

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 61 OF 1997

Dated, the 22nd April, '99

BETWEEN:

R. Valasina Babu Applicant

A N D

1. The Superintendent of Post Offices,
Adilabad Postal Division, Adilabad.
2. The Director of Postal Services,
Hyderabad Region, Hyderabad.
3. Member (D), Postal Services Board,
New Delhi.

... Respondents.

COUNSELS :

For the Applicant : Mr. S Ramakrishna Rao
For the Respondents : Mr. V. Rajeswara Rao

CORAM:

THE HON'BLE MR. R. RANGARAJAN, MEMBER (ADMIN)

THE HON'BLE MR. BS JAI PARAMESHWAR, MEMBER (JUDL)

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O R D E R

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

1. Heard Mr. S. Ramakrishna Rao, learned counsel for the applicant and Mr. V. Rajeswara Rao, learned Standing Counsel for the respondents.
2. This is an application under Section 19 of the Administrative Tribunals Act, 1985. The application was filed on 9.1.97.
3. The applicant claims to belong to Mala Community, which is recognised as SC Community and that he is a Graduate. During the year 1979, he was appointed as Postal Assistant in Adilabad Division, against the reserved community quota. At the time of his appointment he had produced a Certificate of Caste bearing No. RC No. A6/20293/79 dt. 27.12.80 issued by Tahsildar, Karimnagar. The respondent authorities made enquiries with the revenue authorities as to the genuineness of the Caste Certificate produced by the applicant. The M.R.O. appeared to have informed the respondent authorities that the Caste Certificate produced by the applicant was a bogus one.
4. On 1.3.89, the S.P.S. Adilabad Division issued a major penalty charge memo vide his proceedings No. SP/Con/RV/88 dt. 1.3.89 on the applicant. The misconduct alleged against the applicant reads as follows :

"Shri R. Valasinababu, presently, P.A. Sirpur (T) at the time of his recruitment to T/S post of Postal Assistant in Adilabad Division had produced a caste certificate RC No. A6/20293/79, dated 27.2.1989 issued by Tahsildar, Karimnagar along with the undated application received in this office on 15.12.79 claiming his right for the reserved quota for S.C. candidates. He was selected and appointed as P.A. in Adilabad Division on 28.7.1980.

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On enquiry, the MRO, Karimnagar, intimated that the said Certificate has been withdrawn as it was issued to Shri R. Valasinababu who actually belongs to Christian community but not to Scheduled Caste.

It is, therefore, imputed that Sri R. Valasinababu had produced a bogus caste Certificate to get selected to the post of Postal Assistant in the reserved quota for SC candidates and thereby failed to maintain absolute integrity and acted in a manner which is unbecoming of a Government servant, contravening the provisions of Rule 3(1) (i) and 3(1) (iii) of CCS(Conduct) Rules, 1964."

5. The applicant denied the charges. A detailed inquiry was held into the charge by the ASP(R) O/o SPO Adilabad. The Inquiry Officer submitted his report. The Inquiry Officer recorded his findings as follows :

"It is therefore evident that the caste certificate R.C. No.A6/20293/79 dt. 27.2.80 submitted by the said R. Vilasinababu, PA, Sirpur (T) SO is not withdrawn or cancelled even to-day and therefore, it is proved to be genuine certificate and not a false one. Thus, the charge framed against Sri R. Valasinababu, PA, Sirpur (T) So vide SPOs Adilabad Memo. No.SP/Com/RV/88 dt. 1.3.89 imputing that the said R. Valasinababu had produced a bogus caste certificate RC No.A6/20293/79 dt. 27.2.80 issued by Tahsildar, Karimnagar along with the updated application received at this office on 15.12.79 and get selected to the post of Postal Assistant in the reserved quota for SC candidates and thereby he failed to maintain absolute integrity and acted in a manner which is unbecoming of a Govt. servant contravening the provisions of Rule 3(1)(i) and 3(1)(iii) of CCS(Conduct) Rules 1964 is NOT PROVED."

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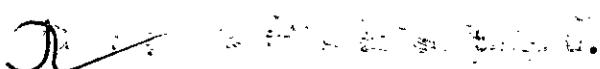
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6. The Disciplinary Authority disagreed with the findings recorded by the Inquiry Officer and furnished/to the applicant. The note of disagreement dt. 28.7.92 is at Annexure-AV (pages 37 to 39 of the O.A.) The applicant submitted his representation to the show-cause notice dated 28.7.92 through his letter dated 31.8.92/5.9.92.

