

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(6)

Original Application No. 1182 OF 1992.
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
~~Transfer Application No.~~

Date of Decision : 8.8.95

Shri Roopkumar Nihalne,

Petitioner

Shri S. R. Atre,

Advocate for the
Petitioners

Versus

Union Of India & 3 Others,

Respondents

Shri Suresh Kumar for
Shri M. I. Sethna,


Advocate for the
respondents

C O R A M :

The Hon'ble Shri B. S. Hegde, Member (J).

The Hon'ble Shri M. R. Kolhatkar, Member (A).

- (1) To be referred to the Reporter or not ? ✓
- (2) Whether it needs to be circulated to
other Benches of the Tribunal?


(B. S. HEGDE)
MEMBER (J).

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH.

ORIGINAL APPLICATION NO: 1182 OF 1992.

Roopkumar Nihalne ... Applicant

Versus

Union Of India & 3 Others ... Respondents.

CORAM :

Hon'ble Shri B. S. Hegde, Member (J).

Hon'ble Shri M. R. Kolhatkar, Member (A).

APPEARANCE :

1. Shri S. R. Atre,
Counsel for the applicant.
2. Shri Suresh Kumar for Shri M.I. Sethna,
Counsel for the respondents.

JUDGEMENT :

DATED : 8-8-95

¶ Per. Shri B. S. Hegde, Member (J) ¶

1. The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985, challenging the impugned order of the respondents dated 8/12.10.1992 (annexure A-1) and 30.10.1992 (annexure A-2) respectively.

2. The facts are, before partition, he was residing in the Sindh Province in the undivided Indian Territory. After partition, he came to India in the year 1948 and settled down at Kalyan, Bombay. He joined the Government Of India in 1956. At the time of joining the service, he had given School Leaving Certificate (annexure A-4) wherein

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the race and caste is shown as Hindu, Dhodia.

3. The applicant's main contention is that he belonged to the S/T Community all along and thus it cannot be said that he became S/T only from 16.08.1979, after production of the certificate to the Competent Authority, therefore, all benefits due to him should be granted, which are otherwise due to him as per law.

4. In this connection, the Learned Counsel for the applicant, Shri S. R. Atre, draws our attention to firstly, with reference to Constitution (Scheduled Tribe) Order 1950, wherein he states that the Tribes or Tribal communities, specified in Part-I of the schedule to this Order shall, in relation to the States to which those parts respectively relate be deemed to be Scheduled Tribes so far as regards members thereof resident in the locations specified in relation to them respectively in those parts of that schedule. In so far as Maharashtra is concerned, Part VII-A "Dhodia Community" is stated as S/T with effect from 01.05.1960, therefore, he contends that since he resides in Maharashtra, he should be deemed to have been treated as S/T Community with effect from that date. Despite the above, it is on record to show that applicant sent a letter to the Respondents vide dated 31.08.1979 requesting them for making correction in the earlier general caste to that of Schedule Tribe. Accordingly, the Respondents vide their letter dated 14.11.1979 directed him to produce the original documents on the basis of which the present caste certificate is issued by the Tahsildar, Ulhasnagar, alongwith other such documents

to enable them to consider his case on merits. After satisfied that the certificate produced by the applicant vide exhibit-2, the School Leaving Certificate issued by the Competent Authority on 15.01.1979, which was verified by the Head Master of the School and certified by the Tahsildar on 16.08.1979 stating that the applicant belongs to Hindu, Dhodia, which is recognized as Scheduled Tribes as amended in PART X of the first Schedule Caste and Schedule Tribes Order (Amendment) Act, 1976 listed as Sl. No. 15. His further contention is that, by birth he belongs to S/T Community and just because he submitted the certificate in 1979, he cannot be denied the benefits accrued to S/T community, though he was in service prior to 1979. Further, even in 1942 Order Schedule 'B' Dhodia Community is showed as backward and also treated as tribe, therefore, under any circumstances the benefits accrued to S.T. community cannot be denied to him viz-a-viz his junior colleagues who have been promoted earlier. Accordingly, he prays for the following reliefs :-

- JKW
- "(a) This Hon'ble Tribunal be pleased to call for the records and proceedings of the present case and after examining the legality and propriety thereof declare the action on the part of the respondents having committed a mistake in stating that the applicant as belonging to the Scheduled Tribe only with effect from 16.8.1979 and accordingly direct the respondents to grant the applicant all the due benefits which otherwise have been granted to the persons belonging to the Scheduled Tribe community and immediate junior to the applicant.

