IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15799 of 2013

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Manoj Kumar Son of Late Nityanand Kumar Resident of Village Anadipur, P.S.- Kahalgaon, District- Bhagalpur

.... Petitioner/s

Versus

1. The Union of India through the Commissioner, Central Excise, Patna Central Revenue Building, Bir Chand Patel Path, Patna
2. Commissioner, Central Excise, Patna Central Revenue Building, Bir Chand Patel Path, Patna
3. Additional Collector (Presently Additional Commissioner) (P and V), Central Excise, Patna Central Revenue Building, Bir Chand Patel Path, Patna
4. Joint Commissioner (P and V), Central Excise, Patna Central Revenue Building, Bir Chand Patel Path, Patna
5. Deputy Commissioner (P and V), Central Excise, Patna Central Revenue Building, Bir Chand Patel Path, Patna
6. Staff Selection Commission (Central Region), Government of India, Department Of Personnel and Training, 8 Beli Road, Allahabad

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pushkar Narain Shahi, Sr. Advocate
Mr. Patanjali Rishi, Advocate
Mr. Sanjeet Kumar Singh, Advocate

For the Union of India : Mr. Sanjay Kumar, ASG

For the Customs Department: Mrs. Archana Meenakshee, Advocate

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA
and
HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 04-11-2015

Heard learned counsel for the Petitioner, the Union of India and the Customs Department.

2. By filing this writ petition, petitioner has assailed the order dated 21.12.2012, Annexure-26 passed by Patna Bench of Central Administrative Tribunal (hereinafter referred to as the

Tribunal) in O.A. No. 545 of 2007 whereunder dismissal order of the applicant dated 18.08.2006, Annexure-23 and the Appellate Order dated 14.11.2006, Annexure-24 have been upheld.

3. Before proceeding to consider the merits of the challenge, it is necessary to notice few facts:

Petitioner was an applicant for the post of Upper Division Clerk pursuant to Advertisement published by Staff Selection Commission (hereinafter referred to as the Commission). He submitted application form dated 19.12.1987, Annexure-2 stating that he belongs to General Category as also deposited fee of Rs. 28/- through Indian Postal Order. In terms of the application form, he appeared in the examination and became successful. Later, he received letter, dated 23.04.1990, Annexure-3 from the Commission asking him to submit his S.C./S.T. certificate in support of his Reserved Category status. Petitioner submitted reply, dated 15.05.1990 stating that he does not belong to any Reserved Category, which was received in the Commission vide Entry No. 1183. In the light of the result of the examination and the aforesaid reply submitted, he was appointed under letter dated 26.06.1990, Annexure-6. Perusal of Annexure-6 indicates that he has been appointed as General Category candidate. Still later, a departmental proceeding was initiated against the petitioner on the ground that having committed fraud, he succeeded in getting appointed as a Reserved (Scheduled Caste) candidate. The Enquiry Officer having considered the materials on record submitted his enquiry report under letter dated 22.08.1996, Annexure-12 recording a finding that petitioner did not commit any fraud in seeking appointment. The report of the Enquiry Officer, however, did not find favour with the Disciplinary Authority. The appeal filed by the petitioner also failed and he approached the Tribunal vide O.A. No. 598 of 1999, which was allowed under order dated 03.06.2005, Annexure-18 observing that if Disciplinary Authority disagrees with the views of Enquiry Officer, it has to record a disagreement note and make available the disagreement note along with copy of Enquiry Report for the response of delinquent. The Tribunal, accordingly, remitted back the matter to the Disciplinary Authority to pass a fresh order in the light of the enquiry report. The Disciplinary Authority again reiterated its earlier order and the appeal filed against the same also failed, whereafter petitioner approached the Tribunal by filing the present O.A. No. 545 of 2007. The Tribunal has considered the matter in detail and has recorded a finding in paragraph 16 after perusing the application form in original that petitioner has subsequently made insertion in the application form, Annexure-2 and thereby succeeded in representing before the authorities that he is a Scheduled Caste candidate and, accordingly, got appointed by practicing fraud.

4. Learned counsel for the petitioner has challenged the aforesaid findings recorded by the Tribunal and submitted that petitioner while submitting his application form had indicated in Column No. 3(a) that he paid Rs. 28/- as the examination fee through Indian Postal Order and then made entry in Column No. 6 that he does not belong to any Reserved Category and the other entry indicating "No fee" on the margin of the application form and Scheduled Caste in Column No. 3(c) have been inserted subsequently, as such, any fraud in the matter cannot be attributed to the petitioner, as after he deposited the application form, the same was within the custody of the authorities and it was not possible for the petitioner to make insertions contrary to the assertions made in Column No. 3(a) and 6. Learned counsel for the petitioner further submitted that in response to the query made by the authorities asking the petitioner that he should submit his caste certificate indicating that he belongs to Reserved Category, petitioner made categorical assertion under letter dated 15.05.1990 that he does not belong to Reserved Category and in such circumstances once the said assertion was made by the petitioner,

there was no occasion for the authorities to treat him as Scheduled Castes candidate. The appointment having been made subsequently on 26.06.1990, the authorities, according to the counsel for the petitioner, should have rejected the candidature of the petitioner after they came to know from the petitioner himself under letter dated 15.05.1990 that he is not from Reserved Category. In support of the aforesaid submission, learned counsel for the petitioner further submitted that the authorities with due diligence prior to giving appointment to the petitioner had already detected that he does not belong to Reserved Category, in the circumstances, any fraud can not be attributed to the petitioner. Learned counsel also submitted that it is well settled that where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved. In support of the aforesaid submissions, learned counsel for the petitioner has placed reliance on the judgment of the Supreme Court in the case of **Shri Krishan Vrs. The Kurukshetra University, Kurukshetra, AIR 1976 Supreme Court 376, paragraph 7**. In the instant case also in the light of the subsequent insertion made in the application form of the petitioner, he was asked by the authorities to furnish his caste certificate much before the appointment was given, in response to such request of the authorities, petitioner categorically stated that he does not belong to Scheduled Caste, as such, according to the counsel for the petitioner, petitioner has not committed any fraud. Reliance is also placed on the judgment **in the case of Madhusudan Vrs. The State of Bihar & Ors., 2002 (1) PLJR 767.**

