

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE NINETEENTH DAY OF NOVEMBER 1986

Present: Hon'ble Shri Justice K.S.PUTTASWAMY..VICE CHAIRMAN

Hon'ble Shri L.H.A.REGO ..MEMEBR(A)

APPLICATION NO 719/86(T)

H.Narashimappa,
Ex-Clerk,
Suragondanekoppa,
Honnali Taluk,
Shimoga District.

..Applicant

(Shri M.Rama Bhat, Advocate)

vs.

1. The Regional Director of
Postal Services Bangalore Region,
Bangalore 560 001.
2. The Senior Superintendent of
Post Offices and competent Disiplinary
Authority,
Shimoga Division,
Shimoga 577 201.
3. The Post Master,
Head Office,
Shimoga.

..Respondents

(Shri M.Vasudeva Rao, Advocate)

This application has come up for hearing before the
Tribunal today. Hon'ble Vice-Chairman made the following:

O R D E R

In this transferred application received from the
High Court of Karnataka under Section 29 of the Administrative
Tribunals Act of 1985(Act), the applicant has challenged
order No.STA/9-3/13/79 dated 25.4.80(Annexure G) of the
Regional Director of Postal Services, Bangalore Region,
Bangalore (Director) affirming order No.B-7/292 dated 9.1.79
(Annexure F) of the Senior Superintendent of Post Offices
and Disciplinary Authority, Shimoga Division, Shimoga (DA).

2. The applicant claims to be a member of scheduled caste called Adi Karanataka(AK). On that basis, he applied for the post of a Clerk in the Postal Department of Government of India and secured an appointment on 22.4.1976, from out of the quota reserved for members of scheduled castes.

3. Along with his application for selection, the applicant produced a certificate issued by the Special Deputy Commissioner, Shimoga (DC) and the District Welfare Officer, Shimoga (DWO) to prove that he was an AK which was accepted by the DA in making the appointment. But later making necessary investigations, the DA on 1.10.77, initiated disciplinary proceedings against the applicant under the Central Civil Service (Classification, Control and Appeal) Rules of 1965 (Rules) on the following charge.

"That the said Shri H.Narashimhappa, Temporary Clerk, Shimoga H.o Secured employment as clerk in Shimoga Division against the reserved quota for scheduled caste community furnishing false information regarding his caste in his application dated 26.8.1973 and 30.10.1973 and producing an incorrect document in support thereof at the time of recruitment and has thus rendered himself liable for action in terms of the declaration dated 30.10.73 furnished by him at the time of his appointment".

As the applicant denied this charge, the DA appointed one Shri R.S.Tankasale as the Enquiry Officer (EO) to inquire into the same, who held a regular enquiry and submitted his

on report/14th December, 1978 to the DA holding him guilty of the said charge.

4. On an examination of the report of the EO, and the evidence on record, the DA concurring with the same made his order on 9.1.79, (Annexure F), inflicting the penalty of dismissal from service. Aggrieved by this order of the DA, the applicant filed an appeal before the Director, who by his order made on 25-9-80, dismissed the same. Hence this application.

5. The applicant has challenged the orders of the Director and the DA, on a large number of grounds, which will be noticed and dealt by us in due course.

6. The respondents have resisted this application.

7. Shri M.Ram Bhat, learned counsel for the applicant contends that the failure of the DA to furnish a copy of the report of the EO, to his client, in contravention of article 311 of the Constitution and rule 17 of the Rules vitiates the orders of the Director and DA.

8. Shri M.Vasudeva Rao, learned Additional SGC appearing for the respondents without disputing that the report of the EO had not been furnished to the applicant, however contends, that this failure which was only a curable irregularity, does not vitiate the orders made by the Director and the DA.

9. Rule 17 of the Rules, on which reliance is placed by Shri Bhatt reads thus:

"Orders made by the disciplinary authority shall be communicated to the Government servant who shall also be supplied with a copy of the report of the inquiry, if any, held by the disciplinary authority and a copy of its findings on each article of charge, or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority and a statement of the findings of the disciplinary authority together with brief reasons for its disagreement, if any, with the findings of the inquiring authority unless they have already been supplied to him and also a copy of the advice, if any, given by the Commission, and where the disciplinary authority has not accepted the advice of the Commission, a brief statement of the reasons for such non-acceptance!"

This rule requires the DA to furnish a copy of the report of the Inquiry Officer to the applicant at any rate along with his order imposing penalty. The DA somewhat regretfully did not comply with the same is not in dispute. But the real question is whether this itself justifies the nullification of the proceedings.

10. The mere use of the word 'shall' in the Rule, is not decisive to hold that the said Rule is an absolute and mandatory provision and violation of the same necessarily results in the nullification of the proceedings. We are of the view that applying the well settled principles to decide whether a provision is mandatory or directory, Rule 17 of the Rules, that too in the context of the amendment to Art. 311(2)

of the Constitution by the 42nd Amendment, is not a mandatory but only a directory provision. If it is only a directory provision, then its contravention, though regrettable and should have been avoided by the DA, cannot by itself be a ground to nullify the proceedings as urged by Sri Bhat.

11. We also find that the DA in his order, had set out the material portions of the report of the EO, which undoubtedly enabled the applicant to challenge the findings of the EO with which the DA had concurred in his appeal before the appellate authority. The omission on the part of the DA to furnish a copy of the report of the EO to the applicant, had not handicapped the applicant from pursuing effectively his legal remedies under the Rules and had not therefore occasioned him grave failure of justice. We are of the view that on this ground also we should decline to uphold the technical contention of the applicant.

