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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD.

OA.1439/93.

Date of order:17-1-1996.

Between:-

Mr.K.Kasi Rao

...

Applicant.

And

1. The Flag Officer, Commanding-in-Chief,
Eastern Naval Command, Visakhapatnam-14.
2. The Admiral Superintendent, Naval Dock Yard,
Visakhapatnam-14.
3. The Deputy General Manager(P &A),
Naval Dock Yard, Visakhapatnam-14-
4. The Enquiry & Authority/Sri M.Samuel,
J.T.O.,(L),Naval Dock Yard,Visakhapatnam-14.

....

Respondents.

Counsel for the Applicant: Mr.M.P.Chandra Mouli

Counsel for the Respondents:Mr.N.V.Ramana,Addl.CGSC.

CORAM:

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

HON'BLE SHRI R.RANGARAJAN, MEMBER ADMINISTRATIVE.

DA 1439/93.

Dt. of Order: 17-1-96.

(Order passed by Hon'ble Justice Shri V. Neeladri Rao,
Vice-Chairman).

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The employment exchange, Visakhapatnam, sponsored names of about 35 candidates including that of the applicant to the post of Internal Combustion Engine Fitter Gr.II (ICE Gr.II). The applicant and 7 others were selected and appointed to the said post with effect from 8-1-1977 in ^(The appointment of applicant was in GC category) Naval Dock Yard, Visakhapatnam. In the attestation form, filled in the year 1973, the applicant had shown his caste as 'Agnikula Kshatriya'. In due course, the applicant was promoted as ICE Fitter Gr.I, and Tradesman Gr.A (ICE Mechanical) ^{later above} for GC ^{category} selection. The applicant was selected to the post of Sr. Chargeman ICE against ST vacancy and he was appointed to the said post on 19-2-1981. Later he was promoted to the post of Foreman as against ST vacancy as per order dt.20-2-1989.

2. It was pleaded for the applicant that when the list of Foreman ICE was circulated on 10-4-1990, he noticed that he was referred to as ST, and then he represented to the General Manager Commander A.K.Mathur stating that his community was wrongly shown as ST and then he was advised to submit a certificate to the effect that ^{he} belongs to Agnikula Kshatriya, ^{caste} which is BC but not ST, and accordingly he applied to the Mandal Revenue Officer, Visakhapatnam in September, 1991. Later a certificate dt.23-11-1991 in regard to ^{his} the caste ^{issued to} and was obtained by the applicant and he

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submitted it to the respondents with a request to correct his cast in the records (vide para-6(b), page-4 of the OA) // But in ^{Para} ~~column~~-4 of the page-4 of the reply statement it was aver^yed that the applicant had not made any endorsement to the effect that his cast was wrongly noted as against his entry in the seniority roll as Fireman(ICE), which was circulated, and it is only after one year seven months from the date of application of the said note, the appli-
cant submitted ^{written} representation to the effect that he belonged to Agnikulakshatriya, which is not a Scheduled Tribe community.

3. Charge memo dt.8-9-93 (page-2 of the Material Papers to the OA) issued to the applicant ~~as to why~~ for the misconduct of not bringing to the notice of the concerned ~~authorities~~ ^{authorities} that he was promoted to the post of Chargeman and also Foreman, wherein he was referred to as ST. This OA was filed on 15-11-93 praying for quashing the charge-memo dt.8-9-93. The enquiry was not proceeded with, in view of the interim order dt.7-12-93.

4. The main contention for the applicant is that he had not seen the order promoting him to the post of ^{SV} Chargeman, and hence he did not know that he was promoted ^{SV} as Chargeman by treating him as ST and as against ST vacancy. He could not even suspect that he was promoted in reserved vacancy, as one of his juniors was promoted to

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the post of STChargeman ^{earlier to his promotion}. When he came to know that he was wrongly referred to as ST, when the seniority roll of Fireman was circulated in 1990, he immediately brought to the notice of the higher authorities about the same and as advised, he applied for the cast certificate and submitted it in November, 1991, with a request for correction in regard to caste.

5. But it was urged for the respondents that the Dock Yard notice PE/19/81, whereby the applicant was promoted as STChargeman and wherein he was referred to as ST, was displayed on the notice board ^{and} the applicant could have seen it, and then he could have been referred to as ST. Further the note PIE/0212/TSS dt.20-2-81 of the Civilian Establishment Order with reference to the applicant where by the applicant was promoted as Fireman by referring him as ST ^{was} ~~are~~ also displayed on the Notice Board, and the applicant would have seen them ^{same} in the normal course, but he had not brought to the notice of the discrepancy in regard to his ^{caste, to the} ~~case~~ then. ^{notice of concerned authorities.} But when the Lt. Assistant PGS in the usual course verifying ^{ied} ~~the~~ applicant, he noticed that some material documents were not found/as ST Certificate was not available he directed investigation in regard to the said irregularity by note dt.5-8-91 (which was treated as confidential and was produced to-day and it was returned after perusal) and the applicant might have ~~an~~ come to

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know ^{it} it, and then he applied to the Mandal Revenue Officer in September, 1991 and thus it is not a case where the applicant on his own brought to the notice of the respondents that his social status was wrongly noted in the service records.

