

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH : AT HYDERABAD.

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O.A. 493/91.

Dt. of Decision : 28.4.1994.

A. Parthasarathy

.. Applicant.

Vs.

1. The Dy. Commissioner of Income-tax, Visakhapatnam Range, Aayakar Bhavan, Daba Gardens, Visakhapatnam.
2. The Commissioner of Income-tax, Aayakar Bhavan, Daba Gardens, Visakhapatnam.
3. The Chief Commissioner of Income-tax, Andhra Pradesh, Aayakar Bhavan, Bashirbagh, Hyderabad.
4. The District Collector, East Godavari District, Kakinada.

.. Respondents.

Counsel for the Applicant : Mr. G. V. R. S. Vara prasad

Counsel for the Respondents: Mr. N. R. Devaraj, Addl. CGSC

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

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Judgement

I As per the Hon'ble Sri R. Rangarajan, Member (A) X

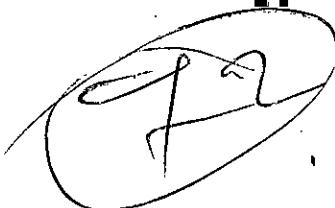
The applicant herein joined the Income-tax Department as L.D.C. under the quota reserved for Scheduled Tribe candidate on 30-7-66. His community was noted as Konda Kapu community which is recognised as a Scheduled Tribe. His educational records also show that he belongs to Konda Kapu community. At the time of entry into the service, the applicant produced a community certificate issued by the Dy. Tehsildar, Yellavaram dt. 18-12-68 (Annexure XI) to the effect that the applicant belongs to the Konda Kapu community which is a Scheduled Tribe and this certificate was countersigned by the R.D.O., Peddapuram. The applicant was promoted w.e.f. 7-8-70 in general category as U.D.C. and not in the reserved quota for Scheduled Tribe for promotion to UDC as he did not produce a fresh community certificate before his promotion as UDC. He was further promoted as Tax-assistant w.e.f. 6-1-87 treating him as a general candidate and not under Scheduled Tribe quota.

2. Later it was found that Shri A. Srinivasa Rao, elder brother of the applicant who is also working in the Income-tax Department has not claimed his caste as Konda Kapu, a Scheduled Tribe community but claimed as belonging to Kapu community, an unreserved community. It was also noticed that as per the birth extract of Shri A. Bhaskar Rao, younger brother of the applicant who is also working in the Income-tax Department, the caste mentioned was 'Telaga'. In the meantime a reference was also made to the Collector, East Godavari, Kakinada

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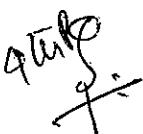
to ascertain the community status of the applicant and his younger brother Shri A. Bhaskar Rao. The Collector, E.Godavari, Kakinada had replied to the Commissioner of Income-Tax, A.P., Hyderabad, vide his Letter D.Dis.(B2)9018/79 dt.24-7-80 stating that the matter was enquired into and both the applicant and his younger brother Shri A. Bhaskar Rao, belong to Kapu community and not Konda Kapu community, a ST community. From the letter it is seen that the above conclusion was drawn <sup>after</sup> enquiring from the village elders of Godavarthi village by the Tehsildar, Yellavaram. In this village and surrounding villages the community Konda Kapu had never lived. It is further stated in that letter of the Dist. Collector that in the absence of those community certificates of both the applicant and his brother, the genuineness cannot be certified. It is further stated that those certificates could have been issued based on the school records produced by the individuals. It is also informed to the Commissioner of Income-Tax by the Collector that Birth Register of Kakinada Municipality reveals that the above individuals belong to Telaga caste. On these ~~evidences~~, a show cause notice was issued by the Memo. Con.No.46/1970 dt.19-11-82 calling <sup>upon</sup> ~~up to~~ the applicant to produce proof of being a Scheduled Tribe candidate. The applicant informed the Commissioner, Income-Tax, A.P., Hyderabad, by his letter dt. 7-1-83 (Annexure-III) that his elder brother Shri A. Srinivas Rao was brought up by his aunt belonging to Kapu community, and therefore his caste was mentioned as Kapu community, whereas, he was brought up by his parents who belonged to Konda Kapu community. As regards his younger brother, he was married to a girl belonging

