

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE 28th NOVEMBER 1986

Present : Hon'ble Shri Ch. Ramakrishna Rao - Member (J)

Hon'ble Shri L.H.A. Rego - Member (A)

APPLICATION No. 784/1986(T)

K.A. Muniyappa
Skilled Worker, MYSS T.No. 4110
Saw Mill Shop
Railway Workshop, Mysore South
Mysore

- Applicant

(Shri Ravi Varma Kumar, Advocate)

and

1. The Railway Board
Government of India
Rail Bhawan, New Delhi

2. The General Manager
Southern Railway
Park Town, Madras 2

3. Works Manager
Southern Railway Workshop
Mysore South, Mysore 8

- Respondents

(Shri H. Shanmukhappa, Advocate)

This application came up for hearing before this Tribunal and Hon'ble Shri Ch. Ramakrishna Rao, Member (J) to-day made the following

O R D E R

This application was initially filed as a writ petition in the High Court of Karnataka and subsequently transferred to this Tribunal. The facts giving rise to the application are briefly as follows: The petitioner joined the service in the Southern Railway as a Gangman in 1968 under the Permanent Way Inspector, Yeshwantpur, Bangalore

in the year 1968 under ('PWI YPR'). Thereafter he was transferred and absorbed as Khalasi in the year 1973 under the Works Manager, Southern Railway Workshop, Mysore South, Mysore (R3). In the year 1968 when he joined service he had declared his caste as 'Gowdalu', a Schedule Tribe in the State of Karnataka and also submitted the original Transfer Certificate that had been issued to him in this behalf. However, in his Service Register ('SR') he was not described as a person belonging to the Schedule Tribe ('ST') but as one belonging to the Schedule Caste ('SC'). On account of this mistaken entry in the SR he was not promoted in his turn. As a sequel to the representation to R3, the applicant was directed to produce a certificate from the competent authority to establish that he belonged to ST which he complied with. Not satisfied with this R3, however, issued a memorandum dated 29/10 - 7/8. 1977 ('memo') to the applicant alleging that the latter had produced a bogus transfer certificate ('TC') from the Head Master, LBSS, Devanahalli Town and acted in a manner unbecoming of a railway servant. On 18.8.1977, the applicant replied, refuting the charge levelled against him. The Enquiry Officer ('EO') in his report held that the charge was established. A second memorandum was issued to the applicant on 26.6.1979 calling upon him to explain why he should not be removed from service in view of the findings of the EO. He submitted his reply

dated 4.7.1979, contesting the findings of the EO. After considering the representation of the applicant and the clarifications given by the District Magistrate in his letter dated 16.8.1979 that the former belonged to 'Gowdalu' community classified as ST, the R3 in and by his letter dated 19.9.1979 informed the applicant that further proceedings in the case were dropped. Necessary entry in the SR of the applicant was also effected showing him as belonging to ST.

2. When the matters stood thus, on a review of the case R 2 informed the applicant by his letter dated 31.5.83 that he had ordered the revival of the proceedings against him from the stage of consideration of his representation in reply to the memorandum dated 26.6.1979 of R 3, under the Railway Servants (Discipline & Appeal) Rules 1978 ('Rules'). R2 also granted an opportunity to the applicant to make such representation as he might like to do in this regard. The applicant submitted a representation dated 6.6.1983 after perusing which R2 imposed the penalty of removing him from service with effect from 15.5.1983. The applicant preferred an appeal to the Chairman, Railway Board, New Delhi (R 1) against the order of R2. The decision of R1 rejecting the appeal was conveyed to the applicant by the Southern Railway in their order dated 13.12.1984. Aggrieved by these orders the applicant has filed this application.



were initiated with a view to enable the applicant to establish that he belonged to ST but not SC and ^{the} doubt having been resolved by the certificate, there was no further need to probe into the early stages of the applicant's scholastic career ~~and~~ to which the TC was relatable. ~~xxxxxx~~. This apart, the matter/version contained in the letter dated 14.1.1977 issued by PWI/YPR to R3 is sufficient to demonstrate that necessary proof was tendered by the applicant in the context of his promotion in 1976. The 'P' file was not called for by R3 from PWI/YPR and we see no reason, why the applicant should be penalised, for this omission on the part of the administration.

9. As a result of the foregoing discussion, we set aside the order dated 7.9.1983 passed by R2 removing the applicant from service and confirmed by R1 (Annexures 'M' & 'P').

10. In the result the application is allowed. There will be no order as to costs.

Chambers

Member (J)

B. S. G.

Member (A)

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3. Shri Ravi Varma Kumar, learned counsel for the applicant, submits that R3 having initially stopped the proceedings after considering the pros and cons, R2 & R3 was not justified in reviving the disciplinary proceedings; that his client had clearly stated in his reply dated 6.6.83 to the letter dated 31.5.83 issued by R 2 that the proceedings held by the EO was initiated on grounds such as the EO having considered several documents not mentioned in the memo; that the impugned TC was not cited as a document to be relied upon by R3; that oral evidence of persons not cited in the memo was recorded by EO without adopting the procedure in the Rules. The counsel for the applicant further states that the applicant had produced a caste certificate from the Tahsildar, Bangalore North Taluk on 10.1.1968 when he joined service as a temporary Gangman (CL) in Yeshwantpur Section (YPR). The applicant had referred in his reply to the fact that when he was transferred to the Railway Workshop as a Khalasi on 14.3.1973, he sought promotion due to him under the quota reserved for S.T. R3 asked him to produce the caste certificate, which he did. Shri Ravi Varma Kumar further submits that the matter, which was given a quietus by R 3 in his letter dated 19.9.1979 by dropping further proceedings was revived by R2 without any justification.

