

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

% Judgment Reserved on: August 21, 2012
Judgment Pronounced on: August 28, 2012

+ **WP (C) No.4821/2000**

KHALIL AHMED Petitioner
Represented by: Ms.Jyoti Singh, Sr.Advocate
instructed by Ms.Saahila
Lamba & Mr.Anil Gautam,
Advocates

Versus

UOI & ORS Respondents
Represented by: Ms.Geeta Sharma, Advocate
along with Mr.Vijaya Kumar Rout
& Ms.Sheena Shekhar, Officers
of the Deptt.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner has filed the present writ petition feeling aggrieved by the penalty of removal from service by DIGP, RAF/CRPF vide order dated 30th September, 1999.

2. Admittedly, petitioner secured employment as an ASI (Clerk) vide letter offering appointment issued to him on March 16, 1989. Admittedly, the recruitment was with respect to an advertisement as per which the 11 posts of Assistant Sub-Inspector (Clerk) were reserved: 5 for SC and 6 for ST

candidates. Admittedly, the petitioner neither belongs to either two categories. He professes Muslim faith and claims to be belonging to a Backward Community. As we would be noticing herein after, it remains a mystery as to who resorted to a strategy of contrivance resulting in the petitioner being issued the offer of appointment and as per the record of the respondent, in the ST category; but later on the record being fudged.

3. As per the petitioner when he filled up the application in response to the advertisement, a fact which is borne out from the record, he never wrote in the application that he is a member of any notified Scheduled Tribe, but it assumes importance to note that the petitioner annexed with his application a certificate certifying that the petitioner belongs to a Backward Caste. It is not in dispute that in the year 1988, there were no reservations for Backward Castes in the Central Government. A question arises: Being neither belonging to a Scheduled Caste nor a Scheduled Tribe, and all the 11 posts being reserved, how come the petitioner managed an appointment. The answer is obvious. The system was manipulated to the benefit of the petitioner.

4. The very first trace of contrivance which we see is that the letter offering appointment pertains to the post of ASI (Clerk), but copy forwarded to the office where petitioner had to join mentions that said office should maintain the dossier containing the personal record of the petitioner with reference to his being appointed as an ASI (Clerk) against existing vacancy of SI (Steno). Thus, it is apparent that the cover up action commenced from day one.

5. When it got detected, it was found that an Office Order dated April 24, 1989 pertaining to petitioner's employment

which preceded the letter of offer recorded petitioner to be a member of a Scheduled Tribe. But which? The Office Order does not record.

6. According to the petitioner, he did not submit any NCC, SC/ST certificate as the same were not applicable to him. On 6th April, 1989 he signed the CRPF Recruitment Roll as a General Candidate and on 24th April, 1989 the petitioner was appointed as an ASI (Clerk) and posted in 71 Bn., CRPF, Aaporijo (ACP). In the year 1995, the petitioner appeared in the UDC qualifying examination conducted by the IGP, Bihar Sector through Group Centre, CRPF, New Delhi. In the Signal dated 20th November, 1995 it was enquired whether the petitioner belongs to ST or General category. The petitioner in his handwritten reply dated 27th November, 1995 stated that he belongs to OBC category and not ST category.

7. It is stated by the petitioner that in order to rectify the mistake in Gradation list and service records, he submitted an application to the DIGP, RAF/CRPF, New Delhi and Commandant 108 Bn., RAF, Meerut. The Commandant 108 Bn., RAF, Meerut wrote a letter to the DIGP, RAF/CRPF, New Delhi requesting that the matter may be closed and necessary amendments in the Gradation list may be made but, the DIGP, RAF passed an order dated 15th October, 1997 and ordered for a preliminary enquiry.

8. The Enquiry Officer in his report dated 14th January, 1998 gave a finding that the petitioner did not furnish any wrong document nor was he responsible for the entry of ST in his service records. However, being dissatisfied the DIGP asked another Enquiry Officer to make further preliminary enquiry who found that a *prima facie* case was made out against the petitioner and he recommended a departmental action. Thus,

the DIGP, RAF held disciplinary enquiry and issued a Memorandum of Charges on 13th August, 1998 against the petitioner. The petitioner submitted his reply to the said Memorandum of Charges. Thereafter, the DIGP, RAF appointed an Enquiry Officer.

