

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 754 of 1997.

Dated this Friday, the 14th day of September, 2001.

Avinash Wamanrao Gaikwad, Applicant.

Shri D. V. Gangal alongwith Advocate for the  
Shri S. V. Marne, Applicant.

VERSUS

Union of India & Others, Respondents.

Shri V. G. Rege, Advocate for  
Respondent Nos. 1 to 4.

Shri V. S. Masurkar Advocate for  
Respondent No. 5

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri Kuldip Singh, Member (J).

(i) To be referred to the Reporter or not ? Yes

(ii) Whether it needs to be circulated to other No Benches of the Tribunal ? No

(iii) Library. Yes

B. N. BAHADUR  
MEMBER (A).

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Hon'ble Shri Kuldip Singh, Member (J).

Avinash Wamanrao Gaikwad,  
Former Excise Inspector,  
O/o. the Asstt. Commissioner,  
Central Excise & Customs,  
Pune Division - 7,  
Hadapsar, Pune.

Residing at - Sarvodaya Housing  
Society, Ambrai,  
Baramati - 413 102,  
Dist. Pune.

... Applicant

(By Advocate Shri D. V. Gangal  
alongwith Shri S. V. Marne)

**VERSUS**

1. The Union of India through  
The Secretary,  
Ministry of Finance,  
Department of Revenue,  
New Delhi.
2. The Commissioner,  
Central Excise & Customs, Pune,  
PMC's Commercial Building,  
Hira Baug, Tilak Road,  
Pune - 411 002.
3. The Additional Commissioner (P&W),  
Central Excise & Customs, Pune,  
PMC's Commercial Building,  
Hira Baug, Tilak Road,  
Pune - 411 002.
4. The Asstt. Commissioner (Vigilance),  
Central Excise & Customs, Pune,  
Office of the Commissioner of  
Central Excise and Customs,  
PMC Building, Hira Baug,  
Tilak Road, Pune 411 002.

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5. The Officer Incharge,  
Govt. of India, Staff Selection  
Commission, 2nd floor,  
Army & Navy Building,  
148, M.G. Road,  
Mumbai - 400 001.

...Respondents.

(By Advocate Shri V. G. Rege for  
Respondent Nos. 1 to 4.  
By Advocate Shri V. S. Masurkar  
for Respondent No. 5)

O R D E R (ORAL)

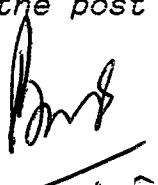
PER : Shri B. N. Bahadur, Member (A).

The Applicant in this case challenges the orders of the Respondents dated 10.01.1997 and 13.05.1997 (Annexure A-1 and A-2) and seeks the relief for the quashing and setting aside of these orders by holding them illegal. Through the first order dated 10.01.1997, the Applicant's services had been terminated and through the second order of 13.05.1997, he has been informed that his appeal has been rejected.

2. The facts of the case as put forth by the Applicant are as follows :-

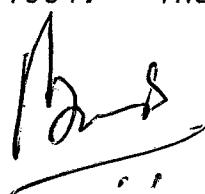
The Applicant states that he has been declared as a Member of Vimukta Jati Tribe and as such, has the benefits of reservation. The sequence of the case has been cogently presented in the statement of chronology, which is part of the O.A. at para 4. The Applicant who was working as a Police Constable with the Government of Maharashtra in 1986, applied for the post of Inspector of Central Excise & Customs in July, 1990.

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He appeared for a written examination in December and for a interview, etc. where he produced the Tehsildar's certificate relating to his caste i.e. Hindu-Takari. It is mentioned, importantly, by the Applicant himself in chronology sl. No. 6 in his application made for the examination conducted by the Staff Selection Commission, that he belongs to the Scheduled Tribe community. In fact, it was throughout pointed out by the Learned Counsel for the Applicant in argument that this was under the mistaken notion that his caste was listed under Scheduled Tribe, since he was getting the benefits under the State of Maharashtra and there was no intention to mislead or derive undue benefit from such an assertion. It is also mentioned in the chronology that on 13.08.1990, (incidentally the date on which he applied for the examination) the Government of India had issued orders regarding reservation for the Socially and Educationally Backward Community (S.E.B.C. for short). It is also a fact, as brought out admittedly, that this O.M. dated 13.08.1990 was stayed by the Hon'ble Supreme Court pending the consideration of what is well known as the Indra Sawhney case [1992 SCC (L&S) Supp 1].

