

(RESERVED ON 10.07.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This the **20th** day of **JULY 2018**.

ORIGINAL APPLICATION NO. 620 OF 2008

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

1. Mohar Singh, son of Shri Bhagwan Das, Resident of 40/02 Type I Ordnance Equipment Factory, Hazratpur, District Firozabad
.....Applicant.

VERSUS

1. Union of India through Secretary, Ministry of Defence, New Delhi, Government of India.
2. General Manager, Ordnance Equipment Factory, Hazratpur, Firozabad, U.P.
3. Works Manager/Administration, Ordnance Equipment Factory, Hazratpur, Firozabad.

.....Respondents

Advocate for the Applicant : Shri K P Singh

Advocate for the Respondents : Shri R K Srivastava

ORDER
(Delivered by Hon'ble Mr. Gokul Chandra Pati, Member-A)

The present Original Application (in short OA) has been filed by the applicant under Section-19 of the Administrative Tribunals Act, 1985 seeking the following main reliefs:-

- "(a) The Hon'ble Tribunal be pleased to pass appropriate order or direction in the nature of certiorari quashing the orders dated 28.02.2016 and 25/25.4.2008 passed by the respondent no. 2.*
- (b) The Hon'ble Tribunal be pleased to pass appropriate order or direction commanding the respondents to reinstate the applicant in service on the post of store keeper with all the consequential benefits.*
- (c) The Hon'ble Tribunal be pleased to pass any other suitable order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.*
- (d) The Hon'ble Tribunal be pleased to award the cost of this Original Application in favour of the applicant."*

2. The facts of the case in a nutshell are that an advertisement for recruitment to the post of Store Keeper (reserved for ST Candidates) was advertised by the respondents in the employment news dated 18-24.12.2004. In pursuance of the said advertisement, the applicant applied for the said post and vide letter dated 05.04.2005 (Annexure No. 1 to the OA) the applicant was called for written test and interview along with all testimonials. Finally after going through all the selection process, the applicant was selected for the post of Store Keeper which was reserved for Scheduled Tribe (in short ST). He was issued the appointment letter dated 02.06.2005 (Annexure No. 4 to the OA) and he joined the duties as Store Keeper on the same day. It is alleged by the applicant that the respondent no. 3 started harassing him and he sent the caste certificate of the applicant to Collector, Muraina for verification. The Collector, Muraina inquired about the genuineness of the said certificate from the Tehsildar, who in turn vide letter dated 30.09.2005 (Annexure No. 7 to the OA) replied that the applicant belongs to 'Gond Adiwasi' which is a Scheduled Tribe.

3. Thereafter, the respondent no. 3 vide letter dated 12.01.2006 again raised certain queries regarding the genuineness of the caste certificate of the applicant and asked for verification. The Collector after his inquiry, vide letter dated 03.02.2006 (Annexure No. 12 to the OA) informed the General Manager, Ordnance Factory, Hazratpur, Firozabad (respondent no. 2) that the verification of the caste certificate of the applicant was forged and false. Thereafter, the respondent no. 2 vide letter dated 28.02.2006 (Annexure No. 14 to the OA) terminated the services of the applicant in pursuance of the paragraph 6 of the appointment letter. The applicant being aggrieved by the action of the respondents moved several representations before the respondents, the last one being dated 06.07.2006 (Annexure No. 15 to the OA) requesting therein that the genuineness of the caste certificate be again verified. When the respondents did not pay any heed to the representations of the applicant, he filed OA No. 301 of 2008 before this Tribunal and this Tribunal vide order 20.01.2008 (Annexure No. 16 to the OA) disposed of the OA with the direction to the respondents to decide the representation of the applicant in accordance with Rules and Regulation on the subject and to take into consideration the G.O. prevalent in the State of Madhya Pradesh. In

pursuance of the order dated 20.01.2008 of this Tribunal, the applicant furnished copy of the G.O. dated 26.06.1987 (Annexure No. 17 to the OA) to the respondents, wherein the 'Gond Adiwasi' has been declared as Scheduled Tribe Community in district Muraina. The respondents in compliance of the order dated 20.01.2008 passed by this Tribunal considered and rejected the representation of the applicant vide order dated 25/26.04.2008 (Annexure No. A-18 to the OA). The applicant has now challenged this order dated 25/26.04.2008 by way of the instant OA.

