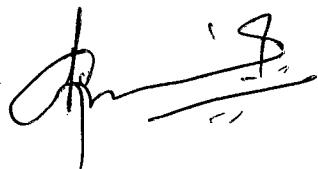
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with costs.

5. Applicant filed rejoinder in which he stated that he was not selected and appointed against Roster point of reserved vacancy of Postal Clerk. In the notification the posts were not set apart for S.T. candidate. The candidature of the applicant was considered along with other candidates on merit and not based on relaxed standard. The applicant had obtained 56.2% marks in SSLC. He was an outstanding Sportsman and had obtained certificate in Kabaddy etc. He participated in State level meet. Therefore 5% grace marks should have been granted. The same was indicated in R1 and later scored off. Instead only 1% marks was added to the basic mark. He claimed that in the select list prepared the applicant was ranked NO. 1 and six candidates were appointed on 25.1.68. He submitted that the contention that the applicant became eligible for accelerated promotion and other benefits available to S.T. in Government service was without any basis. He was not given any benefits normally given to S.T. candidate. Had he been given he would have been promoted in 1973 itself based on relaxed standard and would have been granted accelerated seniority. The applicant appeared for LSG examination against 1/3rd quota set apart for Clerks and came out successful with 74% marks and accordingly he was promoted as LSG-A. According to him the memo issued and consequential order threatening to take action including cancellation of promotion as HSG was set aside by this Tribunal by Al order. It was based on the factors contained in the memo dated 12.12.89 and proceeding dated 25.1.90 set aside by the Tribunal that Chief Post Master General, Trivandrum by proceeding dated 10.4.90 intimated the District Collector to conduct an enquiry as regards caste status. R3 order dated 24.10.90 was issued on



the basis of this request. R3 letter dated 24.10.90 could not be acted upon for two reasons. It was non est in the light of A1 judgment of the Tribunal and it could not be acted upon because there was no declaration by the competent authority. (By GO(P) 2/90 SC ST DLD dated 12.1.90). Applicant claimed that Director SC/ST Department, as the case may be to take a decision as per circular No. 7903/E2/86/SCST DD dated 28.7.86 that the applicant did not belong to 'Marata' community, Scheduled Tribe community. Further, the Tahsildar Kasaragod issued A-9 community certificate on 18.7.67 in the prescribed form indicating that the applicant belonged to Marati community, ST. A8 had not been cancelled by the District Collector or the Director of SC/ST or Scrutiny Committee of Scheduled Caste/Scheduled Tribe. Therefore, no competent authority established by law declared that the applicant did not belong to Marati Scheduled Tribe community. There was no material even before the Tribunal to prove that the applicant did not belong to S.T. community. He referred to Madhuri Patel's case and submitted that Supreme Court had declared that the caste certificate issued by the competent authority and the school certificate were conclusive proof of the caste. He filed A-10 copy of SSLC certificate indicating the caste of the applicant as 'Marati.' He submitted that the selection of the applicant as Clerk and select list containing name, age, caste, and marks etc. were published in the notice board of all the post offices for three months and if any complaint was there by the public against the selection, the same should have been made to the appointing authority within three months from the date of publication of the list and no such complaint was made. Since no caste name was mentioned in the caste certificate dated 2.5.67, another caste certificate dated 18.7.67 was produced and accepted by

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the department. According to the applicant he was not treated as an S.T. by the department. Had it been so he would have been promoted in 1973 based on the Roster. In the year 1974, 4 S.T. and 1 S.C. were selected as Inspector of Post officers as per the gradation list as on 1.7.87 on page 18 (Sl.Nos. 13, 14,15, 16 and 17) this included the carry forwarad S.T. vacancies of 1973. Therefore, the applicant had not enjoyed the benefit of reservation and concession available to S.T. community and prayed for rejection of the averments in the reply statement.

