

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 1202 of 1996.

Dated this Thursday, the 20th day of November, 2000.

Uday Jambawalikar, Applicant.

Shri B. Ranganathan, Advocate for the
applicant.

VERSUS


Union of India & Another, Respondents.

Shri R. K. Shetty, Advocate for
Respondents.

CORAM : Hon'ble Shri B.S. Jai Parameshwar, Member (J).

Hon'ble Smt. Shanta Shastri, Member (A).

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal ?
- (iii) Library.


20/11/2000
(B. S. JAI PARAMESHWAR)
MEMBER (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1202 of 1996.

Dated this Tuesday, the 28th day of November, 2000.

CORAM : Hon'ble Shri B. S. Jai Parameshwar, Member (J).

Hon'ble Smt. Shanta Shastri, Member (A).

Uday Jambawalikar,
Residing at - Parshuram
Patil Chawl, Bldg. No. 4,
Room No. 2, Bhandarwada,
Rajanpada, Malad West,
Bombay - 400 064.

... Applicant.

(By Advocate Shri B. Ranganathan)

VERSUS

1. H.A. Yadav,
Director,
Directorate of Printing,
Ministry of Urban Affairs
& Employment,
'B' Wing, Nirman Bhavan,
2, Malouna Azad Road,
New Delhi - 110 001.

2. Officer-in-Charge,
Government of India,
Patents Printing Press,
Todi Estate, 3rd floor,
Lower Parel (West),
Bombay - 400 013.

... Respondents.

(By Advocate Shri R. K. Shetty).

OPEN COURT ORDER

PER : Shri B.S. Jai Parameshwar, Member (J).

Heard Shri B. Ranganathan, the Learned Counsel for the applicant and Shri R. K. Shetty, the Learned Counsel for the Respondents.

2. The applicant herein is a native of Majali Village in Karwar, Uttara Kannada District in Karnataka State. He claims to belong to 'Bandi' caste - a caste recognized as a Scheduled Caste during the year 1977.



3. He was appointed as Machine Operator Grade-II with effect from 16.10.1978 in the office of the Respondent No. 2. The applicant was appointed against S/C community quota. The respondent authorities received certain complaints against the caste status of the applicant and they started enquiries with the Revenue Authorities of Uttar Karnataka district. After correspondence, the respondent authorities formed an opinion that the applicant had furnished a false caste certificate and had also furnished incorrect information regarding his experience. Thus, the Respondent No. 2 by his memorandum no. C-14013/1/85/562 dated 04th June, 1985 (Annexure-1, page 35) issued a charge-sheet. The misconduct alleged against the applicant reads as follows :

"ARTICLE-I

That the said Shri U.S. Jambawalikar, Machine Operator Offset Grade-II has furnished the false information at the time of entry into Government Service claiming that he belongs to S/C community in order to secure Government employment.

ARTICLE-II

That Shri U.S. Jambawalikar, Machine Operator Offset Gr.II has furnished incorrect particulars regarding his experience in column No.11 of the attestation form filled up by him at the time of his entry into Government service so as to make himself eligible for appointment as Machine Operator Offset Gr.II.

ARTICLE-III

That Shri U.S. Jambawalikar, Machine Operator Offset Gr.II has misused the facility of special casual leave meant for the office bearers of the recognized Union for his personal and private work by availing five days special casual leave from 7.5.84 to 11.5.84.

Shri U.S. Jambawalikar, Machine Operator Offset Gr.II by his above acts exhibited lack of integrity and conduct unbecoming of a Government servant and thereby violated Rule 3(1)(i)(iii) of the C.C.S. (Conduct) Rules, 1965."

4. The applicant denied the charges by his letter dated 14.06.1985, Exhibit R-2 to the reply.



5. A detailed enquiry was conducted into the charges by the Assistant Manager (Administration), Government of India Press, Nashik. The applicant participated in the enquiry proceedings. The Inquiry Officer submitted his report dated 03.05.1988. A copy of the report of the Inquiry Officer is at Annexure-6, Pages 95 to 121. The Inquiry Officer held all the three items of misconduct as proved.

