

**Central Administrative Tribunal
Principal Bench**

OA No.4189/2015

Order Reserved on: 18.11.2016

Pronounced on: 20.12.2016.

Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

Surya Dayal Singh, aged about 52 years,
S/o Shri Dhud Nath Singh,
Removed Hospital Attendant
Health Unit Kot Kapura (N. Rly.)
C/o Sh. S.N. Vatsa, Rly. Qr. No.2/1,
Ram Nagar Colony, Pahar Ganj,
New Delhi.

-Applicant

(By Advocate Shri G.D. Bhandari)

-Versus-

1. General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Ferozpur Division,
Ferozpur Cantt. (Punjab).
3. Chief Medical Superintendent,
Northern Railway Hospital,
Firozpur Division,
Firozpur Cantt. (Punjab)
4. Chief Medical Director,
Northern Railway,
Baroda House,
New Delhi.

-Respondents

(By Advocates Shri R.N. Singh, Shri Satendra Kumar and
Shri Amit Sinha)

ORDER

Mr. K.N. Shrivastava, Member (J):

Through the medium of this Original Application (OA),
filed under Section 19 of the Administrative Tribunals Act,
1985, the applicant has prayed for the following reliefs:

- “(i) To set aside the impugned orders of the Revisionary Authority (A-3), Appellate Authority (A-2), Disciplinary Authority (A-1)
- (ii) To declare the Inquiry Report (A-3) based on no-evidence as null and void including DO letter dt.13.12.2010
- (iii) To direct the respondents to re-instate the applicant to his original post with back wages.
- (iv) To grant 12% interest on the back wages and all dues.”

2. The brief facts of the case are as under:

2.1 The applicant was appointed as a Hospital Attendant on 03.02.1982 in the Medical Department of Firozpur Division of Northern Railway against Scheduled Tribe (ST) quota. He had furnished Annexure A-4 caste certificate dated 08.02.1980 issued by BDO, Nokha, Rohtas. He had also furnished another Annexure A-5 caste certificate dated 07.01.1981 issued by the District Magistrate, Sasaram (Rohtas). Both these certificates indicate that the applicant hails from Akrehiya village, PO Chetna, PS Nokha, Rohtas District (Bihar State) and that he belongs to Kora sub-caste. A major penalty charge-sheet came to be issued to him on

01.08.2011, alleging that he had furnished false caste certificate and that the caste certificate dated 08.02.1980, issued by B.D.O. Nokha, District Rohtas was found to be illegal and fake (Annexure A-6). The Disciplinary Authority (DA) vide Annexure A-1 order dated 15.11.2012 removed him from the service. The said order reads as under:

“On perusal of all documents, the charges against the CO were framed that he was got appointed in Railways on the basis of the fake scheduled Tribe Certificate which was issued on dated 08.02.1980 by कायालय सहायक परियोजना कायपालिक पदाधिकारी, Village Akarihya Nokha, Distt. Rohtas (Bihar) and violated of para 3.1 (i), (ii) & (iii) of Railway Service Conduct Rules-1966. The same has now been found fake after got it verified from the Block development Officer/Nokha (Rohtas) vide his letter No.1532 dated 13.12.2010 and the charges as leveled in the major penalty chargesheet dated 01.8.2011 stands proved in the inquiry report. So services of the CO Sh. Surya Dyal Singh HA/HU/KKP cannot be continued further in Railways. Hence, the CO Sh. Surya Dyal Singh, HA/HU/KKP is hereby awarded punishment of “Removal from Service” with immediate effect.

As the CO Sh. Surya Dyal Singh, HA/HU/KKP has rendered more than 30 years service in Railways and he has liability of his wife, hence a compassionate allowance @Rs.3500/- Per month within Para 65 of Railway Service Pension Rules, 1993 is sanctioned for his livelihood.”

2.2 Aggrieved by the Annexure A-1 order of the DA, the applicant filed Annexure A-2/A appeal dated 12.12.2012 before the departmental Appellate Authority (AA), who vide his Annexure A-2 order dated 17.05.2013 dismissed the appeal.

2.3 Aggrieved by the orders of the DA and AA, the applicant filed Revision Petition before the Revisionary Authority (RA),

who vide his Annexure A-3 order dated 13.02.2015 dismissed the Revision Petition.

2.4 Aggrieved by the impugned Annexures A-1, A-2 and A-3 orders passed by the DA, AA and RA respectively, the applicant has filed the instant OA praying for the reliefs indicated in para-1 above.

3. The main grounds pleaded in support of the reliefs prayed for by the applicant are as under:

- i) The author of the document (i.e., the caste certificate) has not been examined and as such there is violation of the principles of natural justice.
- ii) The original caste certificate submitted by the applicant has not been withdrawn or cancelled and hence it continues to remain valid.
- iii) The applicant was appointed in the Railway-department 30 years ago on the basis of the original caste certificate duly verified by the Senior Divisional Personnel Officer and to declare those documents as invalid after this length of time is bad in law and against the principles of natural justice.
- iv) The Enquiry Officer (EO) has proved the charge against the applicant without any corroborative evidence.

4. The respondents have denied the allegations made in the OA and repelling the grounds mentioned therein, have broadly pleaded as under in their reply:

a) The BDO in his letter (Annexure A-11) has stated that the applicant belongs to 'Korie' caste, which is not an Adivasi (ST) caste. The issue has been decided based on the documentary evidence (BDO certificate) and as such personal hearing of the applicant would not have made any difference.

b) The Hon'ble Apex Court in the case of **B.C. Chaturvedi v. Union of India & Others**, [(1995) 6 SCC 746], has held that judicial intervention in such matters is not warranted.

5. The applicant in his rejoinder to the reply filed on behalf of the respondents, *inter alia*, has stated that Annexure A-11 letter has been issued by the BDO without proper verification. It is merely stated in the said letter that serial No.33 of the caste certificate issued to the applicant on 08.02.1980 was not available. Such registers are maintained permanently. Annexure A-11 letter does not specifically state as to whether the record is available or destroyed.

6. After completion of the pleadings the case was taken up for hearing the arguments of the parties on 18.11.2016. Shri G.D. Bhandari, learned counsel for the applicant and Shri

R.N. Singh with Shri Satyendra Kumar and Shri Amit Sinha, learned counsel for the respondents argued the case.

7. We have considered the arguments put-forth by the learned counsel for the parties and have also perused the pleadings and documents annexed thereto.

8. The sole issue involved in this case is as to the legal validity or otherwise of the caste certificate issued to the applicant way back on 08.02.1980 by the BDO, Nokha, Rohtas (Annexure A-14) and subsequently by the District Magistrate, Rohtas on 07.01.1981 (Annexure A-5), based on which the applicant has been able to secure employment under the respondents under the ST quota. No doubt, the respondents have conducted a departmental enquiry. They have also obtained Annexure A-11 letter from BDO, Nokha, addressed to Divisional Personnel Officer, Northern Railway, Ferozpur, which reads as under:

“To

Divisional Personnel Officer,
North Railway Ferozpur

Subject: Regarding verification of caste

Reference: Your letter NO.726/E/11/1723/P2A dated 9.12.2010.

Mahashaya

In reference to above subject it is to state the due to non-availability of Caste Certificate register year 1980, verification was got done through Sh. Vishavnath Singh Jan Sewak village Panchayat Chatauna and on his investigation it has been reported that Suryadayal Singh s/o Late Sh. Dudh Nath Singh is resident of village Akariyan Post Chatauna Police Station Nokha District

Rohtas. His case is 'Korie'. In Chautona Gram Panchayat, there is no Adivasi (Scheduled Tribe) Caste."

8.1 The letter merely states that the applicant is a resident of the village Akariyan, belongs to 'Korie' caste and there is no Adivasi caste living in the said village. The Annexure A-5 caste certificate dated 07.01.1981 has been issued by the District Magistrate, Rohtas, stating therein that the applicant belongs to Kora caste – a Scheduled Tribe. Neither the EO nor the respondents bothered to contact the District Magistrate and obtain his response in the matter. Needless to say that verification of the caste of a government employee cannot be the subject matter of a departmental enquiry. There are prescribed statutory authorities, who alone have been given the authority in such matters. The highest authority in the matter of issuance of a caste certificate is the District Magistrate of the District. In the event of any controversy arising as to the caste of a government servant there is no well laid down procedure as to how such verifications are required to be carried out. The States have specifically set up Caste Scrutiny Committees who are to go into the gamut of caste verification. In the instant case, we find that the respondents have merely acted on the Annexure A-11 letter of the BDO, which does not question the authenticity of Annexures A-4 and A-5 caste certificates issued to the applicant by the BDO and District Magistrate

respectively; more than 30 years ago. The applicant has not been issued any notice, nor has been granted any opportunity of being heard before the impugned Annexure A-1 order dated 15.11.2012 has been passed by the DA. Hence, we are of the view that the principles of natural justice have been grossly violated.