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to a Konda Kapu community which proves that there is no discrepancy in the community certificate submitted by him. As regards the Collector's certificates it was contended that the report of the District Collector is not available to him and only a gist of it was made available to him. The report of the Collector is of recent time and his certificate was issued as far back as 1962 by the Tehsildar, Yellavaram stating that he belonged to the Konda Kapu community of Godavarthi village. By making enquiries from the 2nd and 3rd generation people, the Collector cannot come to the conclusion that he belongs to the Kapu community, an unreserved one. He further stated in his explanation that his community was mentioned as Konda Kapu in the records of the Municipal High School, Gandhi Nagar, Kakinada where he studied from 1951-52. In the records of Mc. Laurin High School, Kakinada where he studied during 1954-55, it was recorded that he belonged to Konda Kapu community. Even in the S.S.L.C. register of 1956-57, his community was shown as Konda Kapu. His younger brother Sri A. Bhaskar Rao whose community was written as a Telaga in the Municipal records could not be ascertained from his father, who is 73 years old and could not recollect the events. The entry in this record may be due to a mistake for which the applicant cannot be held responsible. As his parents have moved from Godavarthi village to Kakinada way back in mid 1940s, the enquiries made by the Collector at this date is very belated and cannot be relied upon. In view of these above reasoning he requested the authorities to drop the proposal of deleting his name from the list of Scheduled Tribe candidates.

3. After going through the explanation given by the applicant and after a careful consideration of the entire material on record, the commissioner of Income-Tax, Visakha-



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patnam had rejected the claim of the official that he belongs to the Konda Kapu community and deleted the name of the applicant from the ~~general~~ <sup>reserved</sup> category in the establishment list for all purposes vide Memo. Con.No.46/70, dt. 26-8-83 (Annexure II). The above deletion was ~~not~~ contended by the applicant. It is stated by the applicant that he did not ~~contend~~ <sup>mean</sup> the same as he wanted to keep peace with the Department.

4. The respondents though referred the case to CBI, the CBI has not given a final report as it was a matter of policy as informed by the CBI by their letter No.C6/I(iii) 113/73-Hyd. dt.4-11-78. The Department referred the case to the Director of Income-Tax, Vigilance, New Delhi which is the advisory body under Central Board of Direct Taxes for all vigilance matters of the Income-Tax Dept. on 20-10-87. The said authority advised to initiate disciplinary action against the applicant on 5-3-90 on the basis of which the charge Memo. No.Con.CCS.No.1/90-91 dated 26-2-91 was issued by R-1 (Annexure I). The article of charge reads as under.

"Article-I"

That the said Sri A. Parthasarathi, TA, joined the department as LDC against quota reserved for S.T. and continued to claim his caste as Konda Kapu, as Scheduled Tribe, which was later found to be false.

By his above act, Sri A. Parthasarathi, TA failed to maintain absolute integrity and exhibited conduct unbecoming of Govt. servant thereby violating Rule 3(1)(i) and Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article-II

That the said Sri A. Parthasarathi, TA, though belonging to a caste other than 'Kondakapu' has claimed as belonging to 'Kondakapu' and claimed the benefit of age relaxation for joining the department in 1966 to which he was not eligible otherwise.

By his above act, Sri A. Parthasarathi, TA failed to maintain absolute integrity and exhibited conduct unbecoming of Government servant thereby violating Rule 3(1)(i) Rule 3(1)(iii) of CCS(Conduct) Rules, 1964.

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5. This O.A. was filed on 30-4-91 assailing the above said Charge Memo. dt. 26-2-91 and for a further direction to quash the same as illegal, arbitrary, unjust, improper and without jurisdiction. An interim direction was given by this Tribunal by its orders dt. 3-5-91 and 7-6-91 suspending the disciplinary proceedings initiated by the memo. dt. 26-2-91 until further orders.

