

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No. 1479/94

Date of Order: 25.9.97

BETWEEN:

B.Shyam Sunder

.. Applicant.

AND

The Regional Director,  
Employees State Insurance  
Corporation, 5-9-23,  
Hill Fort, Hyderabad.

.. Respondents.

Counsel for the Applicant

.. Mr.P.Naveen Rao

Counsel for the Respondents

.. Mr.N.R.Devraj

CORAM:

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

HON'BLE SHRI B.D. JAI PRASAD : MEMBER (ADMN.)

J U D G E M E N T

[ Oral order as per Hon'ble Shri R.Rangarajan, Member (Admn.) ]

Mr.P.Naveen Rao, learned counsel for the applicant and Mr.W.Satyanarayana for Mr.N.R.Devraj, learned standing counsel for the Respondents.

2. The applicant in this OA was appointed as L.D.C. in the respondents corporation on sponsorship by the Employment Exchange. He wrote the competitive examination for the post of Lower Division Clerk. He was informed by memo dated 17.3.86 that he <sup>had</sup> ~~was~~ qualified in the written test for recruitment to the post of IDC. The respondent issued memo No. 12-4/12/15/82-Estt, dated 21.3.86 (A-4) offering appointment to him for the post of IDC in the ESI Corporation

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and the respondents also fail<sup>ed</sup> to check the certificate at the time of entry. Hence he cannot be blamed for submitting the certificate which was done due to his ignorance of the deletion of the sub-caste from the ST status. He further pleads that the respondents cannot take up with him as they themselves fail<sup>ed</sup> to check the status while scrutinising his application in the year 1985 in view of the Apex Court Judgement in AIR 1976 SC 376 (Sri Kishen Vs. The Kurukshetra University). The learned counsel for the applicant also submits that basing on the above judgement of the Supreme Court ~~U.O. 1985/...~~ Bench was also allowed. Hence on the same consideration this OA should also be allowed and the enquiry proceedings ordered to be set aside.

11. In AIR 1976 SC 376 it was observed that the question of a candidate committing a fraud does not arise if the certificate filed by the candidate could be scrutinized and when concerned authorities failed to scrutinize. Hence it was held therein that the admission to appear for Part-I Law Examination cannot be cancelled even though the candidate did not satisfy the eligibility criterion.

12. In the present case the applicant submitted his ST certificate. It <sup>was</sup> ~~is~~ for the respondents to check up the validity of the certificate on ~~the date of~~ the last date of the notification. If the respondents fail<sup>ed</sup> to scrutinize it properly and allow<sup>ed</sup> the applicant to sit for the competitive examination for the post of IDC the blame cannot be squarely placed on the applicant. Further the respondents have not brought out any details to show that the applicant was aware of the deletion of the Wanjari caste from the ST status on the date of submission of his application. Even the Employment Exchange, it appears, was not aware of the position. If the Employment Exchange was aware of the position they could

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Sri B. Shyam Sunder by such act exhibited lack of integrity and committed misconduct which are unbecoming of a Corporation employee and thereby violated Rule 3 of CCW (Conduct) Rules, 1964 read with Regulation 23 of ESI Corporation (Staff and conditions of service) Regulations, 1959, as amended".

5. An enquiry was also ordered on the basis of the issuance of charge sheet.

6. This O. is filed for setting aside the memo No. 52-6/14/14/51/88, dated 29.10.93 (A-12) issued by F-1 by holding it as illegal, arbitrary, unconstitutional and malafide.

7. An interim order was passed in this OA dated 19.12.94 staying the enquiry proceedings ordered in pursuance of the charge memo dated 29.10.93.

8. The OA has come up today for consideration.

9. The respondents in this reply submit that the applicant entered the service on the false claim of social status. Government order of 1977 was cancelled in February 1979 and hence the applicant should not have claimed the ST status when he applied for the post of LDC in the Corporation. Hence the issue of the charge sheet is in order and the enquiry proceedings should be allowed to be continued and a final decision has to be taken on the enquiry.

10. We have heard both the sides. The applicant pleads that though his sub-caste was deleted from the ST category in 1979, he was not aware of the same. Had he <sup>been</sup> aware of the same he would <sup>have</sup> not ventured to produce the ST certificate when he joined in the Corporation. As he was not aware he had submitted a certificate

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have informed the respondents authorities in regard to the deletion of the Wanjari sub-caste from the ST status. In view of that it has to be held that the submission of the applicant that he was ignorant of the deletion has to be taken as a correct one and on that basis the relief has to be given to him.

13. In view of what is stated above, we are satisfied that the applicant was unaware of the deletion of the Wanjari sub-caste from the list of ST community and he submitted the application in good faith. The respondents authorities made no efforts to check the certificates before he admitted for the examination for the post of IDC. In that view it has to be held the charges now <sup>framed</sup> ~~issued~~ cannot be treated as a valid one and hence it has to be set aside.

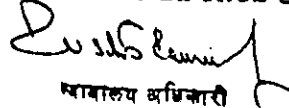
14. Even if the charge sheet is set aside the applicant cannot now state that he belongs to ST community. His name has to be noted only <sup>as</sup> an OC candidate and on that basis his seniority in the cadre of LDC has to be properly fixed. His further promotion to higher post should not be considered <sup>against</sup> ~~in~~ the ST quota but only on the basis of the normal seniority list in his turn.

15. In the result, the following direction is given:-

The impugned charge sheet No. 52-6/14/14/51/88.Estt.1 dated 29.10.93 is hereby set aside. The respondents are directed to treat the applicant as OC <sup>and his name suitably</sup> in the seniority list of LDC at proper place. The applicant should not be given any further promotion on the basis of reserved quota <sup>for</sup> of ST. His further promotion will be on the basis of the seniority in the general seniority list in his turn.

16. The OA is ordered accordingly. No costs.

प्रमाणित प्रतः  
CERTIFIED TO BE TRUE COPY

  
प्रशासनिक अधिकारी  
COURT OFFICER  
केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal  
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