

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00351/2015

Jabalpur, this Monday, the 08th day of October, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Ramesh Chand Dekate
S/o Late Shri Ramaji Dekate
Aged about 63 years,
R/o E.W.S. 679 Vaishali Nagar
Bhilai Distt. Durg C.G. 490001
(By Advocate –**Shri Sanjay K. Agrawal**)

-Applicant

V e r s u s

1. Union of India,
through its Secretary,
Department of Personnel and Training
3rd Floor Lok Nayak Bhawan,
Khan Market New Delhi 110003

2. Steel Authority of India Ltd.
Through its CMD
Ispat Bhawan Lodi Road,
New Delhi 110003

3. Bhilai Steel Plant
through the Chief Executive Officer
Bhilai Steel Plant Ispat Bhawan,
Main Gate Bhilai Distt.
Durg C.G. 490001

4. The Assistant Manager (Personnel-EE)
Bhilai Steel Plant Bhilai Distt
Durg C.G. 490001
(By Advocate –**Shri P. Shankaran Nair**)
(Date of reserving the order: 26.07.2018)

- Respondents

ORDER**By Ramesh Singh Thakur, JM:-**

The applicant has challenged the inaction on the part of the respondents in not disbursing his retiral dues after his superannuation on 30.11.2012, on the pretext that the applicant does not belong to Scheduled Tribe Halba and matter is pending before the Caste Scrutiny Committee.

2. The applicant in this Original Application has prayed for the following reliefs:-

“8.1 Hon’ble Tribunal be pleased to direct the respondents to disburse all the retiral benefits such as gratuity, leave encashment settlement allowance V.P.F. C.P.F etc. etc. and salary of one month i.e. November 2012 to the applicant with 9 % interest per annum.

8.2 Hon’ble Tribunal may also pass any further order (s), direction(s) as be deemed just and proper to meet the ends of justice.

8.3 The Hon’ble Tribunal may also be pleased to quash the order dated 24.08.2015 as void and illegal.”

3. Precisely the case of the applicant is that the applicant had joined Bhilai Steel Plant (BSP) on 30.04.1975 as field Assistant. He took the benefit of reservation in induction in the service as he belongs to Halba-Koshti which comes under the Scheduled Tribe category at that time. He stood retired on 30.11.2012 (Annexure A/1) from the post of Deputy Manager (E-III Grade) on attaining the age of superannuation.

3.1 The applicant approached the respondents for disbursing his retiral benefits as well as salary of the last month of his service. But the respondents did not turn up in granting the same. He approached this Tribunal by way of filing an Original Application No.47/2013 which was disposed of vide order dated 15.01.2013 (Annexure A/2) with a direction to the respondents to disburse the retiral benefits for which he is lawfully entitled on his retirement.

3.2 It is further submitted by the applicant that the respondents had filed review application for modification of the said order of the Tribunal as the scrutiny of the caste of the applicant was pending before the State Level Caste Scrutiny Committee. The said review application was allowed by the Tribunal. Being aggrieved by the said order of the Tribunal, the applicant preferred a Writ Petition before the Hon'ble High Court of Chhattisgarh. The said Writ Petition was dismissed on 30.07.2014 on the ground that the scrutiny of the caste of the applicant is under consideration before the State Level Caste Scrutiny Committee. Therefore, he is not entitled for any relief.

3.3 A show cause notice dated 25.04.2013 was issued to the applicant by the High Level Caste Scrutiny Committee to show the genuineness of his caste certificate. The applicant filed his detailed reply to the said show cause notice. On non receipt of any response

from the said committee, the applicant submitted his representation to the Committee on 01.12.2014 (Annexure A/3).

