

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

(CIRCUIT BENCH AT SHIMLA)

...

ORIGINAL APPLICATION NO. 063/00038/2016

Chandigarh, this the 16th day of March, 2018

...

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. P. GOPINATH, MEMBER (A)**

...

Rajinder Kumar son of Shri Sodager Chand, resident of House No. 224, Kather, Bye Pass Road Solan, Post Office Chambaghat, Solan, Himachal Pradesh.

....APPLICANT

(Argued by: Shri B.L. Negi, Sr. Advocate with Mr. Prasant Sharma, Advocate)

VERSUS

1. Employees Provident Fund Organization, Ministry of Labour & Employment, Government of India through its Commissioner, Bhavishya Nidhi Bhawan, 14 Bikaji Cama Place, New Delhi-110066.
2. Additional Central Provident Commissioner (II) Punjab & Himachal Pradesh Zone.
3. Regional Provident Fund Commissioner (I) Shimla, Himachal Pradesh.

....RESPONDENTS

(By Advocate: Shri Rahul Mahajan,)

ORDER (Oral)

SANJEEV KAUSHIK, MEMBER (J)

The applicant by means of present Original Application (OA), has assailed order dated 31.3.2014 (Annexure A-12), passed by the Disciplinary Authority inflicting the punishment of removal

from service, and order dated 27.1.2016 (A-14) passed by the Appellate Authority, rejecting his appeal. The applicant has further sought direction from this Tribunal to direct the respondents to reinstate him in service with all consequential benefits.

2. Facts are not in dispute.

3. Learned Senior counsel appearing on behalf of applicant argues that by disagreeing with the inquiry report the disciplinary authority has held that the applicant cannot take the benefit of reservation being ST candidate and has inflicted punishment of removal from service. The applicant had also filed Writ Petition No. 1485 of 2011 where question of claiming the benefit of reservation being ST candidate was under consideration which was decided vide judgment dated 5.5.2015, whereby Sub Divisional Magistrate, Kalpa was directed to conduct an inquiry with regard to validity of ST certificate of the applicant in terms of clause 4 sub-clause (iv) of circular dated 6.7.1977. It is submitted that SDM Kalpa conducted a fair inquiry and has submitted its report on 29.6.2015, holding that the applicant can claim the benefit of ST category. He submitted that while challenging the orders of disciplinary authority, the applicant has also placed reliance upon report submitted by SDM, Kalpa. He submitted that while dismissing his appeal the appellate authority has not considered the report submitted by the SDM Kalpa. Therefore, he submitted that the impugned order be quashed and set aside and the matter be remitted back to the appellate authority to give fresh look in the matter after considering the report submitted by the SDM Kalpa.

4. Learned counsel representing the respondents did not dispute the above factual accuracy. He submitted that let the matter be remitted back to the appellate authority to re-consider the matter in the light of report submitted by the SDM Kalpa.

5. In the above backdrop of the matter, once the respondents themselves have come with the plea that the appellate authority has not considered the report submitted by SDM, therefore, we deem it appropriate, to dispose of this O.A. by quashing the impugned orders and remit the matter back to the appellate authority to reconsider the entire matter in the light of SDM report and, thereafter, to decide his appeal according to law. The above exercise will be completed within a period of 2 months from the date of receipt of certified copy of this order. The respondents shall forward the notice to the applicant, indicating the date to be fixed for submission of any representation and the applicant be also given an opportunity of personal hearing before passing order.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 16.03.2018

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3. Learned counsel appearing on behalf of applicant submitted that after holding inquiry into the charges levelled against the applicant, disciplinary authority, while disagreeing with the inquiry report, came to the conclusion that the applicant cannot take benefit of reservation being ST candidate. Learned counsel submitted that simultaneously a Civil Writ Petition No. 1485 of 2011 had filed by the applicant before the jurisdictional High Court wherein vide judgment dated 5.5.2015 while allowing the said CWP the Hon'ble High Court directed the Sub Divisional Magistrate, Kalpa, to conduct inquiry with regard to the validity of ST certificate in possession of the applicant in terms of clause 4 sub clause (iv) of circular dated 6.7.1977. Pursuant to direction of the jurisdictional High Court, SDM, Kalpa, conducted inquiry, and have submitted its report on 29.6.2015 holding that the applicant can claim benefit of ST category. He further submitted that the applicant while challenging the order passed by the disciplinary authority, the applicant raised a specific plea that his caste certificate has been found to be genuine by the SDM in its report dated 29.6.2015.

Therefore, he submitted that the impugned orders be quashed and set aside and the applicant be reinstated in service.

