

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/128 OF 2012
Cuttack, this the 08th day of February, 2018

CORAM
HON'BLE MR. S. K. PATTNAIK, MEMBER(J)
HON'BLE DR. M. SARANGI, MEMBER (A)

.....

Sri Philip Pradhan,
aged about 59 years,
son of Late Magata Pradhan,
Ferro Printer (under suspension)
Office of the Senior Architect,
BSNL, Bhubaneswar and
at present residing at Qr. No.II/3,
Block-30, P & T Colony Vanivihar,
Bhubaneswar-751007, Dist- Khurda.

...Applicant

(By the Advocate-M/s. A. K. Mohanty, S. Rath, D. K. Mohanty, P.K. Kar)

-VERSUS-

Union of India Represented through

1. Chief General Manager, Bharat Sanchar Nigam Ltd., P.M.G. Building, Bhubaneswar-751001.
2. Senior Architect, BSNL, BSNL Training Centre Building, Vanivihar, Bhubaneswar-751007.
3. Chief Architect, BSNL, Lucknow, 1st Floor, CTO Building, GPO Compound, Hazratganj, Lucknow-226001.
4. Chief Engineer (C), BSNL, Civil Orissa Zone, Door Sanchar Bhawan, Unit-IX, Bhubaneswar-751022.

...Respondents

(By the Advocate- M/s. R. N. Pal, S. Behera)

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ORDER

S. K. PATTNAIK, MEMBER (JUDL.):

The applicant has filed this O.A. praying for the following reliefs:

(A) *To quash the orders of extension of the period of suspension of the applicant till his date of retirement on superannuation as per Annexure A/13 as illegal and void in the eye of law.*

(B) *To declare that initiation of the disciplinary proceeding against the applicant for examining the genuineness of the caste certificate was bad and illegal and consequently quash the suspension order of the applicant as per Annexure A/5 for being nor sustainable in law.*

AND

(C) *To declare that continuation of the applicant under prolonged suspension for more than three and half years after completion of the inquiry was bad and not sustainable in law.*

AND

(D) *To quash all the orders of extension of suspension of the applicant as in no case the review of suspension order of the applicant was considered by the review committee consisting of the appellate authority, disciplinary authority and another officer equivalent to the rank of the appellate authority.*

AND

(E) *To issue any other order or orders, direction or directions as it deems fit and proper in the interest of justice, equity and fair play for the benefit of the applicant.*

AND

(F) *To order and direct that the cost of litigation be paid to the applicant by the respondents for unnecessarily dragging him into this un warranted and avoidable litigation.*

Since multiple prayer is not permissible under Rule 10 of the CAT (Procedure) Rules, 1987, the prayer made under Paragraph 8(B) is omitted from the purview of present consideration. Basically, the applicant challenges his suspension and its continuation.

2. The case of the applicant, in short, runs as follows:

The applicant, on his selection by the Selection Committee, joined as Peon in the office of Executive Engineer, Civil Division, P&T,

Bhubaneswar w.e.f. 25.06.1973 (Annexure-A/1). It has been submitted that since the applicant belonged to Scheduled Tribe Community (Kandha) and he did not submit any Caste Certificate either at the time of application or at the time of his appointment to the said post of Peon and also there was no mention in the appointment letter that his appointment is provisional and will be subject to production/verification of Caste Certificate, it is understood that his appointment was against un-reserved category. However, he himself submitted a Caste Certificate issued by the Tahasildar G.Udyagiri on 31.10.1973 (Annexure-A/2) in support that he belonged to S.T. Community and Sub-caste "Kandha". On formation of the Bharat Sanchar Nigam Ltd. w.e.f. 01.10.2000, he was transferred to BSNL and was permanently absorbed there. While the matter stood thus, on certain allegation, the Tahasildar G.Udayagiri enquired about the genuineness of the Caste Certificate issued to the applicant on 31.10.1973 and recommended to the Collector, Kandhamal District for cancellation of the said Caste Certificate vide letter dated 18.02.2008 (Annexure-A/3) and, accordingly, the Collector, Kandhamal, issued letter (Annexure-A/4) to the Respondent No.4 suggesting to take action against the applicant as he belonged to SC community and has obtained a ST Caste Certificate. In pursuance thereof an F.I.R. filed by the Tahasildar G.Udayagiri in Tikabali Police Station alleging fraud committed by the applicant in obtaining a false Caste Certificate, the applicant was arrested and taken in to police custody. Since the applicant remained under police custody for more than 48 hours, he was placed

