

Deva Jehta Chavda Vs. Union of India (Uoi) and ors.

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Court : Central Administrative Tribunal CAT Ahmedabad

Decided On : Jul-12-2000

Judge : V Ramakrishnan, A Sanghavi

Appellant : Deva Jehta Chavda

Respondent : Union of India (Uoi) and ors.

Judgement :

1. Mr. Sailesh Brahmbhatt for the applicant and Mr. B.N. Doctor for the respondents.

2. This O. A arises out of the order passed by the Disciplinary Authority dismissing the applicant from the service on the ground that he had obtained the service by misrepresenting that he belonged to Schedule Tribe. The applicant was appointed as Telephone Operator in the Establishment of the respondents in the year 1983 and his appointment was made on the consideration that he belonged to Schedule Tribe. The applicant had furnished a caste certificate showing that he belonged to village Dholivav Ness in Junagadh Dist., residents of which are notified as Schedule Tribe by Gujarat Government. The applicant was given a charge sheet dated 06.05.88 alleging that he had secured employment under the SC/ST category by producing a false caste certificate and that he did not belong to Dholivav Ness. The inquiry officer after recording the evidence had submitted his report giving the findings that applicant did not belong to Dholivav Ness and that he had procured a false certificate of caste and therefore, the charges leveled against him were proved. The Disciplinary Authority accepted the inquiry report

and on the basis of the same, passed the penalty of dismissal from service on the applicant. The applicant preferred an appeal before the Appellate Authority but the appeal came to be rejected on dated 23.06.90. He has therefore, moved this O.A.challenging the order of the Disciplinary Authority as well as Appellate Authority imposing penalty of dismissal from service on him and praying for reinstatement in the service.

3. The respondents have resisted this O.A. and contended inter alia that though the applicant had maintained that he belonged to village Dholivav Ness, on inquiry it was found that he had never resided there nor his parents or relatives had resided there and as he did not belong to the said village, he was not entitled to be considered as Schedule Tribe candidate. The inference was inevitable that he had procured a false caste certificate and on the basis of that false certificate, he had secured appointment in the respondent's department. They have denied that the inquiry was vitiated by any factor. They have contended that the Disciplinary Authority has rightly imposed the penalty of removal on the applicant.

4. At the time of the arguments, Mr. Sailesh Brahmhatt, learned Advocate for the applicant had moved M.A. 335 of 2000 seeking permission to produce certain documents which according to him were quite relevant for deciding the issue involved in this O.A. According to Mr. Brahmhatt, some of the documents produced with this M.A. were not in existence when the inquiry against the applicant was conducted and even when the Disciplinary Authority as well as Appellate Authority passed the impugned orders. He has maintained that some of the documents sought to be produced by him go to establish beyond doubt that the applicant belonged to the village Dholivav Ness and that he is entitled to claim to be Schedule Tribe by birth. Considering that there was no question regarding genuineness of these documents, as they are in the nature of Govt., orders, Judgment of the Gujarat High Court and the certificate issued by Government of Gujarat, the M.A. was allowed by us and the documents were brought on record. These documents however, change the whole complexion of the case. Undisputedly many of them were not in existence when the inquiry against the applicant was conducted and the penalty order was passed. However, since the issue involved in this case pertains to the only consideration as to whether the

applicant belongs to Schedule Tribe or not and since it can not be denied that belonging to a particular community or caste would be by birth and not from any subsequent date, these documents, if they go to establish that he belongs to a village Dholivav Ness, then, clearly in spite of the fact that they were not in existence at the time of the inquiry, they would go a long way in establishing that the applicant had not misrepresented about his caste and had not procured appointment on mis-representation.

5. It is an un-disputed position that persons hailing from a small village of Dholivav Ness in Gir i.e. Junagadh Dist., are notified by the Govt., of Gujarat as belonging to Schedule Tribe. Since the applicant had procured his service on the basis of certificate obtained by him as belonging to Dholivav Ness and thereby being a Schedule Tribe, even if, subsequently, documents establish that he hails from that village then, even if, these documents were not available at the time of inquiry and were not produced before the inquiry officer, it cannot be denied that he is Schedule Tribe person and that he had not obtained service by mis-representation. This being a question of fact was required to be decided by the inquiry officer and it is a settled position of law that we cannot enter into the re-appreciation of the evidence and cannot replace our findings for the findings of the inquiry officer. However, when it is found that new evidence which goes to the root of the matter is forthcoming and that this evidence was not in existence when the inquiry was conducted, the inquiry officer will have to be given directions to consider this evidence and give his findings after re-appreciating the new evidence. Since it will be the function of the inquiry officer to re-appreciate the evidence, we refrain from discussing the new documentary evidence adduced by the applicant before us. We however, are satisfied that these documents are required to be considered by the inquiry officer in the interest of justice. The matter therefore, requires to be remitted back to the Disciplinary Authority who had conducted inquiry proceedings against the applicant. If the same inquiry officer is not available, it will be open to the Disciplinary Authority to appoint another inquiry officer and the inquiry officer after giving due opportunity to the applicant as well as the respondents to present their case and to produce the evidence if any, shall give his findings on the issue involved and thereafter the Disciplinary Authority may pass the necessary orders.

Since the matter is remanded back to the Disciplinary Authority, the impugned order of dismissal of the applicant from service is set aside and the respondents are directed to reinstate the applicant in service.

It will, however, be open to the Disciplinary Authority to regulate the period from the date of the dismissal of the applicant till the date of the reinstatement in service in accordance with rules and regulations.

The Disciplinary Authority is further directed to complete the inquiry within three months from the date of receipt of the order in this O.A. The O.A. stands disposed of with the above directions. No order as to costs.

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