6. Thus the main point for consideration is as to whether the applicant came to know for the first time ^{only that} only in 1990 ~~though~~ he was wrongly described as ST when the seniority Roll ~~of~~ of Foreman (ICE) was circulated as contended by him, or whether the applicant had chosen to apply for caste certificate in September, 1991, after the Lt. A.S. Chouhan, Asst. PG made a note on 5-8-91, whereby investigation was also ordered in regard to the reference of the applicant as ST. We ^{already} ~~also~~ observed that the applicant categorically pleaded that in 1990 itself ^{he} (the applicant) brought ~~is~~ to the notice of the Manager Commander Shri Mathur that he was wrongly referred to as ST. Sri U.R. Narsing Rao, S. enographer in the office of Respondent No. 2 is present and is instructing the learned counsel for the respondents. He has stated that Manager Commander Shri Mathur is still in service, ^{he further submitted} and ~~it was further referred~~ to by him that these Army Officers work in each station only for two years. Anyhow Shri P.K. Sinha, Rear Admiral Superintendent, who filed the reply statement on 26-5-94 had not chosen to verify from Manager Commander Mathur ~~as to whether~~ what was stated by the applicant with reference

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to his social status, ^{is correct.} It is not the case of the respondents that Manager Commander Mathur is interested in the applicant. In such a case the applicant would not have pleaded that he brought to the notice of Manager Commander Mathur, if it were not to be true. So it can be inferred that the said plea of the applicant is true and hence it is not a case where the applicant applied for the certificate only after he came to know ^{about} the note dt.15-8-81 of the Lt.Chouhan.

7. As this ~~is~~ happened to be a very large establishment, it is stated that the orders of promotion are not ~~being~~ reserved upon the employees. The promotion to the post of Sr.Chargemen is by way of selection. ~~The~~ One of the Juniors of the applicant was promoted to the post of Sr. Chargeman (Sri Samuel) even earlier to the date of promotion of the applicant. ~~Then~~ the applicant ~~also~~ might have felt that he too got the promotion to the post of Sr.Chargemen on the basis of merit, and not by treating him as reserved candidate. It is submitted for the respondents that no record is available to show that the applicant had seen the order promoting ^{him} as Sr.Chargemen in 1981. It is stated that in case of promotion, the concerned head of the unit ^{relieves} ~~release~~ the promoted candidate by informing him about his promotion. In such a case there is no need to state for that Head of the Unit as to whether a particular candidate was promoted as against vacancy reserved for ST/SC.

8. Thus when there is no material to indicate that the applicant knew even in ¹⁹⁸¹~~1989~~ that he was promoted as Sr.Chargeman by treating him as ST, and as we feel that the case of the applicant ~~is~~ that when he came to know in 1990 after ^{his} promoted ^{ion} as Foreman, that ~~though~~ he was erroneously described as ST, ~~and then~~ he brought to the notice of the concerned authority that he was wrongly described as ST, it cannot be stated that he had not promptly brought to the notice of the concerned authority about the said discrepancy. Thus there was no mis-conduct on the part of the applicant for which an enquiry can be held as contemplated by charge memo dt.7-9-93. Hence the same is ~~xxx~~ liable to be quashed.

9. But as the applicant was promoted to the post of Sr.Chargeman in 1981 and as Foreman in ¹⁹⁹⁰~~1989~~ as against the slots for ST, with the erroneous impression that the applicant is an ST, and as admittedly he is not an ST. a direction had to be given to the respondents to consider the case of the applicant for promotion to the post of Sr.Chargeman/~~Foreman~~ as on the date on which he would have got it as an OC. (Up to and inclusive to the promotion to the post of Tradesman-A (Mechanical) ICE, the applicant was considered only as OC hence the direction referred to above is applicable in regard to the consideration for promotion to Sr.Chargeman) ~~and if on that basis~~ of his turn as OC for promotion to the post of Foreman ^{also} arises,

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he had to be considered for promotion to that post also. Otherwise he has to be reverted to the post in which he would ~~not~~ have been continued on the basis of his turn as OC. The question of protection of pay of the applicant on such reversion does not arise. As the applicant worked in the promotion post of Sr.Chargeman ^{and} Foreman, the question of recovery does not arise even if he is ~~not~~ going to be reverted as Tradesman 'A' Mechanical/Sr. Chargeman.

10. The O.A. is ordered accordingly. No order as to costs. //


(R.RANGARAJAN)
Member (A)


(V.NEELADRI RAO)
Vice-Chairman


Dy.Registrar(Judl)

Dated: 17th January, 1996.
Dictated in Open Court.

avl/

Copy to:-

1. The Flag Officer, Commanding-in-Chief,
Eastern Naval Command, Visakhapatnam-14.
2. The Admiral Superintendent, Naval Dock Yard,
Visakhapatnam-14.
- Naval Dock Yard, Visakhapatnam-14.
4. The Enquiry & Authority/Sri M.Samuel,
J.T.O.(L), Naval Dock Yard, Visakhapatnam-14.
5. One copy to Mr.M.P.Chandra Mouli, Advocate,
CAT.Hyd.
6. One copy to Mr.N.V.Ramana, Addl.CGSC.CAT.Hyd.
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04-1439/93
19/1/96

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

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

AND

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

DATED: 1/-/-1995

ORDER/JUDGMENT

M.A./R.A./C.A.No.

in

O.A.No. 1439/93

T.A.No.

(W.P.No.)

Admitted and Interim directions
Issued.

Allowed.
Disposed or with directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Ordered/Rejected.

No order as to costs.

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No spare copy

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal द्वेषण/DESPATCH 5 FEB 1996 हैदराबाद बेंच HYDERABAD BENCH
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