

(2019) 11 GAU CK 0033
In the Gauhati High Court
Case No : Writ Petition (C) No. 3783 Of 2013

Ex.Ct/Gd Phukan Deori

APPELLANT

Vs

Union Of India And 4 Ors

RESPONDENT

Date of Decision : 14-11-2019

Acts Referred:

Representation Of Peoples Act, 1950 — Section 3, 20
Census Act, 1948 — Section 15
Constitution Of India, 1950 — Article 226

Citation : (2019) 11 GAU CK 0033

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : A Kumar

Final Decision : Disposed Off

Judgement

1) Heard Mr. R. Mazumdar, learned counsel for the petitioner and Mr. G. Pegu, learned counsel for the respondents on 09.07.2019. None appears on call today, i.e. 14.11.2019.

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioner has challenged his removal from service as Constable (General Duty), Central Industrial Security Force (CISF for short).

3) The case projected by the learned counsel for the petitioner is that the petitioner was issued a caste certificate by the Deputy Commissioner, Changlang, Arunachal Pradesh, stating that the petitioner belonged to Schedule Tribe Community. Pursuant to a recruitment drive, the petitioner was selected and by letter dated 03.04.2004, the petitioner was offered appointment to the post of Constable (GD) in CISF. It is projected that after long unblemished service, the Commandant, CISF Unit Bongaigaon had issued a

Memorandum of Charges dated 28.09.2012 together with Article of Charges, etc., to the effect that the petitioner had misled the CISF authorities showing himself as ST candidate and succeeded in getting appointment in quota for the ST Candidates of Arunachal Pradesh though he was not a ST candidate from the said State. The Enquiry Officer as well as Presenting Officer were appointed by a communication dated 19.10.2012. The Enquiry Officer had conducted preliminary hearing on 03.11.2012. It is submitted that the original caste certificate dated 16.08.1989 had been retained by the CISF authorities, as such, the petitioner had approached the Office of the Deputy Commissioner, Changlang and accordingly, the Extra-Assistant Commissioner, Diyun, District- Changlang, Arunachal Pradesh had issued another certificate dated 12.10.2012, certifying that the petitioner belongs to Deori Caste/ Tribe which is recognized as a Schedule Tribe in the State of Arunachal Pradesh. However, in the enquiry proceeding, the Enquiry Officer had relied on a letter dated 28.03.2012 issued by the Extra Assistant Commissioner (J), Changlang by which the said authority had certified that (i) a fraction of â??Deoriâ? community normally resides at Bordumsa Sub- Division under Changlang District, and (ii) â??Deoriâ? community is not recognized as Schedule Tribe of Arunachal Pradesh and accordingly, on the basis of evidence produced by the prosecution and materials on record held that the Article of Charges No.1 against the petitioner stands proved. The said Enquiry Report by the Enquiry Officer was submitted on 09.01.2013. Thereafter, on 12.01.2013, the impugned order of removal from service was passed by the Commandant, CISF Unit IOCL, Bongaigaon. Thereafter, on 31.01.2013, the petitioner had preferred an appeal before the Deputy Inspector General, CISF, North Eastern Sector, Kolkata against the order of removal from service. The said authority, by the impugned order dated 16.03.2013, dismissed the appeal filed by the petitioner. Accordingly, both the impugned orders dated 12.01.2013 and 16.03.2013 are impugned in this writ petition.

4) The learned counsel for the petitioner has submitted that â??Deoriâ? community is a recognized Schedule Tribe of Arunachal Pradesh. It is also submitted that the petitioner had produced two ST Certificates dated 16.08.1989 and 12.12.2012. Hence, it is submitted that it was wrongly held that the petitioner had misled the CISF authorities. It is submitted that as the

petitioner was the member of ST Community of Arunachal Pradesh, not only the Deputy Commissioner, Changlang had issued a ST Certificate dated 16.08.1989, but the competent authority, i.e. E.A.C.(J), Changlang had issued a second ST Certificate dated 12.10.2012 in favour of the petitioner. It is also submitted that the competent authority in the State of Arunachal Pradesh had not recalled and canceled the ST Certificate dated 16.08.1989 and 12.12.2012 issued to the petitioner for which those remained to be valid ST certificates, as such, the respondents, more specifically the Commandant, CISF, Unit IOCL, Bongaigaon (respondent No.5) could not have dismissed the petitioner from service, as there was no misrepresentation by the petitioner. Hence, on the basis of pleadings in the writ petition and affidavit- in- reply, it is submitted that the â??Deoriâ? community is an ST community of Arunachal Pradesh and the said Tribe is contained in the Presidential Order of 1950 and accordingly, it is submitted that the petitioner is entitled for all the reliefs as prayed in the writ petition.