7. The Disciplinary Authority by his proceedings of even number dt. 30.9.92 imposed the penalty of dismissal of the applicant from service with immediate effect. The order of the Disciplinary Authority is at Annexure-AVI (pages 40 to 43 of the O.A.). The Disciplinary Authority in page 43 has observed as follows :

"The Govt. servant argues that the charge sheet was issued before the completion of actual action i.e. cancellation of his Caste Certificate hence, it is not maintainable. Thus, the Govt. servant is accepting the cancellation of his Caste Certificate, but after the issue of Charge Sheet. But the fact is that the charge sheet was issued on 1.3.1989 on the enquiry report of Mandal Revenue Officer, Karimnagar dtd. 20.5.1988 (Exp-3) in which it was clearly mentioned that the caste certificate issued to the Govt. Servant is bogus, as such permission was accorded by the then Tahsildar, Karimnagar to withdraw the Certificate. And this proves that the Disc. authority has not come to any premature conclusion in this case, as alleged by the Govt. servant, but took action only after having reliable information about the bogus Caste Certificate and its withdrawal."

8. The applicant preferred an appeal dated 12/28.11.92 to the PMS, Hyderabad Region. The appeal was considered by the Respondent No.2 and rejected the same. The order of the Appellate Authority dt. 1.3.94 is at Annexure.VIII (pages 62 to 66 of the OA). The applicant submitted a representation petition to the Member, Postal Services Board, New Delhi, (the respondent No.3). The respondent No.3 considered the revision petition and rejected the same.

 J. S. [Signature]

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9. The applicant has filed this O.A. for the following reliefs :

(a) to set aside the punishment imposed by the SPOs, Adilabad vide Order No. SP/Con/RV/89 dated 30.9.92 and the irregularity upheld by the II and III respondents vide orders No. ST/21-3/20/93 dt. 1.3.94 and 1-11/95-VP dated 9.7.96 respectively, declaring the same as arbitrary, unwarranted, illegal and in violation of Articles 14 and 16 of the Constitution;

(b) to direct the Respondents to reinstate the applicant to duty with all consequential benefits.

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

(a) His Certificate of Caste dated 27.12.80 not was/cancelled by a competent revenue authority as on the date of issue of the charge memo i.e. 1.3.89. Because of this, the Inquiry Officer exonerated him of the charge. However, the Disciplinary Authority relying upon the order of the Collector dated 28.11.90 disagreed with the findings recorded by the Inquiry Officer and imposed penalty. The action of the Disciplinary Authority is not proper and legal. The Disciplinary Authority could not have taken note the order dated 28.11.90 passed by the Collector which was long after the conclusion of the disciplinary proceedings. Further it is stated that the said order was not produced during the inquiry.

(b) The Disciplinary Authority was not justified in issue of the charge memo dt. 1.3.89 only on the basis of the correspondence with the MRO. The MRO is not the competent authority to consider the validity of genuineness of the Certificate issued by a superior Officer viz. Tahsildar, Karimnagar. It is stated that the Certificate of Caste

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dated 27.12.80 produced by him was issued by the Tahasildar. Thus, the respondent authorities should have corresponded with the higher authorities and ascertained the genuineness or otherwise of the same. On the other hand, the respondent authorities merely basing on the correspondence received from MRO issued the charge memo. This is ~~irregular~~ ^{improper and} irregular.

11. The respondent authorities have filed a reply stating that they felt suspicious about the Certificate of Caste dt. 27.12.80 produced by the applicant and enquired with the MRO and the MRO made a report stating that the Caste Certificate dt. 27.12.80 produced by the applicant was not genuine and therefore they initiated the disciplinary proceedings. They could not cite any rule or provision to contend that they were justified in taking action against the applicant only ~~on~~ ^{on} the basis of ~~rung~~ ^{we see} of the the report from the MRO. The MRO is the lowest ~~official~~ ⁱⁿ hierarchy of the revenue department. Further, the Caste Certificate dt. 27.12.80 was issued by the Tahasildar, ~~we see~~ Karimnagar. When that was so, no justifiable reason ~~prompted~~ ^{prompted} which the respondent authorities corresponded with the MRO ~~and~~ ^{on} the basis of which they issued the charge memo.

12. As on the date of issue of the charge memo dated 1.3.89, the Certificate of Caste dt. 27.12.80 produced by the applicant was not at all cancelled by the competent revenue authority. Hence, they were not justified in issuing the charge memo.

13. Whenever an employer finds reasons or feels suspicious about the Certificate of Caste produced by his employee

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then, he must approach the competent revenue authority to ascertain the genuineness or otherwise of the same. Then the competent revenue authority may inquire into the genuineness or otherwise of the certificate produced by the employee and may even conduct an inquiry giving due opportunity to the employee to substantiate the Caste Certificate produced by him and to decide his social status. On the basis of the outcome of the inquiry conducted by the competent revenue authority, he may inform the employer about the genuineness or otherwise of the certificate. Apart from that the competent revenue authority may, if he finds that the Caste Certificate produced by the employee to be bogus, then he can pass an order cancelling the same. A competent revenue authority is the proper authority to consider social status of a person.

