

**Central Administrative Tribunal
Madras Bench**

OA/310/01324/2013

Dated 11th December Two Thousand Eighteen

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

T.Kannammal,
W/o Thatti Reddi,
No.8, Vasantham Nagar,
EB Colony, Saravanampatti PO,
Coimbatore-35. .. Applicant
By Advocate **M/s.Paul & Paul**

Vs.

Union of India, rep by
Principal Director of Audit,
Southern Railway,
Chennai. .. Respondent
By Adovacte **MrT.Ravikumar**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

This is an OA filed seeking the following relief:-

“to direct the respondent to grant the 2nd instalment of VIth Pay Commission scales payable to the applicant from 1.1.2006 to 30.11.2008 along with bonus amounts to the applicant and pay the same with interest at 12% and pass such other order or orders as may be deemed fit and thus render justice.”

2. The applicant was a Senior Auditor under the respondent and he superannuated on 30.11.08. The applicant claims to belong to Konda Reddy Community which is considered as a Scheduled Tribe. He entered service as Auditor in the office of the Accountant General on 08.12.77 and thereafter changed over to the office of the respondent in the year 1985. There arose a dispute regarding the caste certificate of the applicant and the District Collector cancelled the same by an order dated 16.3.93. Then respondent issued a charge memo to the applicant dated 12.4.93 under Rule 14 of CCS (CCA) Rules, 1965. Applicant filed an appeal before the State Level Scrutiny Committee (SLSC). While the appeal is pending, the applicant retired from service. The respondent had granted a provisional pension but they withheld terminal benefits. Then applicant filed OA 861/08 and the Tribunal ordered the release of terminal benefits. But the Hon'ble Madras High Court stayed the above order. In the meanwhile the SLSC cancelled the certificate of the applicant. But the Hon'ble High Court allowed the WP 8429/10 and the order of Tribunal was set aside. The applicant then challenged the SLSC in WP 27752/11 and the High Court allowed the WP and

remanded back the order of Committee for fresh disposal. The SLSC again passed an order cancelling the Community Certificate. The applicant again filed WP 20238/15 and challenged the said order. The WP was again allowed and at present the matter is again pending before the SLSC.

3. According to the applicant, the VIth Pay Commission report was implemented on 01.1.06. The government has released the amount of arrears in 2 instalments. The applicant is entitled to get arrears of pay w.e.f. 01.1.06 to 30.11.08. The 1st instalment of arrears was paid to him by the respondent. The 2nd instalment of arrears, bonus amount etc. are not paid so far. He prays for release of the 2nd instalment of arrears and bonus due to him.

4. Respondent entered appearance and denied the allegation. The applicant had obtained appointment taking the benefit reserved for a category. His caste certificate was cancelled. The cancellation effects his appointment, service pension and retirement benefits. The dispute regarding the caste certificate is still in dispute and hence this OA is not maintainable. The above benefits claimed by the applicant can be granted only if the certificate produced is found genuine by the SLSC.

5. We have heard the counsel for the applicant and the counsel appearing for the respondent and perused the pleadings of both sides. The main contention of the counsel for the respondent is that of payment of arrears of salary which flows from the service rendered and here validity of the service of applicant itself is in dispute and it is for the applicant to prove the validity of certificate before the competent authority. In *Bank of India & Another v. Avinash D. Mandivckar & Others* the

Hon'ble Supreme Court held that when Scrutiny Committee cancels a certificate “the very foundation of the appointment collapses and the same is no appointment in the eye of law.” It was also held that right to salary or pension after retirement flows from a valid and legal appointment.

6. The counsel for the applicant has invited attention to the case of *Union of India & Others v. Registrar, CAT, Madras & Ponnuswamy* wherein the respondents had not released the terminal benefits holding that the dispute regarding caste certificate is pending before SLSC and the benefits cannot be released. The Tribunal then ordered the release of terminal benefits. The respondent Railways preferred a WP and the Hon'ble High Court dismissed the same without interfering in the Tribunal's order. On going through the said order, it can be seen that the facts of that case is not similar. In that case, the respondent referred the dispute to SLSC in the year 2003 and it did not give its findings till the applicant therein retired in 2013 i.e. after a period of 10 years from reference. Here the applicant was challenging every order passed by the Committee and it was only because of that the Committee's report is pending. On two earlier occasions, the SLSC had cancelled the certificate issued to the applicant. It is also not seen that whether the decision of the Hon'ble Supreme Court in *Bank of India & Another v. Avinash D. Mandivkar & Others (2005) 7 SCC 690* was brought to the notice of the Tribunal while the matter was decided. The dispute in question very much affect and service and entitlement to benefits claimed by the applicant. The Hon'ble Apex Court has held that “*he who comes to court with false claims cannot plead equity or invoke sympathy nor would the court be justified*

to exercise equity jurisdiction in his favour.” It is also observed that “*compassion cannot be allowed to bend the arms of law in a case of fraud.*” If the SLSC finds that certificate is false, the appointment of the applicant to the post will become void and non est in the eye of law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefit can be given only if the appointment was valid and legal.

7. In this case, the cancellation order of the caste certificate was set aside and remanded back to the SLSC and only on finding that genuineness of the certificate is proved, the applicant can claim any arrears of salary from the respondent. **So, we are of the view that the arrears of pay and other benefits arising out of service can be released only after the order is passed by the Committee. There is no arbitrariness or illegality in the withholding of the same by the respondent.**

8. **Hence, we find that the OA lacks merits and it is liable to be dismissed. No costs.**

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

11.12.2018

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