

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 823/2003

NEW DELHI THIS...^{30th}...DAY OF JUNE 2004

HON'BLE SHRI KULDIP SINGH, MEMBER (J)
HON'BLE SHRI S.A. SINGH, MEMBER (A)

Shri Durjan Mehto
Ex. Air Condition Mechanic Gr. J
Under Sr. Electrical Engineer (Air Conditioning)
Northern Railway, Jammu Tawi.

.....Applicant

(By Shri B.S. Mainee, Advocate)

VERSUS

1. The General Manager,
Northern Railway, Baroda House,
New Delhi
2. The Chief Electrical Engineer, Northern Railway,
Baroda House, New Delhi
3. The Divisional Railway Manager,
Northern Railway,
Ferozpur Division,
Ferozpur (Punjab)
4. The Sr. Divisional Electrical Engineer,
Northern Railway, Ferozpur (Punjab)

.....Respondents

(By Sh. B.S. Oberoi, advocate)

ORDER

BY HON'BLE SHRI S.A. SINGH, MEMBER (A)

The applicant was appointed against the ST quota in the Railways as AC Khalasi (Group 'D') post on 20.8.1976 in the Grade Rs.196-232. He had supported his claim as ST candidate through a certificate issued on 6.7.1971 by the Collector of District Saran (Bihar) certifying that he belongs to 'Kharla' caste. As ST candidate, he obtained three further promotions, first as Assistant Fitter in 1978 and then as AC Mechanic Grade-II, which is a Group 'C' post in 1981 and further as AC Mechanic Grade-I.

2. Respondents received a complaint that the applicant had produced a false ST Certificate as he did not belong to 'Kharria' community, which was got investigated through CBI, Chandigarh. The CBI, Chandigarh informed that BDO, Ekma, District Saran vide letter dated 10.1.1997 had informed that the applicant belongs to the 'Nonia' community, which is a backward caste and not ST community.

3. The respondents issued a major penalty chargesheet and impugned orders dated 19.3.2002, 8.4.2002 and 1.1.2003 removing the applicant from service. Aggrieved by these orders, he has filed the present OA.

4. The applicant pleaded that the charges levelled against him were false and baseless because the certificate presented by him, at the initial appointment, was issued by the District Collector, Saran correctly reflecting his caste status. Further asking the BDO Ekma to verify the certificate at this late stage is incorrect as records are also not available. The applicant added that the enquiry was vitiated because that the respondents had not supplied the listed documents and statements of the Prosecution Witnesses despite the applicant submitting a representation on 21.6.1991 demanding 11 additional documents. Out of 11 documents only two were supplied by the Presenting Officer against 6 documents which were allowed by the I.O. vide order dated 10.12.2000. Non-supply of documents had seriously prejudiced his defence. Further I.O. did not examine the two most vital prosecution witnesses, i.e. Shri Aditya Narain Singh, who has been cited as PW1 stating that

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the applicant belongs to 'Nonia' community. ^{and d} Shri Mithlesh Kumar Singh JE, Ekma Block, who was vital for establishing the authenticity of the document. Despite these infirmities, the enquiry officer had recorded that the applicant could not produce any evidence that he belongs to 'Kharia' caste and as such the charges are proved. Based on these findings the respondents removed the applicant from service.

5. The order removing the applicant from service was challenged by the applicant in the Chandigarh Bench of this Tribunal by filing OA NO.219/JK/2002, which was disposed of with the direction to consider the appeal of the applicant on its merits and as per rules, instructions and law on the subject. The respondents rejected the appeal on 8.4.2000 through a non-speaking and non-reasoned order violating the direction of the Tribunal. The applicant, therefore, prays that the Tribunal quash these orders and direct the respondents to reinstate him with all consequential benefits. The applicant further relied upon the Bombay High Court judgement in the case of Anil Vasantrao Shirpurkar Vs State of Maharashtra and Other (2003(1) ATJ 653), wherein it had been held that when the proceedings are not initiated within the reasonable time, they are liable to be set aside. The relevant portion of which is reproduced below:

12. In the facts and circumstances of the case, in our opinion, the proceedings cannot be said to have been initiated within reasonable time. It is undisputed that the petitioner was appointed in 1994 and

after the period of probation, he was regularised in 1996. Neither the proceedings were initiated in 1994 nor in 1996 but after five years of completion of probation period i.e. in 2001.

13. In our opinion, therefore, it cannot be said that the proceedings were initiated within reasonable period. Only on that ground, the petition is allowed. The order dated 9th July 2002 is hereby quashed and set aside."

14. Since the petition is allowed on the ground that the power of initiation of proceedings was not exercised within 'reasonable period', the action taken and order passed deserve to be quashed. We may, however, make it clear that, we may not be understood have upheld the validity of Scheduled Tribe of the petitioner."

6. On the other hand the respondents in their counter categorically denied the above pleadings made by the applicant. Respondents denied the allegation of the applicant that he was removed from service illegally or unconstitutionally. Respondents stated that the applicant was appointed as AC Khalasi against ST quota vacancy. The ST certificate produced by the applicant at the time of his initial appointment issued by collector Saran, Bihar dated 6.7.71 was got investigated through CBI, Chandigarh and BDO EKMA, District Saran informed vide their letter No. 34 dated 10.01.1997 that the applicant is not ST but belongs to Nonia, a backward caste. All the relied upon documents as asked by the applicant and felt necessary by the IOs, were supplied to the applicant. Plenty of time and opportunity was given for his defence. Despite repeated reminders some of listed PWS failed to attend the enquiry proceedings, but merely on these grounds the applicant cannot take advantage as he failed to rebut the charges. The letter dated 10.1.97

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issued by the BDO EKMA District Saran cannot be termed by the applicant as forged because it was issued by the authority after due investigation/verification. The IO has drawn conclusion in accordance with the basic principles of law. The allegation that there were irregularities/illegality are denied as the punishment of removal from service was given after considering the appeal of the applicant and facts of the case, hence the allegation of non application of mind and non-speaking order without reasons are denied. The respondents forcefully contested the pleadings made by the applicant and prayed for dismissal of the OA with cost.

7. We have considered the pleadings made by the parties and also perused the documents brought on record. The applicant appointed as AC Khalasi (Group 'D') against a ST vacancy on the basis of caste certificate issued by Collector of District Saran of Bihar. On the basis of a complaint the investigation was done to confirm the authenticity of the Class Certificate. The CBI Inspector Mr. Talwar reported that the applicant belong to Nonia caste and not Kharia as confirmed in the certificate and that the register of 1971 was not available.

8 In the Enquiry two material witnesses viz. Sh. Aditya Narain, BDO Ekma, Distt. Saran who had signed letter on 10.1.97 stating that the applicant belongs to Nonia community, and Sh. Methilesh Kumar Singh who was to confirm the contents of the letter dated 10.1.97 were not examined. These were important PWs whose examination was necessary to

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prove the authenticity of letter dated 10.1.97 and its contents.

9 The applicant was appointed in 1978 and as per the Railway Board's letter No. 79-E(SCT)15/98 dated 18th December 1981 the caste certificate produced by the candidate has to be verified within a reasonable time and particularly at the stage when the candidates are to be considered for promotion to the next higher grade. It reads as under:-

"It has recently come to the notice of the Board that a number of non-Schedule Caste/Scheduled Tribe candidates have produced false certificates on the basis of which they have not only secured jobs but also the promotions. This is perhaps due to Railway Administration's failure to keep appropriate investigative steps to verify the Caste and Tribe status of the candidates. In this connection, your attention is drawn to the instructions contained in Board's letter No E(SCT)74CM15/46 dated 19th February 1976 in which it has been mentioned that a caste certificate should be verified within a reasonable time

The Board like to reiterate that the caste certificates submitted by candidates should be verified within a reasonable time and particularly at the stage when the candidates are to be considered for promotion to the next higher grade. It is further desired that suitable action against persons responsible for not verifying the caste certificates at the appropriate time should be taken "

10 From a plain reading of the above, it is clear that the respondents have failed to adhere to their own instructions by not verifying the authenticity of the certificate within a reasonable time and also at the time of promotion. Therefore, at this belated stage, i.e. after 12 years of submissions of the original caste certificate to

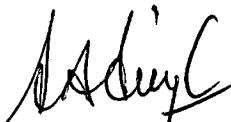
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consider that the same is not authentic is not sustainable in view of the Bombay High Court judgement in Anil Savantrao Shirpurkar Vs State of Maharashtra and Others (supra) and also Railway Board's letter dated 13.12.1981 (supra).

11. The respondents have not been able to show that the original certificate was false, especially as the original records are not available. The PWs, which would have enabled to elaborate on the letter issued by PDO, Ekma that the applicant belongs to Nonia and not Kharia community have not ^{been} examined. This has clearly prejudiced the case of the applicant.

12. In view of the above facts, the OA succeeds and the impugned order dated 31.1.2002 passed by Sr. Divisional Elec. Engineer Northern Railway, the order dated 8.2.2002 passed by Addl. DRM, NR and the order dated 1.1.2003 issued by the Sr. Divisional Electrical Engineer, NR, Ferozepur are quashed and set aside. The applicant should be re-instated with immediate effect with all consequential benefits.


(S.A. Singh)
Member(A)


(Kuldip Singh)
Member (J)

/Patwal/