

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH  
AT HYDERABAD

ORIGINAL APPLICATION No.616/92

DATE OF THE JUDGEMENT: 30 / 1 1995

Between

Sri R.Mangaiah Naidu ..

Applicant

and

1. Indian Council of Agricultural  
Research - represented by the  
Addl.Secretary, ICAR  
"Krishi Bhavan" Dr.RajendraPrasad Road,  
New Delhi-110 001.

2. Director  
Central Institute of Fisheries  
Technology, ICAR Matsyapuri PO  
Cochin-682 029

3. Director  
Kakinada Research Centre  
Central Institute of Fisheries Technology  
Kakinada, EG District AP .. Responder

Counsel for the Applicant :: Mr TPV Subbarayudu,

Counsel for the Respondents :: Mr E.Madanmohan Rao

CCRAM:

HON'BLE SHRI A.V. HARIDASAN, MEMBER(JUDL.)

HON'BLE SHRI A.B. GORTHI, MEMBER(ADMN)

issued the community certificate to him, to be examined. This request was not accepted. Though the inquiry was completed by the inquiry authority on 17.7.85, no final decision was taken by the disciplinary authority for quite some time. Thereafter, the applicant was served with a memorandum dated 9.11.87 of the first respondent, (Annexure 10) in which it was stated, that further to the departmental inquiry, the matter in issue was further investigated, that, as per the said notification, an additional fact had come to its notice that from the said fresh evidence it was clear that the applicant could not be considered as a member of the Konda Kapu community Tribe and that he belonged to Kapu (Telega) caste which was not declared as ~~an~~ a scheduled tribe and the applicant was given a chance to make a representation against the fresh evidence. In response to this, the applicant had on 1.12.1987 requested the first respondent to furnish him with a copy of the Enquiry Report as also the copies of the documents referred to in the memo so as to enable him to submit a detailed representation. The request of the applicant was not acceded to, but, he was again asked to submit a representation. Though correspondence in this regard consumed some time the applicant was not furnished with the details and the documents which he asked for. Ultimately, by an order dated 04.5.88 the first respondent held the applicant guilty of the misconduct and imposed on him the penalty of dismissal from service. Along with the order of penalty, a copy of the enquiry report in which the inquiry authority had held the applicant

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the applicant in his statement dated 29.6.82  
stated that the question of issuing  
fresh  
the required/certificate was pending with the  
revenue authorities and as the G.O. contained  
certain amendments to the rules on the subject, . . .  
the applicant requested the Director, CIFT, Cochin  
(the 2nd respondent) to help him in contacting  
Collector Vizianagaram. However, as r-order  
dated 31.7.82, the applicant was again called upon  
to produce a fresh certificate; but he ~~him~~ could not do  
so. The applicant was thereafter served with a  
memorandum of charges dated 5.3.1984 (Annexure 5 to  
the OA) on behalf of the President, ICAR, informing  
him that it has been decided to initiate proceedings  
against him under Rule 14 of the CCS(CCA)Rules. It  
was alleged in the memorandum of charges and <sup>in</sup> the  
statement of imputations that the applicant had got  
employment and availed all benefits by producing a  
false caste certificate and as per letter No.R.Dis.  
No.10160/82 dated 28.6.83 received from the Collector  
of Vizianagaram, the applicant didnot belong to  
Konda Kapu community and that the applicant was  
therefore, guilty of mis-conduct. The applicant  
denied the charges and an inquiry was held. The  
request of the applicant for permitting him to be  
represented by an employee belonging to a postal  
department was notacceeded to by the Disciplinary  
authority and he was advised to avail the assistance  
of an employee belonging to ICAR. However, the applic  
choose to defend the case himself. During the inquiry  
the applicant wanted the Tasildhar, Madras, who had