3.4 Subsequently, the High Level Caste Scrutiny Committee summoned the applicant to appear personally on 09.01.2015 for personal hearing. He appeared before the High Level Caste Scrutiny Committee on 09.01.2015 and submitted reply along with all the relevant documents and judgments. It was specifically pointed out by the applicant that his caste is Halba Koshti and he was inducted in the service of the respondents in the year 1975 and as per judgment of Hon'ble Apex Court in the case of *State of Maharashtra vs. Milind and others* (2001) 1 SCC 4 held that the persons who are Halba Koshti/Koshti do not come under the purview of Scheduled Tribe, Halba. The Hon'ble Apex Court has further held that those persons who are already in employment on the basis of taking advantage of reservation as Halba Koshti before the date of the judgment i.e. on 28.11.2000 they will not be affected. However, in future they will not be eligible for any reservation benefit.

3.5 The applicant thereafter submitted an Office Memorandum dated 10.08.2010 (Annexure A/4) issued by the Department of Personnel and Training (DoPT), Government of India, in relation to persons belonging to the Halba Koshti/Koshti Caste who got

appointment against the vacancies reserved for the Scheduled Tribe on the basis of ST certificate, issued to them by the competent authority on or before 28.11.2000 shall not be affected. However, they shall not get any benefit of reservation after 28.11.2000.

3.6 In accordance with the order dated 28.11.2000 passed by Hon'ble Apex Court, the State of Madhya Pradesh issued a circular dated 07.03.2011 (Annexure A/5), whereby implementation of the said order dated 28.11.2000 was notified. A similar circular was issued by the State of Chhattisgarh whereby implementation of the said order dated 28.11.2000 was notified. The applicant sought information from Right to Information regarding implementation of the said order of Hon'ble Apex Court in Bhilai Steel Plant whereby it was informed that the said order is being implemented in Bhilai Steel Plant vide information dated 05.11.2012 (Annexure A/6).

3.7 The applicant submitted that his caste certificate was verified by the Collector, Balaghat and it was pointed out that in college transfer certificate the caste of the applicant was shown as Halba. Though the applicant has submitted documents as well as judgment of Hon'ble Apex Court to the Committee, the said committee held that the applicant is not a Scheduled Tribe of Halba and his caste is Koshti vide order dated 04.03.2015 (Annexure A/7). The applicant

further submitted that he was inducted in the service in the year 1975 much before 28.11.2000 and as per judgment of Hon'ble Apex Court his rights should be protected and his retiral dues should be disbursed in accordance with law.

3.8 The applicant submitted his representation dated 16.03.2015 to the Bhilai Steel Plant for disbursing his retiral benefits. Till date no action has been taken by the respondents.

4. The respondents in their reply have submitted that the applicant's appointment is BSP was based on his Scheduled Tribes (Halba) certificate and he took benefit of reservation at the time of his appointment. It has been submitted by the respondents that the CPF payment and SEWA payment of the applicant have already been released to him. His balance CPF dues amounting to Rs.3,08,231/- was released vide cheque No.84388, dated 17.12.2012. He had already withdrawn a sum of Rs.10 lakh from CPF account before his separation under pre-retirement withdrawal facility as NRL and the same was released to him vide cheque No.81559 dated 14.07.2012. His SEWA payment of Rs. 10,263/- was released to him vide cheque No.549709 dated 01.12.2012 (Annexure R/1). His salary for the month of November 2012 had also been released to him vide Annexure R/2. The remaining final settlement/retiral dues (except CPF & SEWA) could not be

released for the reason that his Caste Certificate was under scrutiny of High level Caste Certificate Scrutiny Committee at Bhopal. The said committee vide order dated 09.01.2015 has finally held that the applicant is not the member of “Halba” tribe but is a “Koshti” by caste, hence decided to cancel the caste certificate dated 24.07.1973 issued by the District Coordinator, Tribal Welfare Department, Balaghat and granted the employer i.e the respondent No.2 to 4 liberty to take independent decision as per rules. In compliance to the order of the Committee, the Commissioner, Tribal Welfare Department Madhya Pradesh vide order dated 04.03.2015 has directed Collector and Superintendent of Police of District Balaghat to take action with a copy to the General Manager (Vigilance) and Additional Chief Vigilance Officer, Bhilai Steel Plant. In pursuance to the aforesaid orders, the Collector District Balaghat has cancelled the Caste Certificate of the applicant vide order dated 23.03.2015 (Annexure R/3).

