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27/04/2012

O.A.369/2008

Present : None for the applicant.

Mr. Anupam Agarwal counsel for the respondents.

This case has been listed before Joint Registrar due to non-availability of Division Bench. Let the matter be placed before the Hon'ble Bench on 10/05/2012.



(Gurmit Singh)  
Joint Registrar

Vv

10/05/2012

O.A No. 369/2008

Mr. P.P. Mathur, Counsel for applicant.  
Mr. Anupam Agarwal, Counsel for respondents.

Heard.

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar  
[Anil Kumar]  
Member (A)

K.S. Rathore  
[Justice K.S. Rathore]  
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR.

*Jaipur, the 10<sup>th</sup> day of May, 2012*

**ORIGINAL APPLICATION No. 369/2008**

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER  
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Than Singh aged about 44 years, son of Shri Sahib Singh, resident of Nai Basti. Gali No. 3, Sogariya Kota, Rajasthan and lastly posted a Turnmer II, T.No. 3173 Machine Shop, under the Chief Works Manager, West Central Railways, Workshop, Kota.

... Applicant

(By Advocate: Mr. P.P. Mathur)

Versus

1. Union of India through the General Manager, West Central Railway, Jabalpur (M.P.)
2. The Chief Works Manager, Carriage & Workshop, Kota, West Central Railway, Kota.

... Respondents

(By Advocate: Anupam Agarwal)

**ORDER (ORAL)**

The applicant has filed this OA praying for the following reliefs:-

"It is, therefore, humbly prayed that this Hon'ble Tribunal may very graciously be pleased to allow this OA, call for entire record relating to the case and grant the following relief:-

- a) Quash and set aside the charge sheet dated 08.10.2005 (Annexure A/1) order dated 10.10.2007 (Annexure A/2) passed by the Disciplinary Authority and order dated 04.07.2008 (Annexure A/3) passed by the Appellate Authority.
- b) Direct the respondents to reinstate the applicant with all consequential benefits and interest on the arrears due.
- c) Any other order or directions, which this Hon'ble Tribunal deem fit in the fact and circumstances of the case may also be allowed in favour of the applicant."

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2. Learned counsel for the applicant argued that the applicant was initially engaged as Casual Labour in Kota Division. On the basis of the screening, he was given offer of appointment on 14.09.1984 (Annexure A/4) on a Group 'D' post. The offer of appointment does not disclose that he was being given offer of appointment on the basis of his being a Member of the Scheduled Tribe Community. It was not in the knowledge of the applicant that he passed the screening as a ST candidate. The applicant was subsequently promoted on various posts and finally on the post of Turner Grade II vide order dated 04.02.2004. He drew our attention to Annexure A/5, which is a photo copy of the result of the trade test dated 08.01.2002 and Annexure A/6, which is the promotion order dated 04.02.2002. In both these letters, the name of the applicant appears at sr. no. 4 but he has not been shown as a ST candidate.

3. That while working as Turner Grade II, the applicant was served with a charge sheet dated 08.10.2005 (Annexure A/1). The main allegation against the applicant was that he is 'Jat' by caste, however, in his Service Book he has been shown as the Member of the ST community. It has been mentioned that because he has signed the Service Book during Public Relation Programme without recording his objection, therefore, it seems that he has intentionally enjoyed the benefit of promotions also on the basis of the reservation. As such, his conduct reflects doubtful integrity, punishable under Rule 3(1)(ii)(iii) of the Railway Service Conduct Rules of 1966. The applicant submitted his reply to the charge sheet denying the allegations. The Inquiry was conducted in the matter. He was given a copy of the inquiry report