13(a). When that is so, the respondent authorities should have approached the higher authorities to consider veracity or otherwise of the Caste Certificate dt. 27.12.80 issued by the Tahsildar, Karimnagar and produced by the applicant. They did a mistake in referring the matter to the MRO. They have not ascertained from a competent revenue authority as to the genuineness or otherwise of the Certificate of Caste issued by the Tahsildar Karimnagar. Further, if they felt that the said certificate issued by the Tahsildar, Karimnagar was not proper, then they should have requested the Collector, Karimnagar, to inquire into the genuineness or otherwise of the Certificate of Caste dt. 27.12.80 and only after hearing from him, they should have taken a decision to proceed against the applicant departmentally.

14. It is in this background, the Inquiry Officer felt that since the Certificate of Caste dt. 27.12.80 issued by the Tahsildar, Karimnagar produced by the applicant was in force and valid, the charge against him was not proved.



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15. However, the Collector, Karimnagar cancelled the Certificate of Caste dt. 27.12.80 by his order dated 28.11.90. Only on the basis of the order dt. 28.11.90 passed by the Collector, Karimnagar, the disciplinary authority disagreed with the findings recorded by the Inquiry Officer and issued the note of disagreement dt. 28.7.92. In our opinion, the course adopted by the disciplinary authority is not proper. In fact, the issuance of the charge memo dt. 1.3.90, when ^{and in force} the Certificate of Caste dt. 27.12.80 was still valid/was not warranted.

16. The order of cancellation dated 28th November, 1990 passed by the Collector, Karimnagar was not included in the Annexure to the charge memo. The disciplinary authority should not have relied upon this certificate to disagree with the findings recorded by the Inquiry Officer and to impose a penalty on the applicant.

17. In this connection, we feel it proper to refer to the decision of the Hon'ble Supreme Court in the case of Kuldeep Singh Vs. Commissioner of Police and Others (reported in S(1992) 2 SCC page 10 para 30). In the above judgment, Their Lordships observed that a document that is not mentioned in the charge memo cannot be relied upon or even looked into. Admittedly, the order dt. 28.11.90 passed by the Collector, Karimnagar was not a subject matter in the Charge Memo dt. 1.3.89. In that view of the matter, the order passed by the disciplinary authority imposing penalty of dismissal on the applicant solely relying on the order dt. 28.11.90 passed by the Collector, Karimnagar is not sustainable in Law. In fact, the very issuance of the charge memo is irregular. Hence, the order of the disciplinary authority cannot be sustained. It is liable to be set aside.

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18. When once the order of the disciplinary authority is set aside, naturally, the orders passed by the appellate authority and revisional authority are also liable to be set aside

19. However, liberty is given to the respondents, if they so desire to proceed against the applicant on the basis of the order dt. 28.11.90 passed by the Collector, Karimnagar cancelling the Certificate of Caste dated 27.12.80 issued by the Tahasildar, Karimnagar.

20. For the reasons stated above, the impugned orders are liable to be set aside. The applicant has to be reinstated into the service forthwith. The O.A. is allowed.

21. Hence, the following directions are given :

- i) The O.A. is allowed and the impugned orders are hereby set aside.
- ii) The applicant shall be reinstated into service forthwith in accordance with the rules. The period of absence from the date of removal of the applicant (30.9.92) from service till the date of his reinstatement shall be regulated as per the rules.
- iii) The respondents are at liberty to proceed against the applicant, if they so desire, on the basis of the order passed by the Collector, Karimnagar dt. 28.11.90 cancelling the Certificate of Caste dt. 27.12.80, produced by the applicant. Before doing so, they may ascertain whether the said cancellation order dt. 28.11.90 pertains to the Certificate of Caste produced by the applicant dt. 27.12.80.
- iv) The respondents may take a decision on (iii) above within 2 months from the date of receipt of a copy of this order.

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


(BS JAI PARAMESHWAR)
MEMBER (JUDL)


(R RANGARAJAN)
MEMBER (ADMIN)

Dated, the 22nd April, '99.

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22/4/99

1ST AND 2ND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

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

THE HON'BLE MR. H.RAJENDRA PRASAD :
MEMBER (A)

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

THE HON'BLE MR.B.S.JAI PARAMESWAR :
MEMBER (J)

DATED: 22-4-99

ORDER / JUDGEMENT

MR./R.A./C.P.No.

IN

C.A. No. 61/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED.

C.P.CLOSED.

R.A. CLOSED.

DISPOSED OF WITH DIRECTIONS.

DISMISSED.

DISMISSED AS WITHDRAWN.

ORDERED/REJECTED. केंद्रीय प्रशासनिक अधिकरण
NO ORDER AS TO COSTS / DESPATCH
Central Administrative Tribunal
HYDERABAD BENCH

SRR

(8 copies)

24 MAY 1999

HYDERABAD BENCH