- (b) This Hon'ble Tribunal be pleased to direct the respondents to fix the applicant's seniority in Government service on having belonged to the Scheduled Tribe community and after doing so grant the applicant all the due benefits which have been granted and paid to the scheduled tribe candidates including stepping up of pay and promotions to the post of Inspector (SG) Superintendent of Central Excise, etc. alongwith all the due benefits including arrears of pay.
- (c) This Hon'ble Tribunal be pleased to direct the respondents to grant the applicant all the due benefits including arrears of pay at the rate of 18% interest."

5. The respondents in their reply have taken the stand that the application is totally misconceived and discloses no cause of action and the same is required to be dismissed. It is on record to show that the applicant at the time of entry in the department did not declare that he belonged to S/T Community, as could be seen from the Attestation form filled and submitted by him to the department, which was sent for police verification, before appointing him in the department. In the School Leaving Certificate produced by him at the time of entry into service, it is only shown as Hindu, Dhodia ^{as} caste and religion. He produced a certificate ^{dated 16.8.1979} from the Tahsildar after the promulgation of the S/C and S/T Order Amendment Act 1976, stating that he belongs to 'Dhodia' caste, which is recognised as S/T in the Maharashtra State. Therefore, the respondents contend that the applicant has been given all benefits after production of the certificate from the Competent Authority and his contention that he belongs to



S/T Community right from the beginning was not accepted. In this connection, the Learned Counsel for the respondents draws our attention to exhibit-4 vide dated 25.10.1984 which is reproduced below :-

"With reference to your letter F. No. II/34(a)4/83., dated 18.04.1984, on the above subject, I am directed to say that the Ministry of Home Affairs (D.O.P. & A.Rs), who were consulted in the matter, have advised that when an individual claims to belong to a community declared as Scheduled Caste/Tribe, it is incumbent for him to produce a certificate from the competent authority. In case an individual claims to be a member of the Scheduled Caste/Tribe, the benefit permissible under the rule/law can only be given to him after he produces the required certificate. In the instant case, Shri R. J. Nihalani, Superintendent Gr. 'B' obtained the certificate from the competent authority on 16.08.1979. He can, therefore, claim the benefit only from that date (viz. 16.08.1979) even though the Tribe to which he belongs was scheduled much earlier. In view of this, Shri Nihalani may be given the benefit accruing to him as a member of Scheduled Tribe community w.e.f. 16.08.1979."

The aforesaid position has been accepted by the applicant vide dated 12.10.1986 (annexure A-10) stating that ^{his} seniority be fixed from the date of his request i.e. from 23.08.1979 and he also conceded that he claims seniority only from 1980 onwards. That being the position, it is not open to him to rake up the pay fixation as well as seniority from the date he started his career. He was promoted as Inspector (SG) with effect from 28.06.1978 and after furnishing the certificate declaring himself as S/T with effect from 16.08.1979, he was thereafter given promotion as Superintendent with effect from 10.12.1980, which is clear from Annexure A-12 dated 13.02.1987, which reads as follows :-

the race and caste is shown as Hindu, Dhodia.

3. The applicant's main contention is that he belonged to the S/T Community all along and it cannot be said that he became S/T only from 16.08.1979, after production of the

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"It is found that Shri Nihalane's name did not fall even in the extended zone of consideration, in the lists considered for the D.P.Cs. held on Oct. 79 and May, 80. He was found eligible for consideration in the grade of Suptdt. only by D.P.C. held on 14.11.1980 and not from 22.08.1979. His case has been considered by the review D.P.C. meeting held on 29.11.1985 and he has been promoted as Suptdt. w.e.f. 10.12.1980 and his seniority has been fixed above Shri R.D. Londhe, Suptdt. who was next junior S.C. Officer to Shri Nihalane, Suptdt."

The applicant made representation vide dated 02.01.1989 and 30.03.1989 seeking for stepping up of pay with reference to Shri R. D. Londhe and others. However, the stepping up of pay has been carried out with reference to Shri R.D. Londhe. Thereafter, he made representation stating that the action to give benefit from 16.8.79 is wrong and it should have been given from earlier date. The same has been answered by the respondents in exhibit-4 rejecting his contention. The said rejection has not been challenged neither in this O.A. nor earlier, seeking seniority over others.