12. But, we hasten to caution the authorities, that they should not construe this decision by us as a licence to disobey Rule 17 of the Rules. We impress on them to meticulously observe Rule 17, at least hereafter, which only embodies the rules of natural justice in regard to the requirement of providing a reasonable opportunity, guaranteed to a civil servant in Art. 311(2) of the Constitution.

13. Sri Bhat next contends that the order made by the DA was not a speaking order and therefore illegal.

14. Sri Rao contends that the order made by the DA was a speaking order and that even otherwise on that ground, the order cannot be invalidated at all.

15. We have carefully read the order of the DA. We notice that the DA on a consideration of the evidence on record had concurred with the finding of the EO and had imposed the penalty. When that is so, we cannot hold, that the order of the DA was, arbitrary, laconic, and not a speaking one.

16. We will even assume that the order of the DA was not a speaking one and examine the contention of Sri Bhat on that basis also.

17. We have earlier noticed, that the DA had concurred with findings of the EO. When a disciplinary authority, concurs with the report of an EO, law does not require him to over again evaluate the evidence and record his own independent findings (See :STATE OF MADRAS v. A.R.SRINIVASAN AIR 1966 SC 1827). In this view also we cannot invalidate the order of the DA.

18. Sri Bhat next contends that non-examination of the complainant as a witness, vitiates all the orders and the inquiry.

19. We find from the records, that the investigation preliminary inquiry and then the regular inquiry, were concluded on the information collected by the Officers of the, department and not on any complaint by any one. When that is so, it is futile to contend that the complainant should have been examined. Even if there was a complainant, his non-examination would not vitiate the disciplinary proceedings. We see no merit in this contention of Sri Bhat and therefore reject the same.

20. Sri Bhat contends that the oral and documentary evidence on record does not justify the finding recorded by the authorities and the EO.

21. Sri Rao contends that the findings of all the authorities and the EO were based on proper evaluation of the evidence on record and the evidence on record justified their conclusions.
22. All the authorities and the EO have concurrently found that the applicant was not a member of SC called AK and was a member of a caste called Namdar Kunchitioa. Every one of them independently examined the oral and documentary evidence on record and have reached their conclusion.
23. Sri Bhat has taken us through the material evidence of the witnesses examined before the EO and the exhibits.
24. When the evidence on record is examined we find it impossible to hold that there was no evidence to reach the conclusions drawn by the authorities or that the evidence on record, was irrelevant to the determination of the questions that arose before them. We are also of the view, that the findings of the authorities were justified on the oral and documentary evidence placed before the EO.
25. Sri Bhat contends that the School Extract EX-P8 does not relate to the admission of the applicant and should not have been relied on by the authorities and therefore this Tribunal should not give credence to this extract for the purpose of determining the caste of the applicant.
26. We have carefully read the evidence of PW-3 and examined EX-P8.
27. All the authorities had concurrently found that the School Extract EX-P8 was the relevant extract from the admission register of the school and the same related to the applicant and none other. We are of the view, that this conclusion drawn by the authorities is a reasonable conclusion. We, therefore, find no ground whatsoever to discard and exclude the School Extract EX-P8. When once we hold that the School Extract EX-P8 had been properly admitted and the

same only related to the applicant and none other, then the entries mentioned therein in regard to caste will be very relevant to determine the caste of the applicant. In school Extract EX-P8 the caste mentioned is Namdari Kunchitica and not AK as claimed later by the applicant. We, therefore see no merit in this contention of Sri Bhat and reject the same.

28. Sri Bhat contends that the certificates issued by the DC & DWO and accepted and acted upon earlier by the authorities concerned were conclusive and therefore, they could not reopen the same on any ground later.

29. Sri Rao contends that the certificates issued by the revenue or the other authorities, were only prima facie evidence and not conclusive. In support of his contention Sri Rao relies on the ruling rendered by us on 14.10.1986 in Application No.279 of 1986 (SHIVAPPA SANCAPPA BARKAR v. DIRECTOR OF POSTAL SERVICES AND ANOTHER).

30. We find that the revenue authorities themselves have vacillated on the caste status of the applicant. We will however assume that the revenue authorities had not vacillated but had stood by their certificates. But still as pointed out by us in Barkar's case certificates issued by the revenue authorities are only prima facie evidence and are not conclusive of the caste status of persons in whose favour such certificates are issued by them. In Barkar's case we have held that the appointing or the superior authority had always the power to re-examine the caste status and come to its own conclusion, after complying with the principles of natural justice. For the very reasons stated in Barkar's case we find no merit in this contention of Sri Bhat and therefore we reject the same.

31. Sri Bhat lastly contends that with due regard to the age of the applicant and all other relevant factors, this is a fit case in which the extreme penalty of dismissal was not justified and this Tribunal should modify the same to minor penalty and give him a chance to turn a new leaf to enable him to lead an honourable life in society.

32. Sri Rao contends that the facts and circumstances do not justify this Tribunal to modify the punishment imposed against the applicant.

33. We have carefully considered the rival submissions made in regard to the punishment imposed on the applicant. We are of the view that all the facts and circumstances of the case justify only removal of the applicant from service, which would not bar him from future employment. We, therefore, propose to modify the same to one of removal from service.

34. In the light of our above discussion, we make the following orders and directions:

1. We dismiss this application in so far as it challenges the orders of the authorities to the extent they held that the applicant was guilty of the charge levelled against him and that the same justified punishment under the Rules.
2. We allow this application in part, modify the punishment imposed by the disciplinary authority and affirmed by the appellate authority against the applicant, to one of removal from service, which will not be a bar for his future employment in Government Service.

35. Application is disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.

Mr. Dharmendra
19-11-1986

VICE-CHAIRMAN

MEMBER (A)

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