

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE

DATED THIS THE SIXTEENTH DAY OF OCTOBER 1986

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

Hon'ble Shri P. Srinivasan .. Member (A)

APPLICATION NO. 968/86

Shri A.S. Talwar,  
S/o Shri Savantappa,  
H.S.G. II Official,  
Posts & Telegraphs Department,  
Saundatti, Belgaum District. ... Applicant

V.

Union of India represented  
by its Posts and Telegraphs  
Department, New Delhi.

Post Master General,  
Karnataka Circle,  
Bangalore

Director of Postal Services,  
Dharwar Region,  
Dharwar-580 001.

... Respondents

(Shri N. Basavaraju ... Advocate)

This application came up for hearing before the Court today,  
Hon'ble Member (J) made the following:-

O R D E R

The prayer in this application which was initially filed as writ petition in the High Court of Karnataka is to quash the order dated 20.11.1981 of the Post Master General (PMG), Karnataka Circle, at Annexure A, cancelling an earlier order of 6.11.1981 by which the applicant had been promoted as Post Master, HSG II and another order dated 18.10.1982 of the Director of Postal Services (DPS), Dharwar, demoting him further to the post of Postal Assistant as per Annexure B.

2. None present for the applicant and Shri N. Basavaraju, learned counsel for respondent, present has been heard.

3. The facts giving rise to the application are briefly

follows: The applicant was appointed as Postal Assistant on 1.11.1960. He was promoted to the grade of LSG Post Master on 1.6.1974 and promoted still further as HSG II on 6.11.1981. The order at Annexure A dated 20.11.1981 was passed by the PMG cancelling promotion and posting of the applicant without assigning any reasons and without giving any notice to him. Subsequently the DPS Dharwar in and by his order dated 27.11.1981 directed the applicant to show cause as to why he should not be reverted to the clerical cadre on the ground that the applicant belonged to 'Koli Mahadev' community and that the said caste was not recognised as belonging to Scheduled Tribe. After considering the representations of the applicant the DPS passed an order on 18.12.1982 reverting the applicant from the post of LSG to the post of Postal Assistant. These orders were a sequel to the fact that the applicant ~~initially~~ while entering service represented that he belonged to a Scheduled Tribe whereas later the authorities felt that the community to which he belonged did not fall under the list of Scheduled Tribe. These orders are under challenge in this application.

4. We have perused the papers and heard Shri N. Basavaraju. So far as the impugned order at Annexure A to the applicant is concerned it is apparent that no reason has been assigned as to why <sup>the</sup> (this) Memo dated 6.11.1981 in respect of the promotion and posting of the applicant to the HSG II Cadre was cancelled. But from Annexure B which is the order passed by the DPS reverting the applicant to the time scale of postal assistant, it is clear that the reason for passing the aforesaid order at ~~Annexure A~~ was due to the so called misrepresentation made by the applicant in the matter of his belonging to the Scheduled Tribe. The latter order does not ex facie indicate that ~~an~~ opportunity was given to the applicant to adduce any evidence - oral or documentary - to support his case and to show that he really belonged to a Scheduled Tribe. Nor does

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it appear from the order that he was given an opportunity to be heard in the matter before passing the order reverting him. In this connection, we may usefully refer to the decision of the Supreme Court in FEDCO (PVT) LTD. V. BILGRAMI (AIR 1960 HC 415) wherein it was observed: "The requirement that a reasonable opportunity of being heard must be given has two elements. The first is that an opportunity to be heard must be given; the second is that this opportunity must be reasonable. Both these matters are justiciable. There can be no invariable standard for reasonableness in such matters, except that the Court's conscience must be satisfied that the person against whom an action is proposed has had a fair chance of convincing the authority who proposes to take action against him that the grounds on which the action is proposed are either non-existent, or, even if they exist, they do not justify the proposed action. The decision of this question will necessarily depend upon the peculiar facts and circumstances of each case, ...".

5. The infirmities in the impugned orders, especially in the case of the first, as pointed out above, run counter to the principles of natural justice, which constitute the substratum of the rule of law, which is the bedrock of our Constitution. The most important among these principles is audi altram partem i.e., the right to be heard, which governs not only matters arising under service jurisprudence but also other branches of law. We have, therefore, no doubt that any order passed in flagrant violation of this basic principle cannot be upheld.

6. In view of the above, we set aside the impugned orders at Annexure A and B. This is, however, without prejudice to the rights of the respondents to initiate fresh proceedings to determine after full inquiry and giving the applicant an opportunity

Ch. R. Am