

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

Lucknow this the 12th day of May, 97.

O.A. No. 54/92

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. V.K. SETH, MEMBER(ADMN.)

Parmeshwar Din, aged about 47 years, son of late Bandhu, resident of Village Mariha, Tehsil and District Hardoi, U.P.

Applicant.

By Advocates S/Shri L.P. Shukla and Akhlaq Husain
versus

1. Union of India through the General manager,
North Eastern Railway, Gorakhpur, U.P.
2. The Additional Divisional Railway Manager,
North Eastern Railway, Ashok Marg, Lucknow.
3. The Chief Engineer, North Eastern Railway,
Gorakhpur. U.P.

Respondents.

By Advocate Shri Manik Sinha.

O R D E R

HON. MR. V.K. SETH, MEMBER(A)

By means of this O.A. the applicant has challenged the orders dated 25.6.91 passed by the Disciplinary Authority imposing upon him the penalty of removal from service and the appellate order dated 8.11.91 upholding the orders issued by the disciplinary authority.

2. Pleadings have been exchanged between the two sides and the same have been carefully perused by us. We have also given anxious thought to the rival contentions of the learned counsel for the parties advanced at the stage of hearing.

3. A resume of facts would be in order for examining the merits of the case. As per averments in the O.A., in 1963 a wrong certificate of caste showing the applicant as 'Gadariya' which is recognised as 'backward' community was issued by the District Magistrate Hardoi to his father. Subsequently, on 9.10.67 another certificate (Annexure A-1 to the O.A.) to the effect that the applicant belonged to 'Dhangar' community which is recognised as Scheduled Caste under the SC and ST Orders (Amendment) Act was issued by the concerned authority viz. District Magistrate, Hardoi. Thereafter, the applicant in pursuance of the employment notice applied to the Railway Service Commission, Allahabad and after qualifying at the selection, was informed by the said Commission vide their letter of 20th March, 1971 that he had qualified for the post of Assistant Permanent Way Inspector(Apprentice) and that the appointment will be made by the General Manager, North Eastern Railway, Gorakhpur. After completing a course of training the applicant was posted as A.P.W.I. with Headquarter at Hadda vide order dated 31.5.72 issued by the Divisional Superintendent (P). On the basis of the caste certificate and other relevant considerations, the applicant secured promotion to the level of P.W.I. and Senior P.W.I.

4. The respondents have interalia mentioned in their C.A. that a complaint was received that the applicants had secured the appointment and promotions on the basis of a forged certificate of S.C. The matter was therefore, investigated

and disciplinary proceedings instituted against the applicant. In his report the enquiry officer held the charges against the petitioner as proved and consequently, the impugned punishment and appellate orders mentioned earlier were passed.

5. In support of his claim the applicant has alleged violation of the provisions of Articles 14, 16 and 311(2) of the Constitution of India. It is also contended that the findings of the enquiry officer are not supported by the evidence on record. Another ground advanced is that the departmental authorities were not competent to hold the caste certificate dated 9.10.1967 issued by the D.M. Hardoi as false in the absence of any evidence of D.M. Hardoi.

6. We were also taken through a letter dated 22.5.1957 issued by Additional Secretary to the Government of U.P. addressed to all District Magistrates on the subject of Scheduled Castes ~~Scheduled Tribes in~~ in Uttar Pradesh under the Constitution of India. Our attention was particularly invited to para 2 thereof which provides that the following castes, races or tribes or parts of or groups within caste or tribes shall be deemed to be Scheduled Castes so far as regards members thereof resident in this State.

I. Throughout the State:

..... 27. Dhangar

The learned counsel for the applicant also provided for our perusal a research paper on subject titled on 'Dhangars and Gadariyas, the most Backward Divisions authored by Professor R.N. Saxena. A pointed reference was made to the

last para on page 5 of this research paper mentioning "Similarly in U.P. Dhangars(Shepherds) were in the list of Scheduled Castes till 24th March, 1975, but a confusion has been created by some officials in Uttar Pradesh....."

8. During the course of hearing no elaboration was offered on the ground of alleged violation of constitutional provisions. However, great store was laid by the ground that the caste certificate issued by the District Magistrate in 1967 had not been cancelled by the said authority and that there was no evidence to prove that the said certificate was a forged one. In response, it was strenuously urged by the learned counsel for the respondents that the charge against the applicant has been held to be proved, as per report of the enquiry officer. Our attention was also drawn to the Confidential letter dated 8.5.1990 from the office of General Manager addressed to the District Magistrate Hardoi enclosing therewith copies of the caste certificates dated July, 1963 and October, 1967 (C.R. 1 with C.A.) and the reply of the letter dated 25 October, 1990.

