

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA NO.3814/2012

RESERVED ON 28.10.2015
PRONOUNCED ON 06.11.2015

HON'BLE MR. JUSTICE B.P. KATAKEY, MEMBER (J)
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)

Krishna Kumar Prasad,
Son of late Shri Kamla Prasad,
Working Upper Division Clerk,
In the office of Director,
Ministry of Environment & Forests,
Paryavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi-03

Resident of B-118, Bharat Vihar,
Kakrola, New Delhi-78.

...Applicant

(By Advocate: Mr. P.S. Khare with Mr. H.P.Chakravorti)

VERSUS

1. Union of India through
The Secretary,
Ministry of Environment & Forests,
Paryavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi-03.

2. The Joint Secretary,
Ministry of Environment & Forests,
Paryavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi-03.

...Respondents

(By Advocate: Mr. Rajesh Katyal)

:ORDER:

HON'BLE MR. JUSTICE B.P. KATAKEY, MEMBER (J):

This application is directed against the order dated 04.05.2012 passed by the Disciplinary Authority removing the applicant from service pursuant to a disciplinary proceeding

initiated against him vide the charge memorandum dated 29.05.2007. The order dated 04.08.2012 passed by the Departmental Appellate Authority dismissing the departmental appeal has also been put to challenge by the applicant in this OA.

2. The applicant was placed under suspension vide order dated 24.04.2007, in exercise of powers conferred by sub-rule (1) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, in short 1965 Rules. The charge memorandum dated 29.05.2007 was, thereafter, issued under Rule 14 of the said Rules asking the applicant to show cause as to why major penalty should not be imposed on him based on the following statement of imputation of misconduct :-

"Shri Krishna Kumar Prasad joined government service by furnishing a Schedule Tribe Certificate dated 7.7.1997 claimed to be issued from the office of Deputy Collector, District:- Siwan, Bihar. The caste shown in this certificate is "Kharwar". It has been brought to the notice of this office by District Collector, Siwan by their Memorandum No.136 dated 27.2.2007 that Shri Krishna Kumar Prasad, S/o Late Kamla Prasad, Vill.+Post: Nathuchap, Distt:-Siwan belongs to "Kamkar" Caste and the said "Kamkar" caste does not fall under Schedule Tribe. It has also been informed by District Collector Siwan that the caste certificate has not been issued by that office and prima facie, it appears fake."

3. The applicant, on receipt of the said charge memorandum, submitted his reply denying the charge levelled against him. The Disciplinary Authority being not satisfied with the reply submitted by the applicant, proceeded to conduct the disciplinary

proceeding by appointing the Inquiry Officer as well as the Presenting Officer. The Inquiry Officer, on completion of the enquiry, submitted his report on 04.02.2008 with the finding that the charges levelled against the applicant have not been proved. The Disciplinary Authority on receipt of the said enquiry report issued a communication dated 04.03.2008 to the District Magistrate, Siwan, Bihar, asking for his views on the following:-

- i. Whether, the certificate dated 7.7.97 issued in favour of Shri Krishna Kumar Prasad is genuine or not;
- ii. Whether Shri Krishna Kumar Prasad belongs to the Scheduled Tribe category;
- iii. Whether "Kamkar" is the other name of "Kharwar".

4. The District Magistrate, Siwan, after lapse of more than 3½ years, sent his reply in the tabular form as follows:-

S.No.	Issues	Factual position based on clarification furnished by DM, Siwan
1.	Whether, the certificate date 7.7.1997 issued in favour of Sh. K.K. Prasad is genuine or not.	No Caste Certificate has been issued from District level on 07.07.1997 in the year 1997.
2.	Whether Sh. K.K. Prasad belongs to the ST category.	Zonal Office, Siwan Sadar has verified the antecedents/background of Shri K.K. Prasad on the request of DM, Siwan. They have informed DM, Siwan that Shri Krishna Kumar Prasad belongs to

		KAMKAR caste.
3.	Whether "Kamkar" is the other name of "Kharwar"	KAMKAR and KHARWAR are different castes. KAMKAR CASTE is most backward caste whereas KHARWAR CASTE comes under scheduled Tribe.

5. The Disciplinary Authority, upon appreciation of the said reply, issued the note of disagreement on 08.11.2011 with the finding recorded by the Inquiry Officer in his report dated 04.02.2008, asking the applicant to submit his comments/representation, if any. The applicant on receipt of the said note of disagreement submitted his reply on 13.12.2011 denying the contentions of the District Megistrate, Siwan and contending *inter alia* that the Schedule Tribe Certificate was issued on 07.07.1997 by the District Social Welfare Officers as authorized by the Government of Bihar vide notification dated 21.02.1985, which is not a fake certificate. The Disciplinary Authority, thereafter, passed the impugned order dated 04.05.2012 removing the applicant from service on the ground of submission of fake Schedule Tribe Certificate for securing the employment. The appeal preferred by the applicant has also been dismissed by the Departmental Appellate Authority vide order dated 04.08.2012.

