

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

O.A.1104 OF 1997

Dated, the 24<sup>th</sup> February, '99.

BETWEEN :

G.S. Brahmaji Rao

... Applicant

A N D

1. The Deputy Chief Electrical Engineer,  
Workshops, Lalaguda, S.C.Railway,  
Secunderabad.
2. The Chief Workshop Manager,  
Loco and Carriage Workshop,  
S.C.Railway, Lalaguda,  
Secunderabad.
3. The Chief Electrical Engineer,  
S.C.Railway, Rail Nilayam,  
Secunderabad.

... Respondents

COUNSELS :

For the Applicant : Mr. PVSS Rama Rao

For the Respondents : Mr. C.V. Malla Reddy

CORAM :

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

THE HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (JUDICIAL)

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O R D E R

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

1. None on either side. Mr. Suryanarayana Sastry for Mr. PVSSS Rama Rao, Learned Counsel for the applicant later relied upon the decisions of the Hon'ble Supreme Court in support of his case. We have considered the citations produced by the applicant. *Heard Mr. Suryanarayana Sastry today.*

2. This is an application under Section 19 of the Administrative Tribunals Act, 1985. The application was filed on 20th August, 1997.

3. The facts of this case are as follows :

(a) The applicant claims to belong to Konda Kapu Community a Community recognised as ST. Under the Crash Programme for SC/ST candidates, in 1989, the respondent administration offered the applicant the post of Trainee Skilled Artisan in the scale of pay of Rs.950-1500(RSRP) by proceedings No.LGD/P/561/E2 dt. 17.7.89 (Annexure-I page 11 to the O.A) The relevant terms and conditions of the offer of appointment is the condition No.2. The condition No.2 reads as follows :

"2.You are required to bring with you the original School/I.T.I. Certificates/Caste Certificate in the prescribed proforma (enclosed)/and satisfactory proof in support of your Age/Date of Birth and Identification marks, etc., as stated in your application form."

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(b) The applicant submitted a copy of the Transfer Certificate bearing No.124 dt. 17.8.83 issued by the Principal, Technical High School attached to Government Polytechnic, Vijayawada in support of his claim.

(c) The District Electrical Engineer by his letter dt. 25.1.90 informed the applicant to produce his caste certificate in the prescribed proforma within 15 days. The applicant did not comply with the directions contained in the said letter. Hence, the applicant was served with a major penalty charge memo by the District Electrical Engineer, Work Shops, S.C. Railway, Lalaguda, Secunderabad vide his proceedings No.LGD/ELP/89541/27/90 dt. 21.11.1990 (Annexure-5 to the O.A.). The misconduct alleged against the applicant reads as follows (Annexure-5 page 19 to the OA)

"Article :I

That the said Sri GS Brahmaji Rao, T.No.89541 while functioning as Diesel Fitter in Gr.Rs.950-1500 (RSRPM under SS(ER)LGD has not submitted the Caste Certificate in the prescribed proforma at the time of appointment as Trainee Artisan Skilled.

Article-II

The said Sri GS Brahmaji Rao has been asked to produce the required caste certificate in prescribed proforma vide letter No.LGD/P/563/E.2 dt. 25.1.90, 25.5.90, 20.6.90 and 4.10.90. The employee has been asking for time and lastly vide his letter No.Nil dt. 22.10.90 desires to accept the School Certificate and his father's documents.

In this letter office order No.192/89 dt. 2.8.89 at the time of appointment/assignment as trainee artisan skilled and vide office order No.64/90 dt. 18.5.90 vide time of his absorption as Diesel Fitter's trade, it was mentioned that absorption is subject to production of his caste certificate as required."

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(d) The applicant submitted his explanation to the charge memo on 31.12.90 (Annexure-A6 to the O.A.)

(e) An inquiry was conducted into the charges.

(f) The applicant participated in the inquiry.