6. Respondents filed an additional reply statement and submitted that all averments and allegations contained in the O.A. and rejoinder were denied except those which were specifically admitted or otherwise dealt with in the additional reply. They reiteraterd that the applicant was appointed as Postal Clerk against Roster Point 21. They did not accept the applicant's statement that he was an outstanding sportsman. They stated that according to them it was not correct that the next promotion post of Clerk was Inspector of Post Offices. They submitted that the same was only one of the several posts which was filled up through competitive examination such as Jr. Accounts Officer, UDC for Saving Bank Control Organisation and Circle/Administrative Offices and Lower Selection Grade 1/3 quota examination, etc. They submitted that in addition there were promotions to Selection grades based on seniority also. They denied that the applicant stood first in the year of selection as the applicant would not have been selected to the post as the last candidate selected in the first half of 1968 against other community vacancies in Ernakulam Postal Division and appointed against point No. 8 had secured 68.67% marks in SSLC whereas the applicant had secured only 56.16% marks. They also submitted that the applicant did not specify as to



what was the examination in which he appeared in August, 1973 and in which he successfully came out and what were the bonus marks he expected. According to them he should have brought his grievances before the appropriate authority, in case any existed, at the appropriate time. The examination for promotion to the cadre of Inspector was a competitive one and merely qualifying in the examination would not entitle him to become Inspector. Applicant having been appointed as Clerk on 25.1.68 was promoted to the LSG w.e.f. 18.2.81 and to HSG II w.e.f. 4.3.89 whereas it took about 25 years for a Clerk recruited under the general category to reach the stage of HSG-II in the normal course prior to the introduction of the LSG TBOP scheme in 1983 and the HSG-II BCR scheme in 1991 and about 30 years to reach the stage of HSG-I. They submitted that in R3 proceedings of the District Collector, Kasaragod dated 24.10.90 field verification by the competent revenue officer i.e. Tahsildar had revealed that the applicant belonged to Bunta community which did not come under the S.T. category. As such, the applicant's contention that the community certificate issued on 2.5.67 only had been cancelled did not hold water. They submitted that the applicant had no case that the community certificate dated 18.7.67 was ever produced before the appointing authority or before the Collector had constituted an enquiry to find the truth about his belonging to Maratti community. Relying on R5 they denied the applicant's averment that there was no material before the Tribunal to prove that the applicant did not belong to S.T. community. They further submitted that R7 letter of the District Collector dated 28.3.92 settled the matter conclusively that the applicant belonged to 'Bunta' community which was not included in the list of SC/ST. They submitted that the averment that the selection of the

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applicant was published in the notice board of all Post Offices and no complaint had been filed against the selection was not correct as he was intially selected for appointment as a Clerk in Ernakulam Postal Division which comprised only parts of Ernakulam district and now Idukki District and the display in notice board was restricted to only that part of the state whereas the applicant belonged to the then Cannnore District. They also submitted that the community certificate dated 18.7.67 was not on record. Referring to R8 order of this Tribunal in O.A. 495/99 they submitted that judicial intervention in the matter of penalty was justified only in case where the penalty was shockingly disproportionate and in this case the penalty was commensurate with misconduct.

7. Heard the learned counsel for the parties. The learned counsel for the applicant took us through the pleadings and argued at length on the grounds advanced in the O.A. and rejoinder. He relied on the following judgments of the Hon'ble Supreme Court and High Court of Kerala in support of his argument:

- (i) Bank of India and Another Vs. Degala Suryanarayana
(JT 1999 (4) SC 489)
- (ii) Ram Kishan V. Union of India and another
(AIR 1996 SC 255)
- (iii) K. Chamay Vs. Senior Regional Manager and Others
(ILR 1998 (1) 958)

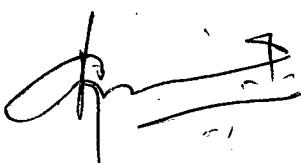
8. The learned counsel for the applicant submitted that the enquiry officer in his report had held that out of two aspects of the charge, one that he secured employment in the Postal Department producing false community certificate as

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S.T. was not conclusively proved. However, inspite of this finding of the enquiry officer, without giving detailed reasons as to how and why the disciplinary authority disagreed with this finding of the enquiry officer. Disciplinary authority imposed the penalty after holding that both the charges were proved. He submitted that it had been held by the Hon'ble Supreme Court in the judgment referred to at (i) above, the disciplinary authority was to give reason when he disagreed with the enquiry officer and on this ground alone the disciplinary authority's order was liable to be set aside. He also relied on the judgment of the Kerala High Court according to which if the disciplinary authority disagreed with the findings of the enquiry officer a show cause notice was required to be given to the delinquent employee before the disciplinary authority came to the conclusion.

