

* **THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 15th November, 2011

+ W.P.(C) 7970/2011

AKHIL KUMAR Petitioner
Through Mr. Shanker Raju, Advocate.

versus

UNION OF INDIA Respondent
Through Mr. Ankur Chhibber, Advocate.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI, ACTING CHIEF JUSTICE (ORAL):

Rule DB.

1. With the consent of the learned counsel for the parties, we have taken the matter for final hearing at this stage. The Petitioner herein has challenged the order passed by the Central Administrative Tribunal on 20th September, 2011 dismissing the OA preferred by him under Section 19 of the Administrative Tribunals Act. The said OA was filed challenging (i) the order dated 9th November, 2006 vide which the appointment of petitioner as Sepoy on 14.9.1997 was cancelled and he was dismissed from service and recovery ordered of all emoluments paid to him; (ii) order dated 26th

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October, 2007 passed by the appellate authority dismissing his appeal; and (iii) order dated 30th December, 2009 dismissing the revision petition preferred by him.

2. The facts which are required to be noted to decide the issue are in a narrow compass and are stated briefly as under.

3. The Petitioner was enrolled as casual worker in Central Economic Intelligence Bureau and was appointed as daily wager in the office of AC Central Excise in October 1988. After five years of service, he was made casual with temporary status vide order dated 8th December, 1993. This temporary status was regularized by the Respondent.

4. A vacancy of Sepoy on regular basis arose in the same department and the Petitioner applied for this post. The vacancy admittedly was in general category and the Petitioner applied for the said post staking his claim as a general category candidate. He was selected for this post and was appointed as Sepoy. However, at the time of filling up the attestation form, the Petitioner mentioned that he belongs to 'ST' category. In support of his claim, he had also annexed a Scheduled Tribe Certificate purportedly issued by the Executive Magistrate, 24, Pargana, West Bengal as per which, he belonged to 'Konde' tribe in Orissa which is a scheduled tribe.

5. In the year 2003, when his turn came for promotion to the next higher

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post for Havaladar, he was considered for promotion to this post as ST candidate and was accorded promotion in 2003.

6. While the Petitioner was working as Havaladar, he was placed under suspension vide order dated 26th December, 2005. This happened after the Respondent got verified the aforesaid ST certificate from the West Bengal authorities and reply was received that no such certificate was issued by the said authorities. It was followed by show cause notice dated 19th May, 2006 to which Petitioner filed his reply dated 31st July, 2006. On 9th November, 2006, Petitioner was dismissed from service with recovery of benefits, as mentioned above. Thereafter, on 18th November, 2006, an FIR No.582/2006 under Section 420, 468, 471 IPC was also lodged against him.

7. Against the aforesaid dismissal order dated 9th November, 2006, the Petitioner preferred appeal which was dismissed by the appellate authority on 26th October, 2007. Thereafter, the Petitioner also filed revision petition challenging the order of the appellate authority. On 30th December, 2009 the revisional authority dismissed the revision petition. It is at this stage that the Petitioner preferred aforesaid OA challenging the orders passed by the disciplinary authority, appellate authority and revisional authority and in nutshell he challenged the dismissal from service. Various grounds were raised by him including the ground that he was appointed to the post of

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Sepoy against general vacancy and had not taken any benefit of his being ST and, therefore, his service could not be terminated. He also submitted that the termination without holding any disciplinary proceedings was in violation of principles of natural justice. The OA of the Petitioner has been dismissed vide order dated 20th September, 2011. The main reason which has weighed with the learned Tribunal in dismissing the OA is that the Petitioner had submitted a forged and invalid certificate which was never issued by Sub-Divisional Officer, 24 Pargana, Alipore. The Tribunal has also relied upon the following note appended in the application form, as per which furnishing of false information could render the candidature unfit for employment:

“The furnishing of false information or suppression of any factual information in the Attestation form would be a disqualification, which is likely to render the candidate unfit for employment under the Govt.”

8. According to the Tribunal, once it is established beyond doubt that the Petitioner had furnished false information at the time he filled the form, even if he had not taken any advantage at the time of appointment of his being ST, the submission of aforesaid false information was sufficient to render the candidate namely the Petitioner unfit for employment under the Government and, therefore, the services of the Petitioner were rightly

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terminated. The Tribunal has also relied upon the judgment of the Supreme Court in *Vice Chairman, Kendriya Vidyalaya Sangathan vs. Girdharilal Yadav*, (2004) 6 SCC 325 wherein the Supreme Court held that there was no infirmity in the action of the Government in cancelling the appointment on the ground that the caste certificate submitted by the person concerned was an act of fraud.

9. The narration of the facts mentioned above would bring forth the following aspects:

- A. The Petitioner had been serving with the Respondent as daily wager and thereafter in temporary status since October, 1988 before he was appointed as a Sepoy on regular basis in the year 1997.
- B. Insofar as post of Sepoy is concerned, he competed with others in general category and was appointed as such without taking any advantage of his claim to be belonging to ST category. This fact has again been verified by counsel for respondent after some hearing yesterday, i.e. 14.11.2011.
- C. In the application form it is stated that he belongs to ST category which information has been found to be wrong / false.
- D. The Petitioner was promoted as Havaldar in the year 2003 and this promotion has been bestowed on him giving him benefit of ST status.

10. Having regard to the aforesaid facts, we are of the view that when the Petitioner had not drawn and / or taken any advantage at the time of his appointment as Sepoy on the basis of his claim that he belongs to ST category, termination of his services was not the proper course of action. We say at the cost of repetition that the aforesaid post of Sepoy was in general category and the Petitioner was appointed to the said post on merit considering his candidature in general category. It appears that for this reason only, even though the petitioner had then only claimed to be belonging to Scheduled Tribe category, no need for verification thereof was felt. No doubt, thereafter, the Petitioner got promotion to the post of Havaldar seeking the benefit of ST status. For this reason only, the need for verification of the Scheduled Tribe certificate was then felt. In such circumstances, the appropriate course of action which should have been taken by the Respondent was to cancel his promotion as Havaldar. At the same time, any other action permissible for furnishing false information could also be available to the Respondent. For this reason, we state that the FIR under Section 420, 468 and 471 IPC which was registered against the Petitioner for wrong declaration and cheating the department, insofar as his promotion as Havaldar, such a course of action would be permissible for the Respondent and it is the right of the Respondent to take this FIR to its

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logical conclusion. It would also be open to the Respondent to take further action against the Petitioner in case the Petitioner is convicted. However, at this stage, the interest of justice would have been subserved by cancelling the promotion as Havaldar and restoring the status of Sepoy to the Petitioner.

11. The reliance of the Tribunal on the judgment of the Hon'ble Supreme Court in *Girdharilal Yadav* (supra) is misplaced inasmuch as in that case the incumbent had taken appointment on the ground of caste certificate which was held to be an act of fraud. The appointment of the petitioner as Sepoy, in the present case, was not dependent upon his Scheduled Tribe status and the said status was stated in the application form as a narration of fact though nothing turned thereon. The petitioner would have secured appointment as a Sepoy even without such a statement of his Scheduled Tribe status. It cannot also be lost sight of that the finding against the petitioner is not of his not belonging to the Scheduled Tribe as claimed by him but of the office of Authority which had issued the certificate of the petitioner to be belonging to the Scheduled Tribe category having denied the issuance thereof. As aforesaid, the need for such verification arose after several years after initial appointment, when the petitioner sought and was granted promotion as a Scheduled Tribe. The petitioner has had no opportunity to cross-examine the authority which has denied issuance of the

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certificate produced by the petitioner. It is well-nigh possible that the authority which has issued the certificate has not maintained with itself any record of issuance thereof and in the absence whereof the successors in office would have denied issuance thereof. All these facts need to be adjudicated in the prosecution which is underway. What we emphasize at this stage is that there is no finding, neither of the Disciplinary Authority nor of the Appellate Authority nor of the Revisional Authority, of the petitioner not belonging to the Scheduled Tribe category. We feel that in the absence of such a finding, the punishment of depriving the petitioner even from the post for selection whereto he had no need to use his Scheduled Tribe status, is too harsh and disproportionate.

12. On the aspect of disclosure in the application forms also, the Division Bench of this Court in *Sandeep Kumar v. Commissioner of Police, (2006) 90 DRJ 707* held that concealment or non-mentioning of a fact not of relevance would not invite application of the clause providing for cancellation of appointment for the reasons of such non-disclosure / falsity. The Supreme Court put its imprimatur to the said judgment in *Commissioner of Police v. Sandeep Kumar (2011) 4 SCC 644* and further held that a bona fide mistake cannot lead to such cancellation of appointment. The clause in the present case was as under:

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“The furnishing of false information or suppression of any factual information in the Attestation form would be a disqualification, which is likely to render the candidate unfit for employment under the Government.”

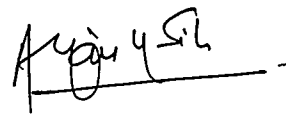
Strictly speaking, the clause aforesaid does not cover a false document accompanying the Attestation Form and applies only to information furnished in the Attestation Form. At the cost of repetition, we state that there is no finding of the information submitted of belonging to Scheduled Tribe category, being false.

13. We may also notice that the Supreme Court in *Radhakant Jha v. Chief Commissioner* (1987) 3 SCC 222 has also held that unsuitability for a promoted post cannot lead to termination of appointment and can only lead to reversion. Applying the same principle, since the appointment of the petitioner as a Sepoy was not on the basis of the certificate which on verification has been denied, the punishment which could have been meted out to the petitioner could only be the reversion from the post to which he was promoted as a scheduled tribe candidate and not of termination of his appointment. The appointment which the petitioner had achieved without any reliance upon the scheduled tribe certificate but by competing with candidates in general category cannot be taken away from him, upon the certificate proving to be false, more particularly when no attempt has been

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made to even determine whether the petitioner in fact belongs to the scheduled tribe category or not.

14. The petition is accordingly partly allowed. The punishment meted out to the petitioner is modified from that of dismissal from service, to of reversion to the position where the petitioner was prior to his promotion as Havaldar. The respondents are directed to so take back the petitioner within eight weeks hereof. However, the respondents shall be entitled to take the prosecution of the petitioner to its logical conclusion and if the petitioner is convicted, to take appropriate action against him.



ACTING CHIEF JUSTICE



RAJIV SAHAI ENDLAW, J

NOVEMBER 15, 2011
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