(g) The Inquiry Officer submitted his report holding the charges levelled against the applicant as proved. The applicant submitted his representation against the findings of the Inquiry Officer.

(h) The Dy. Chief Electrical Engineer, Work Shops, Lalaguda i.e. Respondent No.1 considered the findings recorded by the Inquiry Officer and the representation of the applicant and agreed with the findings recorded by the Inquiry Officer and by his proceedings of even number dt. 7.10.94 imposed the penalty of dismissal of the applicant from service w.e.f. 18.10.94.

(i) A copy of the order passed by the Disciplinary Authority is at Annexure-A18 pages 37 and 38 of the O.A.

(j) Against the penalty order, the applicant submitted an appeal to the respondent No.2. His appeal is dt. 17.11.94. A copy of the memorandum of appeal is at pages 39 to 46 of the O.A.

(k) The respondent No.2 considered the appeal of the applicant and by his proceedings of even number dt. 31.10.95 rejected the appeal and confirmed the punishment. The order passed by the Appellate Authority is at Annexure-A20 pages 47 and 48 of the O.A.

(l) The applicant submitted a revision <sup>is</sup> a petition to the respondent No.3. His revision petition/dt. 11.12.95. A copy of the revision petition is at Annexure-A21 pages 49 to 56 of the O.A.

(m) The respondent No.3 considered the revision petition of the applicant and by his proceedings No.P.87/LGD/GSBR/2144 dt. 24.8.96 considered the revision petition and confirmed the

punishment. The order passed by the respondent No.2 is at Annexure-A22 pages 57 to 59 of the O.A.

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

"To set aside the orders passed by :

- (a) Proc. No.LGD/ELP/89541/27/90 dated 07.10.94 of the 1st respondent;
- (b) Memorandum No.LGD/P 227/Appeal/Review dated 31.10.95 of the 2nd respondent; and
- (c) Order No.P.87/LGD/GSBR/2144 dt. 24.8.96 of the 3rd respondent

with a consequential direction to the respondents to reinstate the applicant with all consequential benefits like that of arrears of pay, seniority, etc."

5. The applicant has challenged the impugned orders on the ground, that he was not required to submit the Caste Certificate in the prescribed proforma in view of the Railway Board's letter dt. 18.6.53 (Annexure-A2 and that the School Leaving Certificate produced by him at the time of his appointment was itself <sup>a</sup> sufficient proof of his social status and that the insistence by the authorities to furnish the caste certificate in the prescribed proforma is not warranted. He was not furnished with the Annexures to the charge memo to enable him to submit effective explanation. The respondent authorities were required to furnish the copies of the documents not listed in the Annexure-3 on which the respondent authorities relied during the course of the inquiry.

6. As per the serial circular No.94 at Annexure-A26, the penalty advice has to be issued by the Disciplinary Authority. He submits that the penalty advice in this case was not issued by the Disciplinary Authority.

7. While passing the penalty order dt. 7.10.94 the Disciplinary Authority had relied upon the report of the Commissioner, Tribal Welfare, AP, Hyderabad and that the Disciplinary Authority had taken an extraneous material to sustain his penalty order.

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8. The applicant relies upon the A.P. (SC/ST/Backward Classes) Regulation of issue of Community Certificate Act, 1993 and rules issued thereunder in GO M..S. No.58, Social Welfare (J) Deptt. dt. 12.5.97. He submits that according to Rule 21 of the said rules the Caste Certificate issued by the competent authority prior to the commencement of the Rules has to be treated as a valid certificate and under the present regulations the competent authority to issue the community certificate is the Revenue Divisional Officer. He submits that the Commissioner/Director, Tribal Welfare is not the authority to decide whether a particular person belongs to a particular community or not.

9. He relies upon the Railway Board's letters dated 19.2.76, 18.12.81 and 3.8.89. He submits that the respondent authorities have not verified his social status through a competent authority viz. District Magistrate.

10. The appellate authority as well as the revisional authority have failed to note these submissions even though he has specifically raised in his appeal/revision petition.

