

(42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD

D.A.NO.78/95

Between:

Date of Order: 20.9.95.

B.Shankaraiah

...Applicant.

And

1. The Prop.,
Work Shop/ Lalaguda,
South Central Railway,
Secunderabad.

...Respondents.

Counsel for the Applicant : Mr.V.R.Balachary

Counsel for the Respondents : Mr.C.V.Malla Reddy, Addl.CGSC.

CORAM:

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

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

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Judgement

(As per Hon. Mr. Justice V. Neeladri Rao, V.C.)

Heard Sri V.R. Balachary, learned counsel for the applicant and Sri C. Venkata Malla Reddy, learned counsel for the respondents.

2. The applicant claims that he belongs to Nomadic Tribe, Subcaste Pichaguntala, and a caste certificate to that effect was said to have been issued by the Tahsildar, Ibrahimpatnam Taluk, in June, 1974 and material paper 8 is the xerox copy of the same. Claiming that he is an ST, he applied for the post of Khalasi in South Central Railway vide Employment notice No.1/81 dated 25-8-1981. Alongwith the application, a copy of the caste certificate issued by the Tahsildar, Ibrahimpatnam, was enclosed. He was selected in ST quota Khalasi under DEE Locomotive with effect from 1-10-1983. He was promoted as skilled fitter in the quota reserved for ST on 10-2-1989 (vide Annexure-III). Chargesheet dated 29-6-1989 (vide Annexure IV) was issued to the applicant by alleging that he committed misconduct in securing job in ST quota when he is not an ST. The applicant submitted reply dated 17-7-89. The Inquiry officer held by order dated 15-1-1990 that the charge was not proved. When inquiry was again held for the same charge, Sri A.V. Rama Rao, inquiry officer, held by the order dated 2-5-1992 that the charge was not proved. The Disciplinary authority held that the inquiry was not properly conducted by Sri A.V. Rama Rao, and hence the matter was remitted to the same officer to conduct the inquiry again. After the said inquiry, the Disciplinary authority i.e. the respondents held that the charge is proved and passed the impugned

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order bearing date 28.12.1994 removing the applicant from service (Page 31 and 32). The same is challenged in this OA.

3. The main contention for the applicant is that there is no fraud on the part of the applicant for he submitted the caste certificate wherein his caste is referred as 'Nomadic Tribe, Subcaste Pichaguntala' and if it is not included in the list of STs, the authorities assumed that he belongs to ST status and hence the appointment cannot be cancelled even though it is noticed by the respondents at a later stage that the caste of the applicant was not included in the list of STs. In support of the said contentions, judgment of the Apex Court reported in AIR 1976 SC 376 (Sri Krishnan vs. Kurukshetra University) was relied on. The caste certificate issued by Tahsildar Ibrahimpatnam was enclosed along with the application of the applicant when he applied for the post of Khalasi. It is not the case of the respondents that the applicant does not belong to the caste and sub-caste referred to therein. The applicant might have felt that the said caste is included in the list of STs. He might be wrong in the said assumption. But it is open to the Railway Administration to verify whether the caste of the applicant is one of the castes notified as ST.

4. It was observed in Krishnan's case that it was the duty of the University authorities to scrutinize the admission form filed by the student in order to find out

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whether it was in order and it is equally the duty of the Head of the Department of Law before submitting the form to the University to see that the form complied with all the requirements of law, and if any of them care(s) to look into the same, the question of candidate committing fraud do not arise. Hence, the order of the University in cancelling admission therein was set-aside.

5. It cannot be stated that there is fraud in the case of the applicant when he claimed that he belonged to ST community. It is a fact that could have been verified by the concerned authority on the basis of the caste certificate filed by the applicant. When it was not so verified, the question of fraud does not arise. Hence, it is a case where the impugned order of removal of the applicant from the service has to be set-aside.

6. But on the basis of the statement made by the Director of Social Welfare, A.P. State Government notification, it can be held that no nomadic tribe was included in the list of ST list at any time and hence it can be conclusively stated that the applicant is not an ST. So, the applicant has to be treated as OC for consideration for promotion. Hence, it has to be ordered that if the turn of the applicant had not come for consideration for promotion as Skilled Fitter by the date of his promotion if he ~~was~~ was a OC, and if his turn for such promotion if he is an OC does not arise even now, he has to be reverted. But if his turn for such promotion if he was a OC

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to be a OC had arisen by the date of his removal, then he has to be placed below the OC above him in the seniority list of Khalasis, in the grade of Skilled Fitter.

7. In such a case, the pay of the applicant in the pay scale of Skilled Fitter has to be fixed at the same pay at which it is fixed in regard to his immediate senior OC.

8. In the circumstances, it is just and proper to treat the period from the date of removal as per the impugned order till the date of reinstatement as per this order as leave that may be available in regard to which the applicant has to make an application.

9. The applicant has to be reinstated by 16-10-1995, if he produces copy of this order by that date. If for any reasons the applicant cannot be reinstated, he has to be paid salary and other emoluments in the grade of Khalasi/ Fitter Skilled post in which he has to be taken as per this order.

10. Even though it is necessary to take the applicant in the grade of Khalasi or to revise the seniority of the applicant downwards in the category of Fitter Skilled, whereby his pay in the said post has to be fixed downwards, the difference between the amounts to which he would have

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been entitled to as per this order and the amount already paid ~~as~~ towards pay and allowance to the applicant for the period for which he worked ~~as~~ shall not be recovered.

11. The OA is ordered accordingly. No costs.//

(R.RANGARAJAN)
MEMBER (ADMN.)

(V.NEELADRI RAO)
VICE CHAIRMAN

DATED: 20th September, 1995.

sk/vsn

DEPUTY REGISTRAR(J)

To

1. The Deputy Chief Electrical Engineer, Workshop, Lalaguda, South Central Railway, Secunderabad.
2. One copy to Mr.V.R.Balachary, Advocate, CAT, Hyderabad.
3. One copy to Mr.C.V.Malla Reddy, Addl.CGSC, CAT, Hyderabad.
4. One copy to Library, CAT, Hyderabad.
5. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

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

and

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

DATED:- 20 - 9 - 1995.

ORDER/JUDGMENT.

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

in

O.A.No. 78/95

I.A.No. (W.P.)

Admitted and Interim Directions
Issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No order as to costs.

pvm.

No Spare Copy

