

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A./100/4152/2014

New Delhi, this the 19th day of December, 2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)

Smt. Harsh Chaliha (TGT Hindi)
W/o Shri T.C. Chaliha
R/o E-42, Satyawati Colony,
Ashok Vihar-III,
Delhi.

....Applicant

(Through Shri Piyush Sharma, Advocate)

Versus

1. Govt. of NCT of Delhi
Through its Chief Secretary
Delhi Secretariat,
Sports Building, Near ITO
New Delhi.

2. Principal Secretary (Education),
Appellate Authority
Old Secretariat, Delhi.

3. Director of Education
Delhi Administration,
Old Secretariat, Delhi.

... Respondents

(Through Sh. Saurabh Chadda with Sh. Rohit Bhagat,
Advocates)

ORDER (Oral)

Justice L. Narasimha Reddy, Chairman

The applicant was born in a Brahmin family. When she was pursuing Post Graduation in Arts, she married one Shri T.C. Chaliha. In view of inter-caste marriage, the applicant approached the Deputy Commissioner, Delhi for issuance of a Caste Certificate. After making an inquiry, initially a

provisional certificate was issued to her on 30.06.1975 and thereafter a regular certificate on 12.09.1975, to the effect that she belongs to Scheduled Caste.

2. The Municipal Corporation of Delhi (MCD) initiated steps for appointment of teachers by conducting a written test. The applicant mentioned her social status in the application form. It is stated that she was appointed as Assistant Teacher on 4.08.1978.

3. On 12.02.1980, some teachers of the MCD were promoted to the post of Trained Graduate Teacher (TGT) in the Directorate of Education, Delhi, where again reservation was provided in favour of SC candidates. The applicant was appointed as a TGT (Hindi) on 12.02.1980 against a vacancy reserved for SC.

4. Disciplinary proceedings were initiated against the applicant by issuing a charge memo dated 23.06.1999, alleging that she secured the appointment by concealing her social status. The applicant submitted her explanation denying the allegation. Not satisfied with the same, the Disciplinary Authority (DA) appointed an Inquiry Officer (IO). In his report, the IO held that the charge is not proved. The DA, however, disagreed with the findings of the IO and passed an order dated 14.11.1991 imposing the punishment of reduction in rank to the post of Assistant Teacher in the

minimum of the pay scale and reverting her to the MCD; in exercise of powers conferred under the CCS (CCA) Rules 1965.

5. The applicant filed an appeal before the Appellate Authority (AA). It is stated that since the appeal was not disposed of, she filed OA 2812/1991. The said OA was disposed of on 14.11.1996 directing the AA to examine the matter whether the finding of the DA was based on evidence. The AA, in turn, passed order dated 27.06.2014 imposing the punishment of removal from service, which shall not be a disqualification for future employment under the government. The applicant attained the age of superannuation on 30.06.2014. This OA is filed challenging the orders of punishment passed by the DA and the AA.

6. The applicant contends that she never misrepresented any fact before the authorities and the caste certificate was issued only on the basis of her social status. She further contends that the DA committed patent illegality in disagreeing with the findings of the IO without issuing a disagreement note, and then passing the impugned order of punishment. It is also pleaded that it was not competent for the AA to enhance the punishment without issuing a Show Cause to the applicant. Other grounds are also urged.

7. The respondents filed detailed counter affidavit opposing the OA. It is stated that the applicant is a Brahmin

by birth and the mere fact that she married a person of SC community shall not change her status. It is stated that vacancy reserved for SC was occupied by the applicant by misrepresentation. It is also stated that the prescribed procedure was followed at every stage before the orders of punishment were passed.

8. Heard Shri Piyush Sharma, for the applicant and Shri Saurabh Chadda with Shri Rohit Bhagat, for the respondents.

9. The challenge in this OA is to the order passed by the DA dated 14.11.1991 as well as the one passed by the AA dated 27.06.2014. Before going into the legality or otherwise of these orders, it would be appropriate to refer to the brief background of the case.