6. A copy of the report of the Inquiry Officer was furnished to the applicant. The applicant submitted his representation through his letter dated 27.02.1992. The said letter was shown to us during the course of arguments. However, the Learned Counsel for the applicant submitted that the Disciplinary Authority has considered in detail the representation made by the applicant against the findings recorded by the Inquiry Officer. The Disciplinary Authority after considering the representation of the applicant, enquiry records and the enquiry report, agreed with the findings recorded by the Inquiry Officer and by his proceedings dated 30.04.1992 (exhibit 'S' pages 134 to 138) imposed the penalty of removal of the applicant from service.

7. Against the said punishment order, the applicant submitted his appeal dated 13.06.1992.

8. During the pendency of the appeal, the applicant approached this Tribunal by filing this O.A. The applicant has filed this O.A. for the following reliefs :

"8.a) that this Hon'ble Tribunal be pleased to call for the papers and records resulting in the impugned order dated 30.04.1992 passed by the Respondent No. 2 and after perusing the same quash and set aside the impugned order dated 30.04.1992 and direct the respondents to reinstate the applicant with full back wages, continuity of services and all other consequential and attendant benefits with effect from 1st September, 1998 and

36

b) that pending the hearing and final disposal of the Application, that this Hon'ble Court may be pleased to direct the office to request the District Magistrate, Karwar to inquire into the matter and submit his report verifying that

- i) the applicant is belonging to Hindu Bandi community ;
- ii) the Bandi Community has been declared as S.C. in 1957 on the basis of the record maintained by him."

9. While the O.A. was pending, the Appellate Authority by his order dated 15.11.1995 (exhibit 'A') rejected the appeal and confirmed the punishment. A copy of the order passed by the Appellate Authority is at page 28-A to 28-C.

10. Accordingly, the prayer portion 8(a) of the application was amended to read as follows :

"8.a) that this Hon'ble Tribunal be pleased to call for the papers and records resulting in the impugned order dated 30.04.1992 passed by the Respondent No. 2 and after perusing the same quash and set aside the impugned order dated 30.04.1992 and the Order No. C-16013/21/92 AV dated 15.11.1995 issued by Director of Printing refusing to interfere with the orders of disciplinary authority and direct the respondents to reinstate the applicant with full back wages, continuity of services and all other consequential and attendant benefits with effect from 1st September, 1998.

Thus, the applicant has challenged the order dated 30.04.1992 passed by the Disciplinary Authority and also the order dated 15.11.1995 passed by the Appellate Authority.

11. The respondents have filed a detailed reply running to 15 pages with material papers. According to them, the applicant has

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produced a false caste certificate, that he was given appointment against the reserved community quota on the basis of the caste certificate produced. That on complaint, they made enquiries with the Revenue Authorities of Uttar ^{Kannada District} ~~Karnataka~~ and found that the applicant actually belonged to Bhandi Community and that the said community was not regarded as a Scheduled Caste and that the attested form submitted by the applicant had contained incorrect particulars as regards his experience earlier to offering this appointment and that on this basis they ~~had~~ thought it proper to proceed against him. That the enquiry was conducted in accordance with the rules giving sufficient opportunity to the applicant to defend and that the Disciplinary Authority as well as the Appellate Authority have considered the case of the applicant in accordance with the rules and passed the impugned orders. They submit there are no reasons to interfere with these orders and the application be dismissed.

12. The applicant has filed the rejoinder.

13. It is to be noted that the Appellate Authority while considering the applicant's appeal vide its order dated 15.11.1995 formed an opinion that the misconduct at item no. 3 regarding availing of special casual leave has not been proved. The Learned Counsel for the applicant as well as the Respondents are not stressing on the findings recorded by the Appellate Authority on item no. 3 of the charge memo and confined to the findings recorded by the authorities on misconduct at item no. 1 and 2 of the Article of charges.

14. Item No. 1 of the misconduct relates to the caste certificate produced by the applicant. The Learned Counsel for

2

the applicant submitted that there was no evidence in the enquiry to prove that the applicant had produced a false caste certificate. That the competent authority had not cancelled the caste certificate issued by the Tehsildar, Karwar on 16.12.1977. The Respondent Authorities could not have issued the charge memo without cancelling the caste certificate. Further, he submitted that no witness was examined to substantiate this misconduct regarding producing false caste certificate and that they relied upon the letter dated 13.02.1985 which was annexed to the charge-memo without examining any person.

