

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/555/2012

Date of Reserve:15.05.2019

Date of Order:01.08.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Jatendra Nath Singh, aged about 46 years, S/o.Padia @ Padma Lochan Singh, At-Olandaz Sahi, PO-Barabati, Dist-Balasore – at present working as Sepoy, O/o. Asst.Commissioner, Central Excise, Customs & S.Tax, Balasore Division, Bhaskar Ganj 'A', Balasore, Dist-Balasore-756 001.

...Applicant

By the Advocate(s)-M/s.K.P.Mishra
S.Mohapatra
T.P.Tripathy
L.P.Dwivedy

-VERSUS-

Union of India represented through:

1. The Secretary to Government of India, Department of Revenue, Ministry of Finance, North Block, New Delhi-110 001.
2. Commissioner, Central Excise, Customs and Service Tax, Bhubaneswar, C.R.Building, Rajaswa Vihar, Bhubaneswar.
3. Asst.Commissioner, central Excise, Customs & Sales Tax, Balasore Division, Balasore.

...Respondents

By the Advocate(s)-Ms.S.B.Das
ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is presently working as Sepoy in the Office of Asst. Commissioner, Central Excise, Customs & S.Tax, Balasore. While working as such, he was issued with a Memorandum dated 29.6.2012 (A/30, under Rule-19(i) of CCS(CCA) Rules, 1965 with the following imputation of charge:

"One allegation petition of fake Caste certificate was forwarded by the SC & ST Development Department, Government of Odisha through letter dt. 2.9.2010 against Sri Jatendranath Singh, Sepoy in Central Excise, Customs & Service Tax, Balasore Division, Balasore to the State Level Scrutiny Committee on the alleged Fake Caste Certificate (SLSC). The case was sent for conducting enquiry to the District Vigilance Cell, Office of the Superintendent

of Police, Balasore by the Revenue Divisional Commissioner (RDC), Central Division, Cuttack-cum-Chairman SLSC for conducting enquiry in pursuance of the Apex Court judgment dt. 01.09.1994 in case of Kumari Madhuri Patil vs. Addl Commissioner, Tribunal Development, Maharashtra.

2. On receipt of enquiry report by SLSC, the same was sent to Sri Jatendranath Singh, Sepoy for his reply and Sri Singh submitted his reply. Then he was issued a Notice to appear before SLSC for personal hearing and Sri Singh was heard by the SLSC. Further in pursuance of the Apex Court judgment dt. 02.09.1994, a copy of the enquiry report, a copy of reply of Sri Singh and statement of personal hearing was sent to the District Welfare Officer, Balasore by the RDC office for publicity in the concerned village or locality for inviting objection from any person and association. In response to the notice published by the District Welfare Officer, Balasore, Ms. Sandhya Rani Majhi, Councillor, Balasore Municipality stated in writing that Sri Singh belongs to Bhumija Tribe.

3. The SLSC duty considered the enquiry report, the reply of Sri Singh, his statement recorded during personal hearing and held that the allegation of fake cast identify as well as the allegation of fake caste certificate in this case is true as per the enquiry findings. Further, as per the field enquiry and available documents, the SLSC found it evident that Sri Singh belongs to Rajput community and he manipulated his caste name from Rajput to Bhumija and obtained a caste certificate from the Tahasildar, Balasore vide Misc. Case No. 418/1968 belonging to Bhumija Tribe (ST) in order to avail the benefits of the constitutional status of the ST.

4. Finally, the State Level Scrutiny Committee on the alleged Fake Caste Certificate under the Chairmanship of the Revenue Divisional Commissioner (CD) Cuttack in its final order dt. 14.03.2012 (received in this office on 13.06.2012) relied upon the Apex Court judgment dated 2.9.94 in Civil Appeal No. 5854 of 1994 in the matter of Kumari Madhuri Patil & Others vs. Additional Commissioner, Tribal Development, Maharashtra and found Sri Jatendranath Singh to have manipulated his caste name from Rajput to Bhumija and obtained a caste certificate to that effect. On the basis of this caste certificate he was found to have entered into Central Government service as Sepoy in the Central Excise, Customs & Service Tax Department, Bhubaneswar as a ST candidate on 18.5.1992 thereby depriving a genuine ST candidate of this benefit.

5. Thus the above act of misconduct are therefore quite unbecoming of a Government like Sri Jatendranath Singh, Sepoy who has failed to maintain absolute integrity by manipulating caste name from Rajput to Bhumija and availed reservation in Government job and thereby violated the provisions of Rule 3(1) of Central Civil Services (Conduct) Rules, 1964 which attracts

penal provision under the Central Civil Services (Classification, Control & Appeal) Rules, 1965".

2. Subsequently, a corrigendum dated 13.07.2012 (A/4) was issued which reads as under:

"The Rule mentioned in bracket in the heading of Memorandum dated 29.06.2012 (in bold letters) may please be read as Rule-14 of CCS(CCA) Rules, 1965 instead of Rule-19(i) of CCS(CCA) Rules, 1965".

3. Aggrieved with this, the applicant has approached this Tribunal praying for the following reliefs.

"Quash the Memorandum of Charges issued on 29.6.2012 under Annexure-3 by concurrently holding the same as bad, illegal and not sustainable or maintainable in the eye of law".

