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O R D E R

(PER: HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (J))

1. Heard Mr. Srinivasa Sarma, Learned Counsel for the applicants and Mr. V. Rajeswara Rao, Learned Counsel for the respondents. Thereafter we had posted this O.A. for seeking certain clarifications. Then the Learned Counsels reiterated the decisions relied upon by them and subsequently they have not made not made any representation. Hence the O.A. was reserved for orders.
2. The name of the applicant was sponsored by the local Employment Exchange for filling up the posts of unskilled Labour in Naval Armament Depot, Visakhapatnam. The applicant claims to belong to Konda Kapu Caste and claimed to belong to ST Community. The applicant was selected and appointed as unskilled Labourer in Naval Armament Depot, Visakhapatnam against the reserved quota for the ST community. He reported for duties on 10.12.80. The applicant earned promotions to the post of ARL SSK w.e.f. 14.2.83 and to the post of FAR SK w.e.f. 23.4.86.
3. While the applicant was working as FAR SK, the ST Employees Association submitted a complaint alleging that the applicant did not belong to Reserved Community and earned undeserved promotions in the Naval Armament Depot.
4. The said complaint was referred to Mandal Revenue Officer, Vepada for ascertaining/genuine/er otherwise of the allegations made therein. The MRO Vepada through his letter No. RC 1739/89 dt. 6.1.90 submitted his report.
5. On the basis of the report, submitted by the MRO, Vepada respondent authorities found a prima facie case to proceed against the applicant for furnishing certain incorrect particulars as regards his caste status.

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6. On 10.4.91, the Commodore, Chief Staff Officer (P&A) i.e. the R-5 issued a Charge Memo on the applicant. The charges levelled against the applicant are as under :

- (a) That he claimed employment against a ST vacancy by fraudulent means and also derived promotion on the false premise of his belonging to "Hindu-Kenda Kanpu" Scheduled Tribe.
- (b) Falsely declared 'Kkulavamipalem' as his home town when he did not belong to that place.
- (c) Furnished false information, whilst functioning as Ammunition Repair Labouer (Skilled), that he actually belonged to Scheduled Tribe, when in fact he did not.

7. The applicant submitted his explanation dt. 22.11.91 denying the charges levelled against him.

8. A detailed inquiry was conducted into the charges. The applicant participated in the disciplinary proceedings. After completion of the inquiry the Inquiry Officer submitted his report.

9. A copy of the report of the Inquiry Officer was furnished to the applicant. The applicant submitted his representation dt. 22.7.93.

10. The R-5 after considering the report of the Inquiry Officer accepted the findings of the Inquiry and by his proceedings dt. CE/9102/83 dt. 10.6.94 imposed a penalty of removal from service on the applicant. A copy of the order passed by the R-5 is at pages 12 to 16 of the O.A.

11. Against the order of removal, the applicant submitted an appeal to the Flag Officer Commanding-in-Chief, Visakhapatnam i.e. R-3.

12. The appeal is dt. 7.8.94. A copy of the appeal memo is at Annexure-II (page 17) of the O.A.

13. Even though the R-3 had considered and decided the appeal, it appears the R-3 had not communicated his decision to the applicant.

14. Then the applicant approached this Tribunal in O.A. 197/96. On 14.12.96, his Tribunal disposed of the said O.A. with

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the direction to the R-3 to decide the appeal on merits, taking into consideration various grounds urged by the applicant.

14. However, the R-3 had decided the appeal by his proceedings No. CC/9402/29 dt. 7.2.95. The R-3 had rejected the appeal and confirmed the punishment.

15. The applicant has filed this O.A. challenging the order dt. 10.6.94 passed by the R-5 and the order dt. 17.2.95 passed by R-3, rejecting the appeal. The applicant has prayed the to set aside the impugned and for a consequential direction to the respondents to extend the same relief of lesser punishment awarded to one J. Satyanarayana for the same kind of offence and to reinstate the applicant and to pay back the wages from the date of removal from service with all consequential benefits.

