

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.315/2013

Monday, this the 1st day of February, 2016

CORAM

Hon'ble Mr.Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs.P.Gopinath, Administrative Member

V.P.Priyadarshan, 49 years
S/o V.P.Chathukutty
Former Postal Assistant (Dismissed from Service)
Thalassery Head Post Office
Residing at Arsha
Pinarayi 670 741, Kannur District. Applicant

(By Advocate: Mrs.R.Jagada Bai)

Versus

1. Union of India represented by the
Secretary to Department of Posts
New Delhi-110 001.
2. Superintendent of Post Offices
Thalassery Division, Thalasserry 670 102.
3. Smt.K.Geetha
Inquiring Authority & Assistant Superintendent of Post Offices
Vadagara Division, Vadagara 673 101
4. The Director of Postal Services
Office of the Post Master General,
Northern Region, Kerala Circle
Kozhikode 673 011. Respondents

(By Advocate: Mr.Brijesh A.S., ACGSC)

The OA having been finally heard on 8.1.2016, this Tribunal delivered the following order on 1.2.2016:



ORDER

By P.Gopinath, Administrative Member

This is a case of obtaining employment as Postal Assistant by producing a fake caste certificate by the applicant, which culminated in his dismissal from service. The present OA has been filed for quashing Annexure A1 charge sheet dated 15.3.2010, Annexure A10 inquiry report dated 13.3.2012, Annexue A12 penalty order dated 20.3.2012 and Annexure A14 order of the appellate authority dated 14.2.2013 rejecting the appeal.

2. The charge levelled against the applicant was that the applicant managed to get selected and appointed as Postal Assistant in 1983 by producing a caste certificate which claimed that he belonged to "Moger" community, which is listed as 'Scheduled Caste' whereas he actually belonged to "Mukaya" community which comes under the "OBC" list. The post was reserved for an SC candidate and by his aforesaid act of false representation, the applicant has deprived an SC candidate of his employment opportunity and this had rendered the applicant unsuitable for government service. An earlier charge sheet issued in 1994 compelled the applicant to approach the High Court with OP No.17763/94 which was finally disposed of directing the 1st respondent to have the caste issue decided by a scrutiny committee. The said scrutiny committee rejected the claim of the applicant. The applicant challenged the report of the Scrutiny Committee by filing another OP No.8713/1998 before the High Court. Finally the Hon'ble High Court dismissed the OP No.8713/98. While dismissing the OP, the High Court had relied on the decisions in the case of

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Punit Rai Vs. Dinesh Choudhary, 2003 (8) SCC 204 and a full bench decision of CAT in *Indira Vs. State of Kerala, 2005 (4) KLT 119*, wherein it was held that '*the petitioner's caste should be treated as the caste of the father*'. The applicant claims that his father belongs to "Mukaya" community and mother belongs to "Moger" and it was an inter-caste marriage. In view of the Annexure A3 judgment of the High Court, a fresh charge sheet dated 15.3.2010 was issued to the applicant. On receipt of this, the applicant filed OA No.980/2011 before this Bench of the Tribunal. That OA was disposed of vide order dated 15.11.2011 directing the respondents to complete the inquiry against the applicant at the earliest, giving liberty to raise whatever contentions at an appropriate time if occasion arises. It is in this background the present OA came to be filed.

3. The respondents in their reply statement have raised preliminary objection contending that the present challenge is highly belated, apart from the fact that the issue involved is hit by the principle of res-judicata. As the applicant is trying to agitate the same matter again and again, the principle of estoppel also comes into play. It is stated that on 24.8.1992, the 2nd respondent had received a complaint from one Raman Master, Pallipuram alleging that the applicant did not belong to "Moger" community. Consequently, a report was sought from District Collector, Kannur who verified his antecedents. 'Mukaya' community is not recognized as SC as per the list published by Govt of Kerala SC/ST Development Department dated 3.12.1991 (Annexure R2). Thereupon the first show cause notice was issued to the applicant. The Scrutiny Committee



