

**Central Administrative Tribunal
Principal Bench**

OA No. 3159/2014

New Delhi this the 18th day of September, 2015

Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

Dr. Kumar Tapas Bhowmik,
S/o Late Shri Saroj Bhowmik,
Aged about 55 years,
Consultant in Radiotherapy and
Addl. Medical Superintendent Group 'A'
Safdarjung Hospital and Vardhaman Mahavir
Medical College, New Delhi-110029
R/o J-1821, Chittaranjan,
New Delhi-110019

-Applicant

(By Advocate: Shri VSR Krishna)

VERSUS

Union of India through
The Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi

-Respondent

(By Advocate: Sh. Manjeet Singh Reen)

ORDER (Oral)

By Mr. A.K. Bhardwaj, Member (J):

The applicant initially joined the Safdarjung Hospital as Senior Radio Therapist in Non Teaching Spl. Sub Cadre of Central Health Scheme in the year 1991. At the time of his appointment, he submitted his original caste certificate showing that he belongs to scheduled caste. The certificate was issued by the District Collector, Coimbatore. In the

year 2009, he was given the charge of the post of Medical Superintendent of the hospital. In due course, he got promotions up to the level of HAG. Nevertheless, in the year 2005, vide Memo No.C.14011/1/2005-Vig. dated 03.10.2005, he was charged with the misconduct and misbehaviour mentioned in Annexure-I and Annexure-II to the Memo. The annexure-I read thus:-

“Article-I

Dr. Kumar Tapas Bhowmik, an Officer of the Non-Teaching Spl. Sub-cadre of Central Health Services, presently working as Consultant (Radio-Therapy) in Safdarjung Hospital, New Delhi, is found to have secured his initial appointment to the post of Senior Radio-Therapist in the year 1991 on the basis of producing fraudulent certificate of Schedule Caste. He has, therefore, failed to maintain devotion to duty and acted in a manner unbecoming of a Government Servant thereby contravening the provisions of Rule 3.1(ii) and (iii) of CCS (Conduct) Rules, 1964.”

2. The charges were inquired into and were not proved specifically for the reason that the Collector, Coimbatore had refused to cancel the SC certificate issued to the applicant. The conclusion arrived at by the inquiry officer read thus:-

“Dr. Bhowmik is listed/registered as a refugee in Delhi, where “Bhuiya” is not specified as a Scheduled Caste. Therefore, he may not be treated as SC. Please re-examine the caste in the above light.

Dr. Kumar Tapas Bhowmik has obtained Caste certificate from the State of Tamil Nadu in respect of which Bhuiya community has not been notified as Scheduled Caste. He has given permanent address of Delhi in respect of which too the community has not been scheduled. According to circular no. 12025/2/76-SCT-I dated 22nd March, 1977” in order to be competent to issue such certificates, therefore, the authority mentioned in the G.O.I (Deptt. of Personnel & ARs) letter No. 13/2/74-list (SCT) dated 05.8.1975 should be the one concerned the locality in which the person applying for the certificate and his place of permanent abode at the time of the notification of the relevant Presidential Order. Thus the Revenue authority of one district would not be competent to issue such a certificate in respect of persons belonging another district. Nor can such an authority of one State/UT issue such certificates in respect of persons whose place of a permanent resident at the time of notification of a particular Presidential Order, has been a different State/UT. In case of persons born after the date of notification of the relevant Presidential Order, the place of residence for the purpose of acquiring SC states is the place of permanent abode of their parents at the time of the notification of the Presidential Order under which they claim to belong to such a case.

According to the Attestation Forms’, Dr. K.T. Bhowmik was born on July 5, 1957. Therefore, in the case of permanent residence of Dr. K.t. Bhowmik is father is the relevant factor for the purpose of determination of Scheduled Caste states. According to material available in the file Wring Cdr. S. Bhowmik (father of Dr. K.T. Bhowmik) was the permanent residence of Tamilnadu on 10.8.1950 when the list of Scheduled Caste of that State was notified. More over the claimed Community has not been scheduled in relation to Tamil Nadu.

In view of the above, the claim of Dr. Kumar Tapas Bhowmik to belong to a Scheduled Caste is

fraudulent. The Ministry of Health and Family Welfare may take necessary action against Dr. K.T. Bhowmik which not being a person belonging to Scheduled Caste, has secured an appointment in Govt. on basis of a false community certificate.”

3. The inquiry was concluded in the year 2008 but no action has been taken on the basis of the same till now. According to Mr. Manjeet Singh Reen, learned counsel for the respondents, the disciplinary authority is in the process of obtaining the report of Caste Scrutiny Committee before taking a final view in the matter. On the other hand, Mr. VSR Krishna, learned counsel for the applicant, espoused that once having taken stock of the situation as well as nature of the charge against the applicant, inquiry officer has arrived at a particular conclusion, the disciplinary authority cannot proceed to ensure that another inquiry committee is set up to look into a different aspect before taking final decision in respect of the specific charge involved in the present case.

4. We heard the counsels for the parties and perused the records.

5. *Ex facie*, the charge against the applicant is that he had secured appointment to the post of Sr. Radio Therapist on the basis of producing the fraudulent certificate for scheduled caste and the charge has not been found proved.