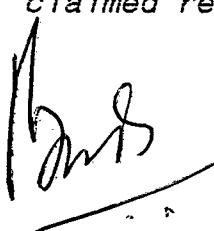
3. The Applicant came to be appointed by Respondents as Inspector in March, 1992. The Applicant also mentions without stating the reasons that he came to be suspended in September, 1994. The Applicant came to be issued with a memorandum



✓ (Annexure A-3) asking him to explain why action should not be taken against him for providing wrong facts to the effect that he was a ST, and seeking and getting appointment on this basis. His services were thereafter terminated vide the impugned order.

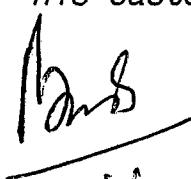
4. Respondent Nos. 1 to 4 have filed a Written Statement of reply, where the claims of the Applicant are resisted, and it is stated that he had submitted false information by declaring that he was a member of the Scheduled Tribes. It is only in September, 1994, while scrutinizing reports and appointment documents, that this wrong information was detected. Details are indicated as to how the Hindu Takari caste was notified only as Vimukta Jati and that it does not come in the list of communities under the Scheduled Tribes. The action for termination of service has been taken on this basis. It is also explained that the Appeal of applicant was considered by the competent authority and no sufficient ground to warrant intervention with the order of termination were found by the Appellate Authority. The remaining part of the detailed Written Statement comments on the averments of the Applicant in the pleadings, parawise. These points were taken up by their Learned Counsel, Shri Rege, during argument:

5. A reply has also been filed on behalf of Respondent No. 5, i.e. the Staff Selection Commission, resisting the claims made by the Applicant, and stating that the Applicant has clearly claimed reservation as an ST candidate by filling up column no. 6



✓ of his application form specifically. The certificate was to the effect that he belongs to Vimukta Jati. As per prevailing practice, the caste certificate produced by the Applicant was accepted on provisional basis. At the time of interview, the candidate was given another opportunity to submit the Caste Certificate in proper format and was informed that his candidature is provisional, and subject to fulfilment of all conditions of eligibility. It is alleged that the candidate did not submit the caste certificate in prescribed format and that general instructions were given to the appointing authority, (Principal Collector) in the letter recommending applicant's name that where caste certificates are not in prescribed format, due verification should be done. It is alleged that the candidate had admitted that he made a false declaration before the Staff Selection Commission. It is stated that candidate cannot be considered as O.B.C. (S.E.B.C.) unless he has applied as such against a specific reserved vacancy advertised accordingly.

6. We have heard the Learned Counsel on both sides. Shri D.V. Gangal argued the case in detail for the applicant first taking us over the chronology of events in the synopsis at page 6 of the O.A. He was at pains to explain that even though the Applicant had mentioned that he belongs to Scheduled Tribe in the application and elsewhere, he had not produced any false certificate. The point made was that there was no criminal intent or intent to secure any employment by misrepresentation of his caste. In this connection, the Learned Counsel made the

  
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✓ point that when the Applicant submitted the Caste Certificate at the time of interview, as demanded, it was caste certificate of Hindu Takari and thus no claim was made that he was a member of the Scheduled Caste. It was also indicated that before his appointment was made, the Applicant had also filled in a proforma where he was asked whether he was a S/T or S/C and he had clearly indicated in the negative (Page 30). This then was one of the main plank of argument on behalf of the Applicant.

7. Shri Gangal further stated that in fact the documents submitted were verified and it was open to the Respondents not to provide the Applicant with a job at this stage. Reacting to the point that the mistake was made by the Respondents in the verification process at the aforesaid two occasions, Learned Counsel made the point that the Respondents could not take up the plea of mistake at this stage, and they were barred on the principle of acquiescence and estoppel in terms of the provisions in the Indian Evidence Act. It was also argued by the Learned Counsel that, at the time of selection, the orders regarding reservation for S.E.B.C. had already been issued by the Union Government. The fact that it was stayed, has to be read with the subsequent fact of lifting of stay, which implied that the orders effectively remain in force from its original date. Thus, the point made was that the Applicant could be provided the benefit of reservation under the Other Backward Classes (S.E.B.C.)/O.B.C.

8. Another point taken by the Learned Counsel was that, being a permanent employee of Government (confirmation deemed in

  
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(view of there being no order of extension of probation), he could not be terminated without a proper enquiry. In this connection, Learned Counsel drew our attention to para 9 of the Written Statement of Respondents 1 to 4 where it is stated that the Applicant had committed gross misconduct with reference to his being caught by the A.C.B., Pune, for demanding illegal gratification of Rs. 15,000/-.

