



CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH, KOLKATA

O.A. NO. 270 of 2012

Order dated: 11.07.2018

Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sri Uday Narayan Pushpak,  
Son of Late Asharfi Prasad Bhakta,  
Employed as Technician Grade-III,  
In Shop No. 27, Eastern Railway,  
Kanchrapara now posted in Production  
Control Organisation/ holding  
Ticket No. P.P. – 39 (Inspection),  
Eastern Railway, Kanchrapara,  
And residing at Railway Plot No. A/20,  
Dangapara – Eastern Railway,  
Kanchrapara,  
Post Office : Kanchrapara,  
District – North 24-Parganas.

..... Applicant.

-Versus-

1. Union of India,  
Service through the General Manager,  
Eastern Railway, Kolkata,  
17, Netaji Subhas Road,  
Kolkata – 700 001.
2. Chief Personnel Officer,  
Eastern Railway,  
17, Netaji Subhas Road,  
Kolkata – 700 001.
3. Chief Works Manager,  
Eastern Railway, Kanchrapara,  
P.O. – Kanchrapara,  
District – 24-Parganas(North)  
PIN – 743145.
4. Deputy Chief Mechanical Engineer,  
(C & W), Eastern Railway, Kanchrapara,  
P.O. – Kanchrapara,  
District : North 24 Parganas,  
PIN – 743145.

5. Sri Suresh Prasad,  
Employed as Technician Grade-I,  
T/No. 27108, Shop No. 27,  
Eastern Railway/Kanchrapara,  
Service through S.S.E. Shop No. 27,  
Eastern Railway, Kanchrapara,  
P.O. : Kanchrapara,  
District : 24 Parganas (North),  
PIN – 743145.

6. Sri Dasarath Prasad,  
Employed as Technician Grade-I,  
T/No. 27226, Shop No. 27,  
Eastern Railway, Kanchrapara,  
Service through – S.S.E/Shop No. 27/  
Eastern Railway/ Kanchrapara,  
P.O. : Kanchrapara,  
District : North 24 Parganas,  
PIN – 743145.

..... Respondents.

For the applicant : Mr. A.K. Banerjee, Counsel  
Mr. P. Sanyal, Counsel

For the respondents : Mr. A.K. Guha, Counsel

### ORDER

Per Bidisha Banerjee, Judicial Member

The applicant has filed this O.A. in order to seek the following reliefs:

“8.(A) An order directing the respondent authority to cancel, withdraw and/or revoke: -

- (i) Memorandum of Charge bearing No.27/ 27207 dated 20.10.1994 issued upon the applicant (being made Annexure A-4 to the application).
- (ii) Findings of the Enquiry Officer (being made Annexure A-6 to the application).
- (iii) Order of Punishment bearing No. 27/ 27207 dated 22.01.1996 (being made Annexure A-7 to the application).
- (iv) Order of appellate authority dated 31.05.1996 (being made Annexure A-8 to the application).
- (v) Order of Chief Personnel Officer, Kolkata, communicated to the Applicant by CWM/ KPA under letter No.27/ 207 dated 27.11.2001 (being made Annexure A-9 to the application).

(vi) Order dated 11.4.2011 passed by the revising authority so far it relates to upholding of the order of punishment treating the applicant belonging to unreserved community.

(B) An order directing the respondent authority to re-instate and restore to the applicant to the post and position of Technician Grade-II with retrospective effect from 01.01.1996 i.e. date of illegal reversion of the basis of impugned order of punishment with all actual consequential benefits and further directing the respondents to consider the applicant for promotion to the Technician Grade I, as has been allowed to many of the juniors to the applicant particularly having regard to the order dated 11.4.2011 passed by the Revising authority and the representations dated 28.06.2011, 16.08.2011 and 26.12.2011 made by the applicant in this context.

(C) An order directing the respondents to produce all records including the records relating to respondent Nos. 5 and 6 before this Hon'ble Tribunal.

(D) An to pass any other order or orders as Your Lordships may deem fit and proper."