9. The next ground taken by the learned counsel for the applicant was that this was also a case of 'no evidence' in support of which he relied on R2 certificate and the wording of the article of charge. He also argued that the applicant had not been given reasonable opportunity to defend himself and it was a case of violation of principles of natural justice. He submitted that a number of documents sought for by the applicant to defend himself were not supplied to him and this caused prejudice to the applicant. Similarly all the prosecution witnesses were also ^{not} examined. He further put the plea that the punishment imposed on the applicant was shockingly disproportionate to the charges levelled against him. For this he relied on the judgment of the Hon'ble Supreme Court referred to under (ii) above.

10. The learned counsel for the respondents took us

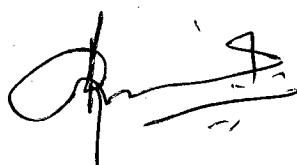
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through the pleadings and submitted that in the light of the categorical statement of the District Collector of Kasaragod as reflected in R7 that the applicant belonged to 'Bunta' community which was not included in the S.T. community the applicant had no case. Moreover, the principle of natural justice had been fully complied with in this case and the applicant had been given all reasonable opportunity to defend himself and that all the points raised by the applicant in this OA had been raised by him before the appellate authority who had elaborately considered each of the points raised by the applicant and came to the conclusion stated therein. Further, it was submitted that the appellate authority had also taken a lenient view of the case and reduced the punishment from one of 'removal' from service to one of 'compulsory retirement' for the reasons stated therein. He submitted that the O.A. was devoid of merits and was liable to be dismissed.

11. We have given careful consideration of the submissions made by the learned counsel for the parties and the rival pleadings. We have also perused the documents brought on record..

12. By A2 order dated 29.9.93 the applicant was proceeded against under Rule 14 of the CCS (CC&A) Rules, 1965. In Annexure I to A2 OM contained the article of charge, which reads as follows:

"That the said Shri K. Babushetty irregularly secured employment as Postal Clerk in the postal department against a vacancy which was adjusted against a vacancy reserved for Scheduled Tribe candidates, producing a false community certificate showing that he belonged to Scheduled Tribe and grabbed a post intended for a candidate belonging to scheduled tribe

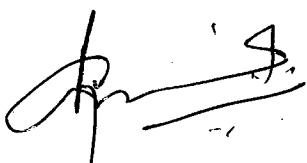


in violation of introductory para 2-1 of Brochure on reservation for SC and ST in service. It is therefore alleged that Shri K. Babushetty acted in a manner unbecoming of a Government servant, and also failed to maintain absolute integrity, violating the provisions contained in Rule 3(1)(iii) and 3(1)(i) of CCS (Conduct) Rules, 1964.

In Annexure II to A2, the statement of imputation of misconduct or misbehaviour in support of the article of charges framed against the applicant is detailed as follows:

"That the said Shri K. Babushetty applied for the post of Clerk in Ernakulam Postal Division, vide his application dated 8.5.67 attaching a community certificate issued by the Tahsildar, Kasaragod dated 2.5.67 in a form other than prescribed in Appendix 14 to the brochure on reservation for SC and ST in services, stating that Shri K. Babushetty, S/o Kunhanna Bunta of Kudlu village belonged to Scheduled Tribe, without mentioning the name of community to which he belonged. Shri K. Babushetty has claimed in his application form dated 8.5.67 for recruitment to the cadre of clerks in post offices that he belonged to 'Marati' tribe and therefore was a member of scheduled tribe. He was appointed as a postal clerk in Ernakulam Postal Division by the Sr. Supdt. of Post offices, Ernakulam division, e.e.f. 25.1.1968, against point No. 13, in adjustment of Point No.21 which was reserved for candidate belonging to Scheduled Tribe.