5. Learned counsel for the Union of India and the Customs Department have supported the order of the learned Tribunal and have taken us to the different paragraphs of not only the order but also to the different annexures appended with the writ petition. They also referred to the application form and submitted that when petitioner submitted the application form, Annexure-2, he had not paid any fee, as he claimed himself to be Scheduled Castes candidate. In support of such fact, authorities themselves noted in the margin of the application "No fee". Learned counsel further submitted that the entry in Column No. 3(a) indicating payment of fee of Rs. 28/- by Indian Postal Order is subsequent entry after receipt of the application form, as such, on that basis and further on the basis of the entry in Column No.6 that petitioner does not belong to Reserved Category, as he has marked the block meant for 'no', should not be accepted. It is also submitted that petitioner was making attempt to mislead the authorities right from the date he submitted his application form and when such finding has been recorded by the Disciplinary, Appellate

Authority and the Tribunal, this Court should be slow in interfering with the impugned order(s). In support of the aforesaid submission, learned counsel placed reliance on the judgment of the Supreme Court in the case of **Bank of India and another vrs. Avinash D. Mandivikar and others, (2005) 7 Supreme Court Cases 690.** From paragraph 6 of the said judgment, it appears that the respondents of the said case have obtained appointment in the service of the Bank on the basis that he belongs to Scheduled Tribes, but from the records, it appeared that he did not belong to the Scheduled Tribe and the very foundation of his appointment having collapsed, Supreme Court directed that he cannot be retained in service.

6. Learned counsel for the Customs Department has referred to the declaration made by the applicant in his application form dated 19.12.1987 stating that he understands that if at any time, it is found that any information given in the application form is false, incorrect or he does not satisfy the eligibility criteria, his candidature may be cancelled and taking advantage of the said declaration made by the petitioner himself, the authorities have taken action as admittedly he does not belong to Scheduled Caste Category, but has been appointed as such.

7. Having heard counsel for the petitioner, the Union of

India and the Customs Department and having perused the records, including the order impugned and the application form of the petitioner dated 19.12.1987, Annexure-2, it is evident that petitioner applied for the post of Clerical Examination, 1988 and that he paid fee of Rs. 28/- payable by a General Candidate alone and made entry in Column No. 6 that he does not belong to Reserved Category. After receipt of the application form from the petitioner, entry was made over the same “No fee”. Later placing reliance on the entry made in Column No. 3(c), which according to the petitioner has been made subsequently, he was treated as Scheduled Castes candidate and pursuant thereto he was asked under letter dated 23.04.1990, Annexure-3 to submit his caste certificate. In response to the aforesaid direction of the authorities, petitioner under letter dated 15.05.1990 indicated that he belongs to General Category, as such, he is not required to submit any caste certificate. The authorities at that stage, were required to have rejected his candidature, as admittedly he has not secured enough marks to be considered and appointed as General Category candidate. Notwithstanding such fact, petitioner was given employment under letter dated 26.06.1990, Annexure-6. Perusal of the letter dated 26.06.1990, Annexure-6 indicates that he has not been appointed as a Reserved Category candidate. It is, therefore, quite evident from the findings recorded in the enquiry report itself at page 138 of the brief that petitioner right from the date he was asked to furnish his caste certificate, categorically asserted before the authorities that he is a General Category candidate. In such circumstances, if the authorities have chosen to appoint him against the post, which was meant for Scheduled Caste Category then they have committed such mistake even after knowing and understanding that he does not belong to that category. Furthermore, in the facts of the case, the judgment rendered in the case of **Bank of India and another (supra)** relied upon by learned counsel appearing for Union of India has no application, as all the time the appointee projected that he belonged to Schedule Tribe, which he was not. In the instant case, facts are different, as petitioner categorically vide letter dated 18.05.1990, duly received vide entry No. 1183 by the respondents, prior to appointment, stated that he belongs to Unreserved Category.

8. In view of our findings above, we have no option, but not only to set aside the order passed by the Tribunal, but also orders passed by the Disciplinary, Appellate Authority, which are, accordingly, set aside.

9. Besides two rounds of the litigation before the Tribunal referred to above, even earlier petitioner has been relegated

to Tribunal as at the first occasion he was removed from service without initiating any departmental proceeding. The predicament of the petitioner since 1993, the date on which he was first removed from service, is too severe and agonizing for any one to undergo even when he has not committed any misrepresentation or fraud and in appreciation of such fact while setting aside the orders impugned i.e. Annexures 23, 24, 26, we direct the authorities to reinstate the petitioner with consequential benefits throughout.

10.In the result, the writ petition is allowed.

(V.N. Sinha, J.)

(Samarendra Pratap Singh, J.)

Arjun/-

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