6. The legal position is that, under Article 342 of the Constitution, the President may with respect to any State or Union Territory after consultation with the Governor thereof by public notification, specify the Tribes or Tribal communities which shall for the purposes of this Constitution be deemed to be S/T in relation to that State or Union Territory as the case may be. Further, Parliament may by law include in or exclude from the list of S/T specified in a notification issued under clause(1)

of Article 342 any Tribe or Tribal Community but save as aforesaid, a notification issued under the said clause shall not be passed by subsequent notification :-

- (1) Constitution S.C Order, 1950.
- (2) Constitution S.T. Order, 1950.
- (3) Bombay Representation Act, 1960.
- (4) SC & ST Orders (Amendment) Act, 1976.
- (5) Constitution (ST) Order (Amendment) Act, 1987.

7. In the facts and the circumstances of the case, the thrust of the argument is, once it is considered that he belongs to a particular tribe, he should be given all the benefits under law ^{from the date of entry in service} irrespective of the fact when he produced the certificate. It is true that the applicant has retired from service on 01.11.1992. He got the post of Assistant Collector on 20.01.1990, thereafter, he made representation on 06.10.1992. It is not the contention of the applicant that he gave the certificate earlier, which is not accepted by the department. It is an admitted fact, that he gave the certificate only in 1979 and the respondents took notice of the same and took necessary consequential action, therefore, treating him as S/T with effect from 16.08.1979. Even in the representation dated 06.10.1992, he has not questioned the seniority given to others except Shri R. D. Londhe. As stated earlier, his pay fixation has already been carried out viz.-a-viz Londhe, thereby, any further grievance with regard to pay in this behalf is of no consequence. His further contention is that having published the seniority list in 1989, all other consequential benefits should have been given to him automatically. The Learned Counsel for the

respondents contends that since he has not challenged the 1984 letter, therefore, it is not open to him to challenge indirectly stating that he belongs to S/T Community right from the date he joined the service. Therefore, his claim is barred by limitation. After the review D.P.C. was held on 1985 and after having known the result of the D.P.C., the applicant has not made out any grievance though it was open to him to challenge the result of the review D.P.C. immediately; thereafter, he has not taken any action. Even in his subsequent letter dated 13.02.1989, he only made out a case for stepping up of pay and no grievance regarding seniority and the stepping up of pay was made out.

8. It is an admitted fact, that the applicant is a migrant from Pakistan in 1948 and at the time of entry in the department in 1956, he did not declare that he belongs to S.T. Community. In exhibit-1 & 2, the columns have been filled by the applicant and certified by him on 10.08.1956, wherein it is only shown as Hindu. As against exhibit-1 the column SC/ST it is stated as 'NO'. In Maharashtra, the 'Dhodia Caste' is recognised as S.T. in 1977 on the basis of SC/ST Amendment Order, 1976 and he produced required certificates stating that he belongs to S/T Community only on 16.08.1979 which has been accepted by the Respondents. The production of Caste Certificate by the specified authority is a condition precedent for taking action and recognising that he belongs to S/T Community. Therefore, in case an individual claims to be a member of the SC/ST, the benefit permissible under the Rule/Law can only be given to him after he produced the required certificate. In the instant case, the applicant claimed the certificate and submitted to respondents on


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16.08.1979, therefore, his request that he should be treated all along belong to S.T. community cannot be accepted.

9. In the light of the above, the question to be seen here is, without production of necessary certificate from the Competent Authority, whether he can claim that he belongs to SC/ST or else could the department suo motu treat him as S/T on the basis of Constitution of (ST) Order (1950) or the Amendment Act, 1956. Further, neither the applicant nor his father belong to 'Dhodia Caste' in Maharashtra. In the School Leaving Certificate (Annexure A-4) it is shown as 'Hindu Dhodia' and place of birth is shown as Gambat in Pakistan.. The School Leaving Certificate does not show that he belongs to S.T. In this connection, attention is invited to Home Ministry's Circular No. 35/1/72-RU (SC-TV) dated 02.05.1975 reproduced in Brochure or Reservation for SC/ST wherein it is stated that, "Where a person migrates from one State to another, he can claim to belong to a SC/ST only in relation to the State to which he originally belonged and not in respect of the State to which he has migrated." In this case, the certificate issued by the Special Executive Magistrate dated 01.12.1978 shows that the applicant belongs to 'Dhodia Caste' in Sindh. Therefore, just because he happens to belong to 'Dhodia Caste' in Sindh, he cannot be treated as 'Dhodia Tribe' in Maharashtra and keeping in view of the guidelines issued by the Ministry of Home Affairs referred, he cannot be treated as ST in Maharashtra right from the inception of his service, rightly, he has been granted