9. According to the petitioner, his request for engaging a defence counsel was declined.

10. The statements of the prosecution witnesses namely PW-1 Sh.D.J.Singh, Dy.Comdt., PW-2 Sh.C.V.Stephen Corraya, Office Supdt., PW-3 Sh.S.M.Sagar, Service Record Clerk, PW-4 ASI(M) Virender Kumar, Confidential Clerk and PW-5 Sh.M.P.Chitnis, VSM, Addl. DIGP, GC, CRPF were recorded by the Enquiry Officer.

11. The Enquiry Officer submitted his report to the DIGP, RAF on 31st May, 1999. Thereafter, the DIGP issued a show-cause notice to the petitioner on 5th August, 1999 along with the copy of the report of the Enquiry Officer. The petitioner filed the reply. On the basis of the inquiry report, the DIGP, RAF passed an order of removal of service of the petitioner on 30th September 1999 with immediate effect.

12. Feeling aggrieved, the petitioner filed a statutory appeal under Rule 28 of CRPF Rules, 1955 before the IGP on 29th October, 1999 but, the same was rejected vide order dated 9th February, 2000.

13. The Revision Petition filed by the petitioner against the order of appeal was also rejected by order dated 31st July, 2000. Hence, the petitioner filed the present writ petition.

14. It is the case of the department that the petitioner appeared in the recruitment test on 5th October, 1988 with a fake community certificate and got enlisted in CRPF and his caste in his service book was mentioned as 'ST' being based

upon the recruitment dossier and appointment order. In his ACR resume for the years 1989-90, 1990-91 and 1991-92 he mentioned his caste as 'ST'. In his resume for the years 1992-93 to 1995-1996, he mentioned that he does not belong to SC/ST category and in his ACR resume for the year 1996-97 he mentioned that he belongs to OBC.

15. During the departmental enquiry, various orders/instructions were consulted and witnesses were examined and the petitioner was found guilty. Thereafter, the departmental enquiry proceedings, report of the Enquiry Officer, representation of the petitioner on the inquiry report were examined and after considering all aspects of the case, all the charges framed against the petitioner were held to be proved and accordingly the order dated 30th September, 1999 was passed.

16. We have heard the learned counsel appearing on behalf of the parties. We have examined the original record produced before us.

17. Ms.Jyoti Singh, learned Senior counsel for the petitioner has relied upon the first report of Enquiry Officer dated 31st May, 1999 who found that the petitioner was not guilty and also held that none of the five charges have been proved except charge V which stood partially proved against the petitioner. The DIGP in his order has stated that the first report dated 31st May, 1999 submitted by the petitioner was a roughly drafted report and the examination of the Enquiry Officer with the roughly drafted two reports was not worthy of any reliance. Both reports were in the handwriting of the Enquiry Officer and both bear his signatures. No Enquiry Officer is expected to write two contradictory reports at one and the same time.

18. According to the learned Senior counsel, there is no evidence either oral or documentary against the petitioner. The onus to prove the charges was on the department who failed to prove charges. Therefore, the DIGP has by his order dated 31st May, 1999 wrongly removed the petitioner from service which is against law and the facts of the present case.

19. The learned counsel has referred the testimonies of the witnesses in support of her submissions. According to the counsel, most of the witnesses are not the witnesses of facts relating to any charge and none of the witnesses was able to prove that the petitioner had committed any fraud or removed/replaced any document(s). It is also argued that there was no evidence on record that the petitioner either produced ST certificate or mentioned ST in his application form. On the contrary, the application form which is Exht.III states that the petitioner was not SC or ST, but was of general category. The petitioner has nowhere written ST in his own handwriting. There is no overwriting or tampering in column-7 of the application form. Thus, the findings of the DIGP are not correct.