6. Shri Vara Prasad, learned Counsel for the applicant advanced four fold contentions. They are:-

- (i) There is unexplained delay in issuing the charge-sheet dt. 26.2.1991 after a lapse of 8 years from the date of issue of the Memorandum CON.No.46/70 dt. 26.8.83 deleting the applicant's name from the reserved list. The charge-sheet was issued more than 10 years after calling for explanation by letter dt. 17.11.1980 (Annexure-IX). Hence, this charge sheet is not sustainable as there is unexplained undue delay.
- (ii) The applicant was promoted as UDC way back in 1970 treating him as a general candidate and hence the respondents have been estopped by initiating any disciplinary proceedings, as he was treated as a general candidate from that date.
- (iii) The Collector, East Godavari District, Kakinada, issued the letter without giving an opportunity to the applicant to establish his community status. Further, the community certificate issued by the Deputy Tahsildar, Yellavaram dt. 18.12.1962 was never cancelled. As the Collector has given an unilateral direction, it is against the principles of natural justice and hence bad in law as observed by this Tribunal in O.A.No.268/93.
- (iv) R-1 has issued the charge-sheet who is subordinate to R-2, who deleted the name of the applicant from the reserved community list in terms of Memorandum No.CON.No.46/70 dt. 26.8.1983 (Annexure-II).

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Hence, R-1 cannot overrule R-2 by issuing the disciplinary proceedings after a lapse of eight years.

7. The contentions 1 & 2 are inter-related hence has ~~not been~~ <sup>and</sup> dealt together.

8. A perusal of the letter of R-2 dt. 26.8.1983 (Annexure-II) by which the name of the applicant was deleted from the list of the reserved community candidate from the establishment registers maintained by the department indicates that he has been shown as a general candidate only in all establishment registers of the department. This letter is the culmination of the enquiry started from 17.11.1980 (Annexure-X) whereby the explanation of the applicant was called to establish his community status. A show cause notice dt. 19.11.1982 (Annexure-VI) was issued for giving an opportunity to the applicant to explain his case before deleting his name from the reserved community list. Finally, he was informed by Annexure-II letter dt. 26.8.83 that he is only a general candidate. The tenor of the letter dt. 26.8.1983 clearly shows that the case of the applicant regarding his community status has been considered carefully and concluded once and for all as a general candidate only. This letter puts a stop to all controversies raised earlier and on the material facts on record, the applicant's community has been decided. For all practical purposes, this letter may be deemed as a final one and nothing further left to proceed further against the applicant. If the department is serious in pursuing the case of the applicant in initiating disciplinary proceedings this letter need not have been issued and instead the charge sheet by the competent

authority could have been issued. The issuance of this letter dt. 26.8.1983 is a final one and no further action need be considered later. It is seen that the applicant was promoted as U.D.C. only against general quota way back in 1970, though he joined the department in 1966 against the reserved quota which conferred on him the unintended benefit of age relaxation at the time of his joining the service. Though no objection was raised at the time of his joining regarding his community status, he was promoted only as a general candidate as U.D.C. Questioning his community status at the fag end of his career after a lapse of over 30 years may not be warranted.

9. While dealing with the scope of Rule-9 of C.C.S. (Pension) Rules, it was observed in para-9 of the judgment reported in AIR 1990 SC 1923 - D.V.Kapoor Vs. Union of India & Ors. ¶ that "the exercise of power by the President is hedged with a condition precedent that a finding should be recorded either in departmental enquiry or judicial proceedings that the pensioner committed grave misconduct or negligence in the discharge of his duty while in office, subject of the charge. (emphasis added). Whether submission of Caste Certificate, even if it is assumed to be false constitutes grave misconduct or negligence of duty while in office is a point which requires consideration. We are not going into this aspect as it is not a matter for consideration in this O.A. and we are not going to express any view in regard to the same. But the concerned authority will naturally look into the decision of the Supreme Court reported in ¶ AIR 1990 SC 1923 ¶ especially para-6 of the same before deciding as to whether disciplinary action can be

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necessitated against the applicant after over 30 years of service, when he is at the fag end of his career on the alleged furnishing of false certificate.