2. The gravamen of the charges against him are as under:

"In response to Employment Notification issued under No:E/R/Group-'D' (Class-IV) dt. 31.8.83, Sri Uday Narayan Pushpak, T/27027, Sk. Fitter (P)/ Gr.II. of Shop No : 27/KPA submitted an application bearing No. 88528 for recruitment in Group-D category as a ST candidate (On being found suitable by the screening committee he was empanelled against ST quota bearing panel No. ST/7/84). In respect of Caste Certificate, he has enclosed attested copier of Certificate issued by BDO/Baniyapur as welfares District Welfare Officer/ Soran, Chapra – Bihar which speaks that he belongs to Backward community whereas in the application he claimed him ..(not legible) a member of 'ST' Community. However, he was given a chance vide this office letter No. E/SH/Rectt./Mech.1/KPA dt. 26.7.94 to submit the caste certificate in the prescribed Proforma issued the competent authority stating his community 'ST'. But he did not comply with the above letters. He has wilfully misguided the Administration. He has got himself recruited against 'ST' Quota though he does not belong to 'ST' Community and has been enjoying the facilities of 'ST' community. Thus he has violated Rly. Service Conduct rule 1966 in item-(iii) of Rule -3(1)."

3. A detailed enquiry was conducted on the allegation. The enquiry officer concluded as follows:

"(i) If the list of caste belong to ST of Bihar state provided by WM/C/KPA (P – 41) IS THE FORD STICK TO JUDGE WHETHER Sri, Pushpak belong to ST or not, it is to be said that Sri, Pushpak was not belong to ST community.

(ii) In my opinion Sri, Pushpak out of benefit of doubt may please be exonerated from the charge of wilful misguiding to the Administration. "The Reason of findings are Lid Down."

Reasons of finding:

1)(a) Caste certificate produced by Sri, Pushpak (P – 4) explains that he belongs to Mali by caste which falls under must backward class but there is no mention that he belong scheduled tribe.

1)(b) The list Supplied by WM/C/KPA (P – 41) indicates 30 caste which fall under ST community in Bihar state. On that list is not mentioned that 'Mali' caste is to be treated as ST such it is appeared that Sri, Pushpak does not belong to ST community.

2)(a) It is true that Sri, Pushpak not belonging to ST community appointed for recruitment in Group – 'D' category as a ST candidate fro charge framed (P – 13). That time there was no existence of C From the questioners & answers it reveals that on hi native their family was considered as ST community (P – 39) and they had to get some preference for considering ST community and it is to be believed that such things are happening in interior village still now. Moreover he himself was confirmed by receiving the caste certificate where it is mentioned, that he belongs to "most backward Class".

2)(b) By judging the caste certificate, the administration i.e. screening committee Has appointed him as a ST candidate. So it will be unjustified to victimize the candidate Sri. Pushpak Leaving the screening committee member those who are paid by Railways.

Note to the Administration :- As Sri. Pushpak refers to his application on 27.1.95 (P – 28) the case of Sri Suresh Prasad T/27108 may please by visualized and necessary steps may please be taken if needed."

4. The applicant has been penalised, vide penalty order dt. 22.1.06 (A-7) of

the Works Manager, in the following manner –

"reverted from the scale Rs. 1200-1800/- to the next lower time scale of Pay Rs. i.e. 990/- in scale Rs. 950-1500/- as SK. Fitter (P) Gr-III with immediate effect."

The detailed order is as under:

"The case has been enquired by an Enquiry Officer in the rank of SS. The enquiry officer has held Sri Pushpak, T/27207 guilty for the charge

mentioned in the Major penalty, charge-sheet. The findings of enquiry officer is accepted.

Considering all the facts and figures available in the file and in the Service Record of Sri Pushpak, T/27207 I consider that Sri Pushpak, T/27207 is responsible for claiming himself as 'ST' candidate through he does not belong to the same.

So, I punish Sri Pushpak, T/27207 for reduction to the next lower time scale of pay permanently at this stage (cumulative effect) and the benefits received by Sri Uday Narayan Pushpak, T/27207 from the Administration as a ST candidate during his period of service should be snatched away and his seniority may be fixed in the Group of UR Community as per Rule."

5. The order on Appeal, dt. 29.2.96, issued on 31.5.96 by CME(C) (A-8), reads as under:

"The appellate authority has considered the appeal and he upheld the penalty awarded to you by Disciplinary authority."

6. Applicant on 28.3.01 (A-9) prayed before the Chief Works Manager (CME) for waiver of punishment.

He was informed on 27.11.01 (A-9) "for CWM" as follows -

"Ref. :- Your application dated 13.06.2001"

Reference above, it is for your information that the case in question has already been sent to CPO/CCC and he has intimated to this office that the irregularity has been committed in the D.A. case."

