

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO: 701/2000

DATE OF DECISION: 19/04/2001

Shri Gangadhar Govind Koli

Applicant

Shri A.I.Bhatkar

-Advocate for
Applicant.

Versus

Union of India & 2 Ors.

-Respondents.

Shri V.S.Masurkar

Advocate for
-Respondents.

Ceramic:

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

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?
3. Library.

Shanta F
(SHANTA SHAstry)
MEMBER (A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:701/2000
DATED THE 19th DAY OF APRIL 2001

CORAM:HON'BLE SMT.SHANTA SHAstry, MEMBER(A)

Shri Gangadhar Govind Koli, Ex.LDC,
Indian Navy, Presently residing at
Madh Navanagar, Via Vesava
Mumbai - 400 061. ... Applicant

By Advocate Shri A.I.Bhatkar

V/s.

1. Union of India, through the Secretary,
Ministry of Defence, DHQ PO,
New Delhi - 110 011.

2. The Flag Officer Commanding-in-Chief,
Headquarters Western Naval Command,
SB Singh Marg, Mumbai - 400 001.

3. The Material Superintendent,
Naval Store Depot,
Ghatkopar (W),
Mumbai - 400 088. ... Respondents

By Advocate Shri V.S.Masurkar

(O R D E R)

Per Smt.Shanta Shastry, Member(A)

The applicant is challenging the impugned orders dated 24/6/99 and 7/8/2000. He has sought to quash and set aside the aforesaid orders and to reinstate him in service with all consequential benefits including payment of backwages with 18% interest thereon and to award cost.

2. The applicant was appointed on provisional basis vide letter dated 13/7/98 as LDC on a regular basis. Claiming to belong to Scheduled Tribe he had produced a caste certificate dated 5/7/79 issued by the Tehsildar of Palghar when he was appointed. On verification the respondents found that the

certificate was not at all issued by the Tehsildar, Palghar but that it was a bogus certificate. Therefore the respondents terminated the services of the applicant vide impugned orders dated 24/6/99. An appeal dated 29/1/2000 against the aforesaid order resulting in rejection on 7/8/2000. The applicant submits that the caste certificate was obtained by his father when the applicant was 8 years old. Later he had changed his name and had obtained another caste certificate from the Collector of Mumbai City and Mumbai Suburban District on 22/5/96. He had produced and offered to submit both his certificates at the time of his appointment but the respondents deemed it enough to retain the earlier certificate of 5/7/79 which they now state to be a bogus certificate.

3. The applicant contends that the respondents could not have terminated his services without following the principles of natural justice. They should have conducted proper enquiry and issued him one month's notice. He should also have been given a chance to examine the Tehsildar of Palghar who has denied having issued the certificate. He should also have been given a personal hearing. According to him it is not the case of the respondents that he does not belong to scheduled tribe. It is not disputed. It is only that the Tehsildar has denied having issued the certificate. Further if there was any enquiry, the result of the enquiry should have been made available for perusal of the applicant. The order of the respondents is thus bad in law. He had produced the second certificate well before his appointment, respondents should have considered the same.

4. The applicant has taken support of certain judgements relating to Natural justice. He has referred to a judgement of

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the Supreme Court dated 17/9/98 in the matter of Basudeo Tiwary V/s. Sido Kanhu University and Ors 1999 SCC (L&S) 174. In this case the services of the applicant were terminated on the ground that his appointment was made by an incompetent authority and therefore it was invalid. The Hon. Supreme Court held that it is well settled that any action taken by the employer against an employee must be fair, just and reasonable which are the components of fair treatment. Omission to impose hearing requirements in the Statute does not exclude hearing. The applicant's termination was held as invalid.

5. The Madras Bench of this Tribunal decided on 25/1/96 an issue similar to the present one in the case of G.Sumathi V/s. Union of India & Ors (1996) 34 ATC 459. In this case, the applicant was selected for the post of UDC in the Income Tax Office, at Karur. The applicant had declared that she belonged to the ST Community in Tamil Nadu and she had also produced a community certificate issued by Revenue Divisional Officer. She was appointed against ST point. The respondents got the Community certificate verified through their Reservation cell. As per a report sent by the Collector of Salem District, the Revenue Divisional Officer, Mettur who was supposed to have issued the community certificate stated that he had not issued the certificate and therefore the certificate is a bogus one. Acting on the report of the Collector, the respondents terminated the services of the applicant. The Tribunal held that before the Competent Authority comes to a finding that the certificate is a bogus one, he has to make an enquiry and give a finding before any action is taken, it is necessary that the person concerned

should know on what material the Collector has given such an adverse finding, which denies her the benefit of community status she claims. While doing so, the procedure required to be followed for rendering a finding that a community certificate is false and has to be cancelled has also to be followed when rendering a finding that a community certificate is forged.

The Tribunal therefore quashed the termination order.

6. The applicant has also cited the judgement of the Supreme Court in the case of A.M.S.Sushanth and Ors. v/s. M.Sujatha and Ors 2000 SCC (L&S) 317 wherein it was held that the principles of natural justice demanded that any person who was likely to be adversely affected should have been given an opportunity of being heard. In this case, the SC certificate was produced after the cut off date mentioned in the advertisement issued for the post. It was held that candidates cannot be rejected on the plea of late submission of SC certificate as the petitioners were SC even prior to cut off date. Only certification was delayed.

7. The applicant therefore pleads that he should be reinstated in service and his second caste certificate should be considered.

8. The respondents have gone by the first caste certificate dated 5/7/79. According to them the applicant had not produced the second caste certificate on 22/5/96 at the time of appointment. The applicant's appointment order very clearly mentioned in clause and that his appointment was only provisional and it was subject to caste certificate being verified through

the appropriate channels and if the verification revealed that the claim to belong to ST category was false the services of the applicant will be terminated without assigning any reason and without prejudice to such further action as may be taken under the provision of Indian Penal Code for production of false Certificate. In view of this inbuilt clause in the appointment order itself, there was no need to issue any notice to the applicant before terminating his services. His appointment was only provisional. The respondents have also submitted that the Tehsildar Palghar had confirmed vide his letter dated 20/6/99 that the certificate in question was not issued from that office and he did not make any mention on non availability of old record as contended by the applicant.

9. I have heard the learned counsel for both the sides and have perused the various judgements referred to in the course of the arguments. In my considered view, the judgement of Madras Bench of the Tribunal in the case of G.Sumathi V/s. Union of India and Anr (supra) squarely covers the applicant's case. In that case also clause 17 of the order of appointment gave right to both the employer and the employee to terminate services on a month's notice without assiging any reason. However, the Tribunal held that though the order of termination was termination simplicitor order without reference to the community certificate in appropriate cases the Courts have to pierce the veil where termination is really for a misconduct. In the present case also the department had terminated the services of the applicant because of for producing a bogus Caste certificate.

It amounts to misconduct. It is not a simplicitor termination and therefore the principles of natural justice demand that the applicant should have been issued a proper show cause notice and proper enquiry should have been held giving the applicant an opportunity of being heard before terminating the applicant's services.

10. I therefore hold that the impugned orders dated 24/6/00 and 7/8/2001 are liable to be quashed and set aside. The same are accordingly quashed and set aside. In the result, the OA is therefore allowed. There shall be no orders as to costs.

Shanta S.
(SHANTA SHAstry)
MEMBER(A)

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