set up to inquire into the charges had also tendered its opinion to terminate the services of the applicant. Though the matter travelled to Hon'ble High Court and CAT, the decisions rendered in those litigations could not come to the rescue of the applicant. The applicant was given all reasonable opportunities to defend his case as provided under Sub Rule (2) to (19) of Rule 14 of CCS (CCA) Rules, 1965. His appeal was also considered as per Rule 27 (2) of CCS (CCA) Rules and it was rejected by a speaking order. The disciplinary authority had weighted the evidence placed before him during the inquiry, the findings of the inquiry authority and the presenting officer as well as the arguments of the applicant on an equal footing and came to a concrete conclusion that the charge against the applicant was proved beyond doubt. The respondents have relied on two judgments of the Hon'ble Supreme Court of India i.e, (1) Regional Manager, Central Bank of India Vs. Madhulika Guruprasad Dahir and others , 2008 (13) SCC 170 and (ii) R. Vishwanatha Pillai Vs. State of Kerala and others (2004) 2 SCC 105 to contend that a person who secures employment by playing fraud is disqualified to hold the post from the very inception of employment. In view of the well settled position in the matter, the applicant has no right to continue in service. The OA is devoid of merit and deserves to be dismissed, contend the respondents.

4. The applicant has been removed from service for submitting a fake caste certificate. He desires that a sympathetic view be taken of the false caste representation and he be reinstated. The respondents take the view that the very appointment of the applicant is vitiated as he entered service



on a fake caste representation and the premise of dishonesty and misrepresentation combined with usurping a seat which should have gone to a SC candidate compounds the lack of integrity and official misdemeanor of the applicant.

5. The applicant, recruited into service in 1983, has been involved in a series of litigations in CAT and High Court, the first one being Original Petition No.17763 of 1994 – M. Most of the litigations were to substantiate and protect his caste claim which was under dispute. In the departmental Rule 14 inquiry, based on oral and documentary evidence, the charge was proved. Applicant was allowed an opportunity to submit a written brief on the inquiry report. During the course of inquiry, the applicant alleged bias and submitted a petition. The petition which disrupted the disciplinary proceedings was disposed of by a detailed speaking order. The applicant with the Damocles' Sword of false certificate hanging over his head, had made every attempt to delay a decision in his case. The applicant had adequate opportunity before CAT, High Court and the State designated Committees to defend his stand, before the final action was taken. The respondents contend that the disciplinary authority had weighed the evidence placed before him in the inquiry report, the findings of the inquiry officer, arguments of the presenting officer and the applicant before drawing his conclusion that the charge was proved.

6. The applicant refers to Annexure A16 document of ADM Cannanore which verifies the character and antecedents of the applicant, in support of his caste verification by the ADM. The respondents would aver that the

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verification of character and antecedents can nowhere, by the widest interpretation, be read as verification of caste certificate. The respondents aver that this verification is intended to verify the ancestral and family background to ascertain if the candidate is fit for government employment, as such a person being a representative of the government is expected to be an exemplary employee.

7. The High Court in OP No. 8713 of 1998 had held that the caste of the applicant should be treated as the caste of the father, this being the thread of judgments up to the Apex Court. There has to be uniformity in the country in the choice of caste, particularly when father and mother belong to different communities. The applicants and other similarly placed do not have the right to choose either father or mother's caste depending on whichever is favourably applicable in a job selection.

8. The applicant's case has also been examined by a Scrutiny Committee of the State Government which has held that the applicant's contention of belonging to Moger (SC) community is misplaced. The State Government Scrutiny Committee Report (Annexure R3) states that they surveyed 203 houses in Kannur District to establish, historically and socially, whether it is the residence of Moger (SC) community. The survey revealed that in none of the 203 houses surveyed did they find a Moger inhabitant. The Scrutiny Committee while arriving at their conclusion, did so independent of the report of KIRTADS. Such an expert opinion being the basis of conclusion in the disciplinary proceedings is not misplaced, as the disciplinary authority did not have the expertise or the analysis which the expert Scrutiny

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Committee had in their study and survey while submitting a report. This was supporting evidence which helped the inquiry officer to arrive at a conclusion in the case and can be compared to the evidence/report submitted by Central Finger Printing Bureau or a handwriting expert whose expert opinion is relied on to arrive at a conclusion by a disciplinary authority or the court. Relying on such evidence was neither wrong nor violative of the principles of natural justice as the applicant had adequate opportunity to defend his case before the Scrutiny Committee and the High Court before they arrived at a final decision. Hence it was not as if the applicant went unrepresented or did not have an opportunity to defend his stand in the case. The Scrutiny Committee had observed that the Moger (SC) community reside mostly in Kasaragod Taluk, speak Tulu language, are socially backward and generally illiterate. The applicant did not fit into the above background of the community he claims his lineage from.

9. Annexure A23 order of the Governor of Kerala on the Scrutiny Committee Report is clear in its findings. The order clearly states that the Scheduled Caste benefits and financial benefits any accruing thereon, will be stopped and benefits availed, if any, shall be recovered. The Governor also ordered prosecution of applicant for making false caste claim and depriving genuine SC members of the benefits of reservation, thereby exploiting them for unlawful gains.