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The first respondent, thereafter issued the impugned order dis-agreeing with the findings of the enquiry authority, holding that the applicant is guilty of the charges and imposed on the applicant the penalty of dismissal from service ~~vide~~ his order dated 31.1.92/4.2.92. It is aggrieved by this order that the applicant has filed this OA. The applicant has alleged that the impugned order is vitiated for the reason that the disciplinary authority has adopted a peculiar procedure of obtaining a report from the Director of Tribal welfare, without associating the applicant to the inquiry which led to the report and has found that the applicant guilty relying on the said report different from the report of the inquiry authority. While according to rule 15(2) of the CCS(CCA) Rules, the disciplinary authority if he differs from the finding of the enquiry authority can only after recording the reason for the dis-agreement, enter his own finding on the basis of the evidence recorded in the inquiry, only and not basing on any other extraneous matters, that the enquiry ~~is~~ is vitiated as the applicant was not allowed to be represented by another government servant and that the finding that the applicant is guilty is not based on any evidence at all.

4. The respondents, in their reply statement seek to justify the impugned order on the ground that the letter of the District Collector, Vizianagaram will clearly indicate that the applicant did not belong to kondakapu community and that it has come out from the report of the Director of Tribal Welfare that the applicant belonged only to Kapu (Telega), which is not one of the scheduled tribe community and that,

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not guilty was also enclosed. The Disciplinary authority had not furnished the copy of the inquiry report before he found the applicant guilty. The applicant submitted an appeal against the order of dismissal. But, the office Chief Vigilance Officer, ICAR vide his/memo dated 5.7.88 (Annexure A.16) informed the applicant, that, according to the CCS(CCA) rules, no appeal would lie against the order of the President of the ICAR and that, he can file a review petition under Rule 29-A of the CCS(CCA)Rules. The applicant thereafter filed OA 568/88 before this Tribunal challenging the order of penalty of dismissal from service (annexure 15 to the OA). This Tribunal vide its Judgement dated 4.5.1990 relying on the ruling of the Full Bench in Premnath Sharma's case set aside the order of dismissal and gave liberty to the respondents to recommence and complete the disciplinary proceedings from the stage of supplying a copy of the enquiry report to the applicant. Thereafter, the Director, ICAR set aside the penalty of dismissal from service of the applicant and furnished the applicant a copy of the enquiry report, as also that of a report of the Director, Tribal Welfare of AP and by another order, placed the applicant under deemed suspension with effect from 4.5.88 in terms of sub-rule 4 of Rule 10 of the CCS(CCA) Rules. The applicant was given an opportunity to make his representation against the enquiry report, as well as the report of the Director of Tribal Welfare. The applicant submitted his representation in regard to the inquiry report in which he inter-alia contended that the report of the Director, Tribal Welfare, having been obtained behind the back of the applicant, could not be looked into for the purpose of deciding the issue involved in the proceedings.

the community certificate which he produced when he joined the services, request was not acceded to, that the Tasildhar would have been very material witness & who could state the circumstances under which he was satisfied that the applicant belonged to Konda Kapu community for the purpose of issuing the certificate and that the reliance placed by the Disciplinary authority on the representation of the Director of Tribal Welfare in an inquiry with which the applicant was not associated at all is illegal and that therefore the finding of the disciplinary authority that the applicant is guilty and the consequential order of dismissal are liable to be set aside.

8. We see considerable force in this argument. The learned counsel for the respondents could not point out any provision in the CCS(CCA)Rules or any other Govt. instructions/rulings of any Court or Tribunal justifying the disciplinary authority from looking into any material other than what was part of the departmental proceedings to arrive at a finding as to whether a delinquent govt. employee is guilty or not guilty. In this case, the disciplinary authority has dis-agreed with the findings of the enquiry authority who held that there was no material at all to hold the applicant guilty and has, relying upon a letter of District Collector, Vizianagaram, as also a report of the Director, Tribal Welfare, found that the applicant was guilty of the mis-conduct. We are of the considered view that the disciplinary authority has committed a grave error in basing his finding on a report alleged to have been made by the Director of Tribal Welfare in an inquiry with which the applicant was not associated.

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therefore the applicant having obtained employment of a post reserved for ST community, on the basis of a false certificate, the penalty of dismissal from service was validly imposed on him.

