

lib

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.286/2016

Date of Decision: 03rd July, 2019

CORAM: R.VIJAYKUMAR, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Smt. Vidya Kiran Deo.
 Aged – 38 Years, Occ. At Present Nil
 16/B, Room No.707,
 Mahim Fishermen Colony,
 Near Raheja Hospital, Mahim,
 Mumbai – 400 016. ... *Applicant*

(By Advocate Shri N.S. Nakhawa)

VERSUS

1. The Union of India
 Through Director General of Posts,
 Department of Posts,
 Dak Bhavan, Parliament Street,
 New Delhi – 110 001.
2. The Director of Postal Services,
 MAHARASHTRA CIRCLE, Mumbai,
 GPO Building, 2nd Floor,
 Mumbai – 400 001.
3. Senior Superintendent of Railway,
 Mail Service (SSRMS)
 Air Mail Sorting Division,
 Vile Parle (East)
 Mumbai – 400 099. ... *Respondents*

(By Advocate Shri V.S. Masurkar)

ORDER (Oral)

Per : R.Vijaykumar, Member (Administrative)

This application has been filed on
 01.03.2016 under Section 19 of the
 Administrative Tribunals Act, 1985 seeking

the following reliefs:-

"(i) The orders dated 25/01/2016 and 27-30/01/2009 passed by the respondent No.2 – Appellate Authority and the Respondent No.3 be quashed and set aside;

(ii) The applicant be allowed to be reinstated into service on the post of Sorting Assistant with an immediate effect along with all consequential benefits including backwages;

(ii) The applicant be granted protection of her service in view of GR No.BCC 2015/CR 276-A/15/16 B passed by the Government of Maharashtra.

(iv) The respondents be held liable to compensate for mental agony caused to the applicant.

(v) Costs incurred in filing this application be provided for;

(vi) Leave to amend be granted for;

(vii) Hearing be Expedited.

(viii) Such other and further reliefs as it may deem fit."

2. The applicant was appointed as Sorting Assistant by the Senior Superintendent of RMS and joined on 05.10.1999. Her name had been proposed by the Employment Exchange under Scheduled Tribe quota and she was appointed w.e.f. 05.10.1999 in orders of the Senior Superintendent No.B1/Apptt./III/99 dated 12.10.1999. The orders of appointment were made provisional subject to verification of caste for which the relevant paragraphs included in the appointment order (Annexure A-3) read as under:-

"The candidates will note that their appointment as Sorting Assistants are purely on temporary basis and their services can be terminated by giving one months notice in advance as per provisions of Rule 5 of CCS(T/S) Rules as amended from time to time in the interest of service.

The candidates belongs to Scheduled Caste (Candidates at Sls.34, 35 & 44 of Annexure) and Scheduled Caste (Candidates at Sls.15,36,37,39,40 & 41 of Annexure) should note that their appointment is provisional and subject to the caste/tribe certificates being verified through the proper channel and if the verification reveals that the claim to belong to Scheduled Caste and Scheduled Tribe, as the case may be is false, their services will be terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of the Indian Penal Code for production of false certificate."

3. The respondents are stated to have referred a copy of caste certificate issued by the Taluka Executive Magistrate, Biloli dated 23/08/1990 indicating the applicant as 'Mahadeo Koli', to the concerned Caste Scrutiny Committee on 10.08.2005 for conducting inquiry. They had also consulted the DoPT and received instructions in DoPT's I.D. No.38028/14/2007-Estt. (REs) dated 24.10.2007 advising them as follows:-

"3. Verification of caste status of SC/ST/OBC candidates is very important if a candidate claiming to belonging to SC/ST/OBC, does not submit original caste/community certificate or does not cooperate in verification of his caste/community status, he fails to establish that he belongs to SC/ST/OBC community. It appears quite justified in such a case to frame a charge against

the candidate that he does not belong to the SC/ST/OBC category, and that he had furnished false information to the effect he belonged to SC/ST/OBC category and to initiate action against him as provided in this Department's OM No.11012/7/91-Estt(A) and 19.05.93 according to which:

"Wherever it is found that Government servant, who was not qualified or eligible in terms of the recruitment rules etc, for initial recruitment in service or had furnished false information or produced a false certificates in order to secure appointment. He should not be retained in service. If he is a probationer or a temporary Government servant, he should be discharged or his services should be terminated. If he has become a permanent Government servant, an inquiry as prescribed in Rule 14 of CCS(CCA) Rules, 1965 may be held and if the charges are proved, the Government servant should be removed or dismissed from service. In no circumstances should any other penalty be imposed."

4. A correspondence was initiated with the applicant from 27.02.2007 asking the applicant to submit the original copy of her caste certificate. This was apparently based on a reply from the Caste Scrutiny Committee, Aurangabad asking for original documents which are required for the purpose of conducting the inquiry by the Caste Scrutiny Committee in accordance with the rulings of the Hon'ble Apex Court in Kumari Madhuri Patil Vs. Additional Commissioner, 1994(6) SCC 241 and based on *Maharashtra SC, ST, DNT(VJ), NT, OBC &*

SBC (Regulation of Issuance and Verification of) Caste Certificate Act 2000 (Maha.Act XXIII of 2001).

5. The applicant replied to the respondents in her letter dated 09.04.2007 (Annexure A-4) stating that her caste certificate was with her mother at Sion, Mumbai and she was trying to locate the certificate. Subsequently, in her letter dated 15.02.2008 (Annexure A-5), she stated that the said certificate has been washed away due to heavy rainfall on 26.07.2005 and that she was making arrangements to procure a duplicate copy of her caste certificate which had earlier been obtained by her late father and that was the reason for not being able to submit the original caste certificate. She has subsequently provided a medical certificate dated 25.07.2008 on a Caesarian section undergone by her in July, 2008 in order to get more time to produce the document. The respondents then issued a memorandum of charge to her No.B5/Disc/VKD/2008 dated 01.09.2008 containing a single article of charge as under:

Article-I

Smt V.K. Deo (previously known as Ms. V.M. Patil), an outsider candidate was appointed on 05.10.99 as Sorting Assistant under reserved category of ST in Air Mail Sorting Division Mumbai vide Sr. Superintendent of RMS, Air Mail Sorting Division, Mumbai – 400 093 Memo No.B1/Apptt./III/99 dated 12.10.1999(wrongly typed as 12.10.999) and was listed at serial No.39 in ANNEXURE attached. The first page of the Service Book of the official was prepared accordingly.

It is clearly mentioned in the OM dated 12.10.1999 (wrongly typed as 12.10.999) that the candidates belonging to Scheduled Caste (candidates at Sls.34,35 & 44 of Annexure) and Scheduled Tribe (Candidates at Sls.15,36,37, 38,39,40 and 41 of Annexure) should note that their appointment is provisional and subject to the Caste/Tribe certificate being verified through the proper channel and if the verification reveals that the claim to being to Scheduled Caste and Schedule Tribe, as the case may be is false, their services will be terminated forthwith assigning any further reasons and without prejudice to such further action as may be taken under the provisions of the Indian Penal Code for production of false certificate.

The official was addressed time to time to submit the documents required for verification along with prescribed form. The official did not submit the documents required for verification of Caste Certificate. As such the official is not co-operating with the Department for getting her caste certificate verified through Caste Scrutiny Committee of the State Government.

It is therefore, imputed that Smt V.K. Deo SA,SPCC, Mumbai – 400 099 by not submitting required documents alongwith the prescribed Form duly filled in, as well, as, not responding to the official correspondence failed to co-operate with the Department for getting her caste certificate verified through the Caste Scrutiny Committee and as such acted in a manner which is unbecoming of a Govt. Servant contravening the provision of Rule 3(1)(iii) of CCS(Conduct) Rules, 1964.

6. The respondents have appointed an Inquiry Officer and a Presenting Officer and inquiry was conducted. During the inquiry, the applicant gave a statement on 05.01.2009 (Annexure A-9 colly) stating as follows:-

"On being asked by enquiry officer, I, Smt Vidya K. Deo Age 31 years Services (S/A) SPCC Mumbai-99 (10 years Services) hereby state that I am in receipt off chargesheet issued by SSRM Air Mail Sorting Division Mumbai - 99. Vide his mo.B-5/DISC/VKD/2008 dated 01.09.2008. I understood the contain of the said memo.

Today I was given an opportunity to difending the case by engaging defence assistance. How ever it is fact that the contents mentioned in the articles I in the charge sheet is correct one. Therefore without any hesitation I am accepting the charge.

I accept the charge. This statement given without any pressure."

7. Following the inquiry, the Inquiry Officer submitted his report dated 05.01.2009 (Annexure A-9) in which he records the fact that the charged official had admitted the charge and given a written statement and accordingly, held that the charge contained in Article I has been proved beyond doubt. The Disciplinary Authority, thereafter passed orders in No.B5/Disc/VKD/2008 dated 27/30.01.2009 after accepting the report of the Inquiry Officer. The Disciplinary Authority records

the opportunities provided to the applicant to produce the required caste certificate for verification purposes and her failure to do so and then has concluded that the applicant was not co-operating with the department in getting her caste certificate verified with the Caste Scrutiny Committee and as such, held that she had acted in a manner unbecoming of a Government servant and therefore, contravened the provision of Rule 3(1)(iii) of CCS(Conduct) Rules, 1964.

On this basis, the applicant was removed from Government service. The orders of the Disciplinary Authority were considered by the Appellate Authority based on her appeal dated 12.08.2014 and orders were passed in reference No.STA/44-1(07)/(47)01/14 dated 25.01.2016 upholding the orders of the Disciplinary Authority.

8. The applicant has challenged these orders of the respondents essentially on the point that she had never admitted to not belonging to the Scheduled Tribe category under which she had been appointed but that she had only agreed to the limited aspect of non-submission of the original document that

has been summoned by the respondents' authorities. The orders of the respondents by the Disciplinary Authority and by the Appellate Authority had instead come to the conclusion that she had admitted to have given a false caste certificate.

9. Learned counsel for the applicant relies on the first sentence of para 6 as recorded in the orders of the Appellate Authority for this purpose and which is reproduced as under:-

"6. In the instructions regarding verification of caste certificate, it is stated that if a candidate claiming to belong to reserved category does not submit original certificate or does not co-operate in verification of his/her caste status, it appears quite justified in such case to frame a charge against the candidate that he does not belong to reserved category and after inquiry as prescribed in Rule 14 of CCS(CCA) Rules 1965, if the charges are proved, the Govt. servant should be removed or dismissed from the service. Punishment order is based on these instructions. Therefore the punishment order is within preview of the instructions."

10. He also submits that the applicant was constrained by the fact that as the document has been washed away due to heavy water seepage and this was by an act beyond her control, the respondents had, therefore acted unfairly in the matter.

11. Learned counsel for the respondents explains the position adopted for caste verification through the Caste Scrutiny Committee and that a correspondence had been made with the concerned Caste Scrutiny Committee at Aurangabad (Annexure R-19 to 27 collectively). He refers in particular to the reply of the Caste Scrutiny Committee, Aurangabad at page 149 (Annexure R-27) and although the translation has not been enclosed, the contents have been explained in respondents' reply at page 77 at para 13 part which reads as under:

"In reply, vide letter dated 06/12/2013 (Annex.R-27), the authority intimated that since "Smt.V.K. Deo has not submitted the required documents as instructed to her, hence no proposal of scrutiny of her Caste Certificate is pending with the Committee." (Translated version)"

12. Learned counsels for the applicant and respondents have been heard and pleadings on record have been examined.

13. The respondents have followed the instructions issued by the DoPT in consultation with their department on the aspect of non production of documents.

14. The applicant has admitted that she was unable to produce the original documents

of her caste certificate on the basis that they had been washed away during the rains. However, there is no clarity nor any submission on what efforts she had taken to obtain a fresh caste certificate from the same district where she had originally obtained such a certificate and a copy of which, she had in her possession or could have obtained from the department. Therefore, the charge of non-production which had been admitted by the applicant is evidently proved without any doubt. The respondents have pointed out that the appointment itself was provisional and was made subject to the verification of the caste certificate by the concerned Scrutiny Committee. For this purpose, the legislation passed by the Maharashtra Government had prescribed a procedure which had to be followed and for which the original certificates are an essential component in cases of false or improper caste certificate. The Caste Scrutiny Committee is empowered under the legislation to confiscate such documents and therefore, the submission of the original document is a

critical factor in the conduct of the Caste Scrutiny Committee proceedings. By not producing the original and therefore, by not enabling the department to communicate the required papers to the Caste Scrutiny Committee, the applicant had deliberately prevented the Caste Scrutiny Committee from performing its statutory duties which was to verify is the caste certificate produced by the applicant to give employment and in the event that the verification had failed, they would have confiscated it. Therefore, when the Disciplinary Authority notes that her act of non-production and non-cooperation was against the provisions of the CCS(Conduct) Rules by being an act of unbecoming of a Government Servant, there is nothing to show that this conclusion is in any way incorrect in relation to the facts of the matter. The reading of the orders of the Disciplinary Authority including para 6 of the Appellate Authority's orders referred by learned counsel for the applicant does not suggest that the respondents had arrived at a conclusion that the applicant was not belonging to the community she claimed to be

a part. Their orders have limited themselves to the aspect of verification and her lack of co-operation thereof.

15. In these circumstances, we do not see anything that could be considered counter-factual, illegal or incorrect in the orders passed by the respondents and from this aspect of challenge, the relief claimed by the applicant is not maintainable.

16. The Original Application is dismissed without any order as to costs.

(Ravinder Kaur)
Member (Judicial)

(R. Vijaykumar)
Member (Administrative)

ma.

SD
06/7/19