4.1 It has been submitted by the replying respondents that the applicant joined the respondent-department on 30.04.1975 based on caste certificate of Scheduled Tribe produced by him against a post reserved for ST candidate. When it was established by the Authority that he does not belong to ST category, his appointment itself was null and void depriving the right of a genuine candidate

in ST category. Thus, his appointment is non-est in the eyes of law. Therefore, the applicant cannot be allowed to take advantage of the wrong committed by him otherwise appointment of ineligible candidates will lead to making mockery of very purpose of reservation against the mandate of Constitution and scheme framed by Government. As the Committee has finally decided to cancel the caste certificate of the applicant and the persons who have taken advantage of the reservation on the basis of Halba-Koshti and are in service prior to 28.11.2000 i.e. the date of order of *Milind's case* (supra) they will not be affected, is incorrect.

4.2 The respondent-department has denied that the State of C.G. or Bhilai Steel Plant has notified and implemented the said order dated 28.11.2000. The respondent No.2 to 4 has been given liberty to take decision as per the rule by the Committee. Hence the appointment of applicant has been declared as non-est in the eyes of law and consequently his service/employment is null and void. Accordingly his appointment in BSP-SAIL has been cancelled and all his final payments except the payments which have already released to him after his superannuation on 30.11.2012 have been forfeited. As such he will not be eligible for remaining retiral benefits of Gratuity, Leave Encashment, SESBF etc.as per order issued on 24.08.2015 (Annexure R/4).

4.3 It has been further submitted by the replying respondents that the respondent-department has taken decision as per guidelines framed by Hon'ble Supreme Court in the case of *Ku. Madhuri Patil* vs. *Additional Commissioner Tribal Development* and further order of Hon'ble High Court of Chhattisgarh dated 08.07.2008 (Annexure R/6) in the case of *Shri Ramesh Chandra Dekate* vs. *State of Chhattisgarh*.

4.4 The respondents further submitted that the applicant being aggrieved from the order dismissing his review petition by this Tribunal preferred Writ Petition(S) No.4401/2013 before Hon'ble High Court of Chhattisgarh which was dismissed vide order dated 03.07.2014 (Annexure R/7). So the applicant has produced false caste certificate to obtain employment under respondent-department and when it is established that he does not belong to ST community he is not entitled to any benefits of the service rendered by him based on false caste certificate except what has already been paid to him.

4.5 Regarding Office Memorandum dated 10.08.2010 issued by DoPT is specifically in relation to the State of Maharashtra. So, the reliance placed by the applicant on the memorandum is misplaced. The circular issued by State of Madhya Pradesh is applicable for the services of the Government of Madhya Pradesh and is not

applicable in the instant case as the respondent-department is being a Government of India Undertaking. Moreover, the circular/memorandum issued by the Government of C.G. is applicable for its employees and the same cannot be taken into account while deciding the instant case. The applicant's case is governed by the Rules and Regulation of the respondent's company.

5. The applicant has filed the rejoinder to the reply filed by the respondents. The applicant reiterated its earlier submissions made in the O.A. It has been further submitted by the applicant that the Collector, Balaghat has cancelled the caste certificate of the applicant vide order dated 23.03.2015. The applicant has submitted that he has filed an application under Right to Information Act seeking information under what provision/order caste of the applicant was scrutinized vide letter dated 22.10.2011, the BSP (employer) informed that on the basis of letter dated 08.06.2005 (Annexure A/8) the caste of the applicant was scrutinized. On bare perusal of the letter dated 08.06.2005, the caste of the employee to be scrutinized who were appointed after 1995 and the appointment of the applicant is of the year 1975. Therefore, the case of the applicant could not be scrutinized by the respondents as per their own departmental instruction. It has been further submitted by the applicant that under the provision of RTI he was informed by the