11. He submits that the respondent authorities have used the material without giving him an opportunity.

12. The Disciplinary Authority was not justified in dismissing him from service on the basis of the report of the Commissioner, Tribal Welfare, AP, Hyderabad which document was not listed in the Annexure to the charge memo nor supplied to him.

13. The Inquiry Officer has not properly analysed the material available on record. There was no obligation on his part to submit the caste certificate in the prescribed proforma. The documents submitted at the time of appointment were themselves sufficient proof regarding his social status.



14. The respondents have filed their reply stating that the applicant had failed to submit the caste certificate in the prescribed proforma though given sufficient opportunity and hence, he was served with a major penalty charge memo. They further submit that the applicant was initially appointed provisionally without caste certificate to avoid hardship to the applicant and he was <sup>directed</sup> / to submit the caste certificate in the prescribed proforma in due course. They submit that the applicant was absorbed as Diesel Fitter subject to the condition of his producing the caste certificate in the prescribed proforma.

15. They submit that they made enquiries with the Commissioner Tribal Welfare, AP, Hyderabad and it revealed that the applicant was not belong<sup>-ing</sup> to the ST community.

16. They further submit that as per the rules an appointee has to submit his caste certificate in the prescribed proforma issued by the competent authority as proof of his social status at the time of his appointment. This was specifically mentioned in the letter of appointment. If the candidate fails to submit his caste certificate then his services can be terminated.

17. The Commissioner, Tribal Welfare, AP, Hyderabad by his letter No.RC/1491/93/TRI/VC which is dt. 2.8.94 <sup>them</sup> (Annexure-A1 to the OA) informed that the applicant was not belong<sup>-ing</sup> to the ST community. The applicant was given sufficient opportunity and reminders to produce sufficient proof regarding his social status. As he failed to prove his social status, he could have been terminated from service even without giving notice. However, an inquiry was conducted and during the inquiry the applicant failed to substantiate his social status and accordingly the impugned orders were passed.



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18. They further submit that the authorities have not relied on the report of the Commissioner, Tribal Welfare, AP, Hyderabad and that the material collected by the inquiring authority <sup>during the inquiry</sup> /itself established the charge levelled against the applicant. However, the Disciplinary Authority casually observed in his order that the Railway Administration made inquiries with the Commissioner, Tribal Welfare, AP, Hyderabad and that the said authority informed that the applicant was not belonging <sup>by the</sup> to ST community. The averment made by the applicant that the Disciplinary Authority was mainly influenced by the report of the Commissioner, Tribal Welfare, AP, Hyderabad is misconceived. Every opportunity was given to the applicant during the course of the inquiry and that the applicant failed to prove his social status. They submit that the Railway Board's letter <sup>at.18.12.81</sup> at. 19.2.76, / and 18.3.87 referred to in the OA are not relevant to the facts and circumstances of the case. The applicant was not charged with misdeclaration of his caste, but was charged for having failed to produce the caste certificate in the prescribed proforma on his appointment. Hence, there are no grounds to interfere with the impugned orders.

offer of

19. We have extracted the condition No.2 of the appointment (Annex.I). As per the said condition, the applicant was required to produce the caste certificate in the prescribed proforma at the time of his appointment. The Respondents submit that in order to avoid hardship to the applicant he was appointed in the Railway Administration subject to his producing the caste certificate in the prescribed proforma in due course.

20. The respondent authorities issued reminders to the applicant to produce the caste certificate. As per the condition No.2 of the letter of appointment when the applicant failed to produce the caste certificate in the prescribed





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proforma they could have terminated the services of the applicant even without holding any inquiry. However, the respondent authorities felt it proper to give him an opportunity to substantiate his social status and initiated the Disciplinary Proceedings. At least during the disciplinary proceedings, the applicant could have produced the caste certificate in the prescribed proforma in support of his claim that he belongs to Konda Kapu Community.

