

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT SITTINGS AT NAGPUR.

~~NEW DELHI~~

~~NEW BOMBAY BENCH~~

~~XXXXXXXX~~

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T.A. No. N-170/87

DATE OF DECISION 18.7.1989

Smt. Chandrakala N. Nandanwar Petitioner

Shri M.N. Belekar Advocate for the Petitioner(s)

Versus

Union of India & Others. Respondent

Shri S.V. Gole (for Mr. S.V. Natu) Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.S. Shah, Vice-Chairman.

The Hon'ble Mr. P.S. Chaudhuri, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal?

(M)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CIRCUIT SITTINGS AT NAGPUR.

Tr. Application No. N170/87

Smt. Chandrakala Nandlal Nandanwar,
Jawahar Nagar,
Quarter No. 50/7, Type II,
Ordnance Estate,
Jawahar Nagar,
Bhandara,
Tal. & Dist: Bhandara.

..Applicant

V/s.

1. Union of India,
through Secretary,
Ministry of Defence (DGI)
Central Secretariat,
New Delhi.

2. The Inspectorate of
Military Explosives,
through the Inspector
of Military Explosives,
Jawahar Nagar, Bhandara
Dist: Bhandara.

3. The District Magistrate,
Bhandara,
Tah. & Dist: Bhandara

..Respondents.

Coram: Hon'ble Vice-Chairman, Shri P.S. Shah
Hon'ble Member(A), Shri P.S. Chaudhuri

Appearance:

1. Shri M.N. Belekar,
advocate
for the applicant

2. Shri S.V. Gole (for
Shri S.V. Natu)
advocate
for the respondents.

ORAL JUDGMENT:

Dated: 18.7.1989

(Per: Shri P.S. Shah, Vice-Chairman)

The applicant has challenged the order dated
3/5-7-1980 passed by the District Magistrate, Bhandara,
holding that the applicant is Kosti by caste and not
Halba (ST) by caste as represented in her affidavit

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dated 24.7.1978 before the Executive Magistrate on the basis of which she obtained from him her caste certificate as belong^{-ing} to Halba caste. She has also challenged the memorandum dated 10.7.1980 issued to her by the Inspector of Military Explosives on the basis of the aforesaid decision of the District Magistrate, asking her explanation as it was proposed to take action against her^{for} furnishing false information as^{to} correct caste at the time of initial entry into service and getting herself appointed against the reserved vacancy by producing the caste certificate obtained on false affidavit.

2. The facts are that the applicant was appointed as Junior Scientific Assistant Grade-II in the pay scale of Rs.150-5-160-8-240-EB⁻⁸⁻280-10-300 by an order dated 2.11.1973 passed by the Government of India, Ministry of Defence(DGI). The order does not specifically refer to the fact that the appointment is made in a post reserved for Scheduled Tribe candidates. The applicant's case before us is that her initial appointment was not in the reserved category. On the other hand the case of the respondents^{is} that she was appointed in the reserved category of Scheduled Tribe. By an order dated 16.6.77 passed in pursuance of Rules 3 and 4 of the Central Civil Services(Temporary Service) Rules, 1965, the applicant was appointed in a quasi-permanent capacity in the post of Junior Scientific Assistant Grade-II with effect from November, 1976. In the mean~~time~~ the applicant was served with a note dated 14.10.1975 informing her that it has been confirmed by the Competent Authority that she was not eligible for ^{benefits in service} ~~the post as it was~~ which are admissible to ~~reserve for the~~ Scheduled Tribe candidates. It appears

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that Inspector of Military Explosives directed the applicant to produce a fresh caste certificate from the Competent District Authority of her area telling her that only on production of such certificate she will be treated as belonging to Scheduled Tribe and given the benefits from 27.7.1977 as per Scheduled Caste/Tribe Order(Amendment) Act, 1976 which came into force from 27.7.1977. By the said amendment with effect from 27.7.1977 persons belonging to 'HALBA' or 'HALBI' caste were to be treated as Scheduled Tribes in the entire Maharashtra State. The applicant accordingly obtained the caste certificate from the Executive Magistrate that she belongs to Halba caste.

