

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00416/16

Reserved on: 22.07.2019
Date of Order: 25.07.2019

C O R A M
HON'BLE MR. JAYESH V. BHAIKAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Narendra Nath Prasad @ N.N. Prasad, Administrative Officer (Retd.), Directorate of Supplies and Disposals, Kolkata, son of Late Kuber Prasad, Resident of Village-Mundipur, PO- Hulesra, Via- Bhagwanpur Hat, District- Siwan (Bihar).

.... Applicants.

By Advocate: - Mr. L.B. Kesri

-Versus-

1. The Union of India through the Secretary, Govt. of India, Ministry of Commerce and Industry, Department of Commerce (Supply Division), Nirmal Bhawan, New Delhi- 110001.
2. The Under Secretary, Govt. of India, Ministry of Commerce and Industry, Department of Commerce (Supply Division), Nirmal Bhawan, New Delhi.
3. Joint Secretary (Disciplinary Authority) to the Govt. of India, Ministry of Commerce and Industry, Department of Commerce (Supply Division), Nirmal Bhawan, New Delhi.
4. Director General (Supplies and Division), Jeewan Tara Building, 5, Sansad Marg, New Delhi.
5. The Director of Supplies and Disposal cum Inquiry Officer, Kolkata.
6. Deputy Director (Adms) cum Presenting Officer, Directorate General of Supplies & Disposals, Jiwantara Building, 5, Sansad Marg, New Delhi.
7. District Collector, Saran at Chapra
8. District Welfare Officer Saran at Chapra.
9. B.D.O., Bhagwanpur, Hat, saran at Chapra.

.... Respondents.

By Advocate: - Mr. Bhuneshwar Pandey

ORDER

Per Dinesh Sharma, A.M:- This OA is for setting aside the memo C41011/1/2008-V (DOC) Government of India, Ministry of Commerce (Supply Division) dated 14.02.2011 issued by Joint Secretary of Government

of India along with the UPSC's letter No. F-3/2/2010-S.I. dated 27.01.2011. He has also prayed for setting aside Memo No. Cal/D-1/PO/260/Pen dated 22.01.2016 issued by Administrative officer, Director of Supply and Disposal and for release of payment of all monetary benefits, retiral benefits, pension, gratuity along with statutory interest. The case of the applicant is that he was appointed on the post of LDC in the year 1970. Though he has worked without any complaint and was promoted to a higher position (Administrative Officer) in the Department, unfortunately in the year 2008 he has been issued a show cause notice stating that the Caste Certificate produced by him at the time of filing application for his appointment was a forged and fabricated one. An enquiry has been initiated against him and despite all attempts by the applicant to prove his innocence and in spite of his filing detailed reply the Disciplinary Authority has illegally passed an order withholding 65% of his admissible monthly pension and his entire gratuity on permanent basis (by order dated 14.02.2011-Annexure A/5). Since the applicant had retired in the year 2008 itself, this order was not served to him and he came to know of this order only through a communication dated 22.01.2016 (at page 50 of the OA) and hence this OA.

2. The respondents have denied the claim of the applicant. According to them, a chargesheet was issued under Rule 14 of the CCS(CCA) Rules, 1965 by DGS&D's Memorandum No. C-13016/1/2006-Vig dated 20.02.2008 stating that the ST certificate produced by Shri N.N. Prasad (applicant) for seeking Government employment is false and he has secured the present employment in the Government of India by fraudulent and

illegal means thereby depriving a bonafide member of the Scheduled Tribe in securing the employment at that point of time. Since the applicant retired on superannuation on 29.02.2008, the Disciplinary Authority, in terms of Sub Rule 2(b) of Rule-9 of CCS(Pension) Rules, 1972, decided to further investigate into the charge through an inquiry authority. The Inquiry Officer submitted its report on 24.07.2008 concluding that the charge against the applicant is proved. The Disciplinary Authority accepted the finding of the Inquiry Authority and referred the case to the competent authority as the applicant had already retired. The competent authority duly considered the matter and consulted the UPSC for advice in terms of Rule-9 of CCS(Pension) Rules, 1972. The UPSC advised that the ends of justice would be met if the penalty of withholding of 65% of admissible monthly pension on permanent basis is imposed on the applicant. They also advised for withholding of entire gratuity subject to minimum monthly pension admissible under 2nd proviso to Rule 9(1) of CCS(Pension) Rules, 1972. The competent authority accepted the advice of the UPSC and issued the order dated 14.02.2011 which is challenged by the applicant. The respondents have stated that the applicant had been given sufficient opportunity for defending himself. He, however, failed to produce the Caste Certificate in original and informed that the briefcase containing the original certificates was misplaced. Though the applicant alleges that he had requested the Howrah Central Police Station to record a note of missing of the above documents it is noted that this report to the Police Station is of a date after the respondents' office wrote to him on 20.03.2007 to produce the certificate for verification. The

Vigilance Director of the DGS&D approached the District Collector, Saran, Bihar with a request to confirm the genuineness of the Caste Certificate and on getting no response, the officers of the DGS&D visited the Collector's office. On being re-directed from there, they approached the Welfare District Officer who certified, after verification of the records, that the Caste Certificate of the applicant was not issued from that office (Anenxure- R IV). Following this, a show cause notice was issued and enquiry was initiated against the applicant. The applicant and his defence assistant attended the enquiry proceedings but could not produce anything in support of his contention that his caste certificate was genuine. Since the punitive action against the applicant has been taken under the relevant rules after following all the required procedure the applicant does not deserve any relief. The respondents also questioned the delay in filing this OA since the penalty was imposed vide order dated 14.02.2011 and prayed for dismissing the same on that ground.

3. The applicant filed a rejoinder on 30.01.2017. He reiterated the facts mentioned in his OA and stated that he was neither given any chance to defend the allegation nor supplied any charge memo which is a gross violation of mandatory provisions. He also stated that the respondent authorities did not call for the caste certificate register from the concerned office nor examined any of the officials of the Collectorate, Saran during the departmental proceeding. The applicant has received an information under RTI vide Memo No. 503 dated 11.04.2016 that the scheduled Tribe Certificate register was not available in the office of District Welfare Officer,

Saran (Chapra) for the period 01.01.1967 to 31.01.1967 (Annexure-9). The punishment imposed on the applicant, in the absence of such register, is illegal and should be set aside. Regarding the period of limitation, the applicant alleged that the punishment order was not served to the applicant and he came to know about it only when the order dated 22.01.2016 came to his knowledge. He has also mentioned that if this Tribunal finds the application is time barred, he may be granted time for filing "limitation petition".

4. We have gone through the pleadings and heard the arguments of learned counsels of both the sides. The discovery about the Caste Certificate being not genuine was made by the Department almost at the fag end of the applicant's career. Thus, he, apparently enjoyed the benefits of a life time job on the basis of a certificate which the Department claims to be bogus. The applicant, apparently, did not produce any evidence of his genuinely belonging to the Caste/Tribe (on the basis of which he had secured this employment) at any time after the charge, of his having secured this job on the basis of a bogus certificate, was put against him. Though not in a form of a formal memo of charges, the applicant was served with a memo containing the charged allegation in no uncertain terms. Therefore, the whole enquiry and the punishment process cannot be termed void ab initio at this stage only because the memo conveying the charge was not headed as such.

5. The Department has also raised the issue of limitation since this OA has been filed after a time gap of more than 5 years. They have

stated that the punishment order dated 22.02.2011 was sent to the applicant by Regd. Post. They have also produced a copy of the reply to the applicant dated 25.10.2011 (Annexure R-VI) informing him why the applicant's petition for reducing penalty (addressed to the President of India) could not be agreed to, in view of the gravity of his misconduct. This letter clearly proves that the applicant was aware of the punishment awarded to him in the year 2011 itself. In such a case the applicant's claiming this OA to be within the period of limitation, only because of a further communication from the Government of India dated 22.01.2016 (at page 50 of the OA), is clearly incorrect and is intentionally misleading. The applicant's conditional request about allowing him to file a "limitation petition" in case his application is found to be time barred, amounts to a non-serious attempt at plea-bargaining with the Tribunal and, therefore, cannot be allowed.

5. As explained above, the applicant's case is clearly barred by the period of limitation within which an application can be entertained under the A.T. Act. The facts that the applicant retired in 2008, was not getting any pension (other than the minimum pension) and did not even allege nor produced anything to prove that he belonged to the Scheduled Tribe community are, prima facie, sufficient proofs that the case has, even otherwise, no merit. The OA is, therefore, dismissed both on grounds of being barred by limitation and for being prima facie devoid of merit. No costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member