5. We have gone through the pleadings and materials on record. We have heard at length counsel for both the parties.

6. The applicant has prayed for quashing not only the order at Annexure A to the OA, imposing on him the penalty of dismissal from service, but also the charge sheet issued against him. A charge sheet can be issued against a government employee at any time, while he is in service. Therefore, we ~~can~~ do not find any reason for quashing the charge-sheet. The impugned order at Annexure A-1 to the CA by which the first respondent had imposed on the applicant the penalty of dismissal from service is assailed mainly on the ground that the order is perverse as there is no material evidence adduced at the inquiry on which the conclusion that the applicant was guilty of obtaining employment by producing a <sup>could</sup> false community certificate <sup>could</sup> be arrived at.

7. Learned counsel for the applicant argued that ~~px~~ apart from a superintendant of the CIIFT, Cochin, no other witness was examined in support of the charge, that the disciplinary authority has relied on a letter alleged to have been written by the District Collector, Vizianagaram in which it was stated that the inquiry conducted, revealed that the applicant didnot belong to Konda Kapu community, without examining the District Collector as a witness, that though the applicant requested the inquiry authority to summon the Tasildhar who issued

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that the inquiry of the Director, Tribal Welfare was not a proper one. Therefore, the reliance placed by the disciplinary authority on the report of the Director, Tribal Welfare is baseless and mis-placed. The same is the case with the letter alleged to have been issued by the District Collector, which according to the disciplinary authority, cannot be challenged. It is fundamental that the recipient of a letter can only prove that a letter was received and that he cannot prove the contents of the letter. Since the District Collector, was not examined, the contents of the letter alleged to have been written by him, could not be taken as proved. Further as the District Collector has not been offered for cross-examination by the applicant, the veracity of the statement contained therein has not been established. It is evident from the charge sheet itself that the applicant had been appointed to a post reserved for Scheduled Tribe on his producing a community certificate issued by the Tasildhar, Madras. It cannot be said that the Tasildhar Madras was not competent to issue a certificate of community in the case of the applicant and that the certificate should have been issued by the revenue authorities of the place to which the applicant belonged. If at the relevant time, the applicant was residing at Madras, the revenue authorities of that place could validly issue a certificate provided they ~~were~~ were satisfied that the applicant belonged to Konda Kapu community which is undoubtedly a community included in the list of scheduled tribes.

10. It is seen that this certificate has not been cancelled by any competent authority. In fact, before the charge sheet was laid, the Tasildhar

If the disciplinary authority felt that the report of Director Tribal Welfare was relevant for the purpose of deciding the question whether the applicant had committed a mis-conduct or not, the report should have been obtained before the charged officer was issued a charge-sheet and should have appended the same with the memorandum of charges and should have examined the Director of Tribal Welfare in the departmental inquiry and exhibited his report in the inquiry.

9. Rule 15 of CCS(CCA) Rules prescribes the procedure to be adopted by the disciplinary authority on receipt of the enquiry report. According to sub-rule 2 of Rule 15, if the disciplinary authority for any justifiable reason differ from the finding of the enquiry authority, he has to record the reasons for differing and if he has entered a different finding it should be done only on the basis of the materials available on record. The disciplinary authority cannot depend on any extraneous matter in deciding whether the employee facing the charge is guilty or not. If any such additional material is to be used for coming to such a conclusion, the same should be obtained only in an inquiry giving the concerned employee a reasonable opportunity to defend himself. The report of the Director of Tribal Welfare has been relied on by the disciplinary authority to decide that the applicant is guilty which is wholly unjustified. As this being ~~xx~~ a material extraneous to the disciplinary proceedings, could not have been looked into at all because the applicant had no opportunity to show

certificate produced by the applicant was false one. The main issue involved in this case is not whether the applicant belongs to Konda Kapu community or not. The issue is whether the applicant had obtained employment by producing a false certificate. The certificate issued by the Tasildhar, Madras wayback in the year 1957 as observed by us, is, among other things based on what was stated in the SSLC register of the applicant, entered as early as in the year 1946. Since no evidence was adduced in the inquiry to show that the certificate issued by the Tasildhar, Madras, was not a genuine one, we are of the considered view that the finding that the applicant has secured employment of a reserved post by producing a false certificate is perverse for paucity of evidence.

