

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 734/90

Transfer Application No:

DATE OF DECISION 10-2-93

Arjun G. Made Petitioner

Shri C.B.Kale Advocate for the Petitioners

Versus

Respondent

Union of India Through Supdt. Post
Offices, Solapur Division, Solapur 80rs.

Shri P.M.Pradhan Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri M.Y.Priolkar, Member(A)

The Hon'ble Shri V.D.Deshmukh, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No


(V.D.Deshmukh)

Member(J)

NS/

(9)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
BOMBAY

O.A. 734/90

Arjun G.Made ... Applicant

vs

Union of India
Through Supdt. Post
Offices, Solapur Division
Solapur and Ors. ... Respondents.

Coram Hon'ble Mr. M.Y.Priolkar, Member (A)
Hon'ble Mr. V.D.Deshmukh, Member (J)

Appearance:

Shri C.B.Kale, Adv.
for the applicant

Shri P.M.Pradhan, Adv.
for the respondents.

Dated 10-2-93

Oral Judgement

(Per: Hon'ble Mr. V.D.Deshmukh, Member (J))

The applicant was appointed as a clerk in Solapur Postal Division under the order dated 24th Dec.1958. The applicant belongs to the Mahadev Koli tribe which according to the applicant is recognised as a Scheduled Tribe since 1950. The applicant had registered himself with the employment exchange and when he appeared for the above said post of clerk in the Postal Division at Solapur, he submitted his birth certificate and also the certificate from Tahasildar to show that he belonged to the Schedule Tribe. The applicant contends that he was being treated as an employee belonging to the Schedule Tribe till 12th April 1973 on which date the respondent No.1 the Supdtt. of Post Offices, Solapur Division issued a notice calling upon him to show cause as to why he should not be treated as the candidate of a community other than a Scheduled Tribe. It was contended in the notice that as per SRO 29-5-56 Mahadev Kolis from Solapur district were not

recognised as Scheduled Tribes and therefore the applicant was liable to be considered as belonging to other communities.

The applicant submitted his reply to the above said notice. However, by the order dated 19th Dec. 1975 it was directed that the applicant be treated as belonging to other community.

The Schedule Casts/Schedule Tribes orders (Amendment) Act 1976(Act. No. 108 of 1976) came into force on 4th Sept. 1976, having received consent of the president on the said date. After the promulgation of this Act the respondent issued certificate dated 17th April 1978 on the strength of this Act that the applicant be treated as belonging to Scheduled Tribe w.e.f. 27th July 1977. Thus, as a result of this development the applicant was treated as Schedule Tribe till 19th Dec. 1975 and was treated as belonging to the other community since that date till 27th July, 1977. The applicant challenges the order dated 19-12-75 and contends that it was illegal to consider him as belonging to other communities during the period from 11th Dec. 1975 to 27th July 1977.

The respondents have filed their reply and we heard the learned counsels for both sides. The applicant relied upon the Presidential order dated 6th Sept. 1950 a copy of which has been placed before us. This order was issued under Clause (1) of Art 342 of the Constitution of India. By the schedule to this order Mahadev Kolis were recognised as Scheduled Tribes through out the State of Bombay as it was at that time. It is obvious that the initial appointment of applicant as a Scheduled Tribe candidate was based on the recognition by the Presidential Order and the certificate submitted by the applicant. In their reply respondents

contended that the certificates given by the applicant were false. However, after reading the reply it is obvious that it is not the contention of the respondents that the applicant had furnished false and bogus certificates although he did not belong to the community of Mahadev Kolis. But their contention is that during the period in dispute the community was not recognised as a Scheduled Tribe. The learned counsel for the respondents relied upon the notification issued by the then State of Bombay dated 29th Oct. 1956. As per this notification Mahadev Kolis from Solapur district were not recognised as the Scheduled Tribes. However, we find that this notification could not have any legal force in view of the Presidential Order of 1950 recognising Mahadev Kolis as Scheduled Tribe throughout the State of Bombay and also in view of the provisions of Article 341(2). The provisions of clause (2) of Article 341 of the Constitution of India clearly lay down that all the notifications issued under Clause-1 shall not be varied by any subsequent notification. Once the tribe of Mahadev Kolis was recognised as a Scheduled tribe throughout the State of Bombay by the Presidential order/1950, the recognition could/be varied by the subsequent notification of 1956, in view of the provisions of Clause (2) of Article 341 of the Constitution. We have, therefore, no hesitation in holding that the applicant could not be de-recognised on the strength of this notification of 1956.

The applicant has raised certain other points, however, in view of the above clear legal position, we do not find it necessary to enter into those points.

The respondents opposed the application on the ground of limitation. The application shows that although several representations were made it was on 6th Jan. 1989 that the respondent rejected the claim of the applicant and the copy of the impuned letter is annexed to the application.

The application was filed on 12th Oct. 1990. The applicant had also made representations against this impuned order and they are not yet replied. In any case, considering the circumstances in the present case we do not find that it can be rejected on the ground of limitation. There cannot be any doubt that once the applicant was recognised as belonging to the Scheduled Tribe and such recognition was supported by the Presidential Order of 1950, he could not be de-recognised and treated as belonging to other communities during the period in dispute.

In this view of the matter the application is allowed. The respondent's order dated 19-12-1975 and letter dated 6th June, 1989 are quashed and the respondents are directed to treat the applicant as belonging to Scheduled Tribes throughout his service including the period from 19-12-1975 to ~~22-1-1977~~²⁷⁻¹⁻¹⁹⁷⁶. The applicant shall be entitled to consequential benefits including monetary benefits, if any. No order as to costs.



(V.D. Deshmukh)
Member(J)



(M.Y. Patilkar)
Member(A)