9. We may now consider the merit of the case. The main charge against the applicant is of violation of conduct rules based on allegation that the applicant deliberately produced a false caste certificate being a member of SC Community resulting in his appointment in 1971 in the railways and his promotions in 1981 and 82. The documents cited in the charge sheet in support

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comprise the caste certificates of 1963 and 1967, the certificate dated 25.12.88 of the Gram Pradhan and the certificate of the same date on one Shri Om Prakash Shukla. The witnesses mentioned are Gram Sabhapati and Vigilance Inspector. While the statement of imputations alleges that the applicant fraudelently obtained the certificate of 1967, the discussion and appreciation of evidence in the enquiry report nowhere indicates that the caste certificate of 1967 was not issued by the competent authority or in the alternative the applicant had any hand in its issue. Nonetheless, the learned counsel for respondents, during his argument took us through Annexure CR-4 with counter. The same is a letter dated 25th October, 1990 from the District Magistrate, Hardoi to General Manager (Personnel), North Eastern Railway. The text of the same is reproduced below:

"उपर्युक्त विषयक आप के गोपनीय पत्र संख्या z/13/u/SPJ/Vo(A)/1-89/34/Vig दिनांक 8-5-1990 के सन्दर्भ में निवेदन है कि आप द्वारा भेजे गये प्रमाण पत्र संख्या प्रति १८-७-१९६३ तथा १-१०-१९६७ में अंकित जाति का सत्यापन तहसीलदार हरदोई के माध्यम से कराये जाने पर ज्ञात हुआ कि श्री परमेश्वर दीन उपरोक्त को इस कार्यालय द्वारा निर्गत प्रमाण-पत्र दिनांक १९-७-१९६३ सही है। इस प्रमाण पत्र में अंकित जाति "गड़ीरया" प्रिष्ठड़ा वर्ग सत्यापित की जाती है। तहसीलदार हरदोई द्वारा इस प्रकरण में जांच कराये जाने पर ज्ञात हुआ है कि श्री परमेश्वर दीन "गड़ीरया" जाति के हैं जो कि पिष्ठड़ी जाति के अन्तर्गत आते हैं। अतः प्रमाण-पत्र दिनांक १८-७-१९६३ प्रति हस्ताक्षर करने के पश्चात अग्रिम कार्यवाही हेतु तैलग्न है।"

10. It is noticed from the above that the caste certificate issued on 18.7.63 has been treated as correct and countersigned, but the said letter nowhere mentions that the caste certificate dated 9.1.1967 was a forged or fictitious certificate or that the same had not been issued. The learned counsel for the respondents also strenuously urged that the applicant was belonging to Dhangar caste, which is recognised as a backward class only and not as a Scheduled Caste. In support of this stand he cited the backward class Certificate in respect of the applicant issued in 1963 as against the caste certificate of October, 1967 as also research paper and the printed circular dated 22.5.1957 cited on behalf of the applicant. The learned counsel for the respondents on a query from the Bench did assure that he would be producing printed material issued by the Government to support the respondents' stand that the Dhangars belong to backward class but did not produce or file any such document.

11. We are of the considered view that it is not for this Tribunal to determine the caste of the applicant. However, the above discussion does demonstrate that there is nothing on record to show that the caste certificate of 1967 was not issued by the competent authority or the same stands cancelled. Further, there is nothing on record to substantiate the allegation that the applicant fraudulently got the same issued. No act or omission on the part of the applicant relating to the issue of said certificate has been mentioned anywhere.

12. It will be relevant to indicate that the letter of District Magistrate Hardoi referred at the bottom of page 9 was received behind the back of the applicant was not the subject matter of the disciplinary proceedings. In view of our findings in para 11 nothing turns on this however since the certificate of 1967 has not been proved to have not been issued by the competent authority or to have been cancelled.

Incidentally we may also refer to a decision of the Madras High Court in SP Sakti Devi vs. Collector of Salem(1985) 1 MLJ 183 wherein a disciplinary enquiry for having produced a false Community Certificate was quashed and the Bench after detailed analysis of the provisions in the Brochure on Reservation for SC & ST in service and other enactments laid down interalia the following propositions of law:

1. A caste/community certificate issued by an empowered public authority under seal continues to be a valid document till it is cancelled by the said authority or by his superior authority.

2. The contents are to be treated as correct and every public authority, bodies, institutions etc. are bound by instructions relating to such certificates, and are bound to act upon them so long as they are not cancelled.

13. It is also a fact that the applicant has rendered long years of service in the railways, while the punishment meted out to him resulted in completely depriving him of all retiral benefits.

14. In view of the conspectus of the case and foregoing discussions, we hold that the impugned order of dismissal is unsustainable. The same is therefore, hereby quashed with immediate effect. We further order that the respondents shall decide about the intervening period in accordance with law and the rules on the subject within a period of three months from the date of communication of this judgment.

15. The O.A. stands disposed of as above with no order as to costs.

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MEMBER (A)

Abdul Karim
VICE CHAIRMAN

Lucknow; Dated: 12-5-97

Shakeel/