15. As regards item no. 2 of the misconduct, the Learned Counsel for the applicant submitted that M/s. Swifts Private Limited had appointed him by letter dated 01.06.1975 (Annexure L-2) page 85 and on the basis of the said letter, he was under training for a period of two years but subsequently he was deputed to work as Operator for Swift-150 Offset at College of Agricultural Banking, Poona from 17.08.1976 to March, 1977 and was deputed as an Operator at Agricultural Refinance and Development Corporation, Bombay from 04.04.1977 to 05.06.1978. Thus, the Learned Counsel for the applicant submitted that whatever information the applicant had furnished in his attestation form at the time of entry into Government service is correct.

16. The Learned Counsel for the respondents produced the original caste certificate produced by the applicant. The Learned Counsel for the respondents submits that the name of the



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Tehsildar has not been mentioned in the certificate. Further, there is difference in ink in the preparation of the certificate. Besides, the caste certificate was prepared on the basis of the affidavit stated to have been furnished by the father of the applicant.

17. The Learned Counsel for the respondents took us through the report of the Inquiry Officer in detail to contend that the Inquiry Officer has taken note of all these factors and has formed an opinion that misconduct at Item No. 1 has been proved. Admittedly, the caste certificate was issued by the Tahsildar, Karwar, on 16.12.1977 only on the basis of the affidavit submitted by the father of the applicant. The applicant has furnished the School Leaving Certificate issued by Shri Shivaji High School, Karwar, dated 04.06.1976 (Exhibit 'C'). The register no. of the applicant is mentioned in the School Leaving Certificate as 3258. The respondent authorities made enquiries with the said School authorities. On 28.09.1988, the Social Welfare Officer informed that the applicant belonged to Hindu-Bandi community on the basis of the entries made in the School Leaving Certificate and also on the basis of the report of the Revenue Inspector, Sawantwadi dated 27.09.1988. The letter is at exhibit C-1 page 32 to the O.A.

18. Even subsequent to the enquiry, the respondent authorities corresponded with the Revenue Authorities of the Uttara Kannada district and they have informed that the applicant belongs to Bandhi Community and not Bandi Community and Bandhi Community is not included in the list of Scheduled Case. Though



these letters have been issued subsequent to the issue of the charge memo, the Learned Counsel for the respondents relied upon those documents only to corroborate and justify the action taken by the respondents. Even the letter issued by the Deputy Commissioner is at page 82 of the reply.

19. As regards item no. 2 of the misconduct, the allegation is that the applicant had furnished incorrect information with regard to his experience. The attestation form submitted by the applicant is at Exhibit R-11 (page 238) to the reply. As per the Recruitment Rules, three years experience is required for appointment to the post of Machine Operator Grade-II. It is the contention of the respondents that on the date the applicant was offered appointment, he was not possessing the requisite experience. On the basis of the certificate produced by the applicant alongwith the attestation form, the respondent authorities corresponded with M/s. Swifts Private Limited, Prabhadevi, Bombay. The said company vide their letter dated 16.04.1985 (Exhibit R-12, page 87 to the reply) informed the respondents as under :

"We wish to inform you that the period of training i.e. June, 1976 to Sept. 1976 mentioned in your letter referred above is correct.

We also confirm that Mr. U.S.Jambaliker was not working with us prior to June, 1976 or otherwise."

Thus, the respondents submit that the applicant had not put in the requisite years of experience on the date of his appointment.

20. The Learned Counsel for the applicant relied upon the decision of the Hon'ble Supreme Court in the case of Gulzar Singh V/s. Sub-Divisional Magistrate & Another reported in 1999 (2) SC

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SLJ 218 and the decision of the Hon'ble High Court of Madras in M.P. No. 7723 of 1997 decided on 12.02.1999 to contend that disciplinary proceedings cannot be initiated without cancelling the caste certificate. The charge memo was issued on 04.06.1985. At that time, it was not the practice of the respondent authorities to request the Revenue Authority to cancel the caste certificate. If really the applicant was aggrieved by the issue of the charge memo, he could have challenged the letter dated 13.02.1985 which was annexed to the charge-memo. The letter dated 13.02.1985 is at exhibit R-9 page 80 to the reply. The contention of the applicant is that the Revenue Authorities of Uttara Kannada District have not conducted an enquiry with regard to his caste status but however, the Inquiry Officer had made observations that the Revenue Authorities had enquired, including the mother of the applicant.

21. The Learned Counsel for the applicant submitted that no one was examined to prove the contents of the letter dated 13.02.1985.