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vide letter dated 28.07.2007 (Annexure A/7). Learned counsel for the applicant argued that during the inquiry, necessary documents were not provided to the applicant and the Inquiry Officer without exercising his power took instructions from the Disciplinary Authority on each point and did not facilitate the supply of the necessary documents. The applicant replied to the inquiry report denying the findings of the Inquiry Officer. Thereafter, vide order dated 10.10.2007 (Annexure A/2), the applicant was awarded the penalty of removal from service by the Disciplinary Authority. The applicant submitted an appeal dated 01.11.2007 (Annexure A/8) against the order of punishment in which it was pointed out that the inquiry should not have been conducted in haste. During the inquiry, the applicant had demanded defense documents but the same were not given to him. The non supply of these documents caused serious prejudice to the applicant as the same are referred to in the impugned punishment order. These documents include the order of appointment dated 21.12.1984, the application form along with the certificate of caste claiming ST status and the order dated 26.09.2002. The Appellate Authority without considering the points raised by the applicant in his appeal rejected the appeal vide order dated 04.07.2008 (Annexure A/3). He further argued that the applicant has himself written to the respondents vide his letter dated 24.09.1997 (Annexure A/9) that he does not belong to ST category but he belongs to General category but the respondents have not considered his plea. In fact, the applicant wanted to convey his point to the respondents in the inquiry but due to non supply of the documents, he was not in a position to cross examine the witnesses. The entire exercise of the disciplinary inquiry was to protect the

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authorities who were responsible for the wrong entry in the Service Book. In support of his arguments that the inquiry report is vitiated on the ground of non supply of documents, he referred to the judgment of the Hon'ble Supreme Court in the case of **State of U.P. & Others vs. Saroj Kumar Sinha** [Civil Appeal No. 254/2008 decided on 02.02.2010] reported in 2010 (1) SCC (L&S) 675 and **Union of India vs. H.C. Goel**, 1964 AIR 364, decided on 30.08.1963. He further argued that the respondents have failed to establish that the applicant entered into the Railway Service on the basis of false caste certificate and, therefore, the punishment of removal from service is unjustified and disproportionate and deserves to be quashed.

4. On the contrary, learned counsel for the respondents at the outset mentioned that the controversy involved in the present OA is squarely covered by the order dated 19.03.2012 passed by this Tribunal in OA No. 46/2008 [**Shiv Singh vs. Union of India**]. A copy of this order was given to the learned counsel for the applicant on 20.04.2012 to study the same. He further argued that Shri Than Singh, the applicant in the present OA, and Shri Shiv Singh, the applicant in OA No. 46/2008, are real brothers and this fact has not been disputed by the learned counsel for the applicant and, therefore, this OA may be dismissed.

5. On merit also, he argued that the applicant has not produced his labour card to substantiate that he belongs to General category. The service record of the applicant was shown to him and in his Service Book, against column no. 5, the following entry is recorded:-

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'Whether a Member of SC/Tribe'? In front of this column the candidate has written 'Yes'. Scheduled Tribe (ST) (This is the English Translation of the Hindi version written in the Service Book)."

He has signed this Service Book in front of Column No. 7 of the Service Book and has also signed column no. 12. Learned counsel for the respondents also referred to the list dated 02.06.1984 regarding the screening of NCA/C&W Department in which the name of the applicant appears at sr. no. 216 and against his name, ST category is mentioned.

6. Learned counsel for the respondents further argued that the applicant cannot challenge the charge sheet dated 08.10.2005 at this belated stage. He further argued that as held by the Apex Court that any challenge to the charge sheet can only be made either on the ground of in-competency of the authority issuing it or on the ground of malafide. The applicant has failed to allege any such plea and for want of impleading any respondent in personal capacity, the OA filed against charge sheet dated 08.10.2005 (Annexure A/1) is not legally sustainable.

7. He further argued that offer of appointment was given only to those who belonged to ST/SC to fill back log vacancies of ST/ST. Accordingly, the applicant was appointed vide order dated 14.09.1984 (Annexure A/4) considering him as a ST candidate. He also denied that requested documents were not supplied to the applicant. He submitted that documents relied upon were supplied to the applicant along with the charge sheet as provided in Annexure III of the charge sheet.

