

11.9.

O.A. 350/282/2016



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

KOLKATA BENCH

DETAILS OF THE APPLICATION

PARTICULARS OF THE APPLICANTS :

Shri Ghagha Gond, son Bina Gond, residing at C/O Uma Shankar Ram, 27A, Coal Depot., Ultadanga Railway Siding, Kolkata - 700 037.

..... Applicant

PARTICULARS OF THE RESPONDENTS (NINE IN NOS.) :

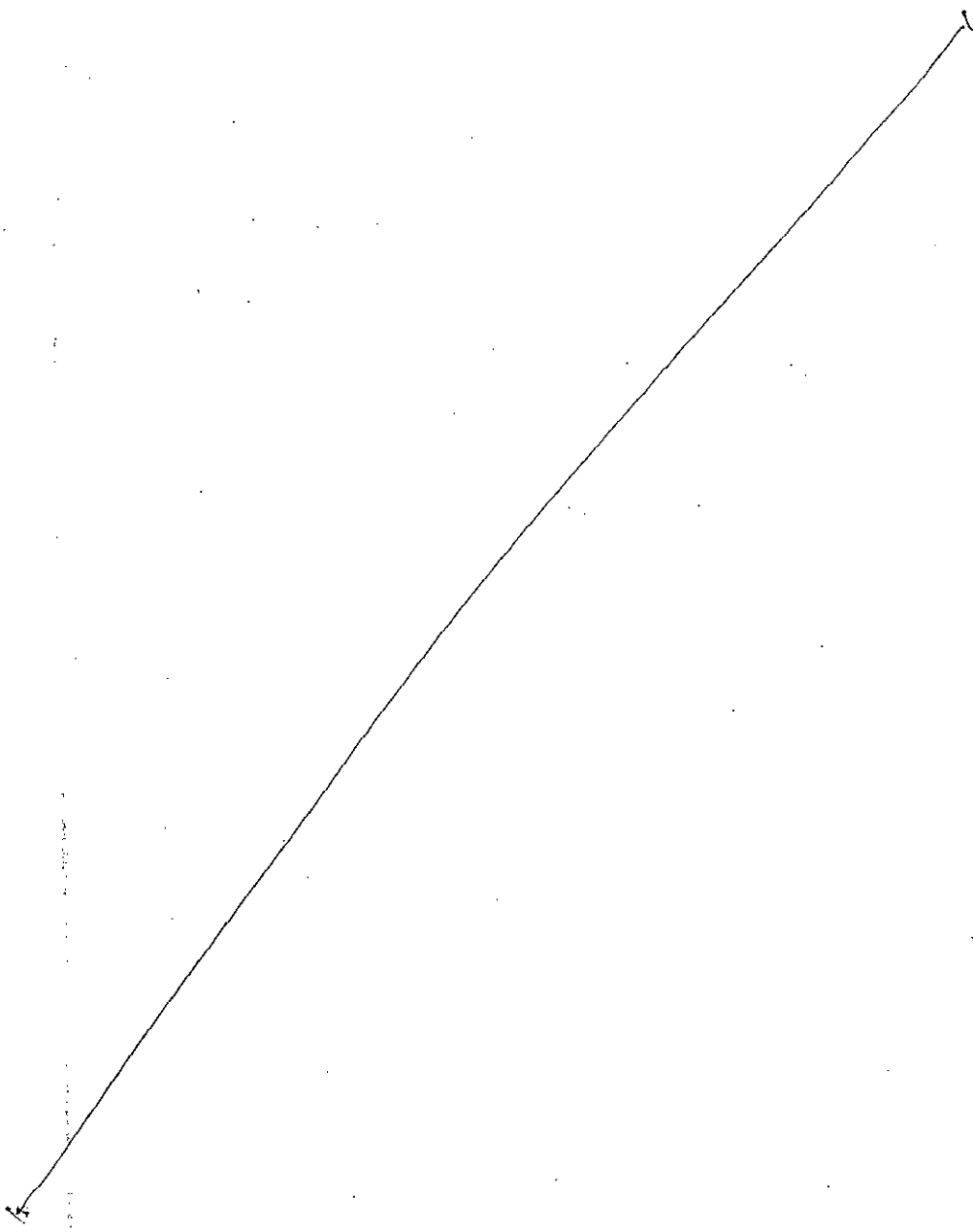
1. Union of India, service through the Secretary, Ministry of Defense, Government of India, Defense Mantralaya, New Delhi - 110 001.
2. Indian Ordnance Factory, Gun Shell Factory, Cossipore, represented by the Managing Director, GSF, Cossipore, Kolkata - 700 002.
3. The General Manager, Indian Ordnance Factory, Gun & Shell Factory, Cossipore, Kolkata - 700 002.
4. The Assistant General Manager, Indian Ordnance Factory, Gun & Shell Factory, Cossipore, Kolkata - 700 002.
5. Sri Santami Saha, WM/QC, Enquiry Officer, Indian Ordnance Factory, Gun & Shell Factory, Cossipore, Kolkata - 700 002.
6. General Manager, Gun & Shell Factory, Cossipore, Kolkata - 700 022 & Disciplinary Authority, Gun & Shell Factory, Cossipore, Kolkata - 700 002.