21. The applicant contends that certain documents were not furnished to him. He has not stated what were the documents he sought from the authorities and what were the documents that were not supplied. The applicant has not produced the Annexure to the charge memo. In the absence of that document, it is not possible for us to know what were the documents that were relied upon by the authorities to substantiate the charge levelled against the applicant.

22. The applicant is under the impression that the disciplinary authority was influenced by the report of the Commissioner, Tribal Welfare, AP, Hyderabad. The respondent authorities have specifically stated that they have not taken into consideration the report of the Commissioner of the Tribal Welfare, AP, Hyderabad and that the material collected by the Inquiry Officer during the inquiry were itself sufficient to substantiate the charge.

23. The applicant has stated in the OA certain irregularities alleged to have been committed by the respondent authorities in the conduct of the inquiry. We considered these irregularities. These are all procedural irregularities. These irregularities cannot be considered as irregularities which vitiated the inquiry proceedings. However, the Court or Tribunal cannot set aside the punishment order on technical reasons.

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24. In this connection, we feel it proper to rely on the decision of the Hon'ble Supreme Court in the case of State Bank of Patiala Vs. S.K.Sharma (reported in AIR 1996 S.C. 1669). The Apex Court has observed that the Court or Tribunal should not set aside the order of the disciplinary authorities automatically. It has laid down guidelines in para 32 of the judgment. Para 32 reads as follows :

"32. We may summarise the principles emerging from the above discussion. (these by are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary inquiries and orders of punishment imposed by an employer upon the employee :

(1) An order passed by imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied \*\*

(3) In the case of violation of a procedural provision, the position is this : procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz. whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting the enquiry and /or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice i.e. whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) there hereinbelow is only another way of looking at the same aspect as is dealt with herein and not in different or distinct principle.

\*\* with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

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4(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not been waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (including the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B.Karunakar, (1994 AIR SCW 1050). The ultimate test is always the same viz. test of prejudice or the test of fair hearing, as it may be called.

5. Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice--or, of that matter, wherever such principles are held to be implied by the very nature and impact of the order/action--the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity i.e. between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it "void" or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e. in accordance with the said rule (audi alteram partem). (b) But in the latter case the effect of violation of a facet of the rule of audi alteram partem has to be examined from the stand point of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. (it is made clear that this principle (No.5) does not apply in the case of rule against bias, the test of which behalf are laid down elsewhere).

6. While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule viz. to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.



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7. There may be situations where the interests of state or public interest may call for a curtailing or the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision."

25. Hence, we are not inclined to interfere with the impugned orders, as the applicant has not established that he was put to inconvenience, during the inquiry.

26. The Counsel for the applicant has relied upon the decision of the Hon'ble Supreme Court in the case of R.Kandasamy Vs. Chief Engineer, Madras Port Trust (reported in 1997 (7) SCC 505. In the said case R. Kandasamy was interviewed by the Port Trust Authorities for the post of Mazdoor. R. Kandasamy had produced the certificate issued by the Tehsildar, Mambalam, Madras dt. 10.3.87. The Port Trust Authorities refused to accept the said Certificate and on 20.11.95, the Port Trust Authorities directed Kandasamy to produce the latest original Community Certificate from the Revenue Divisional Officer. Kandasamy requested the Port Trust Authorities to accept the certificate produced by him issued by the Tehsildar. However, the Port Trust Authorities insisted upon Kandasamy to produce the latest original community Certificate. At that stage, Kandasamy approached the Court. However, the Hon'ble Supreme Court directed the Port Trust Authorities to consider appointment of Kandasamy on the basis of the Certificate produced by him and directed the Port Trust authorities to hold proper inquiry as to the genuineness of the certificate produced by him, if found necessary.

27. The circumstances detailed above are quite different. In the instant case, the respondent authorities themselves allowed the applicant to join the Railway Administration and directed him to produce the caste certificate in the prescribed proforma in due course. They gave reminders to him. In spite of that, the applicant failed to produce the same and insisted on acting on the said School Transfer Certificate produced by him.

