

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No.280 of 1998

Jabalpur, this the 20th day of February, 2003.

Hon'ble Mr.R.K.Upadhyaya, Member (A)
Hon'ble Mrs.Meera Chhibber, Member (J)

Madhuri Ojha, aged 32 years,
Daughter of Shri Gendral Ojha,
resident of Shekhon Ki Gali No.2,
Tikamgarh, District Tikamgarh M.P.

-Applicant

(By Advocate- Mr. A.Adhikari)

Versus

1. Union of India through
the Secretary, Ministry of Posts
and Telegraphs, Government of
India, New Delhi.
2. Chief Post Master General,
M.P.Circle, Bhopal M.P.-462012
3. The Superintendent of Post Offices,
Chhatarpur Division, Chhatarpur M.P.
4. Shri Y.N.Sharma,
Assistant Post Master-cum-Enquiry
Officer, General Post Office,
Panna, M.P.

-RESPONDENTS

(By Advocate- Mr.S.C.Sharma)

O R D E R (ORAL)

By R.K.Upadhyaya, Member (Admny.):

The applicant is aggrieved by order dated 20.6.1997 (Annexure A-4) by which he has been removed from service. The applicant is also aggrieved by the rejection of his appeal against this order of removal from service as per order of Appellate Authority dated 16.12.1997 (Annexure A-6). The applicant has requested that these orders ~~be~~ be quashed and has sought a direction to the respondents to reinstate her in service.

2. The applicant was appointed as Postal Assistant w.e.f. 28.7.1992 as a candidate of Scheduled Tribe community

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on the basis of caste certificate issued by the Naib Tahsildar Tikamgarh on 03.07.1992. The applicant was issued a memorandum of charge sheet dated 30.1.1996 (Annexure A-1) in which it has been alleged that the applicant had applied as a candidate of Scheduled Tribe community and on the basis of certificate of Tahsildar, Tikamgarh dated 21.8.1989 and Naib Tahsildar, Tikamgarh dated 3.7.1992, she was allowed to join as S.T. candidate. Afterwards the certificate was examined and it has been noticed that the applicant belongs to 'Lohar' community and does not fall in the S.T. category. Therefore, the applicant has filed a false certificate for getting employment and thereby committed misconduct of Rule 3(1) (iii) of the CCS (Conduct) Rules, 1964. On receipt of the memorandum of charge sheet dated 30.1.1996, the applicant submitted a reply on 1.2.1996 (Annexure A-2). The applicant ~~having~~ denied the charge and Enquiry Officer, after recording statements and considering documents available submitted a report dated 19.2.1997 (Annexure A-3) holding that the applicant had submitted a false Scheduled Tribe community certificate for obtaining the employment. The applicant was called upon to show-cause in pursuance to the report of the Enquiry Officer and considering the enquiry report and contentions of the applicant, the Disciplinary Authority by order dated 20.6.1997 (Annexure A-4) imposed the punishment of removal from service. The applicant filed an appeal dated 4.8.1997 (Annexure A-5) to the Appellate Authority. After considering the facts of the case and points raised in appeal, the Appellate Authority confirmed the punishment of removal from service passed by the Disciplinary Authority. Therefore, this application has been filed.

2.1 It is claimed by the learned counsel of the applicant that Enquiry Officer is not a competent officer to decide

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the caste of an employee. In this connection, he placed reliance on the decision of Hon'ble Supreme Court in the case of Kum. Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development & others, (1994)6 SCC 241. The Apex Court had examined the matter in details and had issued detailed guide-lines as to how to proceed in such circumstances where the veracity of the caste certificate produced by the employees is doubted. The learned counsel also placed reliance on the order dated 19.2.2002 of this Tribunal in the case of S.M. Ambadare Vs. Union of India & others in OA No.462/97 reported in 2003 MPLSR 43. It was urged that the facts in that case are almost identical in as much as the applicant in that case was also charge sheeted and Disciplinary Authority had imposed the penalty of compulsory retirement. The caste certificate on the basis of which applicant in that case was appointed was not cancelled as in the instant case. This Tribunal placing reliance on the decision of Hon'ble High Court of Rajasthan in the case of Punjab National Bank & others Vs. Surendra Nath, 2001(1) LLJ 79 ~~and~~ observed that wherever the veracity of caste certificate produced by the applicant is doubted, every State Government is required to refer the matter to the State Level Committee. It was further observed that unless the certificate on the basis of which employment^{was} obtained was not cancelled, the applicant is entitled for the benefit of the certificate issued in her favour. With those observations, this Tribunal quashed the order of compulsory retirement and appellate and revisionary order thereon^{and} also directed the respondents to reinstate the applicant in service.