7. Chairman & Appellate Authority, Ordinance Factory Board, 10A, S.K. Bose Road, P.S. : Hare Street, Gun & Shell Factory, Cossipore, Kolkata - 700 001.

8. District Magistrate, Howrah, P.O. & District : Howrah.

9. District Magistrate, South 24-Parganas, Administrative Building, Alipoe, Kolkata - 700 027

..... Respondents.



15.

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/282/2016

Date of order : 11-09-2019

**Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Mr. N. Neihial, Administrative Member**

**GHAGHA GOND
VS.
UNION OF INDIA & OTHERS
(M/O DEFENCE)**

For the applicant : Mr. U. Roy, counsel

For the respondents : Mr. P. Mukherjee, counsel

Bidisha Banerjee, Judicial Member

The applicant in his second journey to this Tribunal has sought for the following reliefs:-

"a) An order do issue setting aside and/or quashing the memo dated 15.9.2015 under challenge, forthwith;

b) An order do issue directing the respondents to consider the status of the applicant as schedule tribe, forthwith;

c) An order do issue directing the respondents to reinstate the applicant in service with full back wages and other consequential benefits."

2. Aggrieved by disciplinary action and infliction of penalty of removal from service, he first preferred O.A.No.1180/2011, wherein he had sought for the following reliefs:-

"8.a) An order do issue setting aside and/or quashing the Memorandum of Charge dated 29.5.2009 issued by the Disciplinary Authority, forthwith.

b) An order do issue setting aside and/or quashing the order of removal dated 4.4.2011 passed by the Disciplinary Authority forthwith.

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c) An order do issue directing the respondents to reinstate the applicant in service with back wages and other consequential benefits forthwith."

The indictments noted against the applicant were as under:-

"3. The extract of the Enquiry Officer's report dated 28.8.2010 as would be relevant of germane to the lis is quoted verbatim hereinbelow for clarity:

"The charges and substance of imputation of misconduct Charge I : He was charged with gross misconduct of submission of fake ST certificate for getting employment in GSF.

Substance of imputation of misconduct

The officer was appointed as GSF against reserved vacancy of ST. Later the ST certificate produced by the officer was forwarded to issuing authority for verification of genuineness. The district authority confirmed that it was not issued to Sri Ghagha Gond. This the act of Sri Gond tantamount to doubtful integrity and conduct unbecoming of a Govt. servant."

The O.A. was disposed of with the following order:-

"In Shrinivas Prasad Shah & ors.(supra) the Hon'ble High Court at Calcutta was considering the following:-

"The "Gond" community to which the respondent belongs by birth was added as a Scheduled Tribe Community by amendment to Scheduled Castes and Scheduled Tribes Act, 1976 and claiming such status in his application for West Bengal Judicial Service Examination, 2007 submitted an application, purchased for General Category Fees. His father belongs to West Bengal Higher Judicial Service as a member of Scheduled Tribe "Gond" community. He, however, could not furnish his Caste Certificate to be issued by the S.D.O., the appropriate authority, on account of delay at the end of the authority. Though he had enclosed a Caste Certificate issued by the Director, Backward Classes Welfare Department of Government of West Bengal with his application form he was not treated as such in the final result of the examination and refused appointment.

Question which arose for decision was "whether the writ petitioner, in the facts and circumstances of the case, was entitled to get the appointment."

The Hon'ble Court held-

"The respondent-writ petitioner undisputedly was born in Scheduled Tribe family and therefore, he is a member of the Scheduled Tribe Community since birth. The competent authority by issuing the certificate at a subsequent stage only affirmed the existing fact that the said writ petitioner is a member of the scheduled Tribe Community."

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"The respondent -writ petitioner by virtue of his birth in a Scheduled Tribe family was not required to fulfil any other condition for the purpose of issuance of the aforesaid Caste/Tribe Certificate."

"The respondent authority should not have altogether ignored the aforesaid claim of the respondent-writ petitioner for treating him as a member of the Scheduled Tribe Community. The competent authority, upon considering the performance of the respondent-writ petitioner in the West Bengal Judicial Service Examination, 2007 should have appointed him provisionally to the post of Civil

Judge (Junior Division) as Scheduled Tribe Candidate, subject to result of any enquiry by appointing a Scrutiny Committee as held by the Hon'ble Supreme Court in the case of Kumari Madhuri Patil(supra) or sufficient time should have been granted to the respondent-writ petitioner for submission of the Caste Certificate after issuance of the same by the SDO, Barrackpore before whom necessary application was submitted by the respondent-writ petitioner in the year 2002 for issuance of the said Caste Certificate."

13. In the instant case the charges are that the applicant entered into the service on the basis of fraudulent certificate. Since the fact itself got revealed in 2009 on the basis of report of the DM, Howrah, it cannot be stated to be a stale charge. Hence the ratio of P.V. Mahadevan(supra) or Bani Singh(supra) is not applicable.

14. The charge-sheet being issued on the basis of report of DM, Howrah the Appellate authority has highly observed that the complainant was not required to be examined as a witness, since the allegation has been found true and the complaint was not an RUD(relied upon document). As such M.V. Bijlani(supra) has no manner of application.