22. As against this, the Learned Counsel for the respondents relied on the provisions of the Evidence Act to contend that a public document issued by an authority can be accepted without examining the person who issued in the official capacity. As against this, the Learned Counsel for the applicant contended that the letter dated 13.02.1985 cannot be regarded as a public document. Even assuming for a moment that the respondent authorities should have produced some evidence in support of their letter dated 13.02.1985 (exhibit R-9, page 80 to the reply), some burden was on the applicant to show that the Caste

certificate dated 16.12.1977 issued by the Tahsildar, Karwar was a genuine document. The disciplinary proceedings are not like criminal trial or civil trial. No strict rules of evidence are applicable to the disciplinary proceedings. The disciplinary authority may on the basis of the material available on record, if he comes to the conclusion that a certain misconduct has been established, he is at liberty to pass the final order.

23. In this connection, the Learned Counsel for the respondents relied upon the decision of the Hon'ble Supreme Court in the case of Union of India & Others V/s. A. Nagamalleswar Rao reported in 1998 SCC (L&S) 363. In para 5, the Hon'ble Supreme Court has considered the question of proving the a public document in the disciplinary proceedings and was pleased to observe as follows:

"5. It was contended by the learned counsel for the appellant, and in our opinion rightly, that the approach of the Tribunal was erroneous as it had proceeded to examine the inquiry proceedings as if it was hearing an appeal in a criminal case. Sanyasi Rao was an officer working in the Office of the Divisional Engineer (Telecom) and was conversant with the practice and procedure followed in that office in making entries in the Z Register. Merely because he had no personal knowledge about the practice prevailing in 1980 and the entry relating to the respondent, his evidence could not have been regarded by the Tribunal as no evidence. The Tribunal had committed an error of law and also exceeded its jurisdiction in holding that the extract which was produced from the Z Register was not legal evidence and could not have been relied upon the Inquiry Officer. The Tribunal failed to appreciate that the register was maintained in the Office of Divisional Engineer as an official record and it was thus in the nature of a public document. It was duly authenticated by a competent officer. The Tribunal after stating that the strict rules of procedure and proof do not apply to a departmental enquiry, committed an error in applying the same in this case. It is really surprising that in spite of the clear position of law in this behalf and as regards the jurisdiction of the Tribunal in such cases, the Tribunal thought it fit to examine the evidence produced before the Inquiry Officer as if it was a court of appeal."

24. Further, the Learned Counsel for the respondents submitted that the scope of judicial review by this Tribunal is very much limited and in support of his contention he relied upon the decision of the Supreme Court in the case of 1999 (2) SC SLJ 213 (R.S. Saini V/s State of Punjab & Others).

25. As already observed, we are required to consider whether the respondent authorities were justified in imposing the penalty of removal of applicant from service on the proved misconduct at item no. 1 and 2 of the charge memo. In case the applicant was certain that the caste certificate dated 16.12.1977 issued by the Tehsildar, Karwar, was a genuine document, he should have placed some material to substantiate the same. On the other hand, the respondent authorities produced the correspondence they had in connection with the said caste certificate with the Revenue Authorities of Uttars Kamada District. When the respondent authorities received information from the Revenue Authority saying that the applicant belonged to Bandhi Community, which is not recognised as a Scheduled Caste community, the applicant should have challenged the decision of the Revenue Authorities. Further, in the enquiry, he has not stated anything about the certificate dated 16.12.1977.

26. As regards item no. 2 of the misconduct, the respondent authorities have corresponded with M/s Swifts Pvt. Ltd. and

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collected the necessary information to show that as on the date of appointment the applicant was not having the requisite experience for being appointed as Machine Operator Grade-II.


27. This Tribunal cannot sit in appeal over the decision taken by the respondent authorities. As already observed, the scope of judicial review is very much limited. In the case of B.C. Chaturvedi V/s. Union of India the Hon'ble Supreme Court has held that the power of the Tribunal is to ^{review} the decision making process and not the decision itself.

28. Considering all these aspects, we are not inclined to interfere with the impugned orders.

29. Further, the applicant has prayed the Tribunal to conduct an enquiry as regards his caste status through the District Magistrate, Karwar. This relief, in our opinion, is outside the purview of this Tribunal.

30. For the reasons stated above, we find no merits in the application and the O.A. is accordingly dismissed. No order as to costs.


(Smt. SHANTA SHASTRY)
MEMBER (A).


30.11.2000
(B.S. JAI PARAMESHWAR)
MEMBER (J).