

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/00764/2016

DATED THIS THE 22ND DAY OF FEBRUARY, 2017

HON'BLE SHRI JUSTICE HARUN-UL-RASHID...MEMBER (J)
HON'BLE SHRI P. K. PRADHAN, MEMBER (A)

G.S. Hungund,
Age: 61 years,
S/o Sharanappa,
Retired Superintendent
of Post Offices,
Chikodi Division,
Chikodi.

Residing at: Mahantheshnagar,
Near Bazaw P.O.
Hungund-587118
Bagalkot Dist.

... Applicant

(By Advocate Shri P. Kamalesan)

Vs.

1. The Union of India,
Represented by Secretary,
Department of Post,
Dak Bhavan,
New Delhi-110 001.

2. Chief Postmaster General,
Karanataka Circle,
Bangalore-560 001.

3. Postmaster General,
N.K. Region,
Dharwad-580 001.

4. Tahsildar,
Hungund Taluk,
Hungund,
Bagalkot Dist. ... Respondents

(By Shri K. Gajendra Vasu, Senior Panel Counsel)

ORDER (ORAL)

HON'BLE PRASANNA KUMAR PRADHAN, MEMBER (A):

The applicant has filed the present OA seeking the following relief:

- i. Quash the Memo No. STA/9-13 68/2015, Dated: 14-10-2015, issued by the Chief Post Master General, Karnataka Circle, Bangalore – 560 001 vide Annexure-A2.
2. The applicant submits that he was initially recruited as Postal Assistant under General Quota in 1975. He obtained ST caste certificate in July 1993. The applicant was subsequently promoted as Inspector of posts/Assistant Superintendent of Posts on General Merit on 1985/1990. He was then promoted to Group 'B' cadre in PB-2 with Grade Pay of Rs.4800 with effect from 16.12.2009 and posted as AD (FS) Circle office, New Delhi (Annexure-A1). According to him he was never directed to submit his caste certificate at the time of promotion and he was not aware that he was promoted under ST category to Group B cadre. The Chief Post Master General contemplated disciplinary proceedings under Rule 14 of CCS (CCA) Rules 1965 and issued a charge memo dated 14.10.2015 (Annexure-A2) alleging that he suppressed the fact of deletion of his caste from ST category by Government of Karnataka from 2002 onwards. The applicant submitted an elaborate defence statement on 26.11.2015 (Annexure-A3). However without considering it the Disciplinary authority proceeded to appoint I.O. and P.O. vide memo dated 28.01.2016 (Annexure-A4). Subsequent to retirement of the applicant on superannuation with effect from 31.10.2015 it was ordered that disciplinary proceedings under Rule 14 would be treated as deemed proceedings under Rule 9 of CCS (Pension) Rules and he was granted provisional pension vide Annexure-A5.

3. The applicant submits that he originally belonged to Tokre Koli community which was subsequently excluded from the ST category in March 2002 by the Government of Karnataka. The applicant was not aware of the fact nor it came to his notice. On receiving notice from the Chief Post Master General on 03.06.2015 to confirm the community to which he originally belonged, he verified it with Tahsildar's office and came to know that Tokre Koli community was excluded from ST category with effect from 2002 and he belongs to Ambiger caste. He submitted that the respondents should have verified the caste certificate following de-scheduling of caste of a scheduled caste person after initial appointment. Further the applicant was promoted as Group 'B' officer in December 2009 and therefore initiating proceedings after a lapse of 7 years of his promotion would also vitiate the inquiry process. Moreover the ST certificate issued in his favour has not yet been cancelled by the Caste Scrutiny Committee which alone is competent to cancel a caste certificate after following procedure of inquiry. Therefore he submits that the action of the respondents contemplating Rule 14 proceedings just 15 days before retirement and deemed conversion under Rule 9 of CCS (Pension) Rules is malafide and should be set aside.

4. The respondents have filed a reply statement in which they submitted that the applicant was appointed in the department in ST category. They produced a copy of the minutes of Departmental Promotion Committee dated 08.02.1991 (Annexure-A2) and combined list of Inspector of Posts/Assistant Superintendent of Posts selected vide letter dated 09.09.2003 (Annexure-R1) saying that the applicant was marked as ST in both the cases. The Government of Karnataka vide order dated 11.03.2002 withdrew the benefit of

