

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1226/96

Date of Decision: 5.9.1997

H.J.Koli

Applicant.

Shri P.A.Prabhakaran.

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri R.R.Shetty for Shri R.K.Shetty.

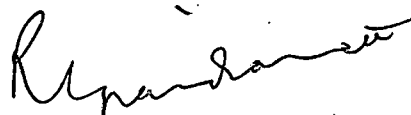
Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice-Chairman,

Hon'ble Shri. P.P.Srivastava, Member(A).

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?


(R.G.VAIDYANATHA)
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1226 / 1996.

Friday, this the Fifth day of September, 1997.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri P.P.Srivastava, Member(A).

Harischandra Jaganath Koli,
At : Uran Koliwada,
Near Uran Police Station,
Post & Tal : Uran,
Dist : Raigad,
Pin - 400 702.
Maharashtra.

... Applicant.

(By Advocate Shri P.A.Prabhakaran)

V/s.

1. Union of India through the
Secretary, Ministry of Defence,
New Delhi.
2. Commander Works Engineer,
Naval Works,
Dr. Homi Bhaba Road,
Navy Nagar, Colaba,
Mumbai - 400 005.
3. Tahsildar,
Tal: Uran, Dist : Raigad,
Maharashtra.
4. Engineer-in-Chief,
Army Headquarter,
Kashmir House DHQ Post,
New Delhi.

... Respondents.

(By Shri Ravi R.Shetty for Shri R.K.Shetty)

O R D E R

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application challenging the order of
termination. Heard both the sides.

2. The applicant came to be appointed as a Mazdoor
in the Office of the Commander Works Engineer which belongs
to the Government of India. The applicant's services came

...2.

to be terminated under the impugned order on the ground that he was appointed to an ST vacancy, but he does not belong to S.T. community. Being aggrieved by that order, the applicant has approached this Tribunal with the present application.

3. It is an admitted case that the applicant does not belong to ST community. He belongs to Son Koli caste which admittedly is not ^{an} ST. It appears that the applicant had produced a caste certificate showing himself as 'Mahadeo Koli' which is an ST. After the appointment of the applicant his case was referred to the Director, Tribal Research & Training Institute, Pune. That Director made enquiries and has given opinion that 'Son Koli' was not coming under ST community. Admittedly, the applicant belongs to 'Son Koli' which is admittedly not an ST community.

4. The learned counsel for the respondents placed before us the office file which clearly shows that the applicant was appointed against an ST vacancy. ^{It} It is shown that the applicant does not belong to an ST, then his appointment to an ST vacancy is liable to be cancelled. That is what the respondents have done. Therefore, the applicant cannot claim continuation in office against an ST vacancy as admittedly he does not belong to ¹ST community.

5. The applicant's counsel has placed reliance on a Resolution of the State Government of Maharashtra dt.15.6.1995 under which some protection is given to persons appointed to ST vacancies, but they do not belong to that ST, ^{and it} but they belonged to Special Backward Class in such cases. The Government Orders shows that such persons shall not be removed from service. The learned counsel for the applicant

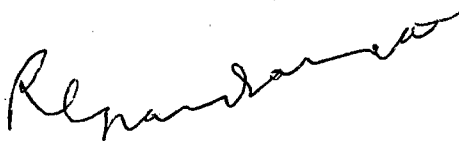
contended that in view of this Government Order the applicant's services cannot be terminated. The arguments have to be rejected summarily since the order dt. 13.6.1995 is passed by the State Government (Government of Maharashtra) and it cannot be applied to the appointments under the Central Government. No such order ~~transmitted~~ passed by the Central Government has been brought to our notice.

Since it has now been shown by the department that the applicant was appointed against ST vacancy and since admittedly the applicant does not belong to ST, his appointment has been validly terminated by the respondents and it is not open to the applicant to challenge it before this Tribunal.

6. At this stage, the learned counsel for the applicant made a submission that applicant's request for appointment under the category of Backward Class or Special Backward Class may be directed to be considered by the respondents. The learned counsel for the respondents says that there is no such classification as far as Central Government is considered. However, we direct that if and when the applicant applies for a job again, his request for being treated under the Special Backward Class may be considered by the respondents if permissible under the Rules.

7. In the result, the application is rejected at the admission stage itself, subjection to the observations made above. No costs.