A communication No. C&R-7/139/89-RU.III from the Commissioner for SC/ST, New Delhi-66 was received by PMG, Kerala circle, Trivandrum on 24.11.1989 pointing out the production of false community certificate by Shkri K. Babushetty, for securing employment in Postal Department, reserved for candidates belonging to Scheduled Tribe. The matter was referred to District Collector, Kasaragod for necessaryenquiries and final decision. The District Collector, Kasaragod in his proceedings No. G5-23758/90 dated 24.10.1990 cancelled the community certificate issued by the Tahsildar from the date of its issue as enquiries made revealed that Shri Babushetty did not belong toST community and that his parent belongs to Bunta community which is not included in Scheduled Tribe. His wife Smt. Rama Bai, employed in Vijaya Bank also belonged to Bunta community. The District Collector in his ahbove proceedings gave Shri Babushetty to be present before the Tahsildar for fresh community certificate with an affidavit showing the caste or tribe to which he belonged and directed the Tahsildar Kasaragod to take a decision thereafter, after proper enquiry. The District Collector, Kasaragod in his letter No. 23758/90 dated 14.12.90 reported that the said Shri K. Babushetty (name was wrongly shown as Balu shetty in letter No. G4.23758/90 dated 28.3.92 from the District Collector Kasaragod addressed to PMG, Calicut) did not file any application for caste certificate as stipulated in the proceedings dated

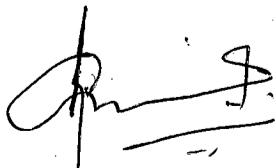


24.10.90 and therefore the cancellation of co;mmunity certificate from the date of issue has become final. Thereupon the Supdt. o;f POs, Tirur Dn, in whose jurisdiction Shri K. Babu Shetty was working at that time, issued a notice in letter No. B-300 dated 21.8.91 calling upon Shri K. Babushetty to produce a fresh caste certificate within 15 days in view of the cancellation of the original community certificate from the date of issue. This notice was delivered to Shri K. Babushetty on 22.8.91. Despite receipt of the notice, Shri K. Babushetty failed to produce a fresh community certificate as reported by SP, Tirur in; his letter No. B-300 dated 3.10.91. The District Collector, Kasaragod in his letter No. G4-23758/90 dated 28.3.92 intimatead PMG, Northern Region, Calicut that Shri K. Babushetty actually belongs to 'Bunta' community which is not included in the approved list of SC/ST in Kerala. Appendix-20 to brochure on reservation for SC and ST in services contain particulars of communities defined under Article 341 and 342 of the Constitution of India. Bunta community to which Shri Babushetty belongs does not find among such community defined as ST on pages 386 and 387 of the brochure.

Therefore, it is imputed that Shri K. Babushetty irregularly secured employment in the cadre of Postal Clerk in Ernakulam Postal Division, against a vacancy reserved for ST candidate, misrepresenting him self as a person belonging to ST community. But for the production of false community certificate Sri K. Babushetty would not have been selected to the post, as the last candidate selected in the first half of 1968 against OC vacancies and appointed against point No.8 of cycle No.4 on 23.4.68 had secured 68.67 marks in SSLC whereas Shri K. Babushetty had secured only 56.16% marks in SSLC, as per the application submitted by these officials for the post of Clerks in Post Offices."

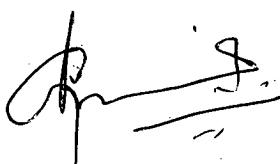
13. Annexure III and IV to A2 are the list of documents and list of witnesses by which the article of charges framed against the applicant was proposed to be sustained. By A5 disciplinary authority imposed punishment of removal from service and by A7 the appeal filed by the applicant was disposed of by the appellate authority. By this A7 order the penalty imposed by the disciplinary authority was reduced to that of compulsory retirement from the date of removal as in the original order.

14. At the outset, we reject the plea of the respondents of the O.A. being premature on the ground of non-filing of

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Revision Application by the applicant. We consider that a proceedings under CCS (CCA) Rules is final when the appeal filed is disposed of.

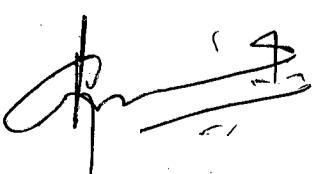
15. It has been held by the Supreme Court in a catena of decisions that the scope of judicial review in disciplinary matters on the basis of domestic enquiry is not to reappreciate the evidence and act as an appellate authority. It has to examine "All things considered whether there was a fair enquiry." In a recent decision the Hon'ble Supreme Court in Civil Appeal No. 1656/98 High Court of Judicature at Bombay through its Registrar Vs. Sasikant S. Patel and Another held "Interference with the decision of the departmental authorities could be permitted while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of the statutory regulations prescribed in the mode of such enquiry or if the decision of the said authority is vitiated on a consideration of examination of the evidence and merit of the case or in the conclusion made by the authority on the very face of it is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the disciplinary committee of the High Court) is the soul judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a Writ Petition filed under Article 226 of the