4. It is stated in the OA that the termination order dated 28.02.2006 indicates that the services of the applicant has been terminated in pursuance of the condition enumerated in paragraph 6 of the appointment letter, whereas in the order dated 25/26.04.2008 (Annexure no. 18 to the OA), the respondent no. 2 has added one new ground with regard to the genuineness of the experience certificate. Since, the experience certificate was neither an essential qualification, nor it was required, nor it was added in the termination order, as such, the subsequently added fresh ground of rejecting the representations of the applicant are totally arbitrary and is violative of the principles of natural justice. It is further stated in the OA that the impugned order dated 25/26.04.2008, the respondents have given a reference of the letter of Additional Collector, District Muraina dated 10.02.2006. The respondent no.2 did not even consider the said letter of the Additional Collector, which itself was explanatory to the effect that the verification report of the certificate was false and bogus.

5. The respondents filed Counter Affidavit in which it is stated that the applicant was appointed on 02.06.2005 as Store Keeper against reserved vacancy of ST with probation period of 2 years. As per procedure the respondents initiated action for verification of the experience certificate in respect of applicant vide letter dated 03.05.2005 and in the inquiry it was found that the experience certificate bearing No. BBC/2002 dated 06.07.2002 was false as per Bharat Book Centre, 17, Ashok Marg, Lucknow letter dated 21.06.2005 (Annexure No. CA-1 to the counter affidavit). A complaint dated 11.08.2005 was also received through Additional Director General Factories/OLF Headquarters, Kanpur vide letter dated 31.08.2005 (Annexure CA-2) regarding irregularity in

appointment of Store Keeper. Thereafter, the Tehsildar, Muraina was requested to verify the Scheduled Tribe Certificate submitted by the applicant vide letter dated 27.06.2005 (Annexure No CA-3 to the OA). In response to the said letter dated 27.06.2005, the Tehsildar, Muraina vide letter dated 30.09.2005 intimated that due to typographical mistake the caste of the applicant was shown as SC. Again the matter was taken up with the Tehsildar, Muraina with a request to confirm whether "Gond Adiwas" as mentioned in his letter and "Gond" as published in Swamy's Compilation of Reservation and Concession for Central Government are the same and both the community are recognized as Scheduled Tribes in Madhya Pradesh vide letter dated 07.10.2005 (Annexure CA-5 to the CA). In response, the Tehsildar, Muraina vide letter dated 24.12.2005 (Annexure CA-6 to the CA) clarified that the caste of the applicant was mentioned as "Gond Adiwas" instead of "Gond" as per practice prevailing in the District for issuing certificate. This report of Tehsildar created suspicion for the respondents and as per directives of Ordnance Factories Board in view of the fact that on verification by CBI, it was revealed that more than 30 % of the ST certificates produced by the candidates were either forged or false. Accordingly, the matter was referred to the District Collector, Muraina with the request to confirm whether the applicant belongs to ST community vide letter dated 12.01.2006 (Annexure CA-7 to the CA). In response the Additional Collector vide letter dated 10.02.2006 (Annexure No. CA-8 to the CA) intimated that verification report of Scheduled Tribe Certificate in respect of the applicant is bogus and false. Accordingly, on the basis of above report and terms and conditions laid down in para 6 of the appointment letter dated 31.05.2005 (Annexure CA-4 to the Counter Affidavit), the services of the applicant were terminated w.e.f., 28.02.2006. Lastly, on the basis of the directions contained in the order dated 20.01.2008 passed by this Tribunal in OA No. 301 of 2008 filed by the applicant against the termination order, the General Manager, OFB, passed a reasoned and speaking order dated 25/26.04.2008 and the said order was served on the applicant on 29.04.2008.

6. Heard learned counsel for the applicant who argued that the respondent no. 3 was harassing the applicant and after receiving letter dated 24.12.2005 of Tehsildar (Annexure No. 8) stating that there was nothing wrong with the certificate of the applicant, respondent no. 3 again

wrote to Collector about it. He further argued that the Tribunal has passed an order dated 26.09.2012 in the case of Ram Sewak vs. Union of India in OA No. 500/2009 on a similar issue and argued that the applicant in this OA is also entitled for relief in the light of this OA. Learned counsel for the applicant also submitted that no opportunity of being heard was given to the applicant before terminating his services.

7. Learned counsel for the respondents submitted that the report of the Additional Collector dated 10.02.2006 clearly states that the Caste certificate submitted by the applicant is forged and false. Hence, action has been rightly taken by the respondents to terminate the services of the applicant who was selected for appointment on the basis of forged caste certificate. He also mentioned that as mentioned in the Counter Reply, the experience certificate furnished by the applicant was also found to be forged. Regarding the point that no opportunity of hearing was given, it was submitted that as per the terms of the appointment letter issued to the applicant, if the certificate, on verification is found to be false, then his services would be terminated without any notice.