5) In support of his submissions, the learned counsel for the petitioner has placed reliance on the following cases, viz., (i) Sri Putil Chandra Deori Vs.

The State of Arunachal Pradesh, W.P.(C) 445 (AP)/2014 decided on 25.02.2015, (ii) Union of India & Ors. Vs. Ex Ct/GD Bikash Chandra Nath,

W.A. No. 280/2016, decided on 21.08.2017. The learned counsel for the petitioner has also placed reliance on (a) the extract of Census of India, 1981

in respect of State of Arunachal Pradesh, (b) the extract of Census of India, 1991 in respect of State of Arunachal Pradesh, and (c) Revised List of

ST for Arunachal Pradesh as forwarded to all Deputy Commissioners in the State of Arunachal Pradesh vide letter No. ARZ.11009/ 1/2009 (ST)

dated 19.05.2010 by Statistical Investigator GR-I, O/o the Director of Census Operations, Arunachal Pradesh, Shillong, containing entry of

â??Deoriâ?? at Sl. No.21 as ST of Arunachal Pradesh.

6) Per contra, the learned CGC has submitted that by virtue of orders passed by High Court of Delhi in CWP 5976/2003, the CISF authorities had

verified the authenticity of the ST Certificate submitted by the petitioner. Accordingly, the E.A.C. (J), Changlang by Memo No. C/Jud-117/88 dated

28.03.2012, informed the respondent No.5 that (i) a fraction of â??Deoriâ? community normally resides at Bordumsa Sub- Division under Changlang

District, and (ii) â??Deoriâ? community is not recognized as Schedule Tribe of

Arunachal Pradesh. Hence, the Charge No.1 framed against the petitioner was established in the duly conducted departmental enquiry. It is submitted that the Petitioner was not a member of ST Community of Arunachal Pradesh and, as such, he was not entitled to be appointed as an ST candidate in the post of Constable (GD). It is also submitted that the CISF authorities did not consider the ST certificate obtained on 12.10.2012, because the petitioner had not secured his appointment on the strength of the said certificate. However, upon verification of ST Certificate, the certificate dated 16.08.1989, as produced by the petitioner was not found acceptable, as such, there is no infirmity in removing the petitioner from service.

7) On examining the letter No. C/JUD-337/88 dated 24.03.2012, it is seen that the E.A.C.(J), Changlang (issued on behalf of the Deputy

Commissioner, Changlang), it was stated therein that Certificate bearing No. 41/89 dated 16.08.1989 was issued by his office. It is also seen that by

letter dated 24.03.2012 (Annexure-3 of Affidavit- in- opposition filed by respondents), the following query had been made to the Deputy

Commissioner, Changlang, viz., (i) Is Deori community or a fraction of them a permanent resident of Arunachal Pradesh, and (ii) Is Deori community

recognized as a Scheduled Tribe in the Presidential order in the State of Arunachal Pradesh. In respect of the said two queries, it had been stated in

the aforesaid letter dated 24.03.2012 that (i) a fraction of Deori community normally resides at Bordumsa Sub- Division under Changlang District, and

(ii) Deori community is not recognized as Schedule Tribe of Arunachal Pradesh.

8) Thus, it is clear that by letter dated 24.03.2012, in respect of query No. (i), the Assistant Commandant, CISF Unit IOCL, Bongaigaon did not make

a specific query to ascertain whether the petitioner was a ordinary resident of Arunachal Pradesh, within the meaning of Section 20 of the

Representation of Peoples Act, 1950. Thus, this is not a case where the respondents had established that the petitioner was not an ordinary resident of

Changlang District in Arunachal Pradesh.