reservation extended to Koli communities directing that all persons of this community who have obtained ST caste certificates should surrender them immediately to the Issuing Authority for cancellation (Annexure-R3). The said order was circulated to the Postmaster Generals and all other divisions in Bangalore region by the CPMG vide Endorsement dated 22.05.2003. The PMG, North Karnataka Region further circulated the said order to all the divisions on 10.06.2003 (Annexure-R4). When the orders were circulated to all the divisions, the applicant was working as ASPO in Bijapur postal division but he failed to surrender the ST certificate to the Issuing Authority and intimate the department about the consequential changes in his community as he was considered as ST category as per the first page entry of the Service Book (Annexure-R5). Further the applicant got regular promotion to Group 'B' cadre under ST quota (Annexure-R6). While working as Superintendent of Post Office in Chikkodi postal division the applicant had submitted ST certificate dated 14.07.1993 issued by the Tahsildar declaring that he belonged to Tokre Koli community (Annexure-R8). However as per the Caste and Birth certificate it is seen that the caste of the applicant in the School Certificate is mentioned as Hindu Mahadevakoli. Hence obtaining and producing ST certificate by concealing the fact of his community Ambiga to which he actually belonged and for accepting the promotion to Group 'B' cadre under ST quota without surrendering the ST certificate is highly irregular. Accordingly the applicant has been proceeded under Rule 14 of the CCS (CCA) Rules, 1965. The applicant will be given all opportunity during departmental proceedings to defend himself.

5. Heard the learned counsel for the parties. The learned counsel for the applicant reiterated the submission made in the OA and submitted that the applicant was given promotion in 2009. Seven years after that and just 15 days before his superannuation issue of a charge memo is grossly unfair. There is no misrepresentation of facts on the part of the applicant. Moreover the ST certificate issued by Tahsildar in 1993 has not yet been cancelled by the Caste Scrutiny Committee. Therefore issuance of charge memo is irregular and should be set aside.

6. The learned counsel for the respondents on the other hand submits that right from 1991 the applicant was being considered as belonging to ST category. Following the Karnataka government's order in March 2002 the applicant should have surrendered the ST certificate to the authorities and also intimated the fact to the respondents. The State Government order was circulated to all offices and the applicant cannot plead ignorance of the said order. The onus was on him to surrender the caste certificate and inform authority. He cannot take the plea that the respondents should themselves have deleted his name from the ST category. The applicant also got promotion in 2009 under ST category. Therefore the departmental proceedings initiated against him are fair and just. Moreover it is only a issuance of charge memo and not a final order of punishment. Therefore at this juncture there is no justification or merit in the contention of the applicant.

7. We have carefully considered the facts of the case and also the submissions made by either side. The matter relates to issuance of charge memo by the respondents on 14.10.2015 against the applicant regarding submission of ST certificate by furnishing false information and failure to

surrender the ST certificate to the Issuing Authority for cancellation and concealing the fact from the respondents following State Government's order withdrawing the said caste from ST category. The applicant had also accepted the postal service Group 'B' post under ST quota which he is not entitled as he no longer belong to ST category. The applicant has raised the issue of delay in issuing charge memo and the fact that the ST caste certificate has not yet been cancelled by the Caste Scrutiny Committee. The respondents on the other hand highlighted that all along the applicant was treated under ST category and following the Karnataka Government notification withdrawing Tokre Koli from the ST quota he ought to have surrendered the caste certificate to the authorities. They also pointed that only a charge memo has been issued and departmental inquiry has not been completed.

8. The Hon'ble Apex Court in Civil Appeal No. 5145 of 2006 Union of India & Another Vs. K. Satyanarayana reported in (2007) 2 SCC (L&S) 304 held vide para 13 and 14 as follows:

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh, Special Director v. Mohd. Ghulam Ghouse, Ulagappa v. Divisional Commissioner, Mysore, State of U.P. v. Brahm Datt Sharma, etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some

punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.”

9. In the present case, only a charge memo has been issued to which reply has been filed by the applicant. Thereafter the authority decided to proceed with the departmental proceedings and appointed an Inquiry Officer and Presenting Officer. The inquiry has not yet taken place and completed and no final order has been passed. Therefore we are of the view that the matter is premature at this juncture. Mere issuance of show cause notice and initiation of proceedings does not amount to establishment of charges. The respondents have mentioned that all opportunities shall be available to the applicant to defend himself in respect of the charge. Therefore we are of the view that there is no justifiable ground to interfere with the charge memo in the disciplinary proceedings initiated by the respondents against the applicant. Therefore we hold that the OA is clearly devoid of merit and is liable to be dismissed.

10. The OA is accordingly dismissed. No order as to costs.

(P.K. PRADHAN)
MEMBER (A)

(JUSTICE HARUN-UL-RASHID)
MEMBER (J)

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