

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 273/2009

This the 2nd day of February, 2010

Hon'ble Ms.Sadhna Srivastava, Member (J)

Hon'ble Dr. A.K.Mishra, Member (A)

Kaushal Kishore aged about 49 years son of late Sri Budhai Lal resident of C-178/2, Bahadur Shah Marg, Cantt, Lucknow (working as Civilian Switch Board Operator (CSBO) Grade I, in Military Exchange, Central Command Signal Regiment, Lucknow.

Applicant

By Advocate: Sri R.C.Singh

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Signal Officer-in-Chief, Integrated Headquarter of Ministry of Defence (Army) Room No. 627, 'A' Wing, Sena Bhawan, DHQPO, New Delhi.
3. Chief Signal Officer, Headquarters Central Command, Lucknow.
4. Officer-in-Charge, Signals Records C/O 56 APO.
5. Commanding Officer, Central Command, Signal Regiment, Lucknow.
6. Major S.K.Malik, Administrative Officer, Central Command, Signal Regiment, Lucknow (Inquiry Officer).
7. Sri H.C. Pandey, Ex-Civilian Switch Board Operator Grade I, resident of Ram Jankipuram, Gali No. 19, Post Office Gomti Nagar, Kaushalpur (Chhota Bharwara), Lucknow.

Respondents

By Advocate: Sri Deepak Shukla

Sri S.P. Singh for respondent No. 7

ORDER

Hon'ble Ms. Sadhna Srivastava, Member (J)

Applicant seeks quashing of major penalty charge sheet dated 24.9.2007 as well as an order dated 2.6.2009 whereby his request for change of enquiry officer has been rejected.

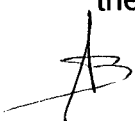
2. The facts are that the applicant was initially appointed on 17.11.1987 as Civil Switch Board Operator (CSBO) Grade II at Station Head Quarter, Dimapur (North East), then transferred on compassionate grounds to Central Command Signal Regiment w.e.f. 17.9.90. He was served with a charge sheet dated 24.9.2007. The charge is to the effect that he secured appointment as CSBO Grade II at Station Head Quarter Dimapur in Scheduled Tribe vacancy based on Scheduled Tribe Caste certificate issued by recruiting officer, Dimapur on the ground that he was resident of village and P.O. Rangapahar Distt. Kohima, although he was Ahir by caste (backward class) and a permanent resident

of Mohan Lal Ganj, Lucknow; that he had secured the appointment in Central Govt. service on the basis of a false certificate of caste against a vacancy reserved for S.T. Candidate.

3. Heard learned counsel of parties and perused the record.

4. The main ground for quashing the charge sheet is delay in service of charge sheet. It has been contended that the appointment of the applicant was made in 1987 and charge sheet has been served in the year 2007. There is no doubt that some reasons must exist on record for the delay in the initiation of the departmental proceedings. The reason in the instant case is that it did not come to the knowledge of the authorities that the applicant had secured appointment on the basis of a false caste certificate and usurped a post meant for S.T. Candidate. It is not a case where it can be said that the delay was caused after the facts had come to the knowledge of the authorities. The fact of a false certificate came to the notice of authorities in 2005 and charge sheet has been served in 2007. The record shows that the applicant was given out of turn promotion to the rank of CSBO Grade I w.e.f. 3.5.95 taking him to be a reserved category employee. The record also bears out that in the seniority rolls issued from time to time and ACR forms prepared each year, the status of the applicant was always shown as belonging to S.T. category. It were possible only because the authorities were not knowing that he does not belong to S.T. Category. The respondents got to know this while reviewing the service record in 2005. Thereafter, when enquiries were made in the year 2005, it, then, came to light that the applicant was a permanent resident of Mohanlalganj, District- Lucknow; that he had been issued S.T. caste certificate on the basis of temporary residence in North East area. The legal position regarding concept of the term 'Residence' has not to be understood in the literal or ordinary sense of the word. It connotes 'permanent residence' of a person on the date of the notification of the Presidential Order scheduling his caste/tribe in relation to that locality under Article 341 and 342 of the Constitution.