3. The learned counsel of the respondents invited attention to the reply filed, in which it has been stated that the applicant does not belong to S.T. Community, but

is Luhar,
her caste/ which is one of the Other Backward Class (OBC).
It is stated that the proper procedure has been followed
in as much as the applicant has been allowed to state her
case before the Enquiry Officer. Therefore, there is no
infirmity in the proceeding.

4. We have heard the learned counsel of both the
parties and have perused the material available on record
carefully.

5. The applicant by MA No.812/2002 has filed a copy
of judgement of First Additional Sessions Judge, Tikamgarh
dated 21.2.2002 in which the sentence of three years
rigorous imprisonment and fine of Rs.2,000/- imposed on the
applicant under section 420 of the Indian Penal Code has
been set-aside. It is stated that the Appellate Court has
acquitted the applicant of the charges of submitting a
false caste certificate to obtain the employment. However,
a perusal of the same indicates that the sentence has been
set-aside by giving benefit of doubt to the applicant.
There is no dispute that the applicant^{got} employed on the
basis of certificate issued by the competent authority
certifying the caste of the applicant as Scheduled Tribe.
Such a certificate issued before ~~an~~ employment has not yet
been cancelled. The Hon'ble Supreme Court in the case of
Madhuri Patil (supra) have laid down the detailed guidelines
as to how veracity of the caste certificate ~~relied~~ by the
employee is to be determined. It was, therefore, incumbent
on the part of the respondents to have referred the matter
to State Level Committee for determination of the caste
of the applicant. Respondents should have also taken
recourse for cancellation of the certificate already issued.
Such a certificate could have been cancelled by following
proper legal recourse only by the superior revenue

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authority. There is nothing on record to suggest that such action has even been initiated. In view of this legal position and facts of this case and also placing reliance on the decision of this Tribunal in the case of S.M. Ambadare (supra) we quash the order of the penalty dated 20.6.1997 (Annexure A-4) as well as the order of appeal dated 16.12.1997 (Annexure A-6). The respondents are directed to reinstate the applicant back in service. While doing so we make it clear that the period from the date of removal from service-^(a) till the date of reinstatement shall be treated as qualifying services for purposes of seniority, promotion on a notional basis and for regulating the retiral benefits on an actual basis. However, the applicant will not be entitled for any back wages. The respondents will, however, be at liberty to refer the matter to State Level Committee and pass appropriate orders in accordance with the recommendations of the State Level Committee. The respondents are directed to complete this exercise within a period of two months from the date of receipt of copy of this order. This O.A. is allowed to the extent indicated above without any order as to costs.



(Mrs. Meera Chhibber)
Member (Judicial)



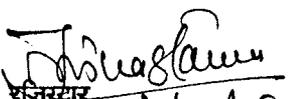
(R.K. Upadhyaya)
Member (Admnv.)

पृष्ठांकन सं. (सो/व्या)..... तबका/मु. दि.....

परिचालिका / प्र. सं. सं. सं.

- (1) उक्त आदेश/आदेशों के संबंध में प्रत्येक प्रमाणपत्र
- (2) उक्त आदेश/आदेशों के संबंध में प्रत्येक प्रमाणपत्र
- (3) उक्त आदेश/आदेशों के संबंध में प्रत्येक प्रमाणपत्र
- (4) उक्त आदेश/आदेशों के संबंध में प्रत्येक प्रमाणपत्र

A Adhikari, Adl.
SC Sharma - Adl.


3rd Secretary
1/3/03

Issued
on 3-3-03
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