4. The grounds on which he has based his claim are that the applicant belongs to Scheduled Caste community and in this respect, a Caste Certificate had been issued in his favour in the year 1985. In the year 1992, the applicant entered into the Government service. On an allegation made that the applicant had manipulated his caste from 'Rajput' to 'Bhumija' which belongs to ST category, an inquiry was conducted by Respondent No.2 and in the end, it was found that the caste of the applicant genuine. While the matter stood as such, again on the basis of an unanimous petition filed before the SC/ST Development Authority, the same was forwarded to the State Level Scrutiny Committee (in short S.L.S.C.). The inquiry report as by the SLSC is totally perverse and based on enquiry report of the Deputy Superintendent of Police (Crime). The R.D.C., who is the Chairman of the S.L.S.C. directed the District Welfare Officer to record statements of villagers regarding the caste of the applicant. The villagers submitted their affidavit inter alia stating therein that the applicant and his family belong to ST category. The applicant claims that

Survey and Settlement was completed in the year 1974-75 and the caste of the applicant's family is mentioned in the Settlement Record as 'Bhumija' and accordingly, in the R.O.R. the caste of the applicant is mentioned as 'Bhumija' in the year 1985. Grievance of the applicant is that the in the Memorandum dated 29.05.2012(A/3), the respondents have proposed to impose punishment of dismissal from Government Service on him without following the due procedure of rules as provided under Rule-14 of CCS(CCA) Rules, 1965.

5. Opposing the prayer of the applicant, respondents have filed a detailed counter. According to respondents, Memorandum of Charges dated 29.06.2012 and the corrigendum dated 13.07.2012 was issued to the applicant by the Disciplinary Authority with the proposed punishment based on the report of the State Level Scrutiny Committee on the alleged Fake Caste Certificate. They have submitted that the same Memorandum of charge has been issued granting an opportunity to the applicant to representation against the proposal highlighting the action purported to be initiated by the Appointing Authority as recommended by the S.L.S.C. In Para-7 of the Counter, the Respondents have mentioned as under:

"7. That, the Memorandum of Charges issued to Sri Singh only proposes the action contemplated under Rule-14 of CCS(CCA) Rules, 1965 where the Disciplinary Authority is following the provisions laid down in the said Rule and decided to appoint Departmental Inquiring Authority to conduct a full phase inquiry into the charges levelled against Sri Singh. On receipt of the inquiry report from Departmental Inquiring Authority on the Memorandum of Charges the Disciplinary Authority will take final decision in terms of Rule 11 of CCS(CCA) Rules, 1965 on the penalty for the misconduct of action unbecoming of a Govt. Servant".

6. In Paragraph-9 of the counter, the respondents have averred as follows:

"9. That the Original Application filed before the Hon'ble Tribunal is premature since the Disciplinary Authority has only initiated the inquiry process and observed the principles of natural justice as laid down in Rule 14 of CCS(CCA) Rules, 1965".

7. In this connection, it is pertinent to note that while issuing Memorandum dated 29.06.2012(A/3), in Paragraph-2 & 3 thereof, it has been indicated as follows:

"2. Sri Jatendranath Singh, Sepoy is hereby given an opportunity to make such representation as he may wish, against the above proposal .

3. If Sri Jatendranath Singh, Sepoy fails to submit his representation within 10 days of the receipt of this Memorandum, it will be presumed that he has no representation to make and order will be passed against Sri Jatendranath Singh, Sepoy ex-part as per law".

8. It reveals from the record that after receipt of the Memorandum dated 29.06.2012(A/3) and corrigendum dated 13.7.2012(A/4), the applicant has rushed to the Tribunal, without, however, submitting any representation as required of him in pursuance of Memorandum dated 29.06.2012.

9. This matter came up for admission on 27.07.2012. While admitting the O.A. and directing notice to the respondents, this Tribunal directed the matter to be listed on 13.08.2012 requiring the learned Additional Standing Counsel to obtain instructions on the prayer for interim relief and directed the operation of Annexure-A/3 to be kept in abeyance. This interim order is in force as on date.

10. We have heard the learned counsels for both the sides and have perused the records including the rejoinder filed by the applicant. In the rejoinder, the applicant has pointed out that challenging the report of the State Level Scrutiny Committee, he has approached the Hon'ble High Court of Orissa in

W.P.(C) No.14051 of 2012 and the Hon'ble High Court vide order dated 05.09.2012 has directed notice to the State Level Scrutiny Committee and as an interim measure, stayed the impugned order. In this connection, we have also gone through the order dated 05.09.2012 of the Hon'ble High Court. It appears that the Hon'ble High Court has granted stay on the order/report of the State Level Scrutiny Committee which is the subject matter of challenge in the above mentioned Writ Petition. Secondly, we would like to note that as revealed from the counter, the applicant without replying to the Memorandum has approached this Tribunal. In view of this, we are of the opinion that Memorandum issued to the applicant asking him to submit his representation against the imputation of charge does not constitute an order within Section-19 read with Section-20 of the A.T.Act, 1985 and therefore, the applicant cannot be said to be a person aggrieved. In view of this, we are of the opinion that there is no cause of action for the applicant to approach this Tribunal. Accordingly, the O.A. being premature is dismissed. No costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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