

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 288/87

DATED SEVENTEENTH DAY OF FEBRUARY
NINETEEN HUNDRED AND EIGHTY NINE

PRESENT

HON'BLE SHRI S. P. MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI G. SREEDHARAN NAIR, JUDICIAL MEMBER

N. Rajappan

.. Applicant

Vs.

1. Assistant Post Master General
(Staff), Trivandrum

2. The Director of Postal Services
(Headquarters) Kerala Circle,
Trivandrum and

3. Post Master General, Kerala Circle,
Trivandrum

.. Respondents

M/s. Chandrasekharan &
Chandrasekhara Menon

Counsel for the
applicant

Mr. P. V. Madhavan Nambiar, SCGSC

Counsel for
respondents

O R D E R

Hon'ble Shri G. Sreedharan Nair,

The applicant, a Head Postmaster, joined the Postal Department as temporary clerk in the year 1959, having been recruited in the quota prescribed for Scheduled Tribes. He had produced a certificate dated 31.12.1957 issued by the Tahsildar, Palghat to the effect that he belongs to the Malaipandaram community which is included in the list of Scheduled Tribes. By the memorandum dated 19.2.1980, the

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applicant was directed to produce his community certificate, in response to which he sent a reply stating that he had already produced the community certificate at the time of his appointment in the Department. Nevertheless, on the ground that the said certificate is not traceable, the applicant was directed to produce a fresh certificate. Again, the applicant ~~written~~ *wrote* back stating that the original community certificate issued by the Tahsildar, Palghat on 31.12.1957 is kept in his C.Rs. On 7.5.1985, the applicant was informed that enquiries have revealed that he belongs to the Pandarah community which is not related to Malaipandaram community and as such, for having misrepresented the Department, disciplinary action is proposed to be initiated against him. The applicant replied stating that he does belong to the Malaipandaram community and that he has not committed any misrepresentation. Thereafter, the memorandum dated 29.9.1986 was issued to the applicant by the second respondent, Director of Postal Services, stating that the applicant does not belong to the Scheduled Tribes and as such, it is proposed to cancel his classification as Scheduled Tribe. The applicant replied stating that there is no valid ground to cancel the classification. On 30.1.1987, the impugned order was passed by the second respondent cancelling the classification and treating the applicant

as belonging to the general category (unreserved) on the ground that he doesnot belong to the Mala pandaram community. The applicant assails the order. It is urged that the report of the District Collector, Palghat dated 29.5.1959 which has been relied upon for cancelling the classification, was obtained behind the back of the applicant and that action should not have been taken on the basis of the said report after about 25 years.

2. After the filing of the present application, based on the re-classification, the applicant was reverted to the lower selection grade by the order dated 18.11.1987. By way of amendment, the applicant has included a prayer in the application for quashing the said oder.

3. In the reply filed by the respondents, it is stated that the Senior Superintendent of Post Offices, Palghat, made a reference on 4.11.1982 to the District Collector, Palghat, requesting to furnish the correct classification of the applicant, pursuant to which the latter intimated that the applicant actually belonged to the Pandaram community which is not related to the Mala pandaram community included in the llist of Scheduled Tribes. A detailed enquiry was conducted through the Assistant Supdt. of Post Offices when it was noticed that on 29.5.1959, the District Collector, Palghat, had intimated that the applicant does not belong to the Scheduled Tribes. It was after questioning the

applicant and based on these two reports from the District Collector that the decision for re-classification was made. It is contended that according to the Schedules under the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, Malai Pandaram community is recognised as Scheduled Tribe but not Mala Pandaram. Since the report of the District Collector was to the effect that the applicant belongs to the latter, he is not eligible to be treated as belonging to the Scheduled Tribes.

4. The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act 1976, in ~~Part~~ VII of the Second Schedule specifically refers to Malai Pandaram at Sl. No. 21. It is significant that it is not confined in its application to any particular region of Kerala. Admittedly, the applicant has been recruited to the clerical cadre in the Postal Department against the quota for Scheduled Tribes on the premise that he belongs to the Malai Pandaram community. The applicant has produced Annexure-V, a copy of a certificate issued by the Tahsildar, Palghat on 31.12.1957, certifying that the applicant belongs to the Malai Pandaram community which is included in the list of Scheduled Tribes. With the introduction of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act 1976, the Postal and Telecommunication Department felt that it was necessary to conduct a review to re-classify officials