11. While it is important that the authorities should see that people who ~~do~~ do not belong to the reserved communities should not be allowed to snatch the employment opportunities meant for persons belonging to those oppressed clauses, it is also important that a person who has been appointed more than two decades back ~~should~~ not be thrown out of employment merely on the basis of some presumptions and surmises. It may seem that the letter of District Collector, Vizianagaram or by the report alleged to have been made by the Director of Tribal Welfare that a doubt was created as to whether the applicant belonged to the Konda Kapu community or not, but a suspicion however strong, cannot ~~be~~ take the place of proof even in a departmental proceeding. Further, as stated earlier, the question is not whether the applicant belonged to Konda Kapu community or not, but is whether the applicant had by producing false certificate obtained employment to a post which is reserved for the ST community. We are of the considered view that the finding arrived at by the Disciplinary authority is

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who issued the certificate could have been questioned by the disciplinary authority or through any agency to ascertain as to how the certificate ~~as~~ was issued. Even though the applicant wanted to examine the Tasildhar as a witness on his side, the enquiry authority rejected the request on the ground that the applicant did not say as to what light the Tasildhar can throw on the subject. Since the appointment of the applicant was on the basis of the certificate issued by the Tasildhar Madras, he only can say as to whether he was satisfied that the applicant belonged to Konda Kapu community which is one of the scheduled tribes. Therefore, the decision of the enquiry authority that the examination of the Tasildhar Madras was not relevant, does not appear to be a sound one. The certificate issued by the Tasildhar Madras was in consonance with the details contained in the SSLC register of the applicant available at Page 30 of the material papers to the OA, in which as early as in 1.9.1946 against the column nationality, ~~the~~ caste or religion, it was recorded Hindu Konda Kapu. Either in the memorandum of charges or in the statement <sup>was</sup> of imputations there ~~is~~ no allegation that the applicant had falsified his SSLC register and made a false entry <sup>out</sup> to make that he belonged to Konda Kapu community. Further, there is no allegation in the charge-sheet that the applicant obtained the certificate of Tasildhar Madras that he belonged to Konda Kapu community by playing ~~as~~ fraud on the Tasildhar. On the other hand, the allegation is that the applicant produced a false certificate. There is absolutely no evidence in the entire file to show that the

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absolutely baseless. and perverse as there is no evidence on which, such a finding can be arrived at by any reasonable person.

12. In the result, the order of the disciplinary authority at Annexure I dismissing the applicant is set aside. Going by the date of Birth shown in the SSLC records of the applicant, the applicant would have retired by this time on attaining the age of superannuation. Therefore, we cannot direct the respondents to reinstate the applicant into service that. The respondents are therefore directed to treat the applicant as continued in service despite the impugned order at annexure I to the OA which has been set aside and retired on superannuation and to pay him the entire backwages for the period during which he was kept out of service, and also to fix his pension and other retirement benefits and make the monetary benefits available to him within a period of three months from the date of communication of a copy of this order. There is no order as to costs.

*Dinesh Pawar*  
Date ..... 11.2.93  
Court Officer  
Central Administrative Tribunal  
Hyderabad Bench  
Hyderabad

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To

1. The Addl. Secretary, ICAR, Indian Council of Agricultural Research, Krishi Bhavan, Dr. Rajendra Prasad Road, New Delhi
2. The Director, Central Institute of Fisheries Technology, ICAR Matsyapuri PO, Cochin - 682 029.
3. The Director, Kakinada Research Centre, Central Institute of Fisheries Technology, Kakinada, E.G. District A.P.
4. One copy to Mr. T. P. V. Subbarayudu, Advocate, CAT, Hyderabad
5. One copy to Mr. E. Madan Mohan Rao, Addl. CGSC, CAT, Hyderabad
6. One copy to Library, CAT, Hyderabad.
7. One spare copy.

YLKR

*Advocate  
Subbarayudu*