7. On 17.11.09 applicant preferred application for revision of penalty, before the General Manager.
8. The applicant simultaneously, also preferred O.A. 221 of 2010 before this Tribunal with the following prayers:

"(a) An order directing the respondents to cancel withdraw the memorandum of charge bearing No. 27/27207 and 20.10.1994 issued upon the applicant.

(b) An order directing the respondents to cancel/ withdraw/rescind the findings of the enquiry officer, order of punishment bearing No. 27/27207 dated 22.01.1996, order of appellate authority dated 31.05.1996 and order of Chief Personnel Officer dated 27.11.2001.

(c) An order directing the respondent to re-instate and restore to the applicant to the post and position of Technician Grade-II with retrospective effect from the date of illegal reversion on the basis of impugned order of punishment with all actual consequential benefits and further promotional benefit to the post of Technician Grade."

9. The O.A. was disposed of without going into the merits of proceedings with the following order:

"In the interest of justice, therefore, this Court directs that the revision petition at Annexure -A/8 may be considered by the General Manager himself and appropriate speaking order be passed within a period of three months from the date of receipt of copy of this order and communicate the same to the applicant thereafter. For that purpose, the applicant is directed to forward copy of the OA, annexure, revision memorandum and this order along with other materials to the said authority forthwith."

10. Pursuant to the directions as supra, the General Manager issued the following speaking order:

"I have seen the caste certificate issued by BDO/Baniapur which clearly mentioned that Sri Pushpak is belongs to "Mali" caste and is known as backward class. The other caste certificate issued by District Welfare Officer, Saran, Chapra also mentioned that Sri PUsHPak belongs to "Mali" by caste which is known as most backward community. Thus, it proves that Sri Pushpak is not belonging to ST community. I find that though Sri Pushpak was a literate person having passed Secondary School Examination, he had submitted application as ST candidate without having a proper ST certificate only to secure a Govt. employment against ST quota.

Secondary, Sri Pushpak has argued that one Sri Suresh Prasad is still enjoying the status of ST submitting same certificate. This cannot be a justification for Shri Pushpak to be allowed the status of ST. I direct CWM/KFA to examine the issue of community status of Shri Suresh Prasad personally and take appropriate action as per law.

Thirdly, E.O in his findings has mentioned that Sri Pushpak does not belong to ST community and found him guilty of the charges E.O also made some observation about benefit of doubt to exonerate him from the charges but the Disciplinary authority taking cognizance of all DA proceedings and other records did not accept such view of E.O and imposed penalty for reduction to the lower time scale of pay as per rule. I find that all Rules and

Procedures under Discipline and appeal rules have been followed and there is no lacunae in this regard.

Thus, in compliance with Hon'ble Tribunal's order, after having considered the revision petition and all facts on record, I uphold the penalty as imposed by DA with further direction that his case for re-promotion is to be reviewed by the competent authority as per rules on the basis of his subsequent performance, as and when he is found fit for promotion."

(emphasis added for clarify)

11. Aggrieved, the applicant has preferred this O.A.
12. The applicant in this OA, has inter alia highlighted the following legal lacunae in the conduct of the proceedings:
  - (i) The applicant belongs to "ATIYANT PIHHLI JATI" which is treated as ST community in the District of Chapra in Bihar and the Screening Committee at the time of appointment after verifying the same accepted.
  - (ii) Other similarly circumstanced employees viz, Sri Suresh Prosad, T/No. 27 Respondent No. 5 and Respondent No. 6 belong to the same shop and seniority group, also belongs to "ATIYANT PICHHLI JATI" which is treated as ST community in the Chapra District in Bihar, is also being treated as member of ST Community by the authorities and thus gross discrimination has been made among similarly circumstanced persons.
  - (iii) The certificate issued by the District Welfare Officer, Chapra is still valid and genuine which was issued in the name of the applicant as is being treated valid and genuine in the case of said Suresh Prosad, Respondent No. 5 also Respondent No. 6 and this aspect of the matter has not considered by the Enquiry Officer, disciplinary authority, Appellate and Reviewing Authority.
  - (iv) The Charge Sheet is stale having been issued after nine years disregarding the report of Civil authorities, which lie under the care and authority of Chief Works Manager, Kanchrapara.
  - (v) The Charge sheet was issued with a closed and vindictive mind.
  - (vi) Findings of the Enquiry Officer is perverse, arbitrary and beyond jurisdiction and contradictory and the Enquiry Officer did not call for records of the private respondents to find out truth.
  - (vii) The order of Disciplinary Authority changing the community of the applicant from ST to UR is beyond Jurisdiction, arbitrary, illegal and not tenable in the eye of law and fact and is void ab-initio.

