

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 546/2003

New Delhi, this the 3rd day of March, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K.NAIK, MEMBER (A)

Ex-Head Constable Hem Chander
No. 178/L
R/o 480/21, Om Nagar
Gurgaon (Haryana). Applicant

(By Advocate: Sh. Mohit Madan, proxy of Sh. Avnish Ahlawat)

Versus

1. Lt. Governor
Govt. of NCT of Delhi
Through Commissioner of Police
Police Headquarters, ITO
New Delhi.
2. Joint Commissioner of Police
Provisional Lines
Provisions and Logistics, Rajpur Road
Delhi.
3. Dy. Commissioner of Police
Provisional Lines, Rajpur Road
Delhi. Respondents

(By Advocate: Shri Ajesh Luthra)

O R D E R (Oral)

Justice V.S. Aggarwal:-

Applicant was recruited as Constable in Delhi Police. He belongs to Bawaria community. It is stated that there are about 80 Bawaria community individuals enlisted in Delhi Police. The applicant had shown that he is a member of the Scheduled Tribe.

2. The departmental proceedings had been initiated against the applicant on the allegations that he applied for the post of Constable (Executive) in Delhi Police by depositing his application for declaring himself as Bawaria caste under the Scheduled Tribe category. He also filed attested photocopy of the Employment Exchange Registration card with the

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application form. Later on he applied for the post of Head Constable on 2.3.1987. He again declared himself to be belonging to Scheduled Tribe category. He did not submit his original caste certificate. The photocopy of the caste certificate appended in his Fauzi Missal was also taken by the applicant on 13.2.1998 against his proper signatures. It was alleged that it was done knowingly with ulterior motive with an intention to destroy the proof from his service record. He never deposited the same despite directions.

3. The District Employment Officer, East and North-East District, Shahdara had informed that the applicant was registered in the Employment Exchange and belongs to Scheduled Caste category. The brother of the applicant, namely, Shri Bal Kishan, had already been dismissed from Police service. In Column No.10 of the said employment card, Bal Kishan had shown himself as a Scheduled Caste. On these assertions, it was claimed that the applicant applied for the caste certificate which was incorrect and further with respect to the removal of the caste certificate which we have referred to above.

4. The inquiry officer held that the assertions pertaining to the above said charge are proved. The disciplinary authority dismissed the applicant from service and appeal also failed.

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5. By virtue of the present application, the applicant seeks quashing of the order passed by the inquiry officer, the dismissal order of 25.2.2002 and appellate authority's order dated 5.11.2002.

6. The application as such is being contested.

7. The respondents contend that in Column No.3 of the application form filled by the applicant, he declared himself to be belonging to Bawaria caste. He had enclosed attested photocopy of the Scheduled Tribe Caste Certificate with the form. He also enclosed attested photocopy of Employment Exchange registration Card with the application form. He again applied for the post of Head Constable as a Scheduled Tribe candidate. He appended the caste certificate. According to the respondents, it has been so done falsely and therefore after following due procedure the applicant has rightly been dismissed.

8. During the course of the submissions, learned counsel for the applicant highlighted the fact that the respondents themselves were in ~~another~~ confusion as to whether Bawaria community is a Scheduled Tribe or not. Large number of persons have been recruited from Bawaria community because of this confusion and the applicant cannot be held to have misconducted himself. So far as this particular contention is concerned, it must be held to be not without merit. A Bench of this Tribunal in the case

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of Constable Krishan Kumar v. Union of India & Others, OA 1410/1999 decided on 16.1.2002 in this regard held:

"4. In the Respondents' impugned order dated 26.11.98 they themselves state that applicant, in his application form for appointment as constable in Delhi Police had mentioned his caste as ST and in support, had submitted a caste certificate being Bawaria caste. There are no materials on record to indicate that applicant deliberately, fraudulently and/or deceitfully sought to secure employment as constable in the Delhi Police by mis-stating the caste to which he belongs. Indeed Respondents themselves entertained some confusion in the matter and had treated a sizeable number of Bawaria candidates as belonging to the ST category. A very similar matter has been adjudicated by Delhi High Court in CWP No.2004/98 Union of India & Others vs. Om Prakash and CWP No.2354/99 Commissioner of Police & Others vs. Rohtash Kumar which was disposed of by a common order dated 18.10.2001, whereby by the CAT, Principal Bench's order was affirmed. In that order dated 18.10.2001 the Delhi High Court has categorically held that the Union of India & Others were themselves not sure of categorisation of Bawaria caste and that is how they had treated the candidates of that caste in ST category which might be done mistakenly and if that was so, S/Shri Om Prakash and Rohtash Kumar could not be held to have secured employment through fraudulent or deceitful means. The question of any misconduct warranting termination of their services on the ground of having misrepresented their caste did not arise."

9. The Delhi High Court also in the Civil Writ filed in the case of Union of India & Ors. v. Om Prakash, CW No.2004/1998 highlighted this confusion and recorded:

"The record on the contrary shows that Petitioners had on their own entertained some confusion in the matter and had treated a sizable number of "Bawaria caste" candidates in the ST category. That is why they had sought clarification from Government of India and had stopped any action in the matter meanwhile. This is evident from their own orders/communications dated 2.10.99

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and 14.10.99 which need not be reproduced here to avoid any burdening of this judgment. We have examined these and found that cases of "Bawaria caste" of being treated as ST category had culminated in a consolidated reference to Government of India and all departmental action was ordered to be kept in abeyance in such cases till final determination whether it fell within the SC category.

All this shows that Petitioners were themselves not sure of categorisation of "Bawaria caste" and that is how they had treated candidates of this caste in ST category though may be mistakenly. If that was so, how could Respondents be blamed for securing employment through fraud or deceitful means. There is nothing to show that they had tampered with the certificates to change the categorisation or had procured these certificates by any fraudulent means. The question of any misconduct warranting termination of their services, therefore, does not arise. We also find that judgment relied up by Ms. Reeta Kaul were wholly distinguishable and involved a charge of tempering and deceitful means which was missing in the present case."

10. These facts would only support, which we have recorded above, that there was a confusion in the respondents' themselves as to if a person of Bawaria caste is a Scheduled Tribe or not. The applicant had clearly indicated that he is from Bawaria community. In that view of the matter, on this count, dismissal of the applicant keeping in view the ratio deci dendi of the decision referred to above cannot be sustained.

11. The second assertion against the applicant is that he removed the photocopy of the caste certificate and did not return the same with ulterior motive. The applicant had removed the same with permission but did not return it. This is a finding of fact arrived at. It is not preposterous to prompt us to interfere. Therefore, this particular contention that the applicant had ~~not~~ returned the

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said certificate cannot be believed.

12. The applicant has been dismissed from service. Keeping in view the totality of the facts and the circumstances for the charge which we have heard has been proved, we are of the opinion that dismissal or removal from service would be a punishment which would be disproportionate to the alleged dereliction of duty.

13. Consequently, as no other argument was raised, we dispose of the present application with the following directions:

(a) following the ratio of the decision of this Tribunal in the case of Const.Om Prakash vs. Union of India (O.A.511/97) decided on 8.12.97, Krishan Kumar vs. Union of India (O.A.No.1410/99) decided on 16.1.2002 and of the Delhi High Court in the case of Union of India vs. Om Prakash (C.W.P.No.2004/98) decided on 18.10.2001, it is held that the applicant cannot be penalised for the alleged charge against him; and

(b) there is a finding of fact that the applicant removed the photocopy of the caste certificate and did not return the same to the department. We do not intend to interfere in the finding of fact in judicial

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review. But on that count, the penalty of dismissal from service is disproportionate to the alleged misconduct, particularly on the findings in the preceding paragraph. The matter is remitted to the disciplinary authority to impose any other penalty other than dismissal or removal from service.

Announced.

Naik

(S.K. Naik)
Member (A)

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(V.S. Aggarwal)
Chairman

/NSN/