under deemed suspension w.e.f. 10.05.2008 by the disciplinary authority (Respondent No.2) vide order dated 16.05.2008 (Annexure-A/5). The applicant has submitted that although in the meantime more than 3 and ½ years have passed from the date of filing of FIR, no charge sheet has been filed against the applicant in the criminal case. The applicant has relied on the decision of the Hon'ble High Court of Orissa in W.P.(C) No. 3836 of 2008 dated 13.05.2008 (Annexure-A/6), in which the Hon'ble High Court quashed the similar FIR filed in Tikabali Police Station and directed for verification of the Caste Certificate by the District Level Scrutiny Committee constituted by the Govt. of Orissa in accordance with the law laid down by the Hon'ble Apex Court in case of ***Kumari Madhuri Patil Vs. Addl. Commissioner Tribal Development, Thane & Ors.*** vide order dated 06.08.2008 (Annexure-A/7), the suspension of the applicant was extended for six months beyond three months of suspension from 10.05.2008 without any review. Respondent No.2 basing upon the letter of the Collector, Kandhamal, issued a charge sheet under Rule 36 of BSNL CDA Rules, on 01.11.2008 (Annexure-A/8). The suspension of the applicant was further extended for six months many times on subsequent occasions (Annexure-A/9 series). The applicant submitted that although the inquiry was concluded on 26.10.2010, the Inquiry Officer submitted its report only on 23.02.2011 and even after submission of inquiry report his suspension was extended for six months from 16.07.2011 vide letter dated 08.07.2011, against which the applicant made representation to the Chief Architect, BSNL,

Lucknow, requesting him to reinstate him in service as the Inquiry Report was already submitted by the I.O. As the I.O. report was served on the applicant by the Disciplinary Authority on 18.05.2011 (Annexure-A/11), he submitted representation against the findings of the I.O. on 27.05.2011 (Annexure-A/12). The applicant alleges that instead of considering his representation, the Disciplinary Authority further extended his period of suspension till 30.06.2012, which is the due date of retirement on superannuation of the applicant, as per order dated 07.01.2012 (Annexure-A/13). Subsequently, the applicant filed O.A.No. 608/2010, which was disposed of by this Tribunal vide order dated 05.12.2011 with direction to Respondent No.3 (Sr. Architect BSNL, Orissa Circle) to complete the Disciplinary Proceedings within a reasonable time frame, at any rate, not exceeding four months from the date of receipt of copy of the order.

3. Grounds taken by the applicant for the reliefs claimed in this O.A. is that since he was not appointed against any reserved quota, the charge sheet itself is misconceived and without any foundation. The Caste Certificate dated 31.10.1973 has not yet been cancelled by the competent authority and, therefore, is still valid and as per the decision of the Hon'ble High Court of Karnataka in case of **G. Satyamurthy Vs. Director ITI Bangalore in W.P.No. 38606 of 1995** (Annexure-A/15) and the similar decision of the Hon'ble Madras High Court held in the case of **S.P.Sakti Devi Vs. The Collector of Salem & Ors**, in the absence of cancellation of Caste Certificate issued in favour of the petitioner as

invalid, the initiation of the disciplinary proceeding is not only bad in law but also without jurisdiction. The Hon'ble Bangalore Bench of this Tribunal in *O.A.No. 465/2004 in case of G.Bhubaneswari Vs. South Eastern Rly.* has held that genuineness of a Caste Certificate cannot be examined by the Disciplinary Authority. As per the decision of Madhuri Patil case the verification of the SC/ST Caste Certificate already issued can only be conducted by a district level scrutiny committee constituted by the State Govt. On the above grounds, the applicant has prayed for the reliefs as quoted above.

4. Respondents have submitted a detailed counter contesting the prayer made in the O.A. Respondents have submitted that the applicant, before his appointment, had filed an affidavit on 25.05.1973 (Annexure-R/2) regarding his caste, which was mandatory as per memo for offer of Temporary appointment and that he has filed after obtaining the same from the Tahasildar, G.Udayagiri. The Collector, Kandhamal (Phulbani) written a letter dated 03.03.2008 to Chief Engineer (Civil), BSNL, Orissa Circle (Annexure-R/4) stating therein that the applicant is working on the basis of fake certificate and to take suitable action against him. The Tahasildar, G.Udayagiri written a letter to the Collector, Kandhamal on 18.02.2008 (Annexure-R/5) seeking cancellation of Caste Certificate issued to the applicant after following due procedure. Subsequently, an FIR was lodged by the Talasildar, G.Udayagiri in Tikabali Police Station against the applicant. Since the disciplinary proceeding was initiated as per the information of the State authorities