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Constitution". Further, the Hon'ble Apex Court held "The findings of the enquiry officer are only his opinion on the materials but such findings are not binding on the disciplinary authority as the decision making authority is the punishing authority and therefore, that authority can come to its own conclusion, of course bearing in mind findings expressed by the enquiry officer. But it is not necessary that the disciplinary authority should discuss the materials in detail and test the opinion of the enquiry officer. Otherwise, the position of the disciplinary authority would get relegated to a subordinate level."

16. We propose to examine the present case keeping in view the above Law laid down by the Hon'ble Supreme Court.

17. The applicant has in the first ground advanced pleaded that the nature of the caste and community status of the applicant was dealt with in a cavalier manner. It was submitted that the Collector without conducting a detailed enquiry by proceedings dated 24.10.90 cancelled the community certificate issued by the Tahsildar on 2.5.67 after 23 years for the reason that the certificate issued by the Tahsildar the name of the community had not been stated. According to the applicant, the certificate issued by the Tahsildar on 18.7.67 which certified that the applicant belonged to 'Marati' community which was recognised as S.T. had not been cancelled. The proceedings, which were held leading to issue of order dated 24.10.90 by the District Collector, Kasaragod has been filed as R3 by the respondents along with the reply statement. We find from the proceeding that the applicant had participated in these proceedings. We also note from the proceedings that the applicant had not referred to the certificate issued by the Tahsildar dated 18.7.67 certifying

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that he belonged to 'Marati' community which was recognised as S.T. The Collector in paras 5 & 6 of R3 stated as follows:

"5. Sri Babu Shetty himself has admitted in his written representation that no mention of the community was made in the certificate dated 2.3.67. The photocopy of the certificate given to the Postal authorities also shows that the name of the community is not mentioned there. The certificate reads as follows:

"This is to certify that Sri K.Babu Shetty S/o Kunhanna Banta of village Kudly district Cannanore in the community which is recognised as a Scheduled tribe..."

It is clear that the sentence is incomplete. The certificate, as extracted above, does not conform to the prescribed form, which specifically provides for the name of the caste. It needless to say that a community certificate must indicate the particular caste or tribe. I, therefore, find that the certificate is totally defective.

Neither in the written representation nor during personal hearing Sri Babu Shetty did disclose his caste. In the circumstances the only course left open to me is to cancell the said community certificate from the date of its issue and I order accordingly.

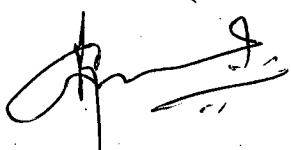
6. However, it is considered necessary to give a chance to the individual to present before the Tahsildar, if he sodesires on fresh application for community certificate together with an affidavit showing the caste or tribe to which he belongs. He is allowed 15 days time to do so. The Tahsildar, Kasaragod will take a decision in the matter after



proper enquiry."

18. From the above, we are of the view that the ground advanced is not tenable and is only to be rejected and accordingly we reject the same. The enquiry authority was well within his rights to rely on the certificate/letter issued by the Collector.

19. The next plea taken by the applicant is that it was a case of "no evidence." From the submission of the learned counsel for the applicant and the pleadings on record, we felt that this plea had been advanced, taking the Article of charge included in Annexure I of A2 charge memorandum dated 29.9.93 in isolation. The Article of Charge in Annexure I of A2 has to be read along with Annexure II of A2 "statement of imputation of misconduct or misbehaviour in support of the articles of charge framed against Shri Babushetty, Deputy Postmaster, Kasaragod." We have extracted the above earlier. We have carefully gone through A3 Enquiry Report. We find that the enquiry officer has relied on Ext. P2 -the application submitted by the applicant (R1 of the reply statement), Ext. P1 - the community certificate dated 2.5.67 enclosed with the application P1 (R2 of the reply statement), the order by the District Collector which declared that the applicant did not belong to 'Marati' S.T. community and the statement of Defence Witness-1(DW-1). The extract of the statement of DW- 1 during the course of the enquiry had been produced along with the reply statement as R5. Further, the applicant had not denied R1 application form in which it had been clearly stated against column 8 that he belonged to ST community and his caste had been shown as 'Marati.' These appear to be in applicant's own handwriting. R2 does not indicate any Tribe and is obviously defective. All the above would indicate that there is 'some evidence'. Therefore, we cannot accept the plea of 'no evidence' made by the applicant.