4. Shri H. Shanmukappa, learned counsel for the respondents, submits that the EO after careful consideration of the material placed before him arrived at the following

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findings :

"There is every possibility for the charged employees to go to Devanahalli within three days and contacting Sri D.V. Suryanarayana Rao and got the Transfer Certificate from him as Sri Suryanarayana Rao categorically tells that he issued the Transfer Certificate to K.A. Muniyappa in person. It is also seen from the application dt. 7-8-1972 requesting for the post of Khalasi in these shops that he mentioned his caste as 'Adikarnataka'. It is also noticed that the caste 'Gowdalu' was overwritten in the Admission Register for 1948-49. He also admits that he submitted the original School Certificates when he joined Railways in the year 1968 and the same was lost in the office of PWI. As such, he again applied for Transfer Certificate as he had to submit same to WM's Office to prove his caste as 'Gowdalu'. This shows that Shri K.A. Muniyappa in order to get the undue benefits of Schedule Tribes got the school transfer certificate on the basis of false records from Sri D.V.Suryanarayana Rao, Asst. Master, LPBS Devanahalli and produced the same to the WM's office on 15-4-1977."

Shri Shankukappa maintains that the charges having been established as a result of the enquiry, R3 was not justified in acting on the letter of the District Magistrate dated 16.8.1979.

5. We have considered the rival submissions carefully. In our view, the EO is not right in thinking that a bare possibility was sufficient to establish the charge levelled against the applicant because in quasi-criminal proceedings, such as the present, what is required is clinching evidence to establish the charge. In other words, if the evidence does not conclusively establish the charge, the delinquent is entitled to the benefit of doubt. The bare circumstances that the word 'Gowdalu' was overwritten in the admission register is much too tenuous to ~~hold~~ ^{conclude} that the charge stood established in the absence of further material regarding identity of the person who had actually overwritten.



To put it differently, the applicant himself could not have had access to the register and ~~it~~ could have taken place ~~mix~~ with the connivance of somebody in the school.

In the absence of any material to establish such connivance, it will be difficult to implicate the applicant. Nor does the fact that the applicant applied for TC a second time demonstrate that he had any ulterior motive because it is consistent with his version ~~is~~ that the TC originally submitted by him having been mislaid in the office, he took steps for obtaining another copy.

6. Now we turn to the letter dated 14.1.1977 addressed by PWI/YPR which was extracted in the reply dated 6.6.83 to the letter dated 31.5.83 issued by the R2 to the applicant. The same reads as follows :

"As the list of ST categories was not readily available at the time of opening of SR of Sri K.A. Muniappa, substitute gangman in this section during 1968 the same was entered as SC in the SR instead of S.T.

"Now as per the schedule tribe list, the caste of the above named comes under the classification of ST. The original certificate produced by K.A. Muniyappa at the time of grant of authorised scale of pay which was in his personal file could not be perused by the Welfare Inspector who attended this office on 27.12.76 as the P.File was in the custody of P.B.Clerk of this office who was on special casual leave on 27.12.76. Now this can be perused and set right and necessary action may please be taken in connection with correction in SR. The P.file in this connection will be handed over through special messenger please."

No special messenger seems to have been sent to collect the P File and this omission seems to have given rise to the controversy over the caste of the applicant.

7. We have perused the 'penalty advice' dated 7.9.83 served on the applicant by R2 in which he imposed the penalty of removal from service with effect from 15.9.1983. A perusal of the 'penalty advice' leaves the impression that R2 had not applied his mind to the several points raised by the applicant in his letter dated 6.6.83. The objections raised by the applicant were weighty enough to call for ~~holding~~ of a fresh enquiry in view of the reliance placed by the EO on the oral and documentary evidence ~~challenged~~ by the applicant therein. He was content with ~~merely~~ observing : 'At the Departmental Enquiry held the charge framed against you was held as proved.' R2 refrained from considering whether the EO had followed the correct procedure as laid down in the Rules and whether the evidence - oral and documentary - was adequate to establish the charge levelled against the applicant. This, in our view, has vitiated the 'penalty advice'.

8. The crux of the matter is whether the applicant was SC or ST and R3 considered the certificate dated 16.8.79 issued by the District Magistrate as conclusive proof of the fact that the applicant belonged to ST and he therefore took a decision to drop the proceedings. R 3 was justified in accepting such certificate given by the competent authority and for no valid reason the matter was reopened by R2. If the disciplinary proceedings

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