10. The applicant, in order to obtain employment, has entered the respondent department under false premises. Since the very claim to employment was on a false claim, the appointment is rendered void. The

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Apex Court in Regional Manager, Central Bank of India Vs. Madhulika

Guruprasad Dahir & others 2008 (13) SCC 170 had held:

""17. The makers of the Constitution laid emphasis on equality among citizens. The Constitution of India provides for protective discrimination and reservation so as to enable the disadvantaged group to come on the same platform as that of the forward community. If and when a person takes an undue advantage of the said benefit provision of the Constitution by obtaining the benefits of reservation and other benefits provided under the Presidential order although he is not entitled thereto, he not only plays a fraud on the society but in effect and substance plays a fraud on the Constitution."

In Viswanatha Pillai Vs. State of Kerala and others (2004) 2 SCC 105, the Hon'ble Supreme Court held:

""15. The appellant obtained the appointment in service on the basis that he belonged to a Schedule Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. His appointment was no appointment in the eyes of law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the applicant can lay a claim to the post on the basis of his appointment, he cannot claim the constitutional guarantee given under Article 311 of the Constitution of India. As he had obtained the appointment on the basis of a false caste certificate, he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India. Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of a false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Caste."

11. The Apex Court in the case of Additional General Manager Human Resources BHEL vs. Suresh R. Burde (2007) 5 SCC 336 had held:

"13. The principle which seems to have been followed by this Court is that, where a person secures an appointment on the basis of a false certificate, he cannot be allowed to retain the benefits of the wrong committed by him and his services are liable to be terminated."



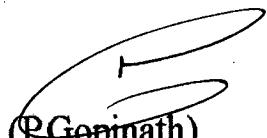
The facts of this case are similar to the facts pointed out above. In view of the finding of the Scrutiny Committee and the High Court of Kerala, applicant has no more the claim to hold the post as the appointment is void from the inception.

12. This matter has been under litigation for a long time. Further it is not as if the applicant was not aware of his caste status. The Scrutiny Committee appointed by the State Government as per orders of the High Court has observed that the five uncles of the applicant namely Melakadavan, Kumaran, Achuthan, Raghavan and Dassan Balan belong to Mogayan/Moger as per their school admission records. Hence it is clear that the caste fraud has been perpetrated right from the time of the schooling of the applicant as brothers and sisters in the same family cannot contend to belong to different community. The Scrutiny Committee, therefore, rightly concluded that taking into account the similarity of the caste name and willfully obtaining the favours of the weaker caste, the caste name was changed to obtain the benefits of the reserved community. The Scrutiny Committee is a statutory committee and the High Court has already dismissed the OP challenging the findings of the Scrutiny Committee. The claim of the applicant that the mother belongs to Mogar community and his producing a certificate to that claim cannot be held to be a wrong act is set aside, as the mother and her brothers themselves had claimed two different communities which cannot be an inadvertent act but a deliberate and calculated attempt to obtain the benefits of reservation under false grounds. Hence the claim of the applicant on the basis of mother's caste status itself



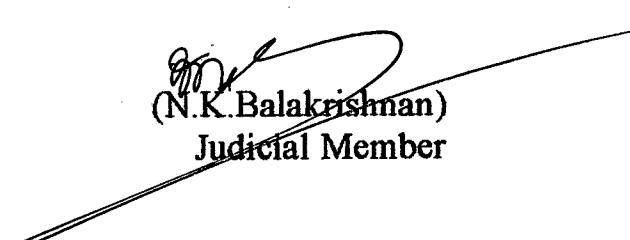
falls to the ground as the same is also in doubt in view of a different claim by the brothers of the mother of the applicant. Basic document on the basis of which the appointment was obtained by applicant is not in order and speaks of a falsehood perpetrated, and hence any restoration of appointment or reinstatement would also not be in order. Reinstatement would also be an encouragement for others to enter government service under such falsehood, thereafter apologize and ask for pardon for an act committed knowingly and expect continuation of service in view of an act committed innocently. It is a fraud on the Constitution of India. Such frauds cannot be allowed to be perpetrated. Such frauds committed on provisions made for upliftment of SC/ST community should not be encouraged or allowed to continue as this would be a travesty of justice.

13. OA is dismissed. No order as to costs.



(P.Gopinath)
Administrative Member

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(N.K.Balakrishnan)
Judicial Member