

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(APPELLATE SIDE)**

Present:

**The Hon'ble Justice V. M. Velumani
&
The Hon'ble Justice Rai Chattopadhyay**

MAT 1014 of 2017

**Jitendra Prasad
Vs.
Union of India & Ors.**

For the Appellant : Mr. Pratik Majumder

For the Respondents : Mr. Ashok Kr. Chakraborty

Hearing concluded on: 17/10/2023

Judgment on: 19/10/2023

V.M. Velumani, J.

1. The present appeal is filed challenging the order dated 16th May, 2017, made in WP 15724(W) of 2013 filed by the appellant.

2. According to the appellant, he was appointed on 2nd June, 1977 as Constable in the Railway Protection Force (in short, 'RPF') of Eastern Railway on Scheduled Tribe category. The appellant was promoted as Head Constable, Assistant Sub-Inspector and Sub-Inspector. At the time of initial appointment and on each promotion,

the caste certificate produced by the appellant was verified and its genuineness was never disputed.

3. While so, on 21st December, 2010, a charge-sheet was issued to the petitioner alleging that he belongs to Other Backward Community, misled and defrauded Railway administration by furnishing forged certificate of belonging to Scheduled Tribe community and fraudulently availed the benefit of reservation. Not being satisfied with the explanation submitted by the appellant, the domestic enquiry was conducted. In the domestic enquiry, the respondent examined seven witnesses and the appellant cross-examined them. The enquiry officer, based on the materials placed before him, gave a report that the charges levelled against the petitioner was proved. The Disciplinary Authority by the order dated 21st January, 2012, dismissed the appellant from service. The Appeal and Revision filed by the appellant were also dismissed.

4. Challenging the orders of the Disciplinary Authority, Appellate Authority and the Revisional Authority, appellant has filed Writ Petition No. 15724(W) of 2013.

The case of the appellant before the learned Single Judge:

5. Before the learned Single Judge, the appellant contended that:

- (i) The Dy. Chief Security Commissioner, who acted as Disciplinary Authority, did not have jurisdiction and power to dismiss the appellant as per Schedule III of the Railway Protection Force Rules, 1987.

- (ii) The Addl. Chief Security Commissioner could not have acted as Appellate Authority as the posts of Addl. Chief Security Commissioner and the Dy. Chief Security Commissioner are parallel and coordinate posts.
- (iii) Originally, only three witnesses were mentioned. Subsequently, the enquiry officer examined additional four witnesses in violation of Rule 153.17 of the Railway Protection Force Rules, 1987. Enquiry officer did not record reasons for examining additional four witnesses contrary to the said Rules which vitiated the entire proceedings.
- (iv) The de-facto complainant, the Assistant Security Officer was examined as P.W. 7. Enquiry Officer was an Inspector lower in rank than de-facto complainant. P.W. 7 and enquiry officer is biased against the appellant.
- (v) The respondent did not examine Additional District Magistrate (ADM), who had issued the Scheduled Caste certificate to the appellant.
- (vi) The Other Backward Community category came into existence only as per the judgment of the Hon'ble Apex Court dated 16th November, 1992 and National Commission for Backward Classes Act with effect from 2nd April, 1993. When the ADM issued Scheduled Tribe Certificate to the appellant, there was no Other Backward Class community.

(vii) One of the additional witnesses was legal expert. In such circumstances, enquiry officer erroneously rejected the request of the appellant for assistance of defence friend. The appellant is entitled to defence friend as per Rule 153.8 of the Railway Protection Force Rules, 1987. The rejection of the appellant is arbitrary and in violation of principles of natural justice.

6. In addition to the above contention, the learned counsel appearing for the appellant relied on the following judgments:

- (i) **(2013) 16 SCC 526 (Shalini vs. New English High School Association)**
- (ii) **(2012) 8 SCC 430 (Kavita Solunke vs. State of Maharashtra)**
- (iii) **(2012) 1 SCC 549 (Dattu S/O Namdev Thakur vs. State of Maharashtra)**
- (iv) **AIR 2015 SC 3024 (Rajeshwar Baburao Bone vs. State of Maharashtra)**
- (v) **(2001) 1 SCC 4 (State of Maharashtra vs. Milind)**
- (vi) **1983 (1) CLJ 8 (Anandram Jiandrai Vaswani vs. Union of India)**
- (vii) **AIR 1983 SC 109 (The Board of Trustees of the Port of Bombay vs. Dilipkumar Raghavendranath Nadkarni)**
- (viii) **2013 (3) CLJ 357 (Monotosh Kanti Das vs. Union of India)**

The case of the respondent before the learned Single Judge:

7. The respondent opposed the claim of the appellant and submitted that:

- (i) Judicial Review of domestic enquiry is limited. If enquiry report and Disciplinary Authorities' orders are based on some evidence, the Court will not interfere. There was sufficient evidence on record to establish the charges of securing appointment by practicing fraud.
- (ii) The appellant did not raise any objection that Rule 153.17 was violated before the enquiry officer, Disciplinary, Appellate and Revisional Authorities. The appellant was allowed to cross-examine all the witnesses.
- (iii) The Contention that the enquiry officer was likely to be bias since the de-facto complainant, P.W. 7 was superior in rank to him is not maintainable as the appellant did not raise such contention before the enquiry officer and did not seek change of enquiry officer. In view of the same, the judgment of **Anandram Jiandrai Vaswani** (supra) relied on by the appellant is not applicable to the facts of the present case as there was substantial rule in the Customs Manual and the charged officer sought for change of enquiry officer.
- (iv) As per Schedule III of the Railway Protection Force Rules, 1987, the Dy. Chief Security Commissioner has power to be the Disciplinary Authority and pass the order of dismissal.

- (v) Initially, the appellant sought for defence assistant. Subsequently, by the letter dated 30th April, 2011, informed the enquiry officer that he would himself conduct his case in the domestic enquiry. The appellant suppressed this fact.
- (vi) The appellant obtained benefit of employment by practicing fraud. Fraud unravels everything.

8. In support of his contention, the learned counsel for the respondent relied on the following judgments:

- (i) **(1995) 6 SCC 750 (Union of India vs. B.C. Chaturvedi)**
- (ii) **(2000) 1 SCC 416 (High Court of Judicature of Bombay vs. Shashikant S. Patil)**
- (iii) **(2011) 4 SCC 584 (State Bank of Bikaner and Jaipur vs. Nemi Chand Nalwaya)**
- (iv) The judgment of the Hon'ble Apex Court dated 3rd March, 2008 passed in **Appeal (C) No. 3964 of 2002 (D.G. Railway Protection Force &Ors. Vs. K. Raghuram Babu)**
- (v) **(2003) 8 SCC 311 (Ram Preeti Yadav vs. U.P. Board of High School and Intermediate Education)**
- (vi) **(2011) 15 SCC 111 (District Primary School Council, West Bengal vs. Mritunjoy Das)**
- (vii) **(2013) 16 SCC 526 (Shalini vs. New English High School Association)**

The Finding of the learned Single Judge:

9. The learned Single Judge based on the pleadings, contentions and judgments relied on by the parties, framed following seven issues:

- i. Whether the Disciplinary Authority lacked jurisdiction to pass the order of dismissal as contended by the petitioner?
- ii. Whether it was incompetent for the Addl. Chief Security Commissioner to act as the Appellate Authority as contended by the petitioner?
- iii. Whether there was breach of Rule 153.17 of the RPF Rules, 1987 as contended by the petitioner?
- iv. Whether there was a real possibility of the Enquiry Officer being biased against the petitioner as argued on his behalf?
- v. Whether non-examination of the ADM who had issued the Scheduled Caste certificate in question vitiated the enquiry proceeding as urged on behalf of the petitioner?
- vi. Whether the enquiry proceeding was vitiated by reason of the petitioner's request for assistance in defending himself not being granted, as contended by the petitioner?
- vii. Whether there is any other ground on which the orders under challenge should be interfered with?

10. After considering the above seven issues, the learned Single Judge by the order dated 16th May, 2017, dismissed the writ petition.

11. Challenging the said order of dismissal, the appellant has come out with the present appeal.

12. The appellant has raised various grounds as contended in the writ petition and referred to the grounds raised in the appeal and further contended that:

- i. Learned Single Judge failed to frame any issue with regard to the Scheduled Tribe status of the appellant.
- ii. The learned Single Judge failed to consider the Scheduled Tribe Community certificate was issued to the appellant in 1976 whereas Other Backward Class community came into existence in 1992 as per the judgment of the Hon'ble Apex Court. The Backward Class Community Ordinance and Act came into force subsequently with effect from 2nd April, 1993.
- iii. The genuineness of Scheduled Tribe certificate can be decided only by special bodies as Caste Scrutiny Committee consisting of persons with specialised knowledge. The employer has no jurisdiction or power to decide the genuineness of Scheduled Tribe certificate and whether employee belongs to Scheduled Tribe community or not.
- iv. The competent person to depose about genuineness of the Scheduled Tribe certificate produced by the appellant is the ADM who issued the said certificate. Failure to examine the ADM who issued the certificate is fatal to the case. The learned Single Judge without considering the above facts

erroneously held that respondent proved the charges of forgery of the certificate by examining other witnesses.

- v. The learned Single Judge failed to consider that the appellant was appointed in the year 1976 and charge memo issued to him in the year 2011, after 34 years of entry to his service. In the intervening period, appellant was promoted as Head Constable, Assistant Sub-Inspector and Sub-Inspector. Every time of promotion, genuineness of community certificate was verified and found to be genuine.
- vi. The learned Single Judge failed to consider that the appellant is entitled to the benefits already accrued to him including continuity in service, but not entitled to any further benefit of reservation.
- vii. The learned counsel in support of his contention, relied on the following two judgments relied on before the learned Single Judge:
 - i. (2012) 1 SCC 549 (Dattu S/O Namdev Thakur vs. State of Maharashtra) – Paragraphs 3, 4, 5 and 9**
 - ii. AIR 2015 SC 3024 (Rajeshwar Baburao Bone vs. State of Maharashtra) – Paragraphs 13 and 14**

13. The learned Additional Solicitor General appearing for the respondent, contended that the grounds raised by the appellant are without merits and are not acceptable. There is no infirmity, perversity in the order of the Disciplinary Authority, Appellate Authority and Revisional Authority. After participating in the entire

enquiry proceedings, now it is not open to the appellant to raise that the Disciplinary Authority has no jurisdiction. Learned Single Judge has considered each and every contention of the appellant and rejected the same by giving cogent and valid reasons. The appellant has not made out any case to set aside the impugned order of the learned Single Judge.

13(a). As far as verification of the genuineness of the community certificate produced by the appellant is considered, when the respondent came to know about the forgery and fraud, the respondent issued charge memo and conducted domestic enquiry. The respondent by letting in evidence by examining seven witnesses proved that community certificate produced by the appellant is a forged one and the appellant by playing fraud, obtained appointment. Even though the respondent could not examine the ADM who issued the community certificate, proved the charges levelled against the appellant by examining the other witnesses that community certificate produced by the appellant was forged one. The appellant did not object to the procedure followed by the respondent at any stage and now it is not open to the appellant to raise the issue at this stage. The appellant obtained appointment to the post meant for Scheduled Tribe candidates by producing forged community certificate and by fraud. The appellant is not entitled to continue to enjoy the accrued benefit and not entitled to protection to continue in service. The order of dismissal is valid and prayed for dismissal of the appeal.

14. Heard the learned counsel appearing for the appellant and the learned Additional Solicitor General appearing for the respondent and perused the entire materials on record.

15. From the materials on record, it is seen that appellant was appointed on 2nd June, 1997 as Constable in Railway Protection Force of Eastern Railway under Scheduled Tribe quota. According to the appellant, he submitted a certificate issued by the appropriate Authority and copy of scholar's registers and the transfer certificate form.

16. The respondent verified the said documents and being satisfied with the genuineness of the same, appointed the appellant as Constable. The appellant during his service of 34 years was promoted as Head Constable, Assistant Sub-Inspector and Sub-Inspector. The respondent, only after verifying the genuineness of community certificate, had given the above three promotions. It is pertinent to take note that the above contentions remain uncontroverted by the respondent till date.

17. The respondent issued a charge-sheet dated 21st December, 2010 containing the following charges:

“CHARGE

Sri Jitendra Prasad posted at RPF Post/BWN as sub-Inspector who belongs to 'Kumri' community 'Other Backward Class' (OBC) misled and defrauded Railway administration by furnishing forged certificate of his belonging to 'Schedule Tribe' community, and fraudulently availed the benefit of reservation

under 'Schedule Tribe' category for his appointment as Rakshak in RPF.

Hence, he has violated provisions mentioned in Rule 146.6 (iv) of RPF Rules, 1987."

18. A reading of the above charges, it is seen that the allegations against the appellant are that:

- (i) He belongs to Kumri community, a OBC community.
- (ii) Produced forged certificate claiming to belong to Scheduled Tribe community and misled and defrauded Railway administration.

19. The appellant produced in the year 1976, a community certificate claiming to belong to Scheduled Tribe community, Kharwar community. According to the appellant, the said community certificate was issued by the concerned ADM having jurisdiction and power to issue the said certificate.

20. From the charge-sheet issued to the appellant extracted above, it is seen that the respondent has alleged that the appellant produced "forged certificate". The Agency which has jurisdiction and power to decide the genuineness of the Scheduled Caste and Scheduled Tribe community certificate is no longer *res integra*. Starting from ***Kumari Madhuri Patil and Another vs. Addl. Commissioner, Tribal Development and Others*** reported in ***(1994) 6 SCC 241***, number of cases regarding genuineness of Scheduled Caste and Scheduled Tribe certificates were considered and decided by the Hon'ble Apex Court and various High Courts. All the Courts have consistently held that

only Caste Scrutiny Committee appointed by concerned State Government have jurisdiction and power to verify the genuineness of community certificate produced by an employee. Only persons having thorough knowledge of the Scheduled Caste and Scheduled Tribe communities are appointed as members of the committee. The committee also has an Anthropologist as one of its members. Elaborate procedure is contemplated to verify the genuineness of community certificate. A vigilance enquiry is ordered and enquiry is made in the locality where the employee resides and/or his native place. The relatives of the employee are enquired and statements are recorded. The employee is given opportunity to dispute the enquiry report and to produce the documents especially community certificates of his parents, brothers, sisters and close relatives. Only after following the procedure contemplated, the Scrutiny Committee decides based on the materials placed before it whether Scheduled Caste/Scheduled Tribe certificate produced by the employee is genuine or a forged one and whether the employee belongs to the Scheduled Caste or Scheduled Tribe community as claimed by him. The employer/employee has right to challenge the decision by way of writ petition if aggrieved.

21. In the present case, when the certificate produced by the appellant was alleged to be forged, the respondent ought to have referred the issue to the Caste Scrutiny Committee. Instead, the respondent proceeded to conduct its own enquiry on predetermined

notion that Scheduled Tribe Community certificate produced by the appellant is forged one. Unless specialized persons and anthropologists having knowledge of the particular Scheduled Tribe community verified the claim of the appellant that he belongs to Scheduled Tribe community and examined the genuineness of the Scheduled Tribe community certificate, the said issue cannot be decided by the employer. The seven persons examined in the domestic enquiry are not competent persons to prove that Scheduled Tribe community certificate produced by the appellant is forged one.

22. Further, the respondent did not examine the ADM who issued the Scheduled Tribe community certificate to the appellant. No doubt, true that considerable time, i.e., 34 years had lapsed and it is doubtful whether the said ADM is in the same post or even in service. The respondent should have examined any one of the responsible officer from the office of the ADM to prove whether the said certificate was issued from their office and whether Kharwar community is Scheduled Tribe community in the districts of Deoria, Balia, Ghazipur, Varanasi and Sonbhadra.

23. The respondent authorities have not explained why they issued the charge memo dated 21st December, 2010. When the appellant was appointed on 2nd June, 1977. It is unbelievable that respondent promoted the appellant on three occasions without verifying and without being satisfied with the genuineness of the community certificate produced by the appellant. The charge-sheet issued to the

appellant is dated 21st December, 2010, consequent proceedings and orders passed by the respondent authorities are invalid and without jurisdiction. The appellant was appointed on 2nd June, 1977 in the Scheduled Tribe reserved post on his submitting Scheduled Tribe community certificate issued by ADM. Till the issue of charge-sheet stated above, he did not face any problem with regard to his caste status. Infact, he was given three promotions. When the respondent received a complaint in the year 2010 or so that caste certificate produced by the appellant is forged one, they ought to have referred the issue to the Caste Scrutiny Committee to find out the genuineness of the same. The Hon'ble Apex Court in the case of **Shalini vs. New English High School Association** (supra) held in paragraph 15 as follows:

“15. It requires specialised bodies such as Caste Scrutiny Committees, specialised lawyers, seasoned bureaucrats, etc. to decipher which category a relatively backward, or ostracised or tribal person falls in. Can it therefore seriously be contended that a person who has honestly, in contradistinction with falsely, claimed consanguinity with a certain group which was later on found not to belong to an envisaged Scheduled Tribe but to a special backward class be visited with termination of her employment? We think that that is not the intent of the law, and certainly was not what the three-Judge Bench was confronted with in Dattatray. In our opinion, therefore, the appellant should have been debarred from any further advantage that would enure to persons belonging to the “Halba” tribe.”

24. The respondent instead of obtaining decision from Caste Scrutiny Committee as held by Hon'ble Apex Court and various High

Courts ventured into deciding that the caste certificate produced by the appellant is forged one.

25. In view of the same, we are of the opinion that respondent has no jurisdiction and power to conduct enquiry to decide the genuineness or otherwise of the community certificate and whether appellant produced forged community certificate. In view of the same, we are not deciding the other contentions of the learned counsel for the appellant and the learned Additional Solicitor General for the respondent.

26. For the above reasons, the orders passed by the Disciplinary Authority, Appellate Authority and Revisional Authority and the order of the learned Single Judge are set aside.

27. The appellant will be deemed to be in service from the date of dismissal till date of superannuation. He is not entitled to any salary for the said period as he was not doing any work. He is entitled to continuity of service and the period from the date of dismissal till age of superannuation will be treated as duty period for calculating terminal benefits including pension.

28. With the above directions, the appeal is disposed of.

I agree,

(Rai Chattopadhyay, J.)

(V.M Velumani, J.)