
(2019) 01 CAT CK 0040

In the Central Administrative Tribunal

Case No : Original Application No. 1271 Of 2013

Shashi Bhushan Prasad

APPELLANT

Vs

Chief Secretary

RESPONDENT

Date of Decision : 22-01-2019

Acts Referred:

Citation : (2019) 01 CAT CK 0040

Hon'ble Judges : L. Narasimha Reddy, J; Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : H.P. Chakravorti, Himanshu Upadhyaya

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. The applicant was appointed as Assistant Bacteriologist in Delhi Jal Board, Government of NCT of Delhi, the 2nd respondent herein, against the vacancy reserved in favour of Scheduled Tribe candidates. The applicant filed the Scheduled Tribe Certificate, said to have been issued by the District Magistrate, Chapra (Saran), Bihar, in the year 1993. As is done in the cases of appointments made against reserved vacancies, verification of genuineness of the certificates was undertaken. In reply to the query made by the respondents, the Additional Collector/District Magistrate informed the respondents through letter dated 13.04.2007 that their office did not issue any Scheduled Tribe Certificate in the name of the applicant herein, i.e., Shri Shashi Bhushan Prasad S/o Shri Sarikhan Prasad.

2. The respondents issued a Memo dated 03.05.2007 to the applicant requiring his explanation in respect of the communication received from the District Magistrate. The applicant submitted a reply on 16.05.2007. Not satisfied with that, the respondents issued a Memorandum of Charge dated 02.05.2008 requiring the applicant to explain as to why action be not taken against him. The applicant submitted his reply and not convinced with that, the Disciplinary

Authority appointed Inquiry Officer. After conducting a detailed inquiry, the inquiry Officer submitted his report dated 22.10.2009, wherein it was held that the first article of charge is proved, and as regards the 2nd article of charge, it was held that though the letter dated 10.11.2007 is fabricated one, it is not proved that the applicant forged it. A copy of the report was furnished to the applicant, and he offered his comments. The Disciplinary Authority passed an order dated 15.02.2010 dismissing the applicant from service. The appeal preferred by the applicant was rejected by the Appellate Authority.

3. The applicant filed OA No.4206/2011 challenging the order of dismissal and the order of Appellate Authority. The OA was partly allowed on 10.11.2012 setting aside the order passed by the Appellate Authority, and directing him to pass fresh order. On such remand, the Appellate Authority passed an order dated 22.02.2013 rejecting the appeal. This OA is filed challenging the order of dismissal, as confirmed by the Appellate Authority.

4. The applicant contends that the ST certificate was issued to him only on being satisfied about his social status and family background, and the information furnished by the District Magistrate that such a certificate was not issued; is totally incorrect. It is also stated that the District Magistrate did not issue any notice to him before taking the view that the ST certificate was not issued at all. Other grounds are also pleaded.

5. The respondents filed counter affidavit denying the allegations made in the OA. It is stated that the applicant was given opportunity at every stage to prove that the ST certificate obtained by him is genuine but he miserably failed in this behalf. It is also stated that the question of issuing notice to the applicant by the District Magistrate would arise, if only the ST certificate was in fact issued, and sought to be cancelled thereafter. According to them, when the ST certificate was not issued at all, the question of issuing any show cause notice to the applicant does not arise.

6. We heard Shri H. P. Chakravorti, learned counsel for the applicant and Shri Himanshu Upadhyaya, learned counsel for the respondents.

7. The applicant was appointed as Assistant Bacteriologist against a vacancy reserved in favour of ST. Complaints poured in, to the effect that the vacancies reserved in favour of SC & ST were filled with the candidates, who do not genuinely belong to those categories. In fact, the complaints of this nature are common. Therefore, verification is undertaken by the concerned authorities to ascertain the genuineness of the social status certificates.

8. The District Magistrate, Chapra (Saran) informed the respondents through letter dated 13.04.2007 that their office did not issue any ST certificate to a person by name, Shashi Bhushan Prasad S/o Shri Sarikhan Prasad. Though the respondents could have straightway issued charge memo to the applicant, they issued a memo to the applicant on 03.05.2007, requiring his version. Reply submitted by the applicant on 16.05.2007 was not found to be satisfactory, and

accordingly disciplinary proceedings were initiated by issuing a charge memo dated 02.05.2008. The articles of charge read as under:-

"Article No.1

Shri Shashi Bhushan Prasad was appointed as Assistant Bacteriologist in the year 1997 against Scheduled Tribe quota on production of Scheduled Tribe Certificate issued by District Magistrate, Chhapra (Saran) Bihar vide No.158 dated 15.03.1993. On verification of the said certificate, Addl. Collector/Distt. Magistrate vide letter No.567/K dated 13.02.2007 intimated that no such certificate has been issued in the name of Shri Shashi Bhushan Prasad S/o Shri Sarikhan Prasad.

Article No.II

A Show Cause Notice was issued to Shri Shashi Bhushan Prasad to explain his position. In the meantime another letter vide No.1255 dated 10.11.2007 was also received from District Magistrate, Saran, Chhapra intimating that 11 employees including Shri Shashi Bhushan Prasad belonged to ST category. On re-verification of above letter No.1255 dated 10.11.2007, District Magistrate, Chhapra (Saran) vide Fax No.46/K dated 17.1.2008 has informed that the above letter dated 10.11.2007 was not issued from that office and confirmed that the report given in the earlier letter dated 13.02.2007 was correct. This clearly reveals that the forged letter No.1255 dated 10.11.2007 of District Magistrate, Chhapra (Saran) was managed by Shri Shashi Bhushan Prasad S/o Shri Sarikhan Prasad."

On receiving reply from the applicant, the departmental inquiry was conducted. In his report dated 22.10.2009, the Inquiry Officer held that Article 1 is proved and part 1 of Article 2, namely, that the applicant fabricated the letter dated 10.11.2007, is not proved. Since the main allegation, namely, that the caste certificate produced by the applicant was not genuine is proved, the punishment of dismissal from service was imposed.

9. Whatever be the latitude or the width of discretion for a disciplinary authority in the context of choosing punishment, in the matters of this nature where the ST certificate, that constituted the basis for appointment was proved to be not genuine, there is no alternative except to impose the punishment of dismissal.

10. The applicant did not plead or establish any defect in the disciplinary proceedings. Opportunity was given to him at every level. Even by now, he is not able to establish that he belongs to ST category. At one stage, this Tribunal also permitted him to come clean in the matter, and he was not able to avail that opportunity.

11. The plea of the applicant that the District Magistrate did not issue him any notice, is not acceptable. The reason is that the occasion or necessity to issue notice by an authority would arise, if only it proposes to cancel a certificate which was issued on an earlier occasion. When the specific stand of the administration

is that no certificate was issued by them to any person with the name of the applicant, the question of issuing notice does not arise. The Appellate Authority examined the matter in detail. Even otherwise, once the order of dismissal is found to be in order, small lapses at the stage of appeal do not make much of difference.

12. We, therefore, dismiss the OA. It is, however, made clear that in case the applicant is successful in establishing that the ST certificate dated 15.03.1990 was issued to him by the District Magistrate, by approaching any competent forum in accordance with law, impleading the respondents herein also as parties, it shall be open to him to make a representation in that behalf, and the dismissal of the OA would not come in the way.

There shall be no order as to costs.