- (viii) The respondent authority can not direct the applicant to submit fresh caste certificate from other authority when the Caste Certificate issued by District Welfare Officer, Chapra, Bihar, remain valid and genuine both in case of the applicant and said Private respondents No. 5 and 6.
- (ix) The reversion of the applicant is void ab-initio and the applicant is entitled to re-instatement as Technician Trade-II and further promotion as Technician Grade-I with all consequential benefits.
- (x) The order of Appellate authority is cryptic.
- (xi) Acts and actions of the Respondent authorities are highly arbitrary, illegal and violate the fundamental rights of the applicant as granted under Article 14, 16 and 21.
- (xii) Memorandum of Charge, Findings of the Enquiry Officer, order of Punishment order passed by the Appellate authority and the order of the Reviewing Authority so far as it supports order of the Disciplinary Authority and Appellate authority are not maintainable and liable to be quashed.
- (xiii) The order of the Reviewing Authority so far as it directs for reopening of promotional channel of the applicant has not been considered inspite of repeated representations made by the applicant in this regard.
- (xiv) The order of the General Manager upholding the order of Punishment imposed by Respondent No. 4, Disciplinary Authority, is not sustainable in the eye of law.

13. The respondents in their reply has almost reiterated the facts stated in the speaking order, impugned in the present OA.

14. We considered the rival contentions and perused the materials on record.

15. We discerned the following:

(1) Applicant was appointed in 1985. He had submitted a caste certificate, issued by District Welfare Officer, Seran Chapra, on 27.12.84. certifying him as belonging to "MALI" community which fell under "ATYANT PICHHLI JATI" which did not construe to mean "ST".

(2) While the enquiry officer found the applicant guilty, opined that the applicant should be exonerated on "benefit of doubt". The disciplinary authority thought it fit to penalise him with reduction in scale permanently.

The Disciplinary Authority however had not carefully analysed the evidence to come to his conclusion. He relied upon the evidence discussed by the enquiry officer.

(3) The Appellate order is indeed cryptic, and a non speaking one.

(4) The General Manager, as revisional authority ought to have considered the aforesaid violation of procedural law. Which he failed to discharge. However, he has discussed some evidence in his order and upheld the punishment.

(5) The applicant had indeed sought for consideration as ST and applied as an ST. He was appointed under ST quota, relaxing standards as meant for the STs. Therefore being a non ST he enjoyed benefits meant for STs. As such it could not be said that the charges lacked material basis or the findings were perverse.

(6) The applicant was let off with the penalty of permanent reduction in scale and fixation of seniority as UR, whereas the said Suresh Prasad (Respondent No. 6) was removed from Railway Service with immediate effect for the following lapse:

"Guilty to will fully misguided to the Railway Administration by submitting dubious certificate proclaiming to be belong to "GOND" community which is taken as ST category. But you are actually belongs to "KANU" community which is not a ST category. You have got appointment as Khalasi and further got several promotions upto Sr. Tech by using the dubious certificate."

Yet applicant has alleged discrimination meted out to him vis-a-vis Suresh Prasad, which is allegation is baseless. We noted that in fact he has been favoured with retention and let off with lesser punishment compared to Suresh Prasad.

16. In the aforesaid backdrop we find no plausible reason to interfere with the punishment meted out to the applicant.

17. However, it was urged in course of hearing that the punishment and its implications are ambiguous which needs to be clarified as the applicant has neither earned any promotion nor increments for a long time.

18. Therefore, before we part we would hasten to add that the grievance, if appropriately represented within 4 weeks, should be redressed by the authorities within 8 weeks thereafter and benefit be released in accordance with law.

19. O.A. stands dismissed but with the aforesaid liberty. No costs.

**(Dr. Nandita Chatterjee)**  
**Administrative Member**

DRH

**(Bidisha Banerjee)**  
**Judicial Member**