20. We find from the enquiry report the question about the need for a finding by an anthropological expert had been raised by the applicant in the enquiry. He had questioned the prosecution witness PW-4 on this aspect who had replied that anthropological study would be necessary if there was a doubt about the community and having no doubt in this case he had not proposed the study to be conducted. In any case, as the revenue authority, the Tahsildar had replied that anthropological study is required only in case of doubt about the caste of the person, we have to reject this plea of the applicant. Moreover, the applicant should have presented his case to establish his community status with the Tahsildar as directed by the Collector.

21. The next plea taken is that the punishment imposed is disproportionate to the charge levelled against him. We find that the appellate authority had modified the punishment imposed from one of 'removal from service' to that of 'compulsory retirement'. By this the applicant would get the benefit of the service he had rendered for 28 years. We do not consider the punishment imposed is xxx shockingly disproportionate to the charges levelled against the applicant on the basis of the modification of the punishment effected by the appellate authority.

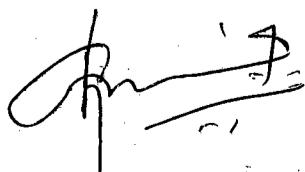
22. The next ground taken by the applicant is that he was appointed as a Clerk in the month of May, 1967 against a vacancy notified for the first half of 1967 and he was not recruited against a vacancy which was reserved for S.T. community. Applicant claimed that the roster was operated only in 1968. Applicant claimed that he was not recruited against reservation point for ST and therefore it could not be said that he had gained unfair advantage and grabbed the

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vacancy set apart for S.T. candidate. According to him as long as this charge was not proved, the whole enquiry proceedings should have been dropped and the applicant should have been exonerated from the charges levelled against him. From the enquiry proceedings we find that the enquiry officer had come to the conclusion that this aspect of the charge i.e. he grabbed employment in P & T Department producing a false caste certificate of S.T. was not conclusively proved. However, the Disciplinary Authority had differed with the enquiry officer. The Disciplinary Authority in A5 order stated as under:

"There is also no merit in the argument of the charged government servant that he did not secure the job on the reservation quota. He had specifically mentioned in his application dated 8.5.67 while applying for the post of Clerk that he belonged to the Scheduled Tribe. It is based on this and the S.T. certificate that he was allotted to the quota meant for the S.T. candidate. It is left to the competent authorities to allot the selected candidates to the points earmarked for each category. It is not to be revealed to the selected candidates."

From the above it is evident that the disciplinary authority had given his reasons for differing with the enquiry officer's views based on the evidence adduced during their enquiry for his conclusion. We are unable to find any fault with the same. We also do not find any violation of the law laid down by the Hon'ble Apex Court in the case of Bank of India and Another Vs. Degala Suryanarayana decided on 12.7.99 reported in JT 1999 (4) SC 489/AIR 1999 SC 2407. "The law is well settled. The Disciplinary Authority on receiving the report of the Enquiry Officer may or may not agree with the findings recorded by the latter. In case of disagreement, the Disciplinary Authority has to record the reasons for disagreement and then to record his own findings if the evidence available on record be sufficient for such exercise



or else to remit the case to the Enquiry Officer for further enquiry and report." There is no need for issue of a notice of the proposed penalty as per the Constitution. Therefore, this plea has no force and has only to be rejected.

23. The next plea taken by the applicant is that the enquiry proceedings were vitiated as the principles of natural justice were violated in that the Tahsildar who issued the certificate had not been examined nor the Senior Superintendent of Post Offices had been examined. The applicant submitted that he was denied reasonable opportunity of defence. We find that the appellate authority has also gone into this aspect and rejected the same for the reasons recorded therein. We have considered the article of charges as also the enquiry report and the orders of the disciplinary and appellate authorities. We find that no prejudice has been caused to the applicant by not examining the Senior Superintendent of Post Offices and the Tahsildar who issued the community certificate dated 2.5.67.