20. The next submission of the learned Senior counsel for the petitioner is that in the offer of appointment letter dated 16th March, 1989 Exht.IV, the word 'ST' was not used. Similarly, Exht.V i.e. the copy of appointment order in which the word 'ST' which was typed has been scored off and 'General' has been written in handwriting. This appointment order has not been prepared by the petitioner. It was the department who has prepared and issued the said letter. Exht.VIII, IX & X support the case of the petitioner who had stated that he does not belong to SC or ST category, but he is a member of Muslim Backward Class. Exht.XI is the extract of service book which is

maintained by the department. The cutting in column of 'Caste' has not been made by the petitioner and he is not responsible for cutting in his service book/records which is filled up by the office. Even otherwise, there is no evidence that the service book was ever seen by the petitioner or the petitioner was provided any opportunity to make any fabrication.

21. It is further submitted that the DIGP has not taken into consideration the preliminary inquiry report dated 14th January, 1998 submitted by Sh.Vikram Sahgal (EO) who stated that 'Pichhri Jati' word in Hindi mentioned in the Backward Class certificate was presumed as ST by dealing hand who apparently could not differentiate between ST and Backward Class. It might be possible that the clerk concerned who was dealing with records of the Recruitment Board understood that Hindi word 'Pichhri Jati' is used for Schedule Tribe. Thus, it was merely a confusion regarding interpretation of the document at the time of recruitment but the petitioner cannot be blamed for the same. The entire responsibility, if any, should be put on the department. As the department has failed to prove the charges, therefore, the impugned order is liable to be set aside.

22. Lastly, it was argued that since the petitioner was not at fault who was appointed on 16th March, 1989 for the post of Asstt. Sub Inspector (Clerk) and it was he who on 12th August, 1997/15th September, 1997 in order to rectify the mistake in gradation list and service record submitted the application to the DIGP, RAF/CRPF, New Delhi. There was no malafide intention on his part and in case the impugned order is sustained, the petitioner would suffer an irreparable loss and injury.

23. Counsel submits that equity demands that benefit of ten years service must go in favour of the petitioner, as he himself had admitted about the said mistake. In case, the mistake has happened at the time of his recruitment, it was the office mistake that ought to examine the papers of the petitioner carefully. Why the petitioner should be penalized for the mistake committed by the department? At this age, where should he go, as chances of getting service is almost nil, thus this Court may consider the overall facts and circumstances and allow the petition by quashing the order of the DIGP, RAF/CRPF dated 30th September, 1999.

24. The following charges framed against No.891540079 Ex.ASI(M) Khalil Ahmed of 108 Bn. (the petitioner herein) which are reproduced here as under:

“Article –I

That the said No.891540079 Ex. ASI (M) Khalil Ahmed during the month of 10/88 committed an act of misconduct in that although he was not hailing from either SC or ST community he appeared in the recruitment test conducted exclusively for the selection of candidates for SC and ST communities on 05/10/88 at SDG Camp., New Delhi-17 and produced a fake testimonial to the effect that he belonged to ST community and managed his enlistment in CRPF as ASI (M) by misrepresenting his case which is punishable in terms of GOI OM No.11012/7/91-Estt-A dated 29/05/93 of Ministry of Personnel, PG and Pension (Deptt. of Personnel & Training)

Article –II

That the said No.891540079 ASI (M) Khalil Ahmed while functioning as ASI (Clerk) during the period between 1989 and 1997 committed an act of misconduct in his

capacity as a member of the Force U/S 11(1) of CRPF Rules, 1955 in that he with malafide intention removed his original application submitted for selection of ASI (Clerk) and replaced another one mentioning GEN in Column No.7 to circumvent from the misconduct of submission of fake caste certificate and subsequent enlistment in CRPF with the support of the fake certificate.

Article –III

That the said No.891540079 ASI (M) Khalil Ahmed while functioning as ASI (Clerk) during the period between 1989 and 1997 committed an act of misconduct in his capacity as a member of the U/S 11(1) of CRPF Act, 1949 read with Rule 27 of CRPF Rules 1955 in that he with malafide intention removed the original caste certificate showing that he belonged to ST community and replaced another caste certificate showing that he belonged to other backward community.