6. We have heard learned counsel, Mr. H.P. Chakravorty with Mr. P.S. Khare appearing for the applicant and learned counsel, Mr. Rajesh Katyal appearing for the respondents.

7. It has been submitted by the learned counsel for the applicant that the Disciplinary Authority having issued the note of disagreement dated 08.11.2011, upon making certain further enquiry behind the back of the applicant, the order imposing the penalty of removal from service cannot be sustained in law, in as much as such enquiry was conducted in violation of the principles of natural justice as well as in violation of the provisions of 1965 Rules. According to the learned counsel, the Disciplinary Authority though has a right to disagree with the finding recorded by the Inquiry Officer in his report, such disagreement has to be based on the evidence collected during the disciplinary enquiry conducted against the applicant and not based on the subsequent enquiry conducted by the Disciplinary Authority that too behind the back of the applicant, as has been done in the instant case. It has also been submitted that if the Disciplinary Authority was not satisfied with the conduct of the enquiry by the Inquiry Officer, it was opened to him to send it back to the Inquiry Officer for fresh enquiry. The learned counsel, therefore, submitted that the order imposing the penalty as well as the order passed by the Departmental Appellate Authority need to be set aside and the respondents may be directed to reinstate the applicant in service.

8. Per contra, the learned counsel appearing for the respondents, supporting the order of the penalty passed by the Disciplinary Authority as well as the order passed by the Departmental Appellate Authority dismissing the appeal, has submitted that since the applicant has secured employment by producing a fake Schedule Tribe Certificate, the order of the removal has rightly been passed by the Disciplinary Authority in disagreement with the finding recorded by the Inquiry Officer in his report placing reliance on the communication dated 08.10.2011 received from the District Magistrate, Siwan, wherefrom it is evident that 'Kamkar' caste, to which the applicant belongs, is not a Schedule Tribe, while 'Kharwar' caste is a notified Schedule Tribe. It has also been submitted that since the post reserved for Schedule Tribe candidate needs to be filled up by the candidate belonging to that tribe and cannot in any way be filled up by general category candidate, no illegality has been committed by the Disciplinary Authority in obtaining information relating to the caste status of the applicant, after submission of the enquiry report by the Inquiry Officer. The learned counsel has also submitted that there being authenticated report submitted by the District Magistrate stating *inter alia* that no caste certificate dated 07.07.1997 has been issued from the district level to the applicant, it is evident that the applicant has secured the employment against the post reserved for Schedule Tribe

candidate by producing a fake certificate and hence the applicant is not entitled to any relief as claimed in the OA. The learned counsel in support of his contention has also placed reliance on the judgment passed by the Hon'ble Delhi High Court in **Delhi Development Authority and others Versus Ashok Kumar** reported in 2006(4) AD(Delhi) 544.

9. The arguments advanced by the learned counsel for the parties have received our due consideration. We have also perused the pleadings of the parties including the charge memorandum, enquiry report, order passed by the Disciplinary Authority as well as the order passed by the Departmental Appellate Authority.

10. Rule 14 of 1965 Rules provides the procedure for imposing major penalties, which includes, apart from others removal from service, in a disciplinary proceeding initiated against the delinquent, for imposing major penalty, which, amongst others, requires giving the delinquent an opportunity to inspect the documents on which the department place reliance in support of the charge levelled against the delinquent, apart from the right to cross-examine the witness(es) examined by the department in support of the charge levelled. In the instant case, though there was an allegation against the applicant relating to submission of fake Schedule Tribe Certificate dated 07.07.1997 at the time of

his employment, the Inquiry Officer has found in his report dated 04.02.2008 that the department could not prove the same.

11. It is no doubt true that the Disciplinary Authority may disagree with the finding recorded by the Inquiry Officer in his report and issue a note of disagreement, which necessarily has to be based on the materials available before the Inquiry Officer during the disciplinary enquiry conducted against the delinquent. The Disciplinary Authority cannot, based on unilaterally collected evidence, subsequent to the submission of the enquiry report by the Inquiry Officer, issue the note of disagreement and punish the delinquent on the basis of such unilateral evidence collected by the Disciplinary Authority, without notice to the delinquent, for the simple reason that the same would amount to depriving the applicant from inspection of the documents as well as the right to cross-examine the witness(es), thereby violating the basic principles of natural justice.