5. The facts of instant case are altogether on different footing. The demand for recruitment of CSBO was notified by Station Head Quarter Dimapur to employment Exchange, Diphu on 7.9.1987. The applicant got his name registered with Employment Exchange, Diphu on 8.9. 1987 as a S.T. Candidate. The recruiting officer issued S.T. Caste certificate to the applicant. The attestation form submitted by the applicant exists on record as Annexure 8 filed with the Counter Affidavit. In this attestation form also the applicant has described himself belonging to scheduled tribe. The authorities in the circumstances, did not entertain a doubt that the applicant belonged to S.T. category. The fact that the applicant had submitted a false caste certificate came to light of Central Command Signal Regiment in October, 2005. It was then the verification was made from Civil authorities as well. Once convinced



that the applicant had obtained appointment on the basis of false caste certificate, the disciplinary proceedings were initiated against him in accordance with instructions contained in DOP&T O.M. No. 11012/7/91-Estt (A) dated 19.5.93. This O.M. according to instruction appended below rule 11 of CCS (CCA) Rules provided that whenever it is discovered that a govt. servant had furnished a false certificate in order to secure appointment, an enquiry as prescribed in Rule 14 of CCS (CCA) Rules 1965, in case of a permanent Govt. servant, should be held and the govt. servant should be removed or dismissed from service. Thus, a case where delinquent employee is charged with procuring appointment in a reserved post by producing a false caste certificate stands on a different footing than other cases of disciplinary proceedings based on commission of some other misconduct. The applicant has cited the following case law:—

- (i) *State of M.P. Vs. Bani Singh 1991 SCC (L&S) 638*
- (ii) *State of A.P. Vs. N. Radhakrishnan 1998 (4) SCC 154*
- (iii) *P.V Mahadevan Vs Md. T.N. Housing Board (2005) 6 Supreme Court cases 636*
- (iv) *Kailash Nayak Vs. UOI and others 2006 Vol (3) ATJ 77*
- (v) *Jabbar Yadav Vs. UOI and others (O.A.No. 427/2006) CAT, Lucknow*
- (vi) *1994 Vol. 12 LCD page 228 High Court, Lucknow.*

However, these cases relate to misconduct other than obtaining appointment on false certificate. Therefore, they are not applicable in the instant case. It is also relevant to mention that the applicant has not pointed out as what prejudice has been caused by the delay in initiating disciplinary proceedings. Consequently, we hold that there was no inordinate delay in initiation of disciplinary proceedings in this case. The matter came to the knowledge of the competent authority in October, 2005. Thereafter, verification was made from military and civil authorities. The charge sheet was served in September, 2007.

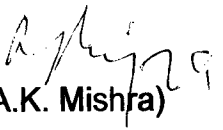
6. The 2nd point which calls for our adjudication is whether the order dated 2.6.2009 (Annexure A/2) is liable to be quashed whereby the request of the applicant for change of enquiry officer has been rejected. The main grievance of the applicant is that the documents listed in Annexure III of charge sheet have not been supplied to him. We find from record that the inspection of listed documents has already been allowed. Even the copies of some documents have been given to the applicant. It may also be mentioned that the request for change of enquiry officer was not made at the time his appointment was communicated to the applicant. Further, we do not find any grounds for bias of the enquiry officer. We also note that the delinquent employee and his defence assistant were not cooperating with the enquiry




officer as reflected by the order sheet dated 22.12.2008 (Annexure XIV page 64 of counter affidavit). Therefore, we are not inclined to interfere with the order dated 2.6.2009.

7. In view of the foregoing facts and circumstances, we are of the opinion that there are no grounds to quash the charge sheet. We must not interfere with the function and responsibility of the Disciplinary Authority. We also cannot express any opinion on the merits or demerits of the charge sheet. The charge sheet cannot be quashed on the ground of delay as alleged nor we are inclined to interfere with the order of competent authority rejecting the request to change the enquiry officer.

8. Resultantly, O.A. is dismissed without any order as to costs.


(Dr.A.K. Mishra)

Member (A)


(Ms.Sadhna Srivastava)

Member (J)

HLS/-