Article –IV

That the said No. 891540079 ASI (M) Khalil Ahmed while functioning as ASI (Clerk) during the period between 1989 and 1997 committed an act of misconduct in his capacity as a member of the Force U/S 11(1) of CRPF Act, 1949 read with Rule 27 of CRPF Rules 1955 in that he with malafide intention tampered with the official documents by eliminating the word ST from the recruitment documents available with Service Book as well as Column No.1(3) of Page 1 of Service Book to circumvent from the misconduct of his enlistment in ST quota.

Article –V

That the said No. 891540079 ASI (M) Khalil Ahmed while functioning as ASI (Clerk) during the period between 89 and 92 committed an

act of misconduct in his capacity as a member of the Force U/S 11(1) of CRPF Act 1949 read with Rule 27 of CRPF Rules, 1955 in that he with malafide intention mentioned his community as ST in Column No.4 below part one of Annual Confidential Reports for the period from 06/04/89 to 31/03/90, 1/4/90 to 31/03/91 and 1/4/91 to 22/2/92 although he was not hailing from ST community.”

25. The Enquiry Officer recorded the statement of the petitioner who put certain questions to him which were replied by him. It is relevant to reproduce the statement made by him; the same reads as under:-

“Statement of No.891540079 ASI(M) Khalil Ahmed of 108 Bn., RAF, Ved Vyas Puri, Meerut.

I No.891540079 ASI(M) Khalil Ahmed hereby state that I reported to 108 Bn. RAF on transfer from Group Centre Jharoda Kalan, CRPF, New Delhi on 24.6.1996. I performed the duties of L.C.I. till November 1996 and since then I am performing duties of EC-III.

While I was at Delhi, I came to know from CRPF personnel that recruitment for the post of ASI(M) will be carried out at SDG, CRPF, New Delhi from 5.10.1988 to 7.10.1988. Therefore I went to SDG, New Delhi, along with my educational certificates. I collected the format for application which was required to be filled, and filled it on the basis of my certificates, and submitted the form along with required documents to the Recruitment Board. Since I belonged to Backward Caste ‘NADDAJ’ of Muslim community, I attached my backward caste certificate along with my application form. After scrutinizing my application/ documents, I was permitted to appear in written examination, on 5.10.1988, the result was declared same evening and I was declared “PASS” on 6.10.1988, I appeared in English typing test and was declared “PASS” on 7.10.1988, I was called for interview, and my interview was conducted by

DIGP, CRPF, New Delhi. After a lapse of about five months, I enquired about the results of interview from office of DIGP, CRPF, New Delhi, and I was told, that I have been selected for the post of ASI(M), and they gave me the copy of my appointment, DIGP, CRPF, letter No.A-VI-6/89 CC dated 16.03.1989, according to which I had to report to Commandant 71 Bn., CRPF, Daporijo (Arunachal Pradesh), for medical examination till 31.3.1988. Nowhere it was mentioned in my offer of appointment that I have been selected against the vacancy for ST. I reported at 71 Bn., CRPF on 31.3.1989, where my medical examination was conducted on 6.4.1989, and I was appointed as ASI(M). On 24.4.1989 I was sent to GC Hyderabad for basic training, after completion of which I again reported back to 71 Bn., CRPF at Moga (Punjab).

In my application form for recruitment, I had mentioned my caste as General, and the application form is available in my Service Book. I had also submitted my caste certificate, in which it was clear mentioned, I belong to backward caste 'Naddaf'. I qualified all the examination conducted during the recruitment, and was not given any concession in respect to age, and physical measurement.

While I was posted in 71 Bn., CRPF, during the initial years of my service, I used to receive ACR form from Steno, the Part-I, of ACR form was typed by Steno only and I only typed my resume and submitted the ACR form duly signed. This is the reason that ST has been mentioned against the caste column in my ACR form for just 2 to 3 years service. After 2½ years, I was transferred to Group Centre, Jharoda Kalan, New Delhi after which I used to type the ACR form myself and I have never mentioned myself as ST.