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28. The authorities held an inquiry against the applicant and formed an opinion that the applicant did not belong to Konda Kapu Community. As already observed, had they refused to appoint the applicant, then in such circumstances the principles enunciated by the Hon'ble Supreme Court in the Kandasamy case would have been applicable. Therefore, the applicant cannot derive any benefit from the case cited above.

29. The applicant further relied upon the order dated 10.12.93 of the Calcutta Bench of this Tribunal in TA No.127/96 in the case of Durga Sankar Saha and Others Vs. Union of India and Others (reported in 1994 (26) ATC 894). The said case related to the Sunri Community which was considered as a SC Community. But the applicant herein had contested Election on the ground that he also belonged to the Sunri Community. However, the Hon'ble Tribunal relying upon the decision of the Hon'ble Supreme Court in the case of Abhoy Pada Saha V Sudhir Kumar Mondal (reported in AIR 1967 SC 115) gave certain directions to the respondent authorities regarding the social status of the employees when were appointed earlier. This case in our opinion does not apply to the facts and circumstances of the applicant.

30. As already observed, the respondent authorities had provided an appointment in the Railway Administration subject to production of caste certificate in the prescribed proforma. The applicant failed to produce the caste certificate despite repeated reminders. Thereafter, disciplinary proceedings were ensued and during the disciplinary proceedings the applicant failed to establish that he actually belonged to ST Community. The object of providing an opportunity to the applicant in the Disciplinary Proceedings was to establish his social status.

31. The contention of the applicant that the respondent

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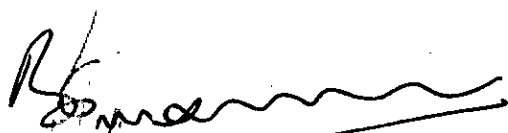
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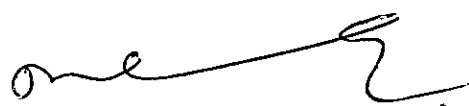
authorities were influenced by the report of the Commissioner, Tribal Welfare, AP, Hyderabad has no substance. The applicant has not substantiated his social status during the inquiry. Further, the respondents have stated that they were not at all influenced by the report of the Commissioner, Tribal Welfare, AP, Hyderabad and that the material collected by the Inquiry Officer were sufficient to substantiate the charge. Even the said report is ignored, the material was sufficient to hold the applicant guilty of misconduct, submit the respondents.

32. The applicant has not filed any rejoinder to the reply rebutting the averments made by the respondents.

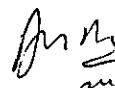
33. In that view of the matter, we are of the opinion that there are no convincing reasons to interfere with the impugned orders. Hence, the only order that can be passed in this O.A. is to dismiss the O.A.

34. The O.A. is accordingly dismissed leaving the parties to bear their own costs.

  
(B.S. JAI PARAMESHWAR)  
MEMBER (JUDL)  
24.2.99

  
(R. RANGARAJAN)  
MEMBER (ADMN)

Dated, the 24<sup>th</sup> Feb. '99.

  
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Copy to:

1. HONND

2. HHRD M(A)

3. HSSDP M(D)

4. D.R.(A)

5. SPARE

5/3/99  
1st and IInd Court.

Typed By  
Compared by

Checked by  
Approved by

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH: HYDERABAD.

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

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

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

THE HON'BLE MR. S.S. JAI PARAMESHWAR:  
MEMBER (D)

DATED: 24.2.99

ORDER/JUDGMENT.

M.A./R.A/C.P.NO.

- IN

O.A.NO :

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ADMITTED AND INTERIM DIRECTIONS  
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

8 copies

केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal  
प्रेषण / DESPATCH

2 MAR 1999

हैदराबाद न्यायपीठ  
HYDERABAD BENCH