Ispat Mantralaya vide letter dated 03.02.2012 (Annexure A-9) that order of DoPT dated 10.08.2010 (Annexure A-4) is to be implemented in the several public sector units including SAIL. The Assistant General Manager SAIL also informed vide letter dated 27.02.2012 (Annexure A/10) the applicant for implementation of order dated 10.08.2010 the units/plants of SAIL have been directed. The applicant was informed vide letter dated 05.11.2012 (Annexure A/11) that the memo dated 13.02.2012 has been implemented in Bhilai Steel Plant. It has been further submitted by the applicant that the contention of the respondents that the Bhilai Steel Plant has not implemented the judgment of Hon'ble Apex Court in the case of *Milind* (supra), is in correct, which is clear vide letter dated 05.11.2012. Regarding Annexure R/4 it is submitted by the applicant that all the retiral benefits including gratuity, leave encashment etc. have been forfeited by the respondents without any cogent reason. So the applicant is entitled for protection as he was inducted in the services of the respondents in the 1975 and protection was granted by Hon'ble Apex Court till 28.11.2000. It has been specifically submitted by the applicant that Chhattisgarh Scrutiny Committee in case of a similarly situated person one Shri Mahendra Dekate has also extended protection to him vide order dated 17.06.2015 (Annexure A/14), as the said

Mahendra Dekate belongs to 'Koshti' but since he was inducted in the services before 28.11.2000 (i.e. the date of Milind case) his rights were protected by the Chhattisgarh Scrutiny Committee. It has been further submitted that in case of ***Kavita Solunke*** 2012 (8) SCC 430, Hon'ble Apex Court extended the protection to the petitioner therein in the light of ***Milind's case***. So the applicant deserves for protection as per judgment of Hon'ble Apex Court.

6. We have heard the submissions made by learned counsel for both the parties and also gone through the pleadings and documents annexed therewith.

7. From the pleadings it is crystal clear that the applicant was appointed with the respondent-department in the category of ST/Halba on the basis of ST certificate and the benefit of reservation of ST category was given to the applicant. It is also admitted fact that the applicant stood retired on 30.11.2012. It is also admitted fact that the case of the applicant regarding the caste certificate was referred to High Level Caste Scrutiny Committee and the notice was issued to the applicant. The applicant has replied and has taken various steps before the High Level Caste Scrutiny Committee. The said show cause notice was issued on 25.04.2013 and the applicant submitted his detailed reply on 01.12.2014 (Annexure A/3). The applicant appeared for personal

hearing on 09.01.2015 before the High Level Caste Scrutiny Committee and had produced all the relevant documents along with judgments. It is also admitted fact that the applicant has made specific averments regarding the benefit of judgment passed by Hon'ble Apex Court in the case of ***Milind*** (supra). It is also further admitted that the High Level Caste Scrutiny Committee has held that the applicant is not Scheduled Tribe of Halba and his caste is Koshti vide order dated 04.03.2015. Thereafter the replying respondent on the basis of decision of High Level Caste Scrutiny Committee has directed the Collector and Superintendent of Police of District Balaghat to take action. The Collector District Balaghat has cancelled the caste certificate of the applicant vide order dated 23.03.2015 (Annexure R/3) and resultantly the respondents have cancelled the letter of appointment has invalid and nonest in the eye of law. Vide order dated 24.08.2015 (Annexure R/4), which is under challenged before this Tribunal.

8. The learned counsel for the applicant has relied upon the judgment passed by the Hon'ble Apex Court in the case of ***Milind*** (supra). The argument of the applicant is that the protection has been given to the persons who have got the caste certificate before 28.11.2000 i.e. the date of order of Hon'ble Apex Court. It has been further submitted by the learned counsel for the applicant is

that the applicant had retired from service on 30.11.2012 from the post of Deputy Manager (E-III Grade) on attaining the age of superannuation. The applicant has further relied upon the judgment passed by Hon'ble Apex Court in the matter of *State of Jharkhand and Others vs. Jitendra Kumar Srivastava and another* in Civil Appeal No.6770/2013 regarding the right to receive pension which is recognized as right to "property".

