



CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1173/2003

Date of decision 6th July 2004

Shri Gopal Mahto Applicant

(By advocate Ms. Meenu Mainee)

Versus

Union of India & Ors. Respondents

(By Advocate Sh. B.S. Oberoi)

Coram:-

The Hon'ble Shri V.K. Majotra, Vice-Chairman(A)
The Hon'ble Shri Shanker Raju, Member(J)

1. To be referred to the reporter or not? Yes

2. Whether it needs to be circulated to other Benches of the Tribunal? Yes.

S. Raju
(Shanker Raju)
Member(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1173/2003

New Delhi this the 6th day of July, 2004.

Hon'ble Shri V.K. Majotra, Vice-Chairman(A)
Hon'ble Shri Shanker Raju, Member(J)

Sh. Gopal Mahto,
Ex-Lineman, Grade-I,
Under Chief Electric Foreman
(Power), Northern Railway,
Ferozpur. Applicant

(through Ms. Meenu Mainee, Advocate)

Versus

Union of India through

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

(through Sh. B.S. Oberoi, Advocate)

O R D E R
Hon'ble Shri Shanker Raju, Member(J)

Applicant impugns order of removal dated 31.1.2002, Appellate order dated 19.3.2002, Revision order dated 8.4.2003 and order passed in review dated 26.9.2002. Applicant claims reinstatement with all consequential benefits.

2. The factual matrix is that the applicant on the basis of certificate showing him to be from Kharia community was appointed to Group-D post under ST category as Electircal Khallasi. Applicant was further promoted as Helper Electric Khallasi in the year 1986 and in Group-C as Lineman in 1990.

3. On a complaint to the C.B.I. that the applicant belongs to Nonia community and not Kharia which is not recognised as ST community in Bihar, the Circle Officer Asstt. Inspector of C.B.I. on investigation and upon his finding held the certificate as forged.

4. The aforesaid resulted into a major penalty chargesheet issued under Railway Servants (Discipline & Appeal) Rules, 1968 for the allegations of securing appointment on a forged caste certificate.

5. In the enquiry the applicant had been held guilty of the charge. On representation, a penalty of removal from service was inflicted. It was upheld in appeal, revision and review respectively, giving rise to the present O.A.

6. Learned counsel of the applicant Ms. Meenu Mainee at the outset referred to a decision of Principal Bench in OA-823/2003 decided on 30.6.2004 in Durjan Mehto Vs. General Manager & Ors. on the basis that the verification has been done after a long period

the removal was set aside. In the above conspectus, it is stated that the applicant in all fours covered by the ratio and the impugned orders are liable to be set aside.

7. Applicant's counsel further stated that the decision of the authorities is contrary to the law laid down in Kumari Madhuri Patil & Anr. Vs. Addl. Commissioner, Tribal Development and Ors. (1994(6) SCC 241) as the caste certificate has not been subjected to the scrutiny committee and as such holding it as forged is not legally tenable.

8. It is further stated that there is delay in verifying caste certificate, ^{Rather} it should have been done immediately after the appointment is contrary to the board instructions dated 18.12.1981.

9. It is also further contended that the documents were not available and additional documents sought for have not been provided.

10. Learned counsel further states that the verdict of guilt is based on no evidence and the orders passed by the authority are without application of mind and are non-speaking orders.

11. On the other hand, Sh. B.S. Oberoi, learned counsel of the respondents vehemently opposed the contentions and states that the applicant while

seeking employment claimed to have belonged to Kharia caste which comes under the ST category in Bihar State. This is on the basis of the certificate issued by the Collector/District Magistrate, 1st Class, Chapra dated 7.6.1972. He was appointed on the basis of the aforesaid certificate. However, CBI investigation revealed on a complaint that the applicant actually belongs to Nonia caste which is a non-Scheduled Tribe. As such claiming appointment on forged document makes the appointment as null & void and ab initio.

12. Learned counsel of the respondents further contend that had the applicant not availed the benefit of ST, he would not have been eligible on general standards. It is stated that the enquiry has been conducted in accordance with rules and procedure laid down and the orders passed are reasoned with application of mind.

13. In the rejoinder applicant has reiterated his pleas.

14. In Kumari Patil's case (supra) as regards the issue of social status certificate and cancellation of appointment, the following guidelines have been laid down:-

"The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in

the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following:

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally fails from and other particulars as may be prescribed by the Directorate concerned.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance be before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers,

namely (1) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribunal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ

petition / miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post."

15. In R. Vishwanatha Pillai Vs. State of Kerala & Ors. (2004 SCC (L&S) 350 while dealing with the cases where after serving for number of years on finding of the verification committee the certificates have been held to be forged. The requirement of

Article 311 has been dispensed with as also the holding of a formal enquiry. The following observations have been made:-

"15. This apart, the appellant obtained the appointment in the service on the basis that he belonged to Scheduled Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. His appointment was no appointment in the eye of the law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India. Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of a false caste certificate has become final. The position, therefore, is that the appellant

has usurped the post which should have gone to a member of the Scheduled Castes. In view of the finding recorded by the Scrutiny Committee and upheld up to this Court, he has disqualified himself to hold the post. The appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India. As the appellant had obtained the appointment by playing a fraud, he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practising fraud or deceit, such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all.

19. It was then contended by Shri Ranjit Kumar, learned Senior Counsel for the appellant that since the appellant has rendered about 27 years of service, the order of dismissal be substituted by an

order of compulsory retirement or removal from service to protect the pensionary benefits of the appellant. We do not find any substance in this submission as well. The right to salary, pension and other service benefits are entirely statutory in nature in public service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of the law. The right to salary or pension after retirement flows from valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled Caste candidate of appointment to that post, does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. he, who comes to the court with false claims, cannot plead

equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud."

16. If one has regard to the above in order to dispense with the service of a government servant who has allegedly sought appointment on forged caste certificate it is incumbent upon the authorities to refer the matter to the verification committee constituted in each State for verifying genuinety of the caste certificate. It is consequent upon the report by the verification committee as to the falsity of the certificate, there is no obligation upon the Government to held an enquiry as the enquiry by the verification committee is held in consonance with the principles of natural justice affording the concerned a reasonable opportunity to show cause. However, the sine qua non of dispensation of service of a government servant is verification of caste certificate by the verification committee.

17. It is equally settled that an appointment acquired by practicing fraud is no appointment in law. Article 311 of the Constitution of India has no application. Merely because the person has continued for number of years and promoted cannot be the mitigant factors. The very inception of the service is nullity in law and is nonexistent. The right to pension and other benefits on account of serving deserves no sympathy. Equity can be sought only when one had acted in fair and equitable manner. Acquiring appointment on the basis of false certificate by playing fraud is an antithesis to the equitable consideration and such a certificate does not confer any right upon a person.

18. Admittedly, the caste certificate has been held to be fraud and the applicant and the finding that the applicant does not belong to Kharia a ST is not derived from the finding of verification committee but on an investigation held by the CBI where even Collector was not approached for verification of the status and social caste certificate of the applicant. This finding has been arrived at in the disciplinary proceedings as to the falsity of the caste certificate. In such an event finding is arrived by the authority without jurisdiction and has no legal sanctity.

19. Learned counsel of the applicant refers to the decision in OA-823/2003 where the following

observations have been made:-

"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 promotions. Therefore, at this belated stage, i.e. after 22 years of submissions of the original caste certificate to 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 18.12.1981 (supra).

20. If one has regard to the above, the aforesaid decision of the Tribunal runs on the face of the decision in Vishwanatha's case of the Apex Court. As a doctrine of precedent under Article 141 of the Constitution of India, a decision of the Apex Court binds us. A decision of the co-ordinate Bench of the Tribunal which is perincurium of the Apex Court decision has no precedent value. Moreover, it settled principle of law that in case of disagreement by the Benches the matter stand referred to the Full Bench. But once the decision of the Apex Court holds the field reference to Full Bench would be an empty formality. Accordingly, we have no hesitation to hold that mere delay in verification would not validate the appointment of the applicant and this is subject to the examination of its genuinity.

21. As the respondents have not referred for verification the caste certificate of the applicant before the verification committee, the findings arrived as to falsity of caste certificate cannot be countenanced. Accordingly the consequent orders are liable to the set aside.

22. In the result, O.A. is partly allowed. Impugned orders are quashed. Respondents are directed to reinstate the applicant forthwith. However, this shall not preclude them from referring the caste certificate of the applicant to the verification committee and on the basis of its finding to take an appropriate action against the applicant in the light of the decision in R. Vishwanatha's case (supra). The intervening period shall remain subject to the final order passed by the respondents and would be governed as per rules, instructions and law on the subject. These directions have to be complied with within three months from the date of receipt of copy of this order. No costs.

S Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Vice-Chairman (A)

/vv/