
(2012) 03 DEL CK 0514

In the Delhi High Court

Case No : Writ Petition (C) 4879 of 2011 and CM 9899 of 2011

Shamim Akhtar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Citation : (2012) 03 DEL CK 0514

Hon'ble Judges : V.K. Jain, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : G.D. Bandari with Mr. Parveen Nagia, for the Appellant; Sankar N. Sinha, For the Respondent No. 1-4, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—This writ petition is directed against the order dated 13.01.2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA 63/2010. The petitioner had challenged his dismissal from service on account of his having been found to have submitted a fake Scheduled Tribe certificate in order to secure employment as a Khallasi in 1989. The Tribunal, after considering the entire facts and circumstances of the case, held against the petitioner and, therefore, did not interfere with the findings recorded in the disciplinary proceedings as also with the order of penalty of dismissal from service.

2. The facts are that the petitioner was appointed in the year 1989 to a group "D" post (Khallasi) in the reserved category of Scheduled Tribe (ST). We may point out that the recruitment was against the shortfall quota of SC/ST candidates of various group "D" categories. It is, therefore, apparent that only a person belonging to a Scheduled Caste or Scheduled Tribe could have applied for the said posts. The petitioner had applied for the same and he had allegedly submitted a Scheduled Tribe certificate which was subsequently found to be fake. However, at that point of time, the petitioner joined as a Khallasi with the respondent Northern Railways on 06.11.1989 and was subsequently promoted to

the post of Train Lighting Fitter, Grade-III in 1993. He got a further promotion in 2002 to the post of Technical Grade-II. However, on 04.10.2005, he was charge sheeted on the charge of obtaining the appointment in the reserved category for Scheduled Tribes on the basis of a fake Scheduled Tribe certificate. Thereafter, the enquiry proceedings commenced and an enquiry report was prepared on 23.01.2008 by the enquiry officer. The disciplinary authority, after considering the report of the enquiry officer, passed the order dated 27.03.2008, whereby he imposed a penalty of dismissal from service.

3. The deposition of PW1 Sh. D. S. Adhikari, who was earlier a Senior Vigilance Officer and, at the time of recording of the evidence, was the Assistant Manager (Personal), clearly indicates that the recruitment against the shortfall quota in SC/ST category of group "D" was held in Firozpur Division in 1989 and that the petitioner had applied for the same as an ST candidate and succeeded in seeking appointment as Khallasi against the vacancy reserved for a member of an ST by submitting an ST certificate. The said witness also stated that the caste certificate was verified from the office of the District Welfare Officer, Saran, Chhapara and by their letter No. 252 dated 19.09.2005, the said office clarified that the said caste certificate had not been issued by their office. The said witness stated that, therefore, the petitioner had got inducted in the railways as a Khallasi fraudulently, on the basis of a fake caste certificate. In the course of cross-examination, the said witness clarified that the caste certificate, which was submitted by the petitioner at the time of recruitment/appointment, was available in his personal file and the same was seized from Delhi Division of the Personnel Department.

4. It may also be pointed out that the interview letter dated 04.08.1989, which was issued to the petitioner, clearly indicated that he was required to bring the originals of several documents which included the "original caste certificate". The interview letter dated 04.08.1989, which is annexure R-2 to the counter-affidavit filed on behalf of the respondents, also indicates that the recruitment was against the shortfall quota in respect of SC/ST candidates of various group "D" categories.

5. Therefore, it cannot be said that this is a case of no evidence. We may also point out that after the order passed by the disciplinary authority, the petitioner had approached the appellate authority, which also rejected his appeal by an order dated 02.02.2009. The matter was carried further in revision by the petitioner and the same was also rejected by an order dated 19.06.2009. It is thereafter that the petitioner had approached the Tribunal by way of the said OA, which has been dismissed by the Tribunal by virtue of the impugned order.

6. The Tribunal, after considering the arguments advanced by the counsel for the parties, took the view that the entire case against the petitioner hinges on the core issue as to whether the petitioner had produced a fake ST certificate for getting appointment as a Khallasi in 1989. The Tribunal, in the impugned order, observed as under:-

9. Admittedly, the applicant was selected and appointed as Khallasi in the special recruitment done for SC and ST categories. The applicant does not dispute his selection and appointment in ST category. He has admitted the same before Disciplinary Authority and sought time to produce the ST certificate. The Enquiry revealed that the ST certificate furnished by the applicant at the time of appointment was fake.

10. The core issue involved in this case is to produce the correct and genuine document in support of Applicant's case of Scheduled Tribe. The applicant has not been in a position to produce in support of as a ST candidate, any proof that he belongs to the Scheduled Tribe before the (i) Disciplinary Authority, (ii) Appellate Authority and (iii) Reviewing Authority. He was granted adequate time right from the year 2006 when the charge sheet was filed against him raising the issue of genuineness of the Scheduled Tribe certificate furnished by him which during the inquiry was found that the certificate furnished by him was fake and therefore, he has been dismissed solely and wholly on the ground of submitting a fake Scheduled Tribe certificate on the basis of which he was appointed. Even while coming to the Tribunal with this OA, the applicant has not demonstrated how his application should be admitted unless he proves that the ST certificate which has been challenged and found to be fake is genuine and if so in what way and what manner. Without such demonstration, the OA is not a fit case for admission and issue of notice to the Respondents to reply.

Consequently, the Tribunal, at the admission stage itself, dismissed the petitioner's said Original Application.

7. The scope of interference in such cases by this Court is very limited. The petitioner has not been able to demonstrate that this was a case of no evidence or of any perversity. As long as there is some evidence, this Court does not normally interfere with the orders passed in disciplinary proceedings and particularly when findings of fact are under challenge. This Court does not indulge in re-appreciation of evidence which has been gone into by the disciplinary authority and by the appellate authority as also by the revisionary authority.

8. We also find that the petitioner in the present case has curiously stated that he is not even claiming to be a member of Scheduled Tribe and that the certificate, which has been found to be fake, has been fraudulently introduced by some of his enemies. We find that such an argument is bereft of any factual backing and has been rejected by the authorities below. There is no substance in such a contention.

9. The Learned Counsel for the petitioner referred to the following three decisions of the Supreme Court:

(i) Chandrabhan Yamaji Nandanwar v. Director of Health Services, Maharashtra State, Bombay and Others: 1999 (1) MH.I.J. 536;

(ii) Anil Vasantrao Shirpurkar v. State of Maharashtra & Others: 2003(1) SCT

476; and

(iii) R. Vishwanatha Pilla v. State of Kerala & Others: 2004 SCC (L&S) 350.

Those cases are clearly distinguishable because in the present case, the petitioner himself claims that he is not a member of a Scheduled Tribe.

10. In any event, it is absolutely clear that the recruitment was only for SC and ST candidates and the petitioner, pretending to be an ST candidate, entered into the process of recruitment and was ultimately appointed on the basis of a fake ST certificate. The post to which he was appointed was actually meant for either an SC or ST candidate. Thus, in any manner this case is looked at, the petitioner has no case. The writ petition is dismissed. There shall be no order as to costs.