

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BRANCH
AT HYDERABAD

O.A.No. 245/91

Date of Order: 21.3.94

BETWEEN :

Peddiraju Rambabu

.. Applicant.

A N D

Telephone District Engineer,
Karimnagar.

.. Respondents.

Counsel for the Applicant

.. Mr. S. Suryaprakasa Rao

Counsel for the Respondents

.. Mr. N. V. Ramana

GORAM:

HON'BLE SHRI T. CHANDRASEKHARA REDDY : MEMBER (JUDL.)

HON'BLE SHRI H. RAJENDRA PRASAD : MEMBER (ADMN.)

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Order of the Division Bench delivered by
Hon'ble shri T.Chandrasekhara Reddy, Member (Jud1.).

This is an application filed under Section 19 of the Administrative Tribunals Act to quash the memo of charge sheet of the respondent dated 1.2.91 served on the applicant on 4.2.91 and to pass such other order or orders as may deem fit and proper in the circumstances of the case.

The facts giving rise to this OA in brief are as follows:-

2. The applicant herein applied for the post of Telephone Operator. While so applying, the applicant described himself as belonging to Bhatraju community and produced to that effect a certificate issued by the Tahasildar. After due selection, the applicant was appointed and sent for training. On successful completion of training, by letter dated 14.10.81 Divisional Engineer, Warangal appointed the applicant as Telephone Operator at Koratla. The applicant was latter transferred to Janagam. While so, as per the orders dated 19.3.82, the services of the applicant were terminated under Rule 5(1) of the CCS (Temporary) Rules 1965. The applicant approached the High Court of Andhra Pradesh in W.P. 2913/82 to quash the said termination order dated 19.3.82. The Writ Petition came up for hearing before the learned Single Judge of the High Court of Andhra Pradesh. As per the judgement of the Learned Single Judge dated 8.7.82, W.P. 2913/82 was allowed by setting aside the termination of the petitioner's services and the respondent was directed take back the applicant into service. As

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against the order dt. 8.7.82 in WP.2913/82 the respondent in WP.2913/82 who was Divisional Engineer, Telecommunications, Karimnagar preferred Writ Appeal No.652/82. W.A.652/82 was disposed of by a Division Bench of the High Court of Andhra Pradesh as per its orders dt. 16.8.82 confirming the judgement of the learned Single Judge of the High Court of Andhra Pradesh in W.P.2913/82. The applicant had been subsequently taken to duty and as such he is continuing now. While so a charge sheet is served on the applicant by the Telecom District Engineer, Karimnagar as per his proceedings dated 1.2.1991. The charges are as hereunder:-

- "1. Sri P.Rambabu, Telephone Operator, Karimnagar in his application dated 25.2.1981 for recruitment to the cadre of Telephone Operators in Warangal division for 1981 given false information against Column No.9 as belonging to "S.T." through "Bhatraju" caste to which he is belonging is not coming under Scheduled Tribe and entered the Central Government Service as Telephone Operator and cheated the Government as with % of marks he has secured, he could not think of getting selected as a Telephone Operator. This is in violation of Rule 3.1(iii) of Conduct Rules.
2. Sri P.Rambabu, Telephone Operator, Karimnagar, in the attestation forms submitted in 1981 in connection with his recruitment to the cadre of Telephone Operators, 1981 furnished wrong information against Column No.9 that he belongs to "Scheduled Tribe" thus giving false declaration to the Department in violation of declaration given at the end of the attestation form (for the candidate) through the candidate is fore-warned of giving incorrect information vide Column No.3 of the attestation forms. This is also in violation of Rule 3.1 (iii) of the CCS (Conduct) Rules, 1964."
3. The present OA is filed to quash the said charge sheet dated 1.2.91 issued by the respondent against the applicant and served on him as already indicated above.
4. Counter is filed by the respondents opposing this O.A.
5. We have heard in detail Mr.S.Suryaprakash Rao, learned counsel for the applicant and Mr.N.V.Ramana, Standing Counsel for the respondents.

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6. On behalf of the applicant it is contended that the judgement in W.P.2913/82 dated 8.7.82 as confirmed in W.A. 652/82 by Division Bench as per its orders dated 16.8.82 would operate a resjudicata. So, it is not open to the respondents to issue a charge memo and try to remove the applicant from service on the ground that he did not belong to Scheduled Tribe at the time of his appointment as Telephone Operator.

7. In view of the contention raised it would be pertinent to extract the relevant portion of the judgement contained at page 2 of the judgement in W.P.2913/82.

"I think that the impugned order of termination of petitioner's service should be set aside. It should be set aside for the reason of estoppel. While seeking his appointment the petitioner did not represent that he belonged to a scheduled Tribe. He merely claimed to belong to Scheduled Tribe to which infact he belonged. Any statement made regarding the question whether Bhatraju community would fall within any of the scheduled tribes was made on the strength of the certificate of a public official, like Tahsildar who is an agent of the State. Such a representation cannot be said to be a representation of fact. It can only be construed as a statement on legal position of ST Order. In fact a public official like the Tahsildar had opined and certified that Bhatraju community was a ST community and that certificate had been accepted by another public functionary, the appointing authority. The petitioner may be mistaken about law but cannot be blamed for any error that might have crept into

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the thinking of the Tahsildar or the appointing authority leading the latter to appoint the petitioner on the basis of the former's certificate that Bhatraju community was a ST community. The petitioner can no more be blamed by the appointing authority for any mistake regarding the true legal position of Bhatraju community than the Tahsildar or the appointing authority itself. When blame cannot be laid on the petitioner for any mistake that might have occurred regarding the legal position it follows that the petitioner cannot be made to suffer by the mistaken or careless acts of the Tahsildar and the respondent. On that account the petitioner cannot be allowed to be subjected to any deprivation of an employment. For the acts of omission and commission of the Government officials, including the appointing authority it would be unjust to throw out the petitioner after the training and the period of service. The petitioner has placed all the material before the authorities. Appointing authority having acted upon those materials, including a certificate of Tahsildar cannot now turn round and throw the petitioner out of job. It follows that even the assumption that Bhatraju community was not ST community at the time when the petitioner was appointed is correct, the appointing authority cannot terminate the services of the petitioner on that basis because the petitioner did not contribute by way of fraudulent concealment or active inducement to his own appointment."

The Division Bench also has made the following observation in its order dated 16.8.82 in W.P.652/82 :-

"In the instant case, it is unnecessary for us to do so having regard to what is stated in the counter affidavit, namely, that the order of termination was made because of it was discovered that the respondent did not belong to the Schedule Tribes. It may be observed that the respondent did not represent or committed a mistake in treating him as a member of the Scheduled Tribes, the respondent cannot be blamed. The appellant having appointed him to the post after due selection and the respondent having successfully undergone training and having been appointed to the post his services cannot be terminated. In any event the appellant is estopped from doing so. The learned Single Judge, in our opinion, has rightly held that the appellant is estopped from terminating the respondent's appointment.

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8. As could be seen from the observations, the learned Single Judge has dealt at length in his judgement as to how the respondent was "estopped" from contending that the applicant did not belong to scheduled tribe at the time of his appointment. As could be seen from the said judgement there was no mistake at all on the part of the applicant or misrepresentation on the part of the applicant to treat him as a member of S.T. The order of the learned Single Judge and also the judgement in Writ Appeal would make it clear that the applicant was not at all to be blamed for treating him as belong to S.T. As a matter of fact the learned Single Judge has also made it clear that the applicant did belong to S.T. So as the judgements of the High Court in the W.P. and W.A. make it clear that the applicant belonged to S.T., we are unable to understand how the charge sheet could be issued by the respondent alleging that the applicant had given a false information as belonging to S.T. at the time of his appointment as Telephone Operator. Even though the applicant belongs to Bhatraju Community, it is not open for the respondent to allege in the charge sheet that the applicant had cheated the respondents in securing the job as Telephone Operator. In view of the judgement of the High Court we are of the opinion that the initiation of the disciplinary proceedings by issuing the impugned charge memo is not at all valid. Hence the impugned charge memo is liable to be quashed and is accordingly quashed.

9. The orders in favour of the applicant had been passed by the High Court in the year 1982. As already pointed out, the caste status of the applicant was specifically in question in the Writ Proceedings before the High Court. The proceedings of the High Court had terminated

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in favour of the applicant as already pointed and the applicant had been reinstated. There is a categorical finding by the High Court of the Andhra Pradesh that the applicant is not guilty either of suppression of facts or concealing any material with regard to the caste status. The question of the caste status of the applicant had already been finally determined.

10. We are unable to understand how it is open for the respondent herein who is a party to the Writ proceedings before the High Court to raise the same question once again. Even it is not open for the District Collector to re-open the caste question of the applicant as the said judgement of the High Court of Andhra Pradesh binds the respondent herein and the District Collector. It is contended that the judgement delivered in the Writ proceedings by the High Court is not correct and that the High Court was not justified in accepting the caste status of the applicant that the applicant belonged to S.T. Even accepting for arguments sake the contention of the learned counsel for the respondents that the judgement of the High Court is erroneous in accepting the caste status of the applicant as belonging to Bhatraju community and as S.T. at the relevant point of time it is needless to point out that wrong judgements also binds the parties and operate as resjudicata. As already indicated it is not open for the respondents to raise the question again with regard to the caste status of the applicant and try to remove the applicant on the ground that the applicant did not belong to S.T. community at the time the applicant was appointed as Telephone Operator.

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Copy to:-

1. Telephone District Engineer, Karimnagar.
2. One copy to Sri. S.Suryaprakasa Rao, advocate, 1-9-485/15/B, 'Ramya' Lalithanagar, Hyd-44.
3. One copy to Sri. N.V.Ramana, Addl. CGSC, CAI, Hyd.
4. One copy to Library, CAT, Hyd.
5. One spare copy.

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11. The writ proceedings in favour of the applicant had been terminated in the year 1982. The applicant had been reinstated in pursuance of the High Court order and as such is continuing in service now. The disciplinary proceedings are sought to be taken as against the applicant in the year 1991 i.e. roughly after 7 years after the writ in the High Court of Andhra Pradesh had been in favour of the applicant. In view of the delay also we do not find it expedient for the respondents to initiate the disciplinary proceedings as against the applicant on the basis that the applicant had produced false information at the time of his appointment with regard to his caste status.

12. By an interim order dated 13.3.1991 this Tribunal had ordered stay of further proceedings of the charge memo dated 1.2.1991 issued as against the applicant. As we have quashed the charge memo issued as against the applicant the said stay orders are made absolute.

13. O.A. is disposed of accordingly. The parties shall bear their own costs.

(H.RAJENDRA PRASAD)
Member (Admn.)

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Dated 21st March, 1994

(Dictated in Open Court)

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(T.CHANDRASEKHARA REDDY)
Member (Judl.)

Amelia
Dy. Registrar (J)

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