9) It is seen that in the Presidential Order i.e. Constitution (Schedule Tribe) Order, 1950 (Part-XVIII of Constitution of India), Deori community is not

listed therein. By the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1956 (Act 65 of 1956), amendments were made to the

Constitution (Schedule Tribe) Order, 1950 and upon going through the Gazette of

India Extraordinary, Part-II, Section-3 bearing No. 316-A dated

29.10.1956, vide Notification No. S.R.O.2477A dated 29.10.1956, the Deori community is not found to be notified as a Scheduled Tribe of Arunachal

Pradesh (then known as North East Frontier Agency i.e. NEFA for short). However, in the said notification, under the Part-II-Assam, Sl. No.2, it has

been mentioned as follows- "2. In the Tribal Areas other than the Autonomous Districts. " All Tribes of North East Frontier Agency " Thus,

it appears that the as per the Presidential Order of 1956, all the tribes of the erstwhile NEFA are included in Scheduled Tribes and accordingly, as

Deori community is admittedly a ST community residing in Arunachal Pradesh, the petitioner has been able to establish his ST status applicable in the

State of Arunachal Pradesh..

10) It has been projected that as per the Census of India 1981, Census of India, 1991 and Census of India 2001, Deori community falls within the

Scheduled Tribes of the State of Arunachal Pradesh. However, as per the provisions of Section 15 of the Census Act, 1948, it is provided that the

records of census are not open to inspection nor admissible in evidence. Hence, in view of the said provisions of Section 15 of the Census Act, 1948,

the Court is unable to rely on (a) the extract of Census of India, 1981 in respect of State of Arunachal Pradesh, (b) the extract of Census of India,

1991 in respect of State of Arunachal Pradesh, and (c) Revised List of ST for Arunachal Pradesh as forwarded to all Deputy Commissioners in the

State of Arunachal Pradesh vide letter No. ARZ.11009/ 1/2009 (ST) dated 19.05.2010 by Statistical Investigator GR-I, O/o the Director of Census

Operations, Arunachal Pradesh, Shillong, containing entry of Deori at Sl. No.21 as ST of Arunachal Pradesh.

11) Nonetheless, it is seen that the Deputy Commissioner, Changlang had issued the Certificate bearing No. 41/89 dated 16.08.1989, and that by letter

No. C/JUD-337/88 dated 24.03.2012, the E.A.C.(J), Changlang had confirmed that the Certificate No. 41/89 dated 16.08.1989 was issued by his

Office. As indicated herein before, by the said Certificate dated 16.08.1989, the Deputy Commissioner had certified that the petitioner belonged to

Deori community, which is recognized Schedule Tribe in the State of Assam under Scheduled Tribe Order, 1950 as amended by the Scheduled Caste

& Scheduled Tribes Lists (Modification) Order, 1956, but normally resides in

Arunachal Pradesh. It is worth mentioning that despite the letter dated 24.03.2012 by the E.A.C.(J), Changlang, the Deputy Commissioner, Changlang, an authority otherwise competent to issue ST Certificate had not recalled, revoked or canceled the petitioner's ST Certificate No. 41/89 dated 16.08.1989. Under similar circumstances, in the case of *Kumari Madhuri Patil Vs. Additional Commissioner, Tribal Development*, reported in (1994) 6 SCC 241, the Supreme Court of India was of the view that the correctness of a caste certificate is to be ascertained by the High Power Committee as ordered to be constituted. This Court in the case of *Sushma Chetri Vs. State of Tripura*, reported in (2001) 2 GLT 215: (2001) 3 GLR 246: (2001) 2 GLJ 62,9 had followed the ratio laid down in the case of *Kumari Madhuri Patil (supra)* and interfered with a declaration issued by the State Govt. as regards the caste status of the person concerned on the ground that the procedure followed in making the declaration was contrary to the law laid down in the said case. By relying upon the herein before cited case of *Kumari Madhuri Patil (supra)* and *Sushma Chetri (supra)*, the Division Bench of this Court in the case of *Union of India & Ors. Vs. Ex Ct/GD Bikash Chandra Nath*, reported in (2015) 3 GLR 657: 2015 (2) GLT 67,9 had upheld the decision by the Hon'ble Single Judge, holding that only High Power Committee could have verified the caste certificate and could not have been verified by the concerned Deputy Commissioner.

