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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 18th day of March, 1998

Before:

THE HON'BLE MR. JUSTICE R.V. RAVEENDRAN

Writ Petition No. 5680 of 1998

Sri M. Markandeyan, s/o A.C.
Mallayya, Deputy Manager (Engineering &
Projects) (now illegally dis-
missed from service),
Karnataka Antibiotics Pharmaceu-
ticals Limited (Government of
India Enterprise), Dr. Rajkumar
Road, First Block, Rajajinagar,
Bangalore - 560 010, and resi-
ding at No.165, Naickamar Street,
Virudhunagar - 526 001,
Virudhunagar District,
Tamil Nadu

..Petitioner

(By Sri K. Subba Rao, Advocate)

-Vs-

1. The Karnataka Antibiotics Phar-
maceuticals Limited (Government
of India Enterprise) having
its Office at Dr. Rajkumar Road,
First Block, Rajajinagar,
Bangalore - 560 010, represen-
ted by the Managing Director;
2. The General Manager (Human
Resources Department),
Karnataka Antibiotics Pharmaceu-
ticals Limited, Dr. Rajkumar
Road, First Block, Rajajinagar,
Bangalore - 560 0010;

3. The Managing Director,
Karnataka Antibiotics Pharma-
ceuticals Limited (Government
of India Enterprise), Dr. Rajkumar
Road, First Block, Rajajinagar,
Bangalore - 560 010 ..Respondents
(By Sri S.N. Murthy, Advocate)

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Writ Petition is filed praying to quash
vide Annexure-T dated 17-6-1997 by respondent-2 and
Annexure-V dated 9-10-1997 by R-3, etc.,

This writ petition coming on for preliminary
hearing this day, the Court made the following:-

O R D E R

The petitioner claims that he is an Engineering
Post Graduate with M.Tech Degree belonging to a de-
notified tribe known 'Thottia Naicker' caste.

2. The first respondent (also referred to as
KAPL) invited applications for the post of Deputy
Manager (Engineering and projects) reserved for
schedule caste and schedule tribe. A copy of the
notice inviting applications which appeared in the
Deccan Herald dated 14-4-1993 is produced as
Annexure-A. The petitioner applied for the said post
by sending the application dated 1-5-1993, Bio-data
and certificates. He also sent an application dated
9-6-1993 in the prescribed form (Annexure-C). In the
said application, he mentioned his caste as 'Thottia

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Naicker D.N. Tribe'. Coloumn (8) of the Application required him to state whether he belonged to schedule caste/schedule tribe or whether he was an Ex-service men. He put a tick mark in the Box for Schedule Tribe and mentioned the words 'D.N.Tribe' on the top of the Box. Even in the Bio-data form, he mentioned his caste as 'D.N. Tribe'. On the strength of petitioner's application representation^{ing} that he belonged to a schedule tribe, he was called for an interview and was selected to the said reserved post and an offer letter dated 11-6-1993 was issued to petitioner. When the ~~the~~ petitioner accepted the offer, he was required to fill and send an attestation form in terms of clause 3 of the letter of offer. The petitioner filled the attestation form and at coloumn 9(b) as to whether he belonged to SC/ST, he wrote the word 'yes', and also 'denotified tribe'.

3. The first respondent Company referred the matter to the District Magistrate, Virudanagar for caste verification in the usual course and seeking his clarification as to 'Thottia Naicker Tribe' was a schedule Tribe. The District Magistrate sent a reply dated 16-8-1995 confirming that Thottia Naicker Tribe to which the petitioner belonged was only a denotified Tribe and was neither a schedule caste nor a schedule

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Tribe. In view of it, the first respondent issued a Charge sheet dated 6-9-1995 (Annexure-D) alleging that the petitioner had misrepresented that as belonging to a schedule tribe with a view to secure employment from first respondent. Petitioner's attention was drawn to Clause 21 of offer letter dated 11-06-1993 issued to petitioner, ^{which provided that} if on verification of his caste, it was found that his claim of belonging to scheduled Tribe was false, his services were liable to be terminated forthwith. The first respondent, therefore, charged the petitioner with misconduct under Rules 5.4 and 5.20 of the KAPL Conduct, Discipline and Appeal Rules, 1985. Rule 5.4 provides that furnishing of false information on a matter germane to the employment at the time of employment is a misconduct. Rule 5.20 provides that Commission of any act subversive of discipline or of good behaviour is a misconduct. The petitioner was, therefore, required to show cause in the matter. The petitioner filed his explanation on 20-10-1995.

4. Not being satisfied with the explanation, an enquiry was ordered and Mr.F.A. Chapparmani, an outside officer was appointed as the Enquiry Officer. After enquiry, the Enquiry Officer submitted a report dated 24-4-1997 (Annexure-M) holding the petitioner guilty under Rule 5.4 and 5.20. The copy

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of the said report was furnished to the petitioner under a cover of letter dated 28-4-1997 (Annexure-L) by the first respondent and the petitioner was required to show cause in the matter. The petitioner furnished a detailed explanation dated 22-5-1997 (Annexure-N). After considering the same, the Disciplinary Authority (second respondent) passed an order dated 17-6-1997 (Annexure-T) accepting the Report and imposing the punishment of dismissal from service. The petitioner filed an appeal. The Appellate Authority rejected the appeal by an order dated 9-10-1997 (Annexure-V). Feeling aggrieved the petitioner has filed this petition for quashing Annexures-T and V and for a direction to the respondent to reinstate the petitioner in his original post with full backwages, continuity of service and consequential benefits.

5. The first contention urged on behalf of the petitioner is that there is no misrepresentation by the petitioner in regard to his caste and therefore, there cannot be a charge of misconduct under the Conduct, Discipline and Appeal Rules. Reliance is placed on the application wherein the petitioner had stated that he belongs to Thottia Naicker Caste and has specified it as ^adenotified tribe. Reference

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is also made to the Collector's Certificate dated 8-12-1985 wherein it is mentioned that the petitioner belongs to a denotified tribe known as 'Thottia Naicker'. (A copy of which is produced as an Annexure to the explanation dated 20-10-1995 and is found at page-59 of the writ petition). The petitioner's counsel contended that as the petitioner had specifically disclosed that he belongs to a de-notified tribe, it cannot be ^{alleged} ~~contended~~ that he misrepresented the facts with the intention of securing employment. But significantly, the petitioner does not contend that Thottia Naicker Community is a Scheduled Tribe. In the explanation submitted in response to the chargesheet and during the enquiry and in the writ petition he ~~contended~~ that he belongs to a denotified tribe which was treated like a schedule tribe. Thus, virtually there is an admission that the petitioner does not belong to a schedule tribe. When the petitioner's counsel was specifically requested to point out whether 'Thottia Naicker' was a schedule tribe or not, he stated that 'Thottia Naicker' was not a Schedule Tribe, but was a denotified Tribe which was treated like a Schedule Tribe. Nothing is produced in the enquiry or before this Court to show that 'Thottia Naicker' is a Schedule Caste

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or Tribe. The Certificates and documents produced by petitioner show that ^{Pethkumar} ~~He~~ does not belong to a Schedule Tribe or Caste but belongs to a denotified Tribe. The Government Order dated 28-4-1995 issued by the Department of Backward Classes and most Backward Classes, Government of Tamilnadu (annexure to explanation dated 20-10-1995, at page 61 of the Writ Petition) clearly states that Thottia Naicker is a most Backward Class. But a most Backward Class is not Schedule Tribe or Schedule Caste. Hence, it is clear that petitioner does not belong a Schedule Caste or Schedule Tribe.

6. The Notification inviting applications for the post of Deputy Manager (Engineering/Projects) clearly mentioned it was reserved for SC/ST. The petitioner who is a M.Tech graduate applied against the said advertisement showing clearly that the post is reserved for SC/ST. He also does not dispute that in the application in the prescribed form, he put a tick mark against the column ST and also mentioned the word 'D.N. Tribe'. It is also not disputed that when he was required to give an attestation form at the time of joining duty, he filled up the attestation form and against the column whether the candidate belonged to SC or ST,

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wrote 'yes' and wrote 'D.N. Tribe'. In explanation dated 20-10-1995 to the charge sheet, the petitioner has stated thus:

"I submit that since the benefit of SC & ST has been extended to me throughout in my educational carrier which prompted me to mentioned as D.N. Tribe in the above column of ST with bonafide intention.... I was appointed against the reservation post of SC & ST as referred to in your notification..... There was no intentional lapse or fraudulent act."

It is clear therefore, that the petitioner represented to the management that he belonged to a Schedule Tribe; at all events ^{he} held out that the denotified Tribe to which he belonged was a schedule Tribe. To this extent the misrepresentation is evident from the chargesheet and the explanation and the documents produced by the petitioner. In fact there was no need for an enquiry having regard to the admissions in the reply to the charge sheet. A person who applies for a job reserved for SC/ST and who gives an attesting form confirming that he belongs to SC/ST and who accepts the job reserved for SC/ST cannot contend that there is no misrepresentation by him, and that he had correctly represented the facts and the first respondent misled himself and he is not responsible for it. Therefore,

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the petitioner's contention that there was no misrepresentation by him is liable to be rejected.

7. The petitioner next contends that the enquiry was opposed to principles of natural justice for two reasons: -

a) refusal by the enquiry officer to permit the petitioner to engage the services of a legal practitioner.

b) refusal to give ^{an} opportunity to the petitioner to let in his evidence.

8. In regard to the first ground of the petitioner relies on his letters dated 10-1-1996 and 9-2-1996 (Annexure-F and G) addressed to the Enquiry Officer, seeking permission to appear in the enquiry with the assistance of an Advocate. In Annexure-G, he has stated that the Presenting Officer is a law graduate well equipped with knowledge of law and therefore, he may be permitted to take the assistance of an Advocate in the enquiry. This request was considered by the Enquiry Officer and his decision on the said request is contained in the proceedings of the enquiry held on 9-2-1996 (Annexure-H - page 74). The Enquiry

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Officer rejected the request on the ground that the Management Representative was not a Law Graduate but was a graduate of Veterinary Sciences and Animal Husbandary and as per the conduct, discipline and appeal rules, the request of the petitioner to engage the services of the legal practitioner was not tenable.

8.1) The relevant Rule in KAPL CDA Rules is extracted below:

Rule 26A(vi): "The employee may take the assistance of any other public servant to present the case in his behalf but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is legal practitioner or the disciplinary authority having regard to the circumstances of the case, so permits."

It is evident from the said Rule that an employee can engage the services of a legal practitioner, only if the Presenting Officer is a Legal Practitioner or if the disciplinary authority, having regard to the circumstances of the case permits the employee to engage the service of a Legal Practitioner. The presenting Officer was not a law graduate. Secondly,

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the request for permission to engage the service of a legal practitioner was addressed to the Enquiry Officer. Petitioner did not even request the disciplinary authority, to permit him to engage the services of a Legal Practitioner. Therefore, the question of Disciplinary Authority considering his request did not arise. The Enquiry Officer has dealt with the request and rejected it. If the petitioner wanted the assistance of the legal practitioner under the rule, he ought to have made an application to the disciplinary authority. He did not do so. Therefore, he cannot now complain that he was not permitted to have the assistance of legal practitioner. Further, it cannot be stated that the refusal by enquiry officer to accept to the request of the petitioner in this regard is unreasonable or arbitrary. The charges does not relate to any complicated question of fact or law, but a simple question whether the petitioner had made a misrepresentation that he belong to schedule tribe while applying for employment and while accepting the offer and giving the attestation form. Hence, it cannot be said that petitioner was in any way prejudiced by not being represented by a legal practitioner. Petitioner is a well educated person and it ^{is} ~~has~~ seen that he has participated

10. It is lastly contended on behalf of the petitioner that having regard to the fact that the petitioner had served the company for some years and as the misconduct alleged is technical in nature, and as there was no malafides on the part of the petitioner, the management ought not have been taken very stringent action of dismissing him from service. In this behalf reliance is placed on several documents to show that denotified tribe have been treated similar to schedule Tribe. The learned Counsel for the petitioner draws the attention of the Court by producing certain documents to show that several authorities have treated denotified Tribes have been clubbed with schedule Tribes. The first is circular for admission to degree courses of the University of Roorkee for the year 1978-79(pages 289 to 293). Para 2.2 thereof contains the following provision.

"5% for the Scheduled Tribes and denotified Tribes. Candidates belonging to the Scheduled Castes, Scheduled Tribes or Denotified Tribes must fill up the Form-A....."

The instructions to the candidates requires production of certificates from Authorities specified if he belongs to SC/ST/DT. The admission notice of Allahabad University for 1997 (produced at page 294) states thus:

"Candidates belonging to SC and STs
including denotified, nomadic
seminomadic Tribes neo-Buddhists...."

The Admission notice of SC & ST all India Services Pre-Examination Centre (in the employment orders dated 20-26-July 1996) copy produced at page 295 states that candidates belonging to SC/ST, including denotified, nomadic Tribes etc are eligible. The notification of college of Engineering and Technology (page 296) shows that separate and reservation is made for schedule castes, schedule tribes and denotified tribes respectively. The petitioner therefore contends he was bonafide believed that denotified Tribes were part of SC/ST and therefore the mistake on his part should not be construed as deliberate misrepresentation. But all the documents relied on by petitioner clearly treat denotified tribes as different from schedule Tribe and ^{therefore} ~~a~~ denotified tribes cannot be treated as Scheduled Tribe.

11. Further the assumption of petitioner that 'dismissal' is a consequence of the finding that petitioner had 'misrepresented' facts or furnished 'false information'; and that if it is held that there was a bonafide error on the part of petitioner, then the punishment would be lesser is without basis.

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in the enquiry in an effective and efficient manner. Hence, the first ground is rejected.

9. Regarding the second ground of violation of principles of natural justice, the facts relating to the enquiry become relevant. The proceedings before the Enquiry Officer commenced on 9-2-1996. The proceedings were continued on several dates of hearing (in all 18 sitting) spread over about eleven months. The proceedings of the enquiry dated 8-1-1997 (at pages 147 to 152 of Annexure-H) clearly discloses that the petitioner was not co-operative and did not offer to produce any defence evidence. In the circumstances, the question of petitioner subsequently complaining that he was not given an opportunity to let in evidence is meaningless. On a perusal of the proceedings of the enquiry I am satisfied that there is no substance in the contention that petitioner was not given adequate opportunity in the enquiry. The records disclose that sufficient opportunity had been given to petitioner and the petitioner ^{was in no} ~~in any~~ way ~~been~~ prejudiced in the matter. The proceedings of the enquiry and the subsequent correspondence also discloses an effort on the part of the petitioner to drag on the enquiry. The second ground is also therefore, rejected.

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12. Clause 21 of the letter of offer of appointment dated 11-6-1993 (accepted and countersigned by petitioner on 16-6-1993) produced as MR Ex.11 in the enquiry reads as follows:

"The employment is provisional and is subject to Caste/Tribe Certificate being verified through proper channel and if the verification reveals that the claim to belong to Schedule Caste/Tribe, as