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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. No. 685/93.

Dt. of Decision : 24.6.94.

Majji Phanibhushana Rao

.. Applicant

Vs

1. The Flag Officer
Commanding-in-Chief,
Eastern Naval Command,
Visakhapatnam - 14.
2. The Material Superintendent,
Material Organisation,
Eastern Naval Command,
Visakhapatnam - 8.
3. The Enquiry Officer,
Lt. Cdr. (SDREG) Surendra Kumar Varma,
Security Officer,
Material Organisation, (V)..,
Eastern Naval Command,
Visakhapatnam - 8.

.. Respondents.

Counsel for the Applicant : Mr. M.P.Chandramouli

Counsel for the Respondents : Mr. N.V. Ramana, 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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O.A.NO.685/93.

JUDGMENT

Dt: 24.6.94

(AS PER HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN)

Heard Shri M.P.Chandramouli, learned counsel for the applicant and Shri N.V.Ramana, learned standing counsel for the respondents.

2. This OA was filed praying for quashing the order of R-1 in No.CE/9101/17, dated 27.8.1992 ordering denovo inquiry and the consequential order dated 19.9.1992 of R-2 in appointing the R-3 as Inquiry Officer, ^{by} holding the same as arbitrary, illegal and void and for a ~~any~~ consequential direction to R-1 and R-2 to proceed and conclude the disciplinary case based on the Inquiry report given by Shri P.K.Achari, Naval Store Officer.

3. The applicant joined as Assistant Store Keeper ^{pot,} in Naval Store ~~De/~~ on 14.12.1962 in the general vacancy. When the applicant produced the caste certificate issued by the Tahsildar, Chintapalli, on 7.10.1969 to the effect that he belongs to Scheduled Tribe ~~Tahsildar, Chintapalli~~, he was considered for promotion to the vacancies reserved for STs.

4. The applicant pleaded that at the instance of persons from SC/ST Organisation in Visakhapatnam, R-2 forwarded the caste certificate dated 7.10.1969 in regard to the applicant to the District Collector, Visakhapatnam on 2.2.1988 for inquiry. The District Collector, on the basis of the report dated 24.12.1988 of Mandal Revenue Officer, Kooyur informed R-2 that the applicant is not an ST.

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5. On the basis of the above letter of the District Collector, charge memo dated 30.6.1990 was issued to the applicant with the following charge:-

"THAT THE SAID SHRI MAJJI PHANIBHUSHANA RAO, Senior Foreman of Stores, Materials Organisation, Visakhapatnam, at the time of his initial appointment as Assistant Store Keeper ie., on 13 Dec 1962 furnished false information in Col.9(b) of the Attestation Form regarding his social status as Scheduled Tribe, while in fact he is not Scheduled Tribe by Caste."

The Inquiry Officer held that the charge is not proved. Then the disciplinary authority by the order dated 27.8.1992 ordered Denovo Inquiry for the following reasons:-

- " a) The Presenting Officer failed to present the documentary evidence quoted in the charge Memorandum except Attestation Form.
- b) The Presenting Officer examined Shri Majji Phanibhushana Rao in contravention to the rules.
- c) As per Rule 14(18), the Inquiry Officer should generally question the Government servant on the circumstances appearing against him in the evidence,

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if the Government servant has not offered himself to be examined as a witness at the closure of the case. However, the Inquiry Officer, in the instant case, had examined the said Shri Majji Phanibhushana Rao from the initial stage itself in contravention to the said rules.

d) The Inquiry Officer failed to pass the orders as required under Rule 14(11) of Central Civil Services (Classification, Control and Appeal) Rules, 1965. Also, the Inquiry Officer failed to maintain Daily Order Sheets.

e) The Inquiry Officer did not record the proceedings on day-to-day basis.

f) Since the Presenting Officer did not bring forward the documentary evidence, the Inquiry Officer only relied on the documents produced by Shri Majji Phanibhushana Rao and drew the conclusions."