15. The applicant has failed to substantiate in what manner he was denied natural justice.

16. The issue is whether the proceedings were vitiated due to stale charges or any legal lacunae in conduct thereof. Due to the reasons as aforesaid, we do not feel that the proceedings require any interference on the ground of "stale" charges, or lacunae in the conduct thereof or any other legal flaws. As the certificate on the basis of which the applicant entered service is said to be not issued by the office itself, we cannot say that the charge lacks basis. Hence the penalty already inflicted is not interfered with.

17. However, since admittedly "Gond" belongs to ST category, and the applicant is admittedly a "Gond", as his name itself suggests, there might not have been any wrong in claiming himself as a ST or in appointing a "Gond" against an ST post. His declaration of caste/community, as such, does not appear to be incorrect since his name itself suggests that he belongs to "Gond" community. Since he has already served for more than 30 years in the meantime, the respondents ought to have granted an opportunity to the applicant to furnish a valid ST certificate. The DA's dissenting note and the order passed by Appellate authority does not disclose that the applicant was given an opportunity to furnish a valid certificate.

18. In such view of the matter and for the ends of justice, we direct the authorities to reverify from the office of DM, Howrah whether the certificate of 6.5.81 was a genuine one and to give an opportunity to the applicant to produce a valid ST certificate by three months. Based upon the outcome/said certificate the appropriate competent authority shall review the case of the applicant and pass appropriate reasoned and speaking order, in accordance with law, within a further period of one month, which shall accordingly govern his entitlements.

19. The O.A. is, accordingly, disposed of. No costs."

3. The order was assailed in WPCT 142/2015 where the Hon'ble High Court observed and held as under :-

"The Respondents shall re-verify the certificate strictly in terms of the order of the Tribunal immediately.

We do not see any reason to interfere with the order passed by the Tribunal. It has not only directed the respondent authorities to re-verified the certificate with the office of the District Magistrate but has also granted an opportunity to the Petitioner to produce a valid Scheduled Tribe Certificate within three months.

Accordingly, the Petition is rejected with no order as to costs."

4. The applicant has sought to substantiate his claim through the following:-

(i) ST Certificate of Additional District Magistrate, Howrah dated 06.05.1981 that certifies that "Ghagha Gond, son of Sri Bira Gond, 9, Jelia Para Lane, P.O. Howrah-711106, Golabari, Dist. Howrah in the State of West Bengal, belongs to the Gond Community which is recognised as a Scheduled Tribe under the Scheduled Tribes Lists(Modification) Order, 1956."

(ii) ST Certificate issued by Zila Padadhikari, Buxar on 04.01.2012 in favour of Ghagha Gond.

(iii) ST Certificate issued by Zila Padadhikari, Buxar on 22.11.2013 and

(iv) ST Certificate issued by Zila Padadhikari, Buxar on 13.11.2014 to his family members.

5. The order of the Hon'ble High Court(extracted supra) affirming our directions, made it imperative for the respondents to verify all such ST certificates as were submitted by the applicant. Yet the Joint General Manager on 15.09.2015 issued a speaking order (Annexure A/14) rejecting his claim without verification, impugned herein, which reads as under:-

".....in compliance with Hon'ble Court's Order the caste certificate in question was forwarded to the DM/Howrah for re-verification vide this Office letter No.1142/GG/1180-2011/DS dated 04.03.2015(Copy enclosed). The verification report clearly stated that certificate No.511/TW dated 06.05.1981 does not contain the caste certificate(ST) in favour of Shri Ghagha Gond, Son of Bira Gond. Shri Ghagha Gond also failed to submit a valid ST Certificate in his favour within three months as stipulated by the Hon'ble CAT Kolkata. Accordingly a speaking Order No.1142/GG/1180-2011/DS dated 24.06.2015 was issued to Shri Ghagha Gond conveying the decision of the management.

Subsequently Shri Ghagha Gond filed the WPCT No.142 of 2015 before the Hon'ble High Court, Kolkata. However, after hearing both sides, the Hon'ble High Court rejected the said petition by passing an Order dated 04-08-2015. The Hon'ble High Court has not directed the GM/GSF to verify the caste certificate dated 04.01.2012 which has been submitted to GM/GSF through his advocate's letter dated 17.08.2015.

The Hon'ble Court's Orders have already been complied with and the case has been closed. The petitioner, instead of responding to the direction of Hon'ble CAT Kolkata, challenged the said Order before the Hon'ble High Court, Kolkata which has also been rejected. Therefore, no action is pending with the department and the case stands closed."

The order demonstrates and exemplifies that the respondents have misinterpreted the direction of the Tribunal, upheld by Hon'ble High Court and failed to perform their duty cast upon them to verify ST Certificate once again.

6. Since the respondents have failed to carry out our earlier directions, we quash the speaking order and direct the authorities to reverify in terms of our directions and issue orders within three months from the date of receipt of this order.

7. The O.A. stands disposed of. No order as to costs.

(N. Neihjal)
Administrative Member

(Bidisha Banerjee)
Judicial Member