3. It appears that some confidential enquiry as to the correctness of the claim of the applicant ^{that} as she belongs to Halba caste was made and the authorities found that the applicant is "Kosti" and not "Halba" by caste and that the certificate ^{was} obtained by her by making a false affidavit before the Executive Magistrate, Gondia. In view of this confidential enquiry a memorandum dated 10.7.1980 calling for her explanation was issued.

4. The short question that arises for our consideration is whether the order of the District Magistrate dated 3/5-7-80 and the memorandum dated 10.7.1980 are bad in law on the ground that the order was passed and the memorandum was issued without giving hearing to the applicant. It is not disputed that the applicant was not afforded any opportunity to meet the case of the respondents that she had obtained the caste certificate by producing a false affidavit. It is undoubtedly ^{at true that} the

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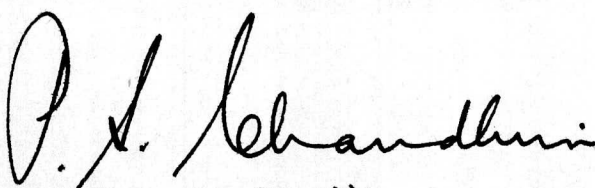
department is not precluded from making a preliminary enquiry which may be in the nature of a confidential enquiry about the alleged mis-conduct before a regular charge-sheet is issued and a departmental enquiry is held against the employee. In the present case, however, the conclusion of mis-conduct on the part of the applicant reached in the confidential enquiry is treated as final and binding on the applicant and it is on that basis that the memorandum dated 10.7.1980 is issued. By this memorandum the applicant is given an opportunity to explain her case only as regards the penal action taken against her. Thus, the applicant is ^{deprived} ~~the~~ ^{of} the opportunity of hearing as far as the finding of the competent authority that she had produced a false caste certificate. A reading of the memorandum shows that the explanation called for is restricted to the action to be taken against the applicant. In other words the applicant was precluded from producing evidence or submitting her say as regards ~~of~~ the specific charge which is the basis on which the memorandum was issued. Even the affidavit in reply of the respondents shows that they have realised that the applicant ^{ought to have} ~~should~~ been given an opportunity both as regards the finding of the District Magistrate and the penal action proposed. ~~is not seriously disputed on behalf of the respondents before us.~~ Further in para 16 of the ^{reply of} ~~respondents~~ ^{and} No. 2 it is averred that respondents No. 1 and 2 have no objection that the matter be re-investigated by respondent No.3 after giving ^{the petitioner} due opportunity of being heard and proving that she does belong to Halba tribe.

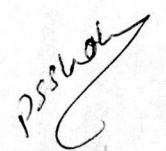
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In para 18 of the affidavit in reply it is stated that respondent No.2 was entitled to issue a show cause for verifying whether or not the claim of the applicant to that she belongs to Scheduled Tribe was true or otherwise. Since the show cause notice in this case has been issued in disregard of the principles of natural justice, but the impugned orders are liable to be quashed.

5. We, however, make it clear that the respondents are not precluded from starting a fresh enquiry by referring the matter to the present competent authority, namely 'Scrutiny Committee' appointed as per State Government Resolution dated 23.1.1985. The applicant will have the opportunity to present her case before the Scrutiny Committee. After the Scrutiny Committee decides the matter it would be open for the respondents to take such action as may permissible under the law after holding a regular enquiry against the applicant and after giving her reasonable opportunity to present her case to meet the case of the applicant.

6. In the result, the application is allowed. The impugned letter of the District Magistrate dated 3/5-7-1980(Annexure-X to the application) and the impugned Memorandum dated 10.7.1980(Annexure-S to the application) are both quashed and set aside. It would be open to the respondents to take steps against the applicant if they so desire in the light of our observations and in accordance with law. In the circumstances there would be no order as to costs.


(P.S. Chaudhuri)
Member(A)


(P.S. Shah)
Vice-Chairman