24. Another plea raised by the applicant is regarding the competency of the Director of Postal Services, Northern Region, Calicut to impose the major penalty of removal from service on the applicant. According to the applicant he was appointed to the LSG prior to divisionalisation of the cadre by an officer of the rank of PMG. We find that the appellate authority has dealt with this plea of the applicant. Moreover, the applicant had not produced his appointment order or promotion order to show that he has been appointed/promoted by the PMG. In the absence of these documents we are unable to accept the plea of the applicant that he had been appointed/promoted by the PMG and the Director of Postal Services, Northern Region is not competent

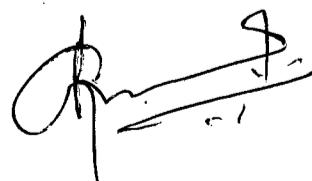
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to impose the penalty of removal from service on him. Respondents have also annexed R6 showing that the Director of Postal Services is competent to impose punishments on the Postmaster/Ministerial staff in Higher Selection Grade and Director as head of the division is competent to impose all the penalties on employees holding group 'C' posts. This had not been contradicted by the applicant in the rejoinder. In view of the foregoing we find no force in this plea.

25. The next plea taken by the applicant is that the order of Disciplinary authority does not contain any reasons and therefore was unfair. On a perusal of A5 which is a very detailed and reasoned order, we reject this plea.

26. We also reject the plea of the applicant that on the face of A1 order of this Tribunal continuance of the disciplinary proceedings against the applicant was ~~contumacious~~. We are unable to accept this plea. The cause of action for O.A. No. 142/90 was in the context of A1 and A3 orders of that O.A. issued to the applicant. We hold that the order in that O.A. in no way restricts the respondents from taking action against the applicant in accordance with law for any acts of ~~commission~~/commission of the applicant. There is also no finding in that order that the applicant belonged to S.T. community.

27. We also find that all the grounds advanced in the O.A. had been advanced by the applicant in A6 appeal and the appellate authority had dealt with the same elaborately in A7 appellate order.

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28. In view of the detailed analysis given above, we find that the applicant is not entitled to the reliefs sought for. All things considered we do not find any infirmity in the proceedings initiated against the applicant under CCS (CCA) Rules, 1964 and we find that the applicant had a fair enquiry.

29. Accordingly, we dismiss this O.A. with no order as to costs.

Dated the 7th January, 2000.



G. RAMAKRISHNAN

ADMINISTRATIVE MEMBER

KMN



A.V. HARIDASAN

VICE CHAIRMAN

List of Annexures referred to in the Order

A1 True copy of the order in OA 142/90 dated 23.8.90 by CAT, Ekm Bench.

A2 True copy of Memo No. Staff/101-1550/90 dated 29.9.93 by 3rd respondent.

A3 True copy of enquiry report issued by Assistant Director (Staff) office of the PMG, Northern Region, Calicut.

A4 True copy of the representation by the applicant to the 3rd respondent dated 10.2.96.

A5 True copy of order No. Staff/101-1550/90 dated 8.3.96 issued by the 3rd respondent.

A6 True copy of the memorandum of appeal filed by the applicant before the 2nd respondent dated 11.4.96.

A7 True copy of the appellate order dated 18.9.96 issued by the 2nd respondent.

A9 True copy of the caste certificate issued by the Tahsildar dated 18.7.67.

A10 True copy of the relevant pages of SSLC book of the applicant.

R7 True copy of the letter No. G4/23758/90 dated 28.3.92 sent by the District Collector, Kasaragod to the PMG, Northern Region, Calicut.

R1 True copy of the application submitted by the applicant

R2 True copy of the community certificate issued on 2.5.67 by Tahsildar, Kasaragod.

R3 True copy of the proceedings of the District Collector, Kasaragod under reference No. 1G5/23758/90 dated 24.10.90

A8 True copy of the Certificate issued by the Tahsildar dated 2.5.67

R4 True copy of the relevant portion of the special representation Roster

R5 True copy of the deposition of the Witness (DW1) dated 5.10.95

R6 True copy of the DG Posts, New Delhi letter No. 12/6/89-VIG-III dated 27.8.90 relevant portion of schedule mentioned therein pertaining to this case