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the status of ST from the date he produced the required certificate for the purpose. As a matter of fact, 'Dhodia Caste' is not recognised at S.T. in Maharashtra. The Dhodia Tribe/Community in Maharashtra is recognised as S.T. in the SC/ST Amendment Act, 1976, effective from 27.07.1977. In the Constitution of (ST) Order 1950, nowhere it has been stated that under 'Dhodia Caste' of Sindh is S.T. in Maharashtra. Since the applicant is not a resident of the locality  in Maharashtra, he cannot be deemed to be Dhodia Community in Maharashtra on the strength of his case in Sindh (Pakistan).

10. It is a well settled principle that though a particular community is treated as S/T in one place, need not be treated as S/T in another place. Therefore, the Government of India as back as 1977 issued an Office Memorandum stating that those who claim the status of SC and ST they should furnish a certificate from the Competent Authority and that would be a material document in considering them accordingly.

11. In the instant case, admittedly the applicant has produced the certificate in the year 1979. Thereafter, necessary consequential benefits have been given to him, therefore, he cannot have any grievance at this belated stage to reopen the settled matters which is unwarranted and the same is barred by time. The Apex Court in K.R. Mudgal and Others V/s. R. P. Singh & Others (1986 (4) SCC 531) held that -

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"Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the Government Servants.....

It is essential that anyone who feels aggrieved by the seniority assigned to him should approach the Court as early as possible as otherwise in addition to the creation of sense of insecurity in the minds of the government servants there would also be administrative complications and difficulties."

"In the present case the appellants had been put to the necessity of defending their appointments as well as their seniority after nearly three decades. This kind of fruitless and harmless litigation should be discouraged, etc."

The applicant has been considered for promotion right from 1985 onwards till 1990 by extending the zone of consideration; however, he was not found suitable till 1990, therefore, he does not have any grievance against the respondents in not selecting him to the post of Assistant Collector till 1990. In this O.A., the applicant has been asking for the relief right from the date of entry in service. However, keeping in view the ratio laid down by the Apex Court, it is not open to the applicant to reopen the settled matter at this belated stage.

12. In the light of the above, we see no merit in the O.A. and the same is liable to be dismissed. Accordingly, the O.A. is dismissed but no order as to cost.

M. R. Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A).

B. S. Hegde

(B. S. HEGDE)
MEMBER (J).

(18)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

Review Petition No.41/96
in
Original Application No.1182/92.

Roopkumar H.Nihalne. ... Applicant.

V/s.

Union of India & Ors. ... Respondents.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri M.R.Kolhatkar, Member(A).

ORDER ON REVIEW PETITION BY CIRCULATION

(Per Shri B.S.Hegde, Member(J)) Dt. 20.2.1996

This application has been filed for seeking review of the order dt. 8.8.1995 by which O.A. 1182/92 was dismissed after hearing both the parties.

2. We have seen the Review Petition. We are satisfied that this application can be disposed of by circulation. The applicant has sought review of the judgment on the following grounds :

- (1) that the claims preferred by the applicant has not been looked into by the Tribunal and the same appears to be error apparent on the face of the record.
- (2) that the petitioner was considered in the Departmental Promotion Committee from 1985-1990, but the said proceedings has not been adduced during the course of hearing.
- (3) that the petitioner belonged to ST community by virtue of SC/ST order 1960 and 1976. The SC/ST order was only a continuation thereof, thus it could not have been stated that the petitioner came to belong to ST only from 1979 onwards.

3. All these contentions have been dealt with in our Judgment at paras 5, 7, 8 and 9. Therefore, it is clear that the applicant has not made out any

case for review. All the contentions raised in the Review Petition has been considered while disposing of the O.A. Therefore, the Review Petition cannot be utilised for re-arguing the same, on the same ground.

4. In the light of the above, as mentioned in the Judgment, we have considered that the explanation given by the Respondents in recognising his status as ST after production of required documents is just and proper. We further find that neither any error apparent on the face of the record has been pointed out nor any new facts have been brought to our notice calling for a review of the original judgment. The grounds raised in the Review Petition are more germane for an appeal against our judgment and not for review. The Review Application, is therefore, dismissed by circulation.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

B.S. Hegde

(B.S. HEGDE)
MEMBER (J).

B.