9. On the other side, the learned counsel for the respondents have submitted that the replying respondents has considered the letter of the applicant in view of the report submitted by High Level Caste Scrutiny Committee and has passed the order after considering the report of the committee whereby it was held that the applicant is not a member of "Halba" tribe but is a "Koshti" by caste. Resultantly, the caste certificate issued by the District Coordinator, Tribal Welfare Department, Balaghat on 24.04.1973 has been cancelled vide order dated 23.03.2013 (Annexure R/3) by the Collector District Balaghat. Accordingly, his appointment in BSP SAIL has been cancelled and all his final payments except the payments which have already released to him after his superannuation on 30.11.2012 have been forfeited as per order dated 24.08.2015 (Annexure R/4). The replying respondents has relied upon the judgment passed by Hon'ble Apex Court in the

matter of **B.H. Khawas** vs. **Union of India and others** (2016) 8 SCC 715. The learned counsel for the respondents has submitted that the instant case is covered by the judgment passed by Hon'ble Apex Court in the matter of **B.H. Khawas** (supra), as the same issue has been dealt with by Hon'ble Apex Court. As per judgment passed by Hon'ble Apex Court in the case of **B.H. Khawas** (supra), the similar plea was taken by the petitioner and has sought the protection of the judgment passed by Hon'ble Apex Court in the case of **Milind** (supra). The Hon'ble Apex Court in the matter of **B.H. Khawas** (supra) has held as under:-

“15. Considering the above, the appellant is not entitled for any relief on the finding that his appointment as Chemical Examiner in the Customs and Central Excise Department vide appointment letter dated 16-06-1995 had not attained finality. Notably, the Caste Certificate Scrutiny Committee has finally answered the factum of caste claim of the appellant on the basis of relevant material, which is indicative of the fact that in the relevant official record pertaining to even the close relatives of the appellant (grandfather and uncle), the caste recorded is “Koshti” and occupation shown as weaving separately. The appellant has allowed that decision of the Caste Certificate Scrutiny Committee dated 10-2-2003/22-4-2004 to attain finality. The Scrutiny Committee has unambiguously held that the appellant does not belong to “Halba” Community, a notified Scheduled Tribe in Maharashtra. The High Court was, therefore, right in allowing the writ petition filed by the Department and to restore the termination order dated 8-6-2004.

16. Accordingly, we find no merit in this appeal; the same is dismissed with no order as to costs.

10. In the instant case also the scrutiny committee vide Annexure A-7 has discussed the matter of the applicant in detail and proper opportunity has been granted to the applicant and it has been held by the committee that the applicant was not the member of 'Halba' tribe and the committee has decided to cancel the caste certificate issued to the applicant on 24.07.1973. However, it has been indicated that the appointment authority has admitted to take appropriate steps.

11. In the instant case, as per Annexure A/7, the High Level Caste Scrutiny Committee has given the specific finding that the caste certificate issued to the applicant on 24.07.1973 is not valid and the Collector Balaghat has later on cancelled the caste certificate vide order dated 23.03.2015 (Annexure R/3). Resultantly, the appointing authority of the respondents has passed order dated 24.08.2015 (Annexure R/4) whereby after considering the finding of the Committee and the principle laid down by the Hon'ble Apex Court, the employment of the applicant has been cancelled. It has been further indicated in Annexure R/4 that the payment except the payments which have already released to him after his superannuation on 30.11.2012 have been forfeited. The case of the applicant is fully covered by the judgment of Hon'ble Apex Court in the case of **B.H. Khawas** (supra). Moreover, the

applicant has taken the similar plea as has been taken in the case of ***B.H. Khawas*** (supra). The applicant has not challenged the report of High Level Caste Scrutiny Committee before the competent court of law. So, we are of the affirmed view that there is no illegality in the order passed by the respondent-department.

12. Resultantly, this Original Application is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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