in Scheduled Caste/Scheduled Tribe, according to their community, and it was in exercise of the said review that the applicant was called upon in the year 1980 to produce the community certificate afresh. The applicant promptly replied that the original community certificate produced by him at the time of his entry in service is in his C.R.S. It is seen that an enquiry was conducted by the Department to verify the community to which the applicant belongs, when an intimation from the District Collector, Palghat dated 29.5.1959 was traced. Copy of the same is produced by the respondents which is at Annexure R-4. It does state that the applicant belongs to Malapandaram caste. However, the Collector has reported that the said caste is not included in the list of Scheduled Castes/Scheduled Tribes (in Malabar area) notified by the Central Government. It is seen that an attempt has been made by the respondents in their reply statements to bring in a distinction between the Malapandaram community and Malaipandaram community. It is admitted in the reply that the applicant belongs to Malapandaram community. On the ground that the reference in ~~Part~~ VII of the Schedule is only to Malaipandaram community, it was argued by the SCGSC that the applicant does not belong to the Scheduled Tribe. We have the least hesitation in repelling the ^{Submission.} ~~statements~~. It has not been shown before us that actually there is another community known as Malapandaram. It may be that the

the community which is known as Malaipandaram and described as such in ~~part~~ VII of the Schedule is written in some correspondence as Malapandaram. Indeed, the certificate granted by the Tahsildar, Palghat, as early as in the year 1957 described the applicant as belonging to the Malapandaram community. In this context, reference may be made to the O.M. dated 25.5.1960 issued by the Ministry of Home Affairs which authorises Revenue Officers not below the rank of Tahsildar to issue caste certificate to Scheduled Castes and Scheduled Tribe candidates for employment under the Central Government. No doubt, the O.M. ^{confers} ~~confirms~~ a right on the appointing authority to verify the same, if desired, through the District Magistrate of the place where the candidate ordinarily resides. The letter from the District Collector (Annexure-R-4) furnished as early in the year 1959 after enquiry discloses that the
→ applicant belongs to the Malaipandaram community. Though the Collector states that it is not included in the list of Scheduled Castes/Scheduled Tribes, Sl. No. 21 of ~~part~~ ^{the} VII of Second Schedule to the Scheduled Castes and Scheduled Tribes (Amendment) Act 1976 refers to the Malaipandaram community.

5. There is no case for the respondents that after the receipt of the report from the Collector dated ° 29.5.1959, any steps were taken against the applicant treating him as not belonging to the Scheduled Tribes. On the other hand, ^{all along} he was ^L considered as belonging to Scheduled Tribe and was being granted consequential service benefits.

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6. In the reply filed by the respondents, it is contended that the reclassification was made not only on the basis of the said report but also on the basis of another report dated 1.10.1984 from the District Collector, Palghat (Annexure R-3). A perusal of the impugned proceedings does not indicate that the second respondent drew support for the action from that report. In any event, in the face of the certificate issued by the Tahsildar, which was virtually confirmed by the District Collector as early as in the year 1959 by stating that the applicant belongs to the Malapandaram caste, the subsequent report obtained after a quarter of century cannot at all be relied upon. That apart, the said report has been obtained behind the back of the applicant and without affording him an opportunity of being heard, and as such, to reclassify the applicant by placing him in the general category based on such a report is violative of all canons of justice and fair play.

7. It is in evidence that when the benefits ~~of~~ belonging to the Scheduled Tribe were not allowed to the children of the applicant, he had approached the Collector, Palghat for the issue of a community certificate testifying that he belongs to the Scheduled Tribe, and since it was rejected, in the year 1986, he approached the High Court of Kerala in O.P. No. 4014 of 1986.

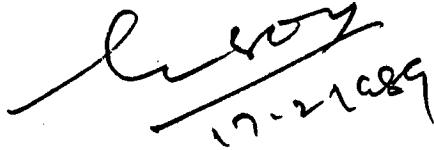
The High Court quashed the orders of the District Collector rejecting the request of the applicant and directed the Tahsildar, Palghat to issue a community certificate as prayed for by him that himself and his children belong to the Mala Pandaram community, a Scheduled Tribe. Copy of the judgement of the High Court has been produced by the applicant. It is at Annexure-22. It is seen from the said judgement that the High Court placed reliance on the certificate issued by the Tahsildar, Palghat on 31.12.1957 (Annexure-5) and held that placing reliance on the said certificate, the request of the applicant should have been allowed, for the benefit of his children. In the face of this judgement, the Revenue authorities can no longer contend that the applicant does not belong to the Malaipandaram community and is not a member of the Scheduled Tribe.

8. It follows that the impugned order of the second respondent dated 30.1.1987 cancelling the classification of the applicant as belonging to the Scheduled Tribe, and treating him ^{as} ~~to~~ ^{the} belonging to general category is unsustainable. Since the order of reversion was passed on 18.11.1987 based on the aforesaid proceedings, the said order cannot also be upheld. Both these orders are hereby quashed. We direct the respondents to treat

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the applicant as belonging to the Scheduled Tribe and eligible for consequential service benefits.

9. The application is allowed as above.



(G. Sreedharan Nair)
Judicial Member
17.2.1989



(S. P. Mukerji)
Vice Chairman
17.2.1989

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