16. The applicant has challenged the impugned orders on the following grounds :

a) that the order dt. 17.2.95 passed by the R-3 is not a speaking order./ The applicant compares his case with one J. Satyanarayana against whom proceedings were initiated for similar kind of misconduct./ It appears that the respondent authorities had imposed lesser punishment on the said employee J. Satyanarayana.

17. The respondents have filed a counter narrating the circumstances under which the disciplinary proceedings were initiated against the applicant and contend that every opportunity was given to the applicant to establish his caste through the inquiry; that the applicant had not placed any iota of evidence before the M.R.O. to substantiate that he in fact belonged to Konda Kapu Caste, though sufficient opportunity

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even

was given to the applicant during the inquiry to establish his social status, the applicant had not submitted any thing which can be concluded that he actually belong to Konda Kapu community. In this background, they justify the action taken by the respondent authorities. They submit that the punishment imposed on the applicant is commensurate with the misconduct alleged against him.

18. As already observed, the applicant has not raised any point of Law in challenging the impugned order. The applicant has not anywhere stated that the Inquiry Officer had violated the principles of natural justice. The applicant has nowhere stated that he was not given sufficient opportunity to prove his innocence, of the charge.

19. In this view of the matter the controversy now confines to the quantum of punishment imposed on the applicant.

20. However, during the course of hearing the Learned Counsel attempted to raise a point in that the M.R.O. was not the competent authority to decide the caste status of the applicant. It is submitted that as per the instructions given by the State of Andhra Pradesh/ competent authorities are constituted for determining the social status of an individual and that the District Collector is the proper authority. Thus submitting the Learned Counsel for the applicant maintained that the preliminary inquiry conducted by the MRO was not in accordance with Law.

21. Thus he relied upon the pre-visions of the A.P. SC, ST & BCs) Regulation of issue of Community Certificates Act, 1993 and Rules 1997.

22. In our humble opinion the said Act and Rules are not applicable to the case of the applicant. The applicant was issued with the charge memo on 10.4.91. The applicant has not produced the relevant instructions issued by the State of Andhra Pradesh which were in existence during the year 1991.

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have
The Rules of the applicant has now produced/came into force
only in the year 1997. Therefore these Act and Rules are not
attracted to the facts and circumstances of the case.

23. The Learned Counsel for the applicant relied upon the
decision of this Tribunal in the case of G. Neekarae Reddy
vs. South Central Railway & Ors. reported in ATR 1989 (i) CAT 582
to contend that the M.R.O. is not the competent Officer to
conduct the inquiry as regards the applicant's social status.
In the case cited above, it was stated that the verification
of the caste or tribe has to be get verified through the
District Magistrate and that the Railway authorities cannot them-
selves conduct the inquiry and decide as to the social status
of its employees.

24. He also relied upon the decision of the Hon'ble Supreme
Court reported in the case of Kumari Madhuri Patil and
another Vs. Addl. Commissioner, Tribal Development and Others
(reported in AIR 1994 Supreme Court 94).
He tried to contend that Special Committee constituted to give
finding of the fact on question as to whether certain person
belongs to certain tribe or not Committee considering all evidence
and giving finding—its finding cannot be reversed.

25. We may form an opinion that the respondent authorities
were not justified in referring the complaint of the ST Association
the Vepada
against the applicant to M.R.O. for preliminary inquiry. Further
we are of the view that merely because of the preliminary
inquiry was conducted by the M.R.O., entire disciplinary proceeding
are not vitiated. Non-competency of the person to conduct a
preliminary inquiry does not vitiate the fulfledged inquiry
conducted and concluded against the applicant. In this connect
we feel it proper to consider the decision of the Hon'ble Sup
Court in the case of N.D. Ramathirthaiah Vs. UOI reported in
AIR 97 SC 2148 wherein the Hon'ble Supreme Court observed

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that the preliminary inquiry loses its importance after a fulfledged departmental inquiry.