8. We have carefully gone through the pleadings and documents available on record. The cause of action for the respondents arose with the letter dated 10.02.2006 (Annexure CA-8 to the Counter Affidavit) written by Additional Collector, Muraina stating as under:-

“श्री मोहरसिंह के जाती प्रमाण पत्र की विस्तृत जांच अनुविभागीय अधिकारी, मुरैना से कराई गई। अनुविभागीय अधिकारी, मुरैना ने अपने प्रतिवेदन में लिखा है की तहसील-मुरैना में पदस्थ श्री बी . पी. श्रीवास्तव, तहसीलदार, मुरैना अति . तहसीलदार, मुरैना श्री भूपेन्द्र कुशवाहा श्री रमेशसिंह तोमर, रा . नि वृत्त - 5 वडोखर से कथन किये गए। उक्त कथनो के अवलोकन से यह पाया गया की श्री मोहरसिंह पुत्र भगवानदास, निवासी - सिंघल वस्ती, मुरैना का जाती प्रमाण पत्र, सत्यापन पूर्णतः फर्जी एवं असत्य है। तथा सलगन सहपत्रो पर हस्ताक्षर पत्र क्रमांक एवं दिनांक कार्यालय अभिलेखानुसार सही नहीं है।”

It states that the verification report on the caste certificate of the applicant was found to be false and forged. The statements enclosed with the letter dated 10.02.2006 include the statement dated 31.1.2006 of the B.P. Srivastav, Tehsildar, Muraina which states that the letter dated 30.09.2005 (Annexure No. 7 to the OA), verifying the caste certificate of the applicant by Tehsildar is a forged letter. The statement dated 31.1.2006 of Additional Tehsildar states that the report dated 24.12.2005 (Annexure No.

8 to the OA) stated to be his report, is forged and false. No where in the statement of the officers recorded by the Anu Vibhagiya Adhikari or in the report of the Additional Collector dated 10.02.2006 anything written about genuineness of the caste certificate dated 13.08.1998 (Annexure No. 5 to the OA), which was the query in the letter dated 12.01.2006 (Annexure No. 9 to the OA), which, in the last two paragraphs, has stated as under:-

“Keeping in view of above facts, you are requested to kindly confirm per return post that Shri Mohar Singh S/o Bhagwan Das belongs to ST Community.

Your early confirmation and co-operation in this regard will be highly appreciated.”

9. From above it is clear that the request in the letter dated 12.01.2006 of the respondents was to confirm whether the applicant belongs to ST community. But the reply was for the genuineness of the verification letters received by the respondents, but not about the caste certificate of the applicant submitted by him with his application for the post. The certificate dated 13.08.1998 (Annexure No.5 to the OA) was submitted with his application form for the post to the respondents as stated in para 4.6 of the OA, which has not been contradicted by the respondents in their Counter Affidavit. No evidence has been produced by the respondents to show that the caste certificate dated 13.08.1998 submitted by the applicant is not genuine or false or forged. The verification reports/letters referred in the letter dated 10.02.2006 were received by the respondents in reply to their letters and there is nothing on record that the applicant is responsible for these letters. Hence, it is not understood how the respondents concluded that the applicant has violated paragraph 6 of his appointment order dated 31.05.2005, which states the consequence if the certificates submitted by the applicant or his claims are found to be wrong. The report/letter dated 10.02.2006 of Additional Collector, Muraina does not say anything about the genuineness of the caste certificate dated 13.08.1998 submitted by the applicant, who had been blamed for forged verification reports/letters which were not submitted by the applicant. No enquiry has been conducted to prove that the applicant was responsible for such forged verification reports/letters. Hence, to blame the applicant for the forged caste verification reports as stated in the letter dated 10.02.2006 without conducting any enquiry and terminating his services without any opportunity of hearing to him, is unjust and unfair.

10. Another ground was taken by the respondents in para 25 of the Counter Affidavit was that as per para 2 (c) of the appointment order dated 31.05.2005 (Annexure No. 3 to the OA), applicant's services have been terminated. This para is applicable for the probation period of 2 years from initial appointment. But this stand of the respondents is not acceptable in view of the decision on the representation of the applicant as per the order of this Tribunal dated 20.1.2008 (Annexure No. 16) in OA No. 301/2008. Operative part of the order dated 20.1.2008 states as under:-

"3. In view of the above, we hereby direct the respondents to consider and decide the pending representation of the applicant in accordance with rules and regulations on the subject and also taken into consideration the GO prevalent in the State of M.P. and pass a reasoned and speaking order within a period of three months from the date of receipt of a certified copy of this order....."