6. It was urged for the applicant that the grounds referred to in the impugned order dated 27.8.1992 ~~can~~ shall not be the basis for ordering Denovo Inquiry, and if ~~in view of~~ ^{it was done} the irregularities referred to above, it is for the applicant to challenge the Inquiry on the ground that in view of the said irregularities prejudice was caused to him, and it is not open to the disciplinary authority to order Denovo Inquiry on the ^{alleged} basis of the above irregularities.

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7. But it was submitted for the respondents that it is open to the disciplinary authority to order Denovo Inquiry in the case of irregularities.

8. Even though in the school register of the applicant, the social status of the applicant was referred to as ST, the applicant had not applied for appointment in the quota reserved for STs and he was actually selected ^{for} in the unreserved ~~as~~ vacancies. It is submitted for the applicant that when in 1969, he was asked to produce the caste certificate as his social status was referred to ^{as} ST in the school registers, he obtained the certificate dated 7.10.1969 from the Tahsildar, Chintapalli as he had not doubted the entry in regard to his social status in his school register. Prior to 7.10.1969, the applicant was given one promotion by treating him as OC. It is only after the caste certificate dated 7.10.1969 was issued, the applicant was considered for promotions reserved for STs. In view of the above facts and the nature of the grounds on the basis of which the Denovo Inquiry was ordered, we suggested whether the respondents will drop the Denovo Inquiry if the applicant is agreeable for deprivation of the benefits of promotions given to him as against the vacancies reserved for STs. After obtaining the necessary instructions, the learned counsel for the respondents submitted that they were agreeable for the said course. The learned counsel for the applicant also stated that the applicant was also agreeable for it.

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9. In view of the material on record, we feel that the course to which both the applicant and the respondents agreed is fair, just and reasonable.

10. In the result, this OA is disposed of as under:-

The order dated 27.8.1992 of R-2 ordering Denovo Inquiry and the order dated 19.9.1992 of R-2 appointing * R-3 as Inquiry Officer in regard to the Denovo Inquiry are quashed. The notional promotion of the applicant in regard to the posts of Senior Store Keeper (SSK), Foreman (Stores) and Senior Foreman (Stores) ~~have to be fixed~~ ie., promotions ~~to~~ given to the applicant by treating him as ST ~~have to be fixed~~ ~~..... on 17.10.1990 with effect from 21.3.1979~~ as SSK, 24.11.1986 as Foreman (Stores) and 8.10.1993 as Senior Foreman, the dates on which he would have been considered for promotion on the ground that he is a OC. But as the applicant actually worked in the promotional posts earlier to the dates of the notional promotion, it is not just and proper to direct him to refund the difference between the ~~available~~ emoluments ~~accrued~~ to the promotion posts and the ~~would have~~ posts in which he ~~worked~~ if he was not promoted. The down graded pay on the basis of this order has

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to be given effect from the salary payable from July, 1994.

No costs.

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(R.RANGARAJAN)
MEMBER (ADMN.)

V.NEELADRI RAO
VICE CHAIRMAN

DATED: 24th June, 1994.
Open court dictation.

Amalg. 8/7/94
Deputy Registrar (J) CC

vsn

To

1. The Flag Officer, Commanding-in-Chief, Eastern Naval Command, visaknapatnam-14.
2. The Material Superintendent, Material Organisation, Eastern Naval Command, visaknapatnam-8.
3. The Enquiry Officer, Lt.Cdr.(SDREG) Surendra Kumar Varma, Security Officer, Material Organisation, (B) Eastern Naval Command, Visakhapatnam-8.
4. One copy to Mr.M.P.Chandramouli, Advocate, CAT.Hyd.
5. One copy to Mr.N.V.Ramana, Adal.CGSC.CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

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COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. G. RTHI : MEMBER(A)

AND

THE HON'BLE MR. T. CHANDRASEKAR REDDY
MEMBER(JUDL)

AND

THE HON'BLE MR. R. RANGARAJAN : MEMBER(A)

Dated 24-6-1994. Urgent

M.A./R.A/C.A. NO.

O.A.No.

in
685/93.

T.A.No.

(W.P.)

Admitted and Interim Directions
Issued.

Allowed

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered.

No order as to costs.

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Central Administrative Tribunal
DESPATCH