According to him, the charge of producing the fraudulent certificate and one that of not belonging to a caste or tribe scheduled for certain benefits for reservation under constitutional/statutory provisions are different issues and once a specific charge has not been proved, the respondents cannot wait for setting up an independent inquiry to look into an issue which is not the subject matter of the charge-sheet.

6. As can be seen from the report of the inquiry officer there was a semblance that the caste 'Bhuiya' to which the applicant belongs was not scheduled as a caste entitled to the constitutional/statutory benefits admissible to such castes. Still being conscious of the articulated charge, he arrived at the conclusion noted above. In terms of provisions of Rule 15 of CCS (CCA) Rules, the authority competent to do so (the disciplinary authority) need to take a decision with reference to the charges alleged against a Government servant and the material available before the inquiry officer. The guidelines regarding verification of authenticity of caste being scheduled caste or scheduled tribe were laid down by the Hon'ble Supreme Court in **Kumari Madhuri Patil & Anr. vs. Additional Commissioner, Tribal Development & Ors.**, AIR 1995 SC 94 The relevant excerpt of the judgment read thus:-

“1. The application for grant of social status certificate shall be made to the Revenue-Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such Officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the concerned Directorate.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the concerned department, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He also should examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their

caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the concerned castes or tribes or tribal communities etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or "doubtful" or spurious or falsely or wrongly claimed, the Director concerned should issue show cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the concerned educational institution in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Addl. Secretary as Chair-person who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/ guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalizing the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/Miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an

offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or the Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the concerned educational institution or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate for further study or continue in office in a post.”

7. As can be seen from the aforementioned, the Hon’ble Supreme Court categorically ruled that it is the Caste Scrutiny Committee alone, which can comment upon the status of the castes/community i.e. whether it fall in scheduled caste or scheduled tribe or not. In the present case, it was not the specific charge against the applicant that the caste ‘Bhuiya’ does not fall in scheduled caste/scheduled tribe category. The only charge against the applicant is that SC certificate relied by him to secure employment was obtained fraudulently. A certificate can be said to be procured fraudulently only when an individual belonging to a different caste give an impression to the competent authority that his caste is once which is scheduled as a caste or tribe declared entitled to certain

constitutional/statutory benefits. Apparently, such is not the case of the respondents, thus the inquiry officer could arrive at a particular conclusion. Now the disciplinary authority cannot venture to develop a different charge i.e. caste 'Bhuiya' to which the applicant belong is not the scheduled caste and then proceed to obtain the opinion of Caste Scrutiny Committee Report to establish the charge which is altogether different. Once the mandate of the inquiry officer is limited to the charge contained in memo of charges served upon the delinquent, the disciplinary authority cannot travel beyond that to form its own opinion regarding the action to be taken against the applicant at its end. What is expected from the disciplinary authority is to act in terms of Rule 15 of CCS (CCA) Rules. The Rule 15 read thus:-

“15. Action on inquiry report

(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.

(2) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring

authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.

(2A) The disciplinary authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4).

(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 11 should be imposed on the Government servant, it shall, notwithstanding anything contained in rule 16, make an order imposing such penalty:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in clauses (v) to (ix) of rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government servant.”

8. Such is also the tenor of the judgment of the Hon'ble Delhi High Court in **Rajesh Kumar Gouhari vs. Union of India**, AISLJ 2012 (2) page 102. Para 13 of the judgment read thus:-

“13. Considering the totality of facts and circumstances of the case, I am not inclined to interfere in the midstream. It is not the case of Petitioner that the charge sheet has been issued by a person who is not authorized or is without jurisdiction. It is informed that enquiry proceedings have been completed. The Enquiry Officer has prepared its report. If the enquiry officer has submitted the report and the Disciplinary Authority is prima facie inclined to have adverse view against the Petitioner, the copy of enquiry report shall be supplied to Petitioner and an opportunity be given to him for responding to the same as per law laid down in *Managing Director, ECIL, Hyderabad, etc. etc. v. B. Karunakar, etc. etc.* [MANU/SC/0237/1994](#) : AIR 1994 SC 1074 (1). It will be open to the Petitioner in that event to raise all such contentions before the Disciplinary Authority as are raised in the present petition including any other contention which may be available to him as per law. The Disciplinary Authority will look into the matter and will pass a speaking order in accordance with law. It is also informed that there is a provision of appeal against the order of Disciplinary Authority imposing a penalty under the Ed. CIL'S (Conduct, Discipline & Appeal) Rules, 2003.”

9. In the wake, the OA is disposed of with directions to the respondent to finalize the disciplinary action against the applicant in respect of the charge alleged against him within the ambit of Rule 15 of CCS (CCA) Rules (ibid),

within eight weeks from the date of receipt of a copy of this order. It is made clear that since there is no specific charge against the applicant that the caste 'Bhuiya' is not a scheduled caste, the opinion of Caste Scrutiny Committee would not be relevant.

(Dr. B.K. Sinha)
Member (A)

(A.K. Bhardwaj)
Member (J)

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