I have appeared thrice in SI(M) Examination, i.e. April 1995, September 1995 and 1996, but I have never claimed the benefits of ST's. I always mentioned Backward Caste in answer sheet of every test. At the time of SI(M) qualifying exam in September 1995, IGP, CRPF Bihar Sector, vide Signal No.M.V.1/95-PA, dated 21.11.1995, enquired

from GC New Delhi, whether I belong to ST or General category. I endorsed remark on same signal that I belong to Backward Caste and not ST. On basis of my remark and caste certificate available in Service Book, GC, CRPF, New Delhi, informed IGP, Bihar Sector that I belong to Backward class vide GC, CRPF, Jharoda Kalan, New Delhi Signal No.C.II.1/95-SRC-1GC dated 30.11.1995.

In June 1996, I came on transfer to 108 Bn. RAF. In the SI(M) qualifying exam of 1997, my particulars were forwarded by LC-I, wherein my caste was mentioned as ST. I chanced upon to see the office copy and I informed the DA that I belong to Backward Caste instead of ST. I also submitted an application for making necessary correction in Gradation List on 12.8.1997 and 5.9.1997. As such, I have availed no benefit/concession available for ST during my service.

Questions by E.O.

Q1. Were you aware that the recruitment was meant only for SC/ST/Ex-Army Personnel?

Ans. No. I only knew that recruitment was going on for the post of ASI(M) and SI (Steno).

Q2. In caste certificate submitted by you, your caste has been mentioned as Naddaf. Does it fall under SC or ST?

Ans. No, it comes under Backward Class.

Q3. As per Col. No.4 of the offer of appointment, you were required to produce proof of belonging to SC/ST/Army discharge certificate as the case may be, did you produce the certificate?

Ans. Since I do not belong to SC/ST, I did not submit any certificate to that effect, but I did produce my Backward Certificate which is available in my Service Book.

Q4. In your appointment letter issued by DIGP, CRPF, New Delhi dated 24.4.1989, against whether SC/ST, the word ST has been cut off and GEN. has been written. What have you to say about it?

Ans. The copy of appointment letter was not given to me nor is the copy endorsed to me, so I have no comments to offer on the above clarification.

Q5. In the Verification Roll filled by you, in Col.9(a), you have mentioned your religion as Muslim, wherein in 9(b) where it is required to state whether you are member of SC/ST Answer Yes or No, you have not filled anything. Why?

Ans. As there is no ST in Muslim religion, there was no question of my mentioning anything.

Q6. In "CRP Form No." in Recruiting Roll in your Service Book reveals that some tampering/alterations have been done in Caste Col. What have you to say about it?

Ans. At time of recruitment, the Recruiting Roll was given to successful candidate for being filled up, however, the categories to which candidate belonged was filled by Recruitment Staff. I filled the form by my own handwriting and pointed out that I do not belong to ST, as written in Caste Col. The same was erased by Recruitment Staff and word GENL. Was written by me in the column.

Q7. In your Service Book at Page No.1, the word ST has been struck off and OBC and Muslim have been written, what have you to say in this regard?

Ans. I can offer no comments on it, as it was not done by me and nor in my presence, but I presume the change was made, after IGP, CRPF, Bihar Sector enquired from GC, CRPF,

J/Kalan, New Delhi, whether I belonged to ST or General category.

Sd/-
No.891540079 ASI(M)
Khalil Ahmed”

26. We have also gone through the statement of other witnesses recorded before the Enquiry Officer. From the above, it is evident that the petitioner belongs to Muslim community, who filled the application form and attached the required documents including the Backward Class Certificate to the Recruitment Board for the post of ASI(M). The column No.7 of the application form shows the details as to whether the petitioner belonged to SC/ST and the petitioner filled the word 'General'. The said application was accepted and the petitioner was allowed to take written examination on 5th October, 1988 and was declared 'PASS' in typing test also. He was called for interview and after the lapse of five months, he was selected for the post of ASI(M) and letter of appointment dated 16th March, 1989 was issued.

27. The petitioner had made the statement before the Enquiry Officer that nowhere it was mentioned in the appointment letter dated 16th March, 1989 that he was selected against the vacancy for ST. Though, in his statement, he admitted that he mentioned his caste as 'General'. The petitioner had made the statement that during the initial years of his service, he used to receive ACR form from Steno and therefore, he did not notice the column of caste and simply signed the said form and he never mentioned himself as ST by his own handwriting in paper and always claimed and mentioned backward caste.

28. From the record, we found cuttings on various documents wherein the word 'ST' was scored off by replacing the words 'backward caste'. We feel that it is not necessary to hold another inquiry to find out how these discrepancies happened and who is the person involved in such activities, rather to decide the matter on the basis of factual position which would go into the root of the case. Thus, if the charges were framed against the petitioner for misconduct, production of fake document and intention of removal of the same having not proved by the department strictly, the arguments are without any relevance in view of matter being decided on real issue involved in the matter.

29. Admittedly, the petitioner was appointed as ASI(M) on 6th April, 1989 against ST vacancy in the special recruitment drive conducted at SDG Camp, New Delhi on 5th October, 1988. It was a reserved quota to fill up the vacancies of SC/ST at Camp during the year 1988. The said fact has not been denied by the petitioner, rather he also admitted that he does not belong to SC/ST caste. In his application, he has declared himself as in 'General' category. In the acknowledgement letter dated 5th October, 1988 of his application, it was mentioned as SC in column No.4 as to whether he was SC/ST, Ex-Serviceman. His selection letter dated 16th March, 1989 and the appointment issued by the department clearly asked him to submit proof of his belonging to SC/ST – Army Discharge Certificate, as the case may be. In his appointment letter dated 6th April, 1989 and office order dated 24th April, 1989 about his selection which contained the conditions of appointment, the particulars were shows as ST. In the ACR for the period 6th April, 1989 to 31st March, 1990 (Exht.VII) and 1st April, 1990 to 31st March, 1991 and 1st April 1991 to

31st March, 1992, the details of particulars i.e. column No.4 showed him as ST in the personal data which is duly signed by him. So, all these documents speak for themselves that his appointment was made contrary to reserved quota and under special recruitment drive. Under these circumstances, it is not necessary to go into this issue as to how the petitioner was appointed despite of specific reserved quota and who is responsible for the same. The fact of the matter is that he was not eligible for the post as he did not belong to SC/ST caste. And ultimately got appointment contrary to selection procedure, question of any relaxation in the terms and conditions does not arise. He cannot be given benefit of the period of service due to reason that as and when it came to the notice of department, immediate action was taken. Thus, the argument of the petitioner is without any force. It is immaterial if the first Enquiry Officer found him not guilty as the Enquiry Officer had not gone into the issue of selection process and its terms and conditions.

The similar view was taken in the case of **Bedanga Talukdar vs. Saifudaullah Khan and Ors.**, reported in AIR 2012 SC 1803, para-28 of which reads as under:-

“28. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any

relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant Statutory Rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the Rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised has to be given due publicity. This would be necessary to ensure that those candidates, who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.”

30. It may be true that with reference to the charges it would be difficult to prove as to what was the exact role played by the petitioner or the others, but the fact that the petitioner professing Islamic faith and not being a member of any Scheduled Caste or Scheduled Tribe managed an appointment to a post which was a reserved post is proof enough that the appointment was the result of a conspiracy which was hatched. Now, a conspiracy is always shrouded in the darkness of secrecy and very seldom exact role played by the various players can be ascertained. But with reference to the benefit derived in the instant case by the petitioner, it is apparent that he was a party to the conspiracy as it was he alone who reaped the fruits thereof.

31. Even if we were to accept the arguments advanced by learned senior counsel for the petitioner, requiring us to quash the impugned order, we would not do so for the reason this would mean restoring petitioner to be appointed to a post to which he was never entitled to. It is settled law that a Court of

Equity would not quash a wrong decision if it would result in restoration of something which itself would be a wrong.

32. For the aforesaid reasons as well as in the facts and circumstances of the present case, we do not find any merit in the writ petition. The same is hereby dismissed. No costs.

(MANMOHAN SINGH)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

AUGUST 28, 2012/ka