9. Learned Counsel for the Applicant cited the following case law in support of his contention.

1. *Dipti Prakash Banerjee V/s. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & Others reported at 1999 SCC (L&S) 596.*
2. *Chandra Prakash Shahi V/s. State of U.P. & Others reported at 2000 SCC (L&S) 613.*
3. *Karnataka State Road Transport Corporation & Another V/s. S. Manjunath reported at 2000 SCC (L&S) 629.*
4. *Ram Dhan Choudhary V/s. Union of India & Others reported at 1998 (3) ATJ 512.*

10. Arguing the case on behalf of Respondent Nos. 1 to 4, Shri V. G. Rege, made the point that in the initial application the candidate had clearly stated that he was a ST. Further, on 27.06.1991 while filling up his biographical data he had again stated that he belonged to ST. Shri Rege also drew our attention to page 99 showing qualification of the Applicant to state that he was Masters' degree holder and had done part of his L.L.B. and being highly educated, could not take the plea of ignorance in regard to the system of reservation. The important point then



Taken by Shri Rege was that the process of selection was started in July, 1970 and that no reservation in this selection process was envisaged accept for SC and ST. In this connection, Learned Counsel took us over the O.M. dated 13.08.1990 and made the important point that in the O.M. itself it had been stated that "the aforesaid reservation shall take effect from 07.08.1990. However, this will not apply to vacancies where the recruitment process had already been initiated prior to the issue of those orders." This was one of the main planks of argument of the Learned Counsel, Shri Rege. He took us over the sequence of events meticulously, as pointed out in the synopsis and, argued that it cannot be said that the Applicant had an honest intention or that it was by mistake that he had projected himself as an ST candidate. It was only at a very late stage, before his appointment, that he had come forth saying clearly 'NO' in the form that he had filled up. Before that he had been stating himself to be a ST. Pointing out that at that time prior to selection non-detection of caste factor was a mistake, Shri Rege stated that no principle of acquiescence or estoppel was made available to the Applicant under such circumstance, where a mistake was made by the Respondents.

11. Regarding the lifting of the stay by the Hon'ble Supreme Court, the Learned Counsel drew our attention to the subsequent O.M. issued by the Government on 08.09.1993 (exhibit D-1 page 103 of the Paper Book) and contended that this was relevant.

12. Arguing the case on behalf of Respondent No. 5, i.e. S.S.C., their Learned Counsel, Shri V.S. Masurkar, emphatically stated that the fact of the Applicant calling himself as ST in the application was itself important, and showed that his intention was far from honest. He stated that in so far as Staff Selection Commission and the process of recruitment was concerned, the notification of vacancies was scrutinized as per the law then prevailing which only envisage reservation for SC/ST. There is no challenge to the advertisement notifying vacancies. Hence, the reservation could be made only for SCs/STs. It was argued that the Applicant was not deserving of any sympathy, as was clear from the facts, as brought out by the other Respondents also. Learned Counsel depended on two cases as below :

1. G. Sundarasan V/s. Union of India & Another JT 1995 (5) SC 568 decided by the Hon'ble Supreme Court.
2. E. Jebamani V/s. Union of India & others decided by the Mumbai Bench of this Tribunal on 13.08.1999 in O.A. No. 919/95.

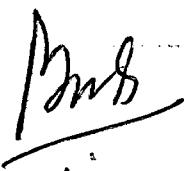
13. We have seen all case papers and have considered the arguments made by the Learned Counsel on respective sides and have also seen the case law cited.

14. The first point that emerges from the O.M. dated 13.08.1990 which indeed is very important to this case is clearly stated in para 2(v) that reservation shall take effect from



07.08.1990 and importantly that it would not apply to vacancies where recruitment process had been initiated prior to issue of orders i.e. prior to 30.08.1990. Clearly, therefore, notwithstanding the argument relating to the vacation of these orders it could be seen that reservation for O.B.C. was not applicable to those recruitment process. Therefore, even at this stage, looking back with a view to the claims made by the Applicant's Learned Counsel for adjustment of the Applicant against O.B.C. now, it could be seen that this would not be a legal proposition. When reservation for an O.B.C. was not applicable in this selection process and this is an important point that goes against the Applicant's case.

15. Now we come to the argument relating to the declaration of the Applicant himself that he was a ST candidate. It is seen admittedly that he did declare himself to be a ST candidate in the original application form. Subsequently also, as noted above, he has declared himself as a Member of the ST. Only just prior to his appointment he has indicated that he was not so. True, he has been submitting certificates in respect of Hindu Takari and not in respect of Membership of a Scheduled Tribe community. The whole point of argument is that it was up to the Respondents that they should not have made a mistake in correctly making an assessment. It is true, as pointed out by the Learned Counsel for Respondent No. 5 that at the stage of application, mere assertion of the candidate is taken and hence, the



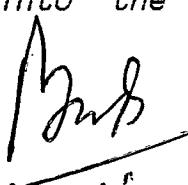
communication, as made, to the department for verification of caste. Notwithstanding the assertion regarding honesty of intentions, it is true that the correct assessment was not done by the Department before appointing the Applicant as Inspector. Since this was clearly a mistake, can it be said, as argued by the Learned Counsel for Applicant, that the Respondents are now stopped on the principle of acquiescence and estoppel from undertaking correction of those mistake or from the action of termination of service, as indicated.

16. We are not impressed by the argument on the principle of acquiescence and estoppel. It will certainly not apply to this kind of facts and circumstances in service law. In the first place, it cannot be said that the intentions of the Applicant were truly innocent and we cannot ignore the fact that he is a Post-graduate or that he had no clue whatsoever regarding the system of reservation obtaining in this country. In fact, in 1990 this matter was very much in public news and taking the plea of ignorance by an educated person like the applicant is clearly not a plausible excuse. It appears preposterous.

17. More importantly, the fact is that there has been suppression of information by applicant. In regard to the action taken for termination of service, we are guided indeed in the matter by the case of G. Sundarasan cited by Shri V.S. Masurkar, Learned Counsel for Staff Selection Commission. Also,

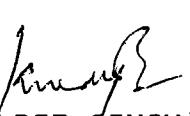
the issue involved here are discussed in length in the case of E. Jebamani decided by this Bench of the Tribunal in O.A. No. 919/95 on 13.08.1995. The issues raised by us has been discussed in detail in para 11 onward in the said judgement. There is sufficient cause for taking action in regard to termination of a Government servant when applicant himself comes into service on the basis of falsely stated facts, especially when the facts are of such importance that it enables him to get employment in Government on relaxed standard. Incidentally, we have been shown the relevant file by the Learned Counsel, Shri Masurkar, where it is confirmed that the Applicant was selected on the basis of relaxed standard. Thus, it cannot be said that the action to terminate the service of the Applicant on the basis of supply of false information is not legally tenable or arbitrary or even harsh. It is noticed that here also a show cause notice has been issued to the Applicant before the action of termination. Thus, there is no flaw in regard to the principles of natural justice.

18. Learned Counsel for the Applicant had made the point that this was not a termination simplicitor and the fact that the Applicant had been involved in a trap case has weighed with the Respondents in taking action of termination. As pointed out above, he referred to para 9 of the Written Statement of Respondents, page 81. We find that this point has not come up in the orders of termination. This is important. However, as argued by the Learned Counsel, Shri Gangal, we did decide to go deeper into the matter and have seen the official file produced before



us. This was indeed necessary to enable us to assess whether the action was punitive in nature, in terms of settled law. We have found from the perusal of the notes in file that the action of termination came about only in view of the provision of false information in regard to the Applicant being a member of the Schedule Tribe. There is no nexus between the incident of trap case and the action of termination, as could be seen from a perusal of the case papers. In this connection, we have also carefully seen the case law cited by the Learned Counsel for Applicant, as referred to in para 9 above. In fact, in one of these cases, namely judgement of the Hon'ble Supreme Court in the matter of Chandra Prakash Shahi V/s. State of U.P. & Another [2000 SCC (L&S) 613] was depended upon by the Learned Counsel, Shri Rege also in regard to the observations on para 12 of the judgement. On careful perusal, we find that in all these cases cited, the Courts had decided that there was stigma attached in the background of the facts of those particular cases. In view of this, the necessity of the enquiry was decided upon. In view of the discussions above, we find no stigma attached in the cause of action leading to the termination in the present case. Hence, the case law cited on behalf of Applicant will not be applicable to the case.

19. In view of the above discussions, we are not convinced that there is a case for interference by the Tribunal in this matter. The O.A. is, therefore, dismissed with no order as to costs.

  
(KULDIP SINGH)  
MEMBER (J).

  
(B. N. BAHADUR)  
MEMBER (A).