10. It is submitted by the respondents that this case was referred to the Director of Vigilance who is the Advisor in Vigilance cases to initiate disciplinary proceedings on 20.10.1987 four years after the issue of Annexure-II proceedings. It is not understood whether this reference at all is necessary when the case was concluded by letter at (Annexure-II) dt. 26.8.1983. The provocation for referring this to the advisor on Vigilance is not explained. Even the C.B.I. has not taken up this case earlier as this was considered as a policy matter and hence do not come under the purview of vigilance cases. No explanation was forthcoming when questioned from the learned counsel for the respondents whether the determination of community status comes under the purview of Vigilance. The Vigilance cell of the department took about 3 years to reply this reference, advising the department to initiate disciplinary proceedings. Though it was explained that the decision was delayed because of procedural formalities involved, the undue delay cannot be explained by merely stating procedural formalities. The respondent by Annexure-II letter had deleted the name of the applicant from the reserved list and shown him as an employee belonging to unreserved community. Had the respondents wanted to pursue this case further, they could have initiated disciplinary proceedings then and there itself instead of initiating the same after 8 years of issue of Annexure-II letter. Issuance of Annexure-II letter would imply that the case is decided once for all and no further action was considered necessary. This view is further strengthened because of the fact that no instruction was shown to us whether determination of status comes under the Vigilance purview and can be referred to Vigilance Cell.

11. The respondents advanced two main contentions to sustain their stand in regard to the issue of the charge memorandum dt. 26.2.1991. It was submitted by Shri Devaraj, learned Counsel for respondents that elder and younger brother of the applicant belong to unreserved community and hence claim of the applicant for a reserved community status warrants disciplinary action. This point was very well considered by the competent authority and on the basis of careful consideration of all points including this aspect, the Annexure-II letter dt. 26.8.1983 was issued. Hence, this aspect may not warrant initiation of disciplinary proceedings after a lapse of 8 years in view of our opinion expressed as above.

12. The second contention made by the counsel for the respondents was that he did not object when his name was included in the list of general candidates, deleting his name from the reserved community list. It was further stated by the learned counsel for the respondents that the applicant did not contest his case when his name was deleted from the reserved status which confers on him many benefits and concessions. Thus, he had accepted the community status as Unreserved and not as a Reserved Community belonging to 'Konda Kapu'. This would go to prove that his initial community certificate is a false one. Hence, initiation of disciplinary proceedings are in order. The candidate had been already promoted way back in 1970 as UDC against general category. If at all he has any objections, he should have objected to it in 1970 itself or immediately thereafter. There is also a possibility that he would have calculated his future career prospects if he is continued as a general candidate. If there is going to be not much of difference, there is no point in his confrontation with the department. The very submission of the applicant that he wants to keep

peace with the department to avoid confrontation with his superiors has to be taken in its face value. Hence, we see not much of force in the contention of the counsel for the respondents.

13. The third contention of the applicant is in regard to the unilateral issue of the letter dt. 24.7.1980 by the Collector, East Godavari District, Kakinada. The Collector in his letter stated that he had made enquiries from the village elders of Godawarthy village <sup>and</sup> ~~or~~ nearby villages. The parents of the applicant had shifted their residence from Godawarthy village to Kakinada in the mid 1940's to eke out their earnings as stated by the applicant. Hence, there is force in the contention of the applicant that the enquiries now made after a lapse of over 35 years may not reveal real facts in regard to the community status of the applicant. However, we do not propose to enter into the merits of the inference drawn by the Collector as it is not a matter for adjudication. But, we are of the opinion that before issue of the letter dt. 24.7.1980 by the Collector, it was essential that the Collector should have given an opportunity to the applicant to explain his case and produce the community certificates before issuing the said letter. As the said letter of the Collector was issued which affects the interests of the applicant, principles of natural justice do demand that the applicant should have been given reasonable opportunity to explain his case. This was not done.

14. It is also not indicated by the respondents whether the community certificate issued earlier by the Deputy Tahsildar, Yellavaram countersigned by the R.D.O. had been cancelled or

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not. The Collector's report bearing No.D.Dis.(B2)9018/79 dated 24.7.1980 addressed to the Commissioner of Income-Tax Andhra Pradesh, Hyderabad was only in the form of a letter and no proceedings cancelling the community certificate, by the Collector was produced before us.

15. In Sakti Devi's case, the Division Bench of the Madras High Court <sup>had</sup> held, "In no disciplinary proceedings their (caste/community certificate) genuineness or correctness of the contents can be gone into. It is open to the department or employer or organisation to ask the issuing authority or District Collector, as the case may be, to verify whether the certificate as issued be still valid on materials which have since come to their ~~knowledge~~ knowledge. They can appear in the verification enquiry, and place the materials. If the certificate is cancelled, then the disciplinary proceedings can be initiated for having furnished false information." The above ruling of the Madras High Court, was respectfully agreed to by this Bench where one of us (learned Vice-Chairman) was a Member and on that basis the impugned charge-memo in O.A.No.268/93 was held as illegal for it is a case of initiation of disciplinary proceedings on the allegation of submission of false certificate, even before it is cancelled by the District Collector ~~who~~ or his subordinate ~~who~~ issued it.

16. In this case also there is no material produced before us for having cancelled the community certificate by the Collector. Hence, the ruling of this Tribunal in O.A.No.268/93 holds good in this case also.

17. The 4th and last contention of the applicant is that the charge memorandum dt. 26.2.1991 was issued by R-1

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who is subordinate to R-2. As the proceedings deleting his name from the reserved community list and treating him as a general candidate was issued by R-2 by Memorandum CON.No.46/70 dt. 26.8.1983, R-1 who is subordinate to R-2 cannot issue a charge sheet over-ruling the decision of R-2 for submission of false community certificate. It is stated in the reply affidavit of the respondents that the Deputy Commissioner, Visakapatnam (R-1) had not reviewed the decision taken by the Commissioner of Income-Tax, Visakapatnam (R-2) but initiated disciplinary action on the basis of the advise given by the Vigilance Cell which is under the control of Director of Income-Tax, Vigilance. As the Director of Vigilance (Income-Tax) is an authority functioning directly under the Apex body of the Income-Tax department, the instructions have to be obeyed to even if it is at variance with that of the Commissioner of Income-Tax. There is no material on record to show that R-1 over-ruled the instructions of R-2. He obeyed the instructions given to him by the Vigilance Cell which is also in the knowledge of R-2 as the instructions from the Vigilance Cell reach R-1 only through R-2. Hence, we see no merit in this contention and reject the same.

18. In the result, the impugned charge memo dt. 26.2.1991 is quashed. O.A. is ordered accordingly. No costs. Registry to communicate this order to Respondent No.1.

*M*  
( R.Rangarajan )  
Member(Admn.)

*N*  
( V.Neeladri Rao )  
Vice Chairman

*Dated 28<sup>th</sup> April, 1994.*

*Prabhu*  
Deputy Registrar(J)CC

To

1. Grh. The Dy.Commissioner of Incometax, Visakhapatnam Range, Ayakar Bhavan, Daba Gardens, Visakhapatnam.
2. The Commissioner of Incometax, Aayakar Bhavan, Daba Gardens, Visakhapatnam.
3. The Chiev Commissioner of Incometax, A.P.Aayakarbhavan, Hyd.
4. The Dist.Collector, East Godavari Dist, Kakinada.
5. One copy to Mr. V.R.S.Nariprasheed, Advocate, C.A.T. Hyd.
6. one copy to Mr. N.R.Devraj, Sr.Corsc. C.A.T Hyd.
7. one copy to Library, C.A.T. Hyd.
8. one spare copy.

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Prabhu*