26. In that view of the matter, we are of the opinion that the disciplinary proceedings initiated against the applicant is not vitiated only on the ground that the MRO, ~~Vepada~~ ^{had} had conducted the preliminary inquiry into the complaint filed by the ST Association against the applicant.

27. As already observed the respondent authorities gave full and adequate opportunity to the applicant to establish ~~that he belongs to~~ ^{and the same is recognised as ST-community} to the Konda Kapu caste. The applicant even to this moment has not stated that the testimonials submitted earlier to the respondent authorities at the time of his appointment were genuine and that he belongs ~~to~~ ^{to} the Konda Kapu caste. If really his testimonials produced before the respondent authorities at the time of his appointment were genuine then the respondent authorities would not have thought it proper to refer the complaint of the ST Association to the MRO, ~~Vepada~~ ^{for} preliminary inquiry. The applicant participated in the preliminary inquiry. The applicant ~~did not~~ did not produce any document to satisfy the MRO that he really belonged ~~to ST Community~~. After considering the report of the MRO, the charge sheet was issued. Even during the disciplinary proceedings the applicant has not improved his case any further. He has not placed any material to show that he belongs ~~to~~ ^{to} S.T. community. Therefore, the applicant cannot have any grievance that the inquiry initiated against him was not warranted.

28. Another grievance put forward by the applicant is that he was unjustly discriminated in awarding the maximum penalty of removal from service. The Principal Bench of this Tribunal in O.A. No.600/PB of 1990 (Om Prakash V. UOI and Ors) decided on

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6.6.97 had observed that punishment of removal from service is a death sentence for a holder of civil post and for the negligence and breach of order, which has not caused pecuniary loss, the ^{28(a).} accused deserves a lower penalty than removal. We are conscious of the dictum laid down by the Hon'ble Supreme Court of India in the case of UOI Vs. Paramananda reported in AIR 1989 SCC SLJ 303 to the effect that the Tribunal has ordinarily no power to interfere with the punishment awarded by the competent authority notwithstanding the fact that the penalty imposed being excessive or disproportionate to the proved misconduct if the punishment is based on the evidence and is not arbitrary or malafide or ~~or~~ perverse.

29. Recently, the Hon'ble Supreme Court reiterated the same view in the case of State of Punjab Vs. Harbachan Singh reported in AIR 1997 (6) SCC page 381 by observing that it is for the disciplinary authority to pass appropriate punishment. the Civil Court cannot substitute its own view to that of the disciplinary authority as well as the appellate authority on the nature of punishment to be imposed on the delinquent employee.

30. More stress was laid on the fact that the respondent authorities had inflicted a lesser punishment on ~~an~~ employee similar by name J.Satyanarayana against whom ~~L.~~ misconduct was alleged. The applicant has produced the order passed in the case of J.Satyanarayana. He was also proceeded against for producing false caste certificate.

31. In fact, in the memorandum of appeal dt. 7.8.94, the applicant brought to the notice of the appellate authority the punishment awarded to J.Satyanarayana who was working as/Assistant Stere Keeper and found guilty of producing a bogus caste

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certificate. J. Satyanarayana was awarded the punishment of reversion from ASK to ASL and his token number ^{is} 952. He submits that the said Satyanarayana is continuing in service. Whereas the respondent authorities thought it proper to impose punishment of reversion on J. Satyanarayana for the same mis conduct. However, they felt it proper to impose the extreme penalty of removal ^{from service} on the applicant. Both are at the extreme ends. It is only on this short ground we feel persuaded to direct the appellate authority to reconsider the question of imposition of proper punishment on the applicant.