In compliance of above order of this Tribunal, the respondents have issued the impugned letter dated 25/26.04.2008 (Annexure No. 18 to the OA), where serious allegations against the applicant for submitting a bogus and false experience certificate and for forged verification report as informed by the Additional Collector, Muraina in letter dated 10.02.2006. No stand was taken that the applicant's service has been terminated as a probationer. It is the settled law that if any reason or allegation is brought against a probationer while terminating the services of the probationer, then the employer has to first establish the allegations or charges as per the rules, before terminating his/her services. Otherwise, it will be illegal. In the case of **Anoop Jaiswal v. Govt. of India reported in (1984) 2 SCC 369** the issue of termination of service of a probationary officer was examined by Hon'ble Apex Court and it was held as under:-

"12. It is, therefore, now well settled that where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. If the court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee."

In this case, although the impugned termination order dated 28.02.2006 (Annexure No. 14 to the OA) did not mention any reason, but in the background, the allegations against the applicant were being inquired by the respondents, which have been mentioned in the impugned order dated 25/26.04.2008. Further, this Tribunal's order dated 20.1.2008 to examine

the case with reference to the GO of State M.P. has not been adhered to by the respondents as there is no mention of the aforesaid GO in the order dated 25/26.04.2008.

11. It is not the case of the respondents that the applicant does not belong to ST Community. In reply to the applicant's averments in para 4.7 that his father Bhagwan Das has been appointed by the respondents as a tailor as a ST candidate has been dismissed by the respondents in the Counter Affidavit by stating that his father's case is not relevant here as he was appointed in 1984 as a ST candidate, but as per the ministry's order, verification of Caste certificate of persons appointed as ST candidates after 1995 are to be verified. As discussed in para 9 of this order, no finger has been pointed out on the caste certificate dated 13.08.2008 in the letter dated 10.02.2006 of Additional Collector, Muraina.

12. Learned counsel for the applicant has cited the judgment dated 26.09.2012 in the case of Ram Sewak (supra) in OA No. 500/2009, which involved same respondents. In that case, the applicant Ram Sewak also belonged to 'Gond community' as per the caste certificate. On verification from the Collector, it was reported that the certificate was issued for a temporary period of six months and for education purpose. The respondents issued the notice to the applicant to submit permanent certificate within 20 days and when he could not submit, his services were terminated. The Tribunal held that nowhere in the caste certificate, it is mentioned that it is for temporary period. It stated that the applicant belonged to 'Gond Community' which is declared as ST. The Tribunal, after examining the case laws in this regard, gave following direction:-

" 11. In view of the above the Original Application is allowed. The impugned orders dated 27.08.2007 and 01.12.2007 are hereby quashed and set aside. The respondents are directed to reinstate the applicant in service forthwith. However, if the respondents still feel that the caste of the applicant does not come within S.T. category, they are at liberty to go according to the decision of Hon'ble Supreme Court rendered in the case of Km. Madhuri Patil (supra). No costs."

The ratio of above decision as to the procedure to be adopted in case of doubt about correctness of the caste certificate, will also apply to the present OA before us, where there is no material on record to show that the caste certificate of the applicant is not genuine or it is forged. However, in OA No. 500/2009, the certificate was found to be genuine, but it was

incorrectly held to be for temporary period. But if on cross-verification, a caste certificate submitted by a candidate is found to be forged and false, then the matter is required to be seriously dealt as per the provisions of law including the terms of the appointment.

13. Hence, it is clear from the discussions above that there is no evidence on record that the applicant does not belong to ST Community and no evidence to prove the caste certificate dated 13.08.1998 furnished by the applicant at the time of submission of his application for the post is false or not genuine. The respondents could not have terminated the services of the applicant as a probation with the background of allegations, which would amount to punishment as per the ratio of the judgment of Hon'ble Apex Court in catena of cases including the case of Anoop Jaiswal (supra) and such action of the respondents clearly violated the principles of natural justice. The averments that the termination is as per the terms and conditions of the appointment order, are also not sustainable.

14. In the circumstances, the order dated 28.02.2006 (Annexure No. 14 to the OA) and the order dated 25/26.04.2008 (Annexure No. 18 to the OA) are set aside and quashed and the respondents are directed to reinstate the applicant in service within one month from the date of receipt of a certified copy of this order with all consequential service benefits except for the salary for the back period which shall be allowed to the extent of 50%. The respondents are at liberty to inquire through the Collector, Muraina about the genuineness of the caste certificate dated 13.08.1998 submitted by the applicant with his application for the post and if it is not found genuine, action as per the rules shall be taken by the respondents. For the experience certificate, submitted by the applicant which is stated by the respondents to be false, appropriate action as per the rules can be initiated by the respondents as per the rules.

15. The OA is allowed as above. No costs.

(RAKESH SAGAR JAIN)
MEMBER-J

(GOKUL CHANDRA PATI)
MEMBER-A

Arun..