9. The learned counsel for the respondents has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **B.C. Chaturvedi** (supra), the relevant extracts from the said judgments are reproduced below:

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H.C. Goel* [(1964) 4 SCR 781], this Court held at page 728 that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

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18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

10. Shri R.N. Singh also stated that scope of judicial intervention in the matter of disciplinary enquiry is highly limited, as laid down by the Hon’ble Apex Court in the case of **Union of India v. T. Gunasekran**, [(2015) 2 SCC 610]. Defining the scope of judicial intervention in such matters, the Hon’ble Apex Court has laid down the following principles:

“13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High

Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience.”

11. The learned counsel for the applicant, on the other hand, has relied on the judgment of this Tribunal in the case of **Kasi Rajan v. Union of India & Others**, [(1996) 32 ATC 27], the relevant extract of which is as under:

“In the instant case, though the Collector, Madurai, who is the authority competent to cancel the community certificate issued by the Tahsildar, was holding the enquiry through the Sub-Collector, Usilampatti, the Community Certificate issued by the Tahsildar had not been cancelled. The department had, therefore, to act on the certificate of the Tahsildar and could not initiate disciplinary proceedings for having produced a false certificate. There could therefore be no suspension order in contemplation of a disciplinary enquiry that in law cannot be initiated. Reliance is placed for the legal position on the judgment of Division Bench of the High Court of Madras in *S.P. Sakthi Devi v. Collector of Salem*”. [1984 Writ LR 535]

He has also relied upon the judgment of the Hon’ble Supreme Court in the case of **B.H. Khawas v. Union of India and Others**, (2016) 8 SCC 715], in which it is held that provisional appointment against reserved category post is subject to verification of the caste certificate through proper channel.

12. While we do agree with the learned counsel for the respondents that the scope of judicial review in disciplinary enquiries matters is highly limited as per the law laid down by the Hon’ble Apex Court in the cases of **B.C. Chaturvedi** and **P. Gunasekran** (supra), but the Hon’ble Apex Court in the cases of **Ashif Hamid v. State of J&K**, [(1989) Supp 2 SCC 364] and **Ekta Shakti Foundation v. Govt of NCT of**

Delhi, [(2006) 10 SCC 337], has held that judicial review can be invoked in the matters decided by the Government which are against any statutory provisions or in violation of fundamental rights of the citizens. In the instant case, we find that the EO/respondents have bestowed upon themselves the responsibility of caste verification, a mandate which no Statute has conferred on them. They have not bothered to even contact the District Magistrate who had issued the caste certificate to the applicant more than 30 years ago. They have also not adhered to the statutory requirement of referring the matter to Caste Scrutiny Committee to verify the caste of the applicant. The applicant has not been issued any notice nor has he been accorded any opportunity of being heard. As such, the principles of natural justice have been flouted.

13. We are in agreement with the learned counsel for the applicant that the caste certificates issued to the applicant by the BDO/District Magistrate would remain valid as long as they are not declared bogus or illegal. At the same time, we do not agree with the plea of the learned counsel of the applicant that the caste certificate issued to the applicant more than 30 years ago has attained finality. The principle laid down in the judgment of the Hon'ble Apex Court in the case of **State of Maharashtra v. Milind & Others**, [(2001) 1

SCC 4] that “admission and appointments that have become final shall remain unaffected” has been turned down by the Hon’ble Apex Court in the case of **B.H. Khawas** (supra). The fate of the appointment ultimately would hinge on the verification of the caste certificate through proper channel.

14. In the conspectus of the discussions in the foregoing paras, we are of the view that the action of the respondents in holding that the applicant does not belong to ST caste without issuing any notice to him, without referring the matter to District Magistrate and Caste Scrutiny Committee is totally illegal. Accordingly, we quash and set aside Annexures A-1, A-2 and A-3 orders passed by the DA, AA and RA respectively. We also quash and set aside Annexure A-3/A enquiry report dated 11.06.2012.

15. The respondents are, however, given liberty to undertake verification of the caste of the applicant through proper channel and take any appropriate decision on the basis of such verification in the due course.

16. The OA stands allowed.

17. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

‘San.’