32. The Madras-Bench of this Tribunal ⁱⁿ this case in O.A. 860/94 (P. Manehar Vs. UOI and Anr) decided on 11.8.1997 observed that the punishment imposed by the disciplinary authority was violative of the Article 14 of the Constitution. The Tribunal in that case also felt that the punishment was excessive and disproportionate. In this case, the appellate authority has ^{not} taken into consideration how J. Satyanarayana who was involved in similar misconduct was given a lesser punishment and how the applicant was given extreme punishment. In our opinion, the appellate authority should have recorded convincing reasons to come to the conclusion that the punishment of removal from service imposed on the applicant by the disciplinary authority was justified. Mere saying that the cases may differ is not a convincing reason. Why the disciplinary authority had taken a decision to impose extreme penalty of removal from service on the applicant should have been considered by the appellate authority when the applicant had clearly cited an instance of J. Satyanarayana who was involved in similar misconduct was awarded a lesser punishment.

33. The appellate authority may take into consideration the cases cited by the applicant in the memorandum of appeal

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and also consider the grounds raised by him as directed earlier in O.A.197/96.

34. The appellate authority shall consider whether the disciplinary authority was justified in imposing extreme penalty of removal of the applicant from service. It is only on this limited ground we are setting aside the order passed by the appellate authority dated 17.2.95 and direct the appellate authority i.e. R-3 to consider afresh the grounds raised by the applicant in his appeal dt. 7.8.94 and to record a definite finding whether punishment imposed by the disciplinary authority in its order dt. 10.6.94 is justified or not.

35. In the light of the above discussions we pass the following order :

- a) The order dt. 17.2.95 passed by the appellate authority is hereby set aside.
- b) The appellate authority is directed to consider the appeal and shall record a definite finding as to whether the punishment imposed by the disciplinary authority on the applicant by its order dt. 10.6.94 is justified or not.
- c) In case the applicant desires a personal hearing, the respondent No.3 shall give him an opportunity.
- d) The appellate authority shall decide the appeal bearing in mind the provisions of Rule 27(2) of the CCS (CCA) Rules.

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O.A. 1186/96

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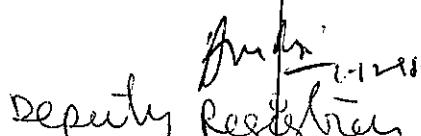
36. With the above directions the O.A. is disposed of. No
order as to costs.


(B.S. JAI PARAMESHWAR)
MEMBER (J)


(H. RAJENDRA PRASAD)
MEMBER (A)

Dated, the 1st December, '98

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Deputy Registrar
1-12-98

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O.A. 1186/96

To

1. The Secretary, Union of India,
Ministry of Defence, New Delhi.
2. The Chief of Naval Staff,
Naval Head Quarters, New Delhi.
3. The Flag Officer-Commanding-in-Chief,
Eastern Naval Command, Head Quarters,
Visakhapatnam.
4. The General Manager,
Naval Armament Depot, Visakhapatnam.
5. The Commodore,
Chief Staff Officer (P&A)
Mukhyalaya, Poorv Nausena Kaman,
Nausena Base, Visakhapatnam.
6. One copy to Mr.A.Srinivasa Sarma, Advocate, CAT.Hyd.
7. One copy to Mr.V.Rajeswar Rao, Addl.CGSC. CAT.Hyd.
8. One copy to HBSJP.M.(J) CAT.Hyd.
9. One copy to DR(A) CAT.Hyd.
10. One spare copy.

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8/12/98
I COURT

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD

THE HON'BLE MR.JUSTICE D.H.NASIR :
VICE-CHAIRMAN

AND

THE HON'BLE MR.H.RAJENDRA PRASAD:M(ADMN)
The Hon'ble Mr.B.S.Jayaramanwar, M.G

DATED: 1-12-1998

ORDER/JUDGMENT

R.A./C.A./ MA.NO.

O.A.NO. 1186 in 96.

T.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

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केन्द्रीय प्रशासनिक विधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH

- 4 DEC 1998

हैदराबाद न्यायालय
HYDERABAD BENCH