12) Thus, in view of the discussion above, this Court is inclined to follow the ratio laid down in the case of (i) *Kumari Madhuri Patil (supra)*, (2) *Sushma Chetri (supra)*, and (iii) *Ex Ct/GD Bikash Chandra Nath (supra)* and it is held that only the High Power Committee constituted in terms of direction contained in the case of *Kumari Madhuri Patil (supra)* could have verified the ST Certificate No. 41/89 dated 1.08.1989, as such, it was not open to the CISF authorities to discard the said ST Certificate in the departmental proceeding conducted against the petitioner. Moreover, in support of his defence, the petitioner had produced ST Certificate issued on 12.10.2012 by the E.A.C., Diyun, Changlang, certifying that the petitioner belonged to Deori community, a ST of Arunachal Pradesh. The said certificate, though not used to obtain appointment, but it re-affirms the ST Status of the petitioner in respect of the State of Arunachal Pradesh. Hence, the discarding of such certificate by the CISF authorities in the Departmental

Proceeding is not found sustainable. It is seen that in this case in hand, there is nothing on record to show that the competent High Power Committee had conducted any verification and arrived at a finding that the petitioner did not belong to ST community, and moreover, the competent authority had not rescinded, recalled, revoked, annulled, canceled or set aside the ST Certificate No. 41/89 dated 16.08.1989 issued by the Deputy Commissioner, Changlang, declaring that the petitioner belonged to Deori community, which is recognized Schedule Tribe in the State of Assam under Scheduled Tribe Order, 1950 as amended by the Scheduled Caste & Scheduled Tribes Lists (Modification) Order, 1956, but normally resides in Arunachal Pradesh. Therefore, as the Certificate No.41/89 dated 16.08.1989 remains valid till date, the petitioner cannot be deprived of the benefit arising out of use of such certificate. Reference to the Gazette notification has already been made herein before. In this regard, it is clarified herein that this Court has not given any opinion as to whether the petitioner belongs to ST community of Arunachal Pradesh, as it is for the High Power Committee constituted in terms of direction contained in the case of Kumari Madhuri Patil (supra) to do so, as such, this order would not stand in the way for the said High Power Committee to verify the SC certificate and/or ST status of the petitioner.

13) Therefore, in view of the discussions above, this Court is of the considered opinion that the petitioner has been able to make out a strong case for interference with the orders impugned in this writ petition. Accordingly, this Court has no hesitation to (i) set aside and quash the Enquiry Report dated 19.01.2013 against the petitioner, and to (ii) set aside and quash the Final Order bearing letter No.V-15024/Disc/Maj-03/ IOCL/2012-132 dated 12.01.2013 passed by the Commandant, CISF Unit IOCL, Bongaigaon (respondent No.5), removing the petitioner from his service, and to (iii) set aside and quash the appellate order bearing No. C.V.11014/Appeal-04/PD/Prasha-11/Upukshe/2013/1658 dated 26.03.2013, passed by the Deputy Inspector General, CISF, North Eastern Sector, Kolkata. Consequently, all the respondents herein are directed to reinstate the petitioner in service with all consequential benefits by treating the petitioner to be in service without any break. However, the respondents shall pay to the petitioner 50% of his monthly salary and other emoluments for the period he was removed from service. It is directed that the reinstatement of the petitioner in

service and payment of his 50% dues shall be made within the outer period of 3 (three) months from the date of receipt of the certified copy of the order by the Commandant, CISF Unit IOCL, Bongaigaon (respondent No.5), who would communicate the order to all concerned. It is also directed that the petitioner shall be entitled to his regular/ full pay on the date of his reinstatement and/or from the expiry of 3 (three) monthsâ?? period from the date of receipt of a copy of this order, whichever is earlier.

14) The Court Master shall provide a copy of this order to the learned CGC.