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Therefore, his allegation that relevant documents were not supplied to him is not correct. The applicant has failed to disclose the relevancy of the documents which he demanded. The Inquiry Officer conducted the inquiry as per the rules. The respondents supplied the copy of the inquiry report to the applicant. The Disciplinary Authority had followed the due procedure and after considering all the aspects of the matter passed the punishment order. The applicant was given opportunity to cross examine the witnesses but he did not do so. He further submitted that the Appellate Authority also considered all the points raised by the applicant in his appeal and then rejected the appeal. In support of his arguments, learned counsel for the respondent referred to the judgment of the Hon'ble Supreme Court in the case of **Union of India vs. Alok Kumar**, 2010(2) SCC (L&S) 22. Therefore, he argued that there is no force in the OA and it should be dismissed.

8. Having heard the rival submissions of the parties and after careful perusal of the documents, we are of the opinion that the applicant has failed to make out any case for our interference in the present OA. We have carefully gone through the order dated 19.03.2012 passed in OA No. 46/2008 in the case of **Shiv Singh vs. Union of India**. The facts & circumstances of OA No. 46/2008 and the present OA are similar. In fact, Shri Shiv Singh (the applicant in OA No. 46/2008) and Shri Than Singh (the applicant in the present OA) are real brothers and this fact has not been disputed by the learned counsel for the applicant. In OA No. 46/2008, we did not find any illegality/infirmity in the orders passed by the Disciplinary Authority and the Appellate Authority.

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9. We have carefully gone through the original Service Book of the applicant produced by the respondents wherein the column 5 of the Service Book read as under:-

'Whether a Member of SC/Tribe'? In front of this column the candidate has written 'Yes'. Scheduled Tribe (ST) (This is the English Translation of the Hindi version written in the Service Book)."

The next column are 'Date of Birth' and of 'Educational Qualification' respectively. The applicant has signed this Service Book in front of Column No. 7, which is almost just below Column No. 5 where he has indicated his caste as ST. The applicant has also signed this Service Book against Column No. 12, which is for signature of the Government Servant. This Service Book has been duly attested by the authority in column No. 13. Then again, he was shown his Service Book on 20.08.2004 and the applicant has signed with the remarks that he has seen the record and found it correct. We have also seen the list of screening NAC (C&W) Department dated 02.06.1984 in which the name of the applicant appears at sr. no. 216 and against the name of the applicant, ST has been clearly mentioned.

10. When the respondents came to know that the applicant is a General Category but has taken the advantage of a ST candidate, they issued a show cause notice to the applicant. Subsequently, a charge sheet was issued to the applicant. The Inquiry Officer conducted the inquiry as per the laid down procedure. The applicant was asked to cross examine the witnesses but he did not avail that opportunity. Inquiry Officer proved the charges against the applicant. The Disciplinary Authority after taking into consideration the inquiry report and all other relevant material on record issued the punishment order

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dated 10.10.2007 (Annexure A/2). We find no illegality/infirmity in the order passed by the Disciplinary Authority.

11. The applicant filed an appeal before the Appellate Authority. The Appellate Authority after considering the appeal rejected it vide order dated 04.07.2008 (Annexure A/3). We do not find any illegality/infirmity/irregularity in the order of the Appellate Authority. The departmental proceedings have been conducted as per rules and procedure on the subject. We have carefully gone through the judgment of the Hon'ble Supreme Court in the cases referred to by the learned counsel for the applicant in the cases of **State of U.P. & Others vs. Saroj Kumar Sinha** [Civil Appeal No. 254/2008 decided on 02.02.2010] reported in 2010 (1) SCC (L&S) 675 and **Union of India vs. H.C. Goel**, decided on 30.08.1963 and we are of the view that the ratio decided by the Hon'ble Supreme Court in these cases is not applicable under the facts & circumstances of the present case. On the other hand, ratio laid down by the Hon'ble Supreme Court in the case of **Union of India vs. Alok Kumar**, 2010(2) SCC (L&S) 22, referred to by the learned counsel for the respondents is squarely applicable in the present case.

12. On the basis of the above discussion, we find that there is no merit in the present OA. Consequently, the OA being devoid of merit is dismissed with no order as to costs.

*Anil Kumar*

(Anil Kumar)  
Member (A)

*K.S. Rathore*

(Justice K.S.Rathore)  
Member (J)

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