12. In the instant case, though the Inquiry Officer, vide his report dated 04.02.2008, has recorded the finding that the charges framed against the applicant could not be proved, the Disciplinary Authority has collected the evidence against the applicant unilaterally by issuing the communication dated 04.03.2008 to the District Magistrate, Siwan and on the basis of the reply submitted by the District Magistrate, Siwan, on

08.10.2011, such note of disagreement was issued and not based on the materials placed before the Inquiry Officer. The Disciplinary Authority, instead of making an unilateral enquiry relating to the caste status of the applicant, after submission of the enquiry report by the Inquiry Officer, could have sent the matter back to the Inquiry Officer for further enquiry, if he was not satisfied about the enquiry as well as the report submitted by the Inquiry Officer, which course, however, has not been adopted by him in the case in hand.

13. As noticed above, the District Magistrate, Siwan, in his communication dated 08.10.2011 has stated that no caste certificate has been issued from district level on 07.07.1997. He has not certified that no caste certificate dated 07.07.1997 has ever been issued to the applicant at the Sub-Divisional level or other level also. It appears from the order dated 21.02.1985 issued by the Government of Bihar that amongst others, the District Social Welfare Officer was also authorized to issue a caste certificate. The caste certificate dated 07.07.1997 was shown to have been issued by the said authority, veracity of which has, however, not been gone into by the Disciplinary Authority, so as to record a finding that the applicant has submitted a false/fake caste certificate for the purpose of procuring employment against the vacancy reserved for Schedule Tribe candidates.

14. The decision of the Hon'ble Delhi High Court in **Delhi Development Authority** (supra) cannot be applied in this case in view of the facts and circumstances involved in that case are different from facts and circumstances in the case in hand. In **Delhi Development Authority's** case, the report sent by the Tehsildar, Rampur (UP), relating to the verification conducted by him about issuance of Schedule Caste certificate to Shri Ashok Kumar was produced during the disciplinary enquiry conducted against him, which document was also allowed to be inspected by Shri Ashok Kumar. By the said report, it has been proved by the department, during the disciplinary enquiry conducted against Shri Ashok Kumar, that no Schedule Caste certificate was ever issued to him. Hence, the Hon'ble High Court has held that there was no question of cancelling the same or issuing any show cause notice for cancelling it and, therefore, there was no question of violation of the principles of natural justice. The Hon'ble High Court, while allowing the appeal preferred by the applicant, has also taken note of the communication issued by the District Magistrate subsequently in that regard. On the other hand, in the case in hand, no such report was submitted during the enquiry proceeding, which, however, was obtained by the Disciplinary Authority from the District Magistrate more than 3½ years after submission of enquiry report by the Inquiry Officer, that too behind the back of the applicant.

15. In view of the above, the order dated 04.05.2012 imposing the penalty of removal from service passed by the Disciplinary Authority as well as the order dated 04.08.2012 passed by the Departmental Appellate Authority dismissing the departmental appeal cannot sustain in law and, hence, set aside.

16. Since, the allegation levelled against the applicant is of a very serious nature, which, if proved, would amount serious misconduct of securing employment in public office by producing false/fake certificate thereby depriving a reserved category candidate from getting employment, we direct the Authority to conduct a *de novo* proceeding allowing examination of additional witness(es) by the department to prove the charge and also the communication dated 08.10.2011 received from the District Magistrate, Siwan as well as any other documents, after supplying copies of the same to the applicant. The applicant shall also be allowed an opportunity to cross-examine the witness(es), if any, to be adduced by the department in support of the charges and he shall also be allowed to examine further witness(es), if any, in support of his defence, including production of the documents, if any. The Inquiry Officer, thereafter, shall, based on the evidence already recorded as well as the further evidence to be adduced by the parties, submit his report. The Disciplinary Authority shall then take necessary further action based on the

report to be submitted by the Inquiry Officer. The entire exercise is directed to be completed within a period of 3 (three) months from today. The applicant shall cooperate in the said enquiry.

17. In view of the setting aside of the order of removal of the applicant from service as well as the direction issued to conduct the *de novo* enquiry as aforesaid, the respondents are directed to reinstate the applicant in service forthwith. The necessary decision relating to the period of suspension till the date of removal as well as till the date of reinstate pursuant to the order passed by this Tribunal would be taken by the Disciplinary Authority on completion of the disciplinary proceeding as directed above.

18. OA is, accordingly, allowed to the extent as aforesaid. No costs.

(K.N. Shrivastava)
Member (A)

(B.P. Katakey)
Member (J)

/jk/