and the cancellation of Caste Certificate can be done only by the State Govt., the applicant should have impled the State Government as necessary party in this case. Since the Collector and Tahasildar have found the Caste Certificate as wrong, there is no reason for the Respondents to discard their findings. If there was any ambiguity in the findings of the Collector and the Tahasildar, the applicant should have appealed before the appropriate forum of the State Government. Respondents have further submitted that the suspension periods of the applicant were approved by the Review Committee (Annexure-R/10) and the applicant also cannot raise such objection at this belated stage. The disciplinary proceeding, in the meantime, has already been completed and draft final order of “Removal From Service” dated 09.09.2011, which was passed much before the order of this Tribunal dated 05.12.2011 in O.A. No. 608/2010 filed by the applicant without availing the departmental remedy available to him, was sent to D.T, Govt. of India for ratification as per rules and anticipating the reply from DoT, Govt. of India, the Review Committee extended the period of suspension. Article I and III of the charges have been proved. Relying on the decision of the Hon’ble Apex Court in the case of **Bank of India & Anr. Vs. Avinash D.Mandivikar** and other (copy not enclosed) submitted that a person obtaining appointment by illegitimate means cannot be allowed to enjoy the same. Respondents finally submitted that the integrity of the applicant being doubtful, his reinstatement in service does not arise.

5. Applicant has filed rejoinder to the counter stating reiterating certain facts. It has been stated that the applicant was appointed as a General category candidate and the affidavit as enclosed by the Respondents under Annexure-R/2 is manufactured one as it cannot be taken as authenticated document as per deposition made by Sri P.K.Mallik, Executive Engineer Civil Division (Annexure-A/18). Since the Caste Certificate was not cancelled by the competent authority, i.e. State level Scrutiny Committee, it was beyond the competence and jurisdiction of the Appointing Authority to take any disciplinary action against the applicant. Since no charge was framed by the Trial Court even after lapse of more than four years of filing of FIR, such FIR is contrary to the law laid down in the Madhuri Patil case. The State Govt. has no role to play as the appointing authority has no jurisdiction to decide the genuineness of the Caste Certificate for which the applicant has rightly approached the Tribunal against the Appointing/Disciplinary Authority. Unless the scrutiny committee cancels such caste certificate, the letter written by the Tahasildar as per Annexure-R/16 has no validity. Only on two occasions Review Committee was constituted to consider his suspension and that too without any Appellate Authority and another officer of that level and hence extension of his suspension is illegal. So far as Inquiry Report is concerned, the applicant has alleged that it has been done without any evidence in support of any of the charges framed against him. The applicant has further alleged that before ratification, i.e. on 12.04.2012, by the Department of Telecom, the Respondents have

stated in the counter to have taken final decision of punishment of “Removal from Service” on 09.09.2011.

6. Heard the Ld. Counsel for both the parties.
7. Admittedly, the applicant was put under suspension vide order dated 16.05.2008 and time to time the suspension period has been extended as per the recommendation of the Review Committee. This Review Committee has been formed under Annexure- R/10 one on 16.02.2009 and the other on 06.08.2009. The applicant is not challenging any specific order passed in 2009 and 2010. The applicant is challenging the extension of suspension order dated 07.01.2012 (Annexure-A/13 in this O.A.). Since the disciplinary proceeding is pending on the allegation of obtaining employment on the basis of a fraud/fake certificate and when the genuineness of the Caste Certificate is under scrutiny by the department, no fault can be found in the action of the Respondents in extending the suspension from time to time calling for interference. That apart, no legal right vests on a candidate who has obtained the employment by fraud/misrepresentation/malafide and it is well settled law that a person appointed erroneously on a post cannot be permitted to reap the benefits of wrongful appointment as has been observed in the case of ***Vikash Pratap Singh Vs. State of Chhattisgarh reported in AIR 2013 SC 3414***. Since the disciplinary proceeding has already been concluded and the applicant has already retired from service, no order on the validity of suspension order can be passed at this stage as it is the

duty of the Disciplinary Authority to decide how the period of suspension would be treated. Hence ordered.

8. O.A. being devoid of merit is dismissed.

(M. SARANGI)
Member (Admn.)

(S.K.PATTNAIK)
Member (Judl.)

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