
(2013) 01 P&H CK 0221
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 18051 of 2011

Sukhwant Singh

APPELLANT

Vs

Central Administrative Tribunal, Chandigarh and Others

RESPONDENT

Date of Decision : 22-01-2013

Acts Referred:

Citation : (2013) 169 PLR 781

Hon'ble Judges : A.K. Sikri, C.J.; Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : G.C. Gupta, for the Appellant; D.R. Sharma for Respondents No. 2 to 5, for the Respondent

Judgement

A.K. Sikri, C.J.—The petitioner herein got the appointment as Mechanic under the Department of Telecom, Government of India in the year 1962. In the application for appointment, he had stated that he belonged to "Dhobi" caste and had produced certificate dated 03.05.1962, issued by the District Welfare Officer, Amritsar to this effect. On this basis, statement made in the application was that he be considered as Scheduled Caste candidate. The petitioner was given appointment as such treating him as Scheduled Caste candidate. He continued to serve in different capacities and got promotions also from time to time. On the creation of Bharat Sanchar Nigam Limited, which took over the telecom operations in India, except Delhi and Mumbai, which was under MTNL, only the services of the petitioner were taken over by the Bharat Sanchar Nigam Limited. A charge-sheet was served upon him stating that he had made false statement stating that he belonged to Scheduled Caste category and secured the employment on that basis. It is not in dispute that the petitioner was resident of Punjab and in the State of Punjab, "Dhobi" is not treated as Scheduled Caste, but is backward class. "Dhobi" caste is considered as Scheduled Caste in the States of Bihar, Madhya Pradesh, Uttar Pradesh, Delhi, West Bengal and Odisha etc. The petitioner contended in the inquiry that since he got the appointment in Madhya Pradesh, under this bona fide impression that "Dhobi" is treated as

Scheduled Caste in Madhya Pradesh, he had given the statement to this effect. Otherwise, he had not made any misstatement or concealed any fact inasmuch as he had categorically stated that he belonged to "Dhobi" caste in the State of Punjab and had produced the certificate from the District Welfare Officer, Amritsar. In the inquiry conducted, the Inquiry Officer held charge to be proved on the ground that stating in the application that the petitioner belonged to Scheduled Caste was a mis-statement and he secured the job on that basis. The disciplinary authority passed the orders of "Removal" from service which was upheld by the appellate authority as well. However, the revisioning authority, while upholding the charge and punishment of removal took into consideration the fact that the petitioner had served for almost 40 years and was due to retire in two days before the order of removal came to be passed. Taking this long service of the petitioner into account, the revisioning authority has sanctioned a compassionate allowance in terms of the provisions of Rule 41 of CCS (Pension) Rules, 1972 i.e. equal to 2/3rd of pension which would have been admissible to the petitioner if he had retired on compensation pension. The operative portion of the order of the revisioning authority, in this behalf, reads as under:-

However, considering the proceedings of the case in its entirety and keeping in view the length of service rendered by the applicant, I, G.S. Bhatia, as competent revisioning authority in the present case, in exercise of the powers conferred under Rule 29(1)(vi) of the CCS (CCA) Rules, 1965, have decided to take a lenient view, purely on compassionate grounds, in the present case and hence, while upholding the punishment of removal from service, hereby sanction a compassionate allowance, in terms of provisions of Rule 41 of CCS (Pension) Rules, 1972, equal to 2/3rd of pension which would have been admissible to the petitioner if he had retired on compensation pension. The compassionate allowance shall be admissible w.e.f. the date of his removal from service i.e. 28.10.2003.

The petitioner challenged these orders by filing O.A. before the Tribunal, which has been dismissed by the Central Administrative Tribunal vide orders dated 03.05.2010 and questioning the propriety of this order, present petition is preferred by the petitioner. From the facts narrated above, it cannot be disputed that the petitioner had made a wrong statement in the application stating that he belonged to Scheduled Caste category, whereas, "Dhobi" is not Scheduled Caste in the State of Punjab. This is included as "Other Backward Class" in the State of Punjab. At the same time, we find that the respondent authorities were also at fault, as it was not checked at the time of considering the application of the petitioner for the post to which he applied, as to whether "Dhobi" could be treated as Scheduled Caste or not. Not only the petitioner was given appointment on that basis, he rendered full service and the impugned orders came to be passed two days before his retirement. By that time, he had rendered almost 40 years of service. When some fault in the form of negligence or otherwise can be fastened even upon the respondents and the long length of service is a consideration, which is weighed by the revisioning authority as well,

we are of the view that the punishment of removal imposed under the aforesaid circumstances appears to be harsh to the petitioner. No doubt, some of the rigors of this punishment have been softened by the revisioning authority vide its order dated 13.07.2004, at the same time, merely by giving compassionate allowance may not serve the ends of justice. It would be more appropriate, in a case like this, if the punishment is reduced to that of compulsory retirement to enable the petitioner to take all the retrial benefits including full pension. We, thus, remit the case back to the revisioning authority to look into this aspect and pass fresh orders on the lines suggested by us in this judgement. Needful be done within three weeks.

2. Disposed of.