10. Way back on 18.04.1975, the applicant married a person belonging to SC community at a time she was studying. An application was made to the Deputy Commissioner for issuance of Caste Certificate. Obviously on being satisfied about her social status, the Deputy Commissioner issued the caste certificate on provisional basis on 30.06.1975 and thereafter on permanent basis on 12.09.1975. The applicant is said to have topped the examination conducted for selecting teachers. The record is not clear as to whether the applicant was appointed as Assistant Teacher against a vacancy reserved for SC. For the

purpose of disposal of this OA, we proceed on the assumption that the applicant was appointed against a vacancy reserved for SC.

11. Whenever an individual is appointed against a vacancy reserved in favour of SC or other reserved community, but the employer entertains a doubt as regards his/her social status, at a later stage the basic requirement is that he must address the authority who issued the caste certificate. It is only when the caste certificate is cancelled by the competent authority that proceedings by the employer can be initiated against the employees. As long as the caste certificate remains intact, the employer cannot take any action by doubting the social status of the individual.

12. In the instant case, the appointing authority did not choose to address the Deputy Commissioner for verification of the genuinity or legality of the caste certificate. On the other hand, he assumed to himself, the power to declare the social status of the applicant and initiated departmental proceedings. Therefore, the very basis of initiating departmental proceedings against the applicant is illegal.

13. Coming to the order passed by the DA, the only charge against the applicant was the alleged misrepresentation as to social status. In her explanation, the applicant has placed all the relevant facts. The IO went into the matter in detail and opined that the applicant did not resort to misrepresentation.

The charge was held not proved. In case, the DA wanted to disagree with the finding of the IO, it was open to him to issue a disagreement note indicating the reasons based on which he proposes to disagree with the IO. No such step was undertaken and the DA straightaway proceeded to impose the punishment of reduction in rank, against the applicant. This is contrary to Rule 15(2) of the CCS (CCA) Rules, 1965, which apply to the case.

14. The applicant availed the remedy of appeal. In case the AA felt that the facts of the case warranted a higher punishment, he was required to issue a Show Cause seeking explanation of the applicant as to why the punishment be not enhanced. A perusal of the order passed by the AA would show that he took exception to the applicant's approaching the Tribunal for expeditious disposal of the appeal. He did not issue any Show Cause Notice to the applicant and imposed the punishment. The relevant portion of the order reads as under:

"10. In view of the above facts and circumstances of the case and the material placed before me, I hereby modify the order No.F.9/(20)/DL/Admn./19890 dated 14.11.91 of Disciplinary as **"removal from service which shall not be a disqualification for future employment under the government."** I am of the view that this order should have been issued as early as in 1996, after the direction of the Hon'ble CAT. However, the appellant was successful to remain in the service till verge of retirement on superannuation due to the inordinate delay in disposal of her appeal. The appellant has benefitted from the inordinate delay in disposal of

her appeal. I am of the view even if belated, justice should prevail and hence I order accordingly.”

Proviso (iii) to Rule 27 (2) of the CCS (CCA) Rules is clear in this behalf. It reads:-

“(iii) if the enhanced penalty which the Appellate Authority proposes to impose is one of the penalties specified in Clauses (v) to (ix) of Rule 11 and an enquiry under Rule 14 has been held in the case, the Appellate Authority shall make such orders as it may deem fit after the appellant has been given a reasonable opportunity of making a representation against the proposed penalty”.

15. Admittedly, the AA did not issue notice to the applicant, proposing to enhance the punishment. Therefore it is evident that the AA enhanced the punishment not only in contravention of Rule 27 (2) of the aforesaid Rules but also the principles of natural justice.

16. The discussion undertaken above discloses that:

- (a) The caste certificate issued to the applicant in 1975 by the Deputy Commissioner is in force;
- (b) The order dated 14.11.1991 passed by the DA is vitiated on account of the fact that he imposed the punishment by disagreeing with the findings of the IO but without issuing any disagreement note and thus violated Rule 15 (2) of the CCA (CCA) Rules; and

- (c) The AA violated Proviso (iii) to Rule 27 (2) of the CCS (CCA) Rules and the principles of natural justice, in enhancing the punishment.

17. Therefore, the OA is allowed and both the orders are set aside. The applicant shall be treated as having retired from service, on attaining the age of superannuation as TGT. The respondents shall release all the retirement benefits to the applicant within a period of three months from the receipt of a certified copy of this order.

There shall be no order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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