(P.F. SRIVASTAVA)
MEMBER(A)


(R.G. VAIDYANATHA)
VICE-CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH, MUMBAI.

C.P.NO 23 OF 1999

IN

O.A.NO 1226/96

Shri Harishchandra J. Koli
resident of
At Uran Kili Wada,
Near Police Station, Uran,
Talre Post Uran, Dist-Raigad.

... Petitioner.

Vs.

Shri S.K. Garg,
Commander Works
Engineers (N/W)
Dr. Homi Bhaba Road,
Neavy Nagar, Colaba,
Mumbai 400 006.

... Respondent.

1. The Hon'ble Tribunal was pleased to dispose of the O.A.No.1226/96 on 05.09.97 with the following directions :

"However, we direct that if and when the applicant applies for a job again, his request for being treated under the Special Backward Class may be considered by the respondents if permissible under the Rules".

A copy of the order is at Exhibit -A.

2. Briefly speaking, the applicant's case had been that duly recruited and appointed as a Mazdoor after a spell of a casual labourer his services were terminated on the basis of the finding that the caste certificate procured by his parents during his school days/minority had been wrong. The applicant would not have been denied his job as HE had not been a guilty of any wrong. Else he would have been prosecuted of that wrong. The technical problem could have been resolved and a family saved by adjusting his appointment as a NERE Mazdoor against the appropriate or general category. That is what the Hon'ble Tribunal directed in the order.

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3. As per direction, the applicant approached the respondents repeatedly and there has been no consideration of his case as such.

3.1. 21.10.97

The applicant submitted his first appeal quoting the direction of the Hon'ble Tribunal on 05.09.97. A copy is at Exhibit-'B'.

19.12.97

The respondent replied stating that "No recruitment is being done". A copy of the reply is at EXHIBIT--B.1

08.01.98

On receipt of the response, the applicant wrote back to the respondents appealing that his application may kindly be kept pending and favourable action taken as and when as (sic) vacancy arises".

A copy of this appeal is at EXHIBIT -B.2.

3.2 Waiting for over a year after the order dt. 05.09.97 and the appeal dtd.21.10.97, that applicant came to know that recruitment/appointments of workers were being done by the respondents. The following cases came to the knowledge of the applicant.

- (1) NYA Samula Seemanna appointed as Mazdoor on 15.05.98.
- (2) NYA Smt. Rohena A. Borkar appointed as Mazdoor on 19.09.98
- (3) NYA Shri Akash D. Patil appointed as Mazdoor on 17.03.98.
- (4) Smt. Nirja Majhi - No.607002
- (5) Smt. Maduri R. Waigankar No. 607001

etc.

contd...3

May be ~~SOME~~ of them have been on compassionate grounds. Technically the case of the applicant is also one ^{of compassion;} in which his means of his lihood was suddenly snapped away, NOT for any wrong DONE BY HIM. The applicant submitted a second appeal through his advocate on 19.11.98. In the said appeal, the respondent was exhorted to provide the applicant "any Job" absorbing him in any category, general or otherwise as per directions of the Hon'ble Tribunal".

A copy of the appeal dated 19.11.98 is at EXHIBIT-C.

3.3. The respondents' reply to the applicant dt.09.02.99 is that :

"No recruitment for Mazdoor/any other category eligible for you has been made so far after issue of Court Judgment dated 5th Sept., 1997".

A copy is at EXHIBIT-C.1.

4. Significantly in both the replies Exhibit B-1 & C-1, there is no statement that the case of the applicant is kept pending or will be considered on his turn. The applicant is genuinely apprehensive that the respondents would not honour the orders of the Hon'ble Tribunal, more because not only vacancies would ^{have} arisen since Sept. 1997 but also the Government has lifted the decades old ban existing against the recruitment.


5. The applicant therefore prays that the respondents be directed to submit a statement of vacancies that arose in the establishments under his control, Since Sept., 1999 till date and the recruitment effected against ^{them} so that the policy of the respondents to avoid or punish those who approach the Tribunals/Courts would be exposed and some justice done to the applicant in the process.

VERIFICATION

I, Harishchandra J. Koli Petitioner above named do hereby
verify that the contents of the petition above are true
and that I have not suppressed any material fact.

Mumbai¹
Dt. 28-04-99

हरीचंद्र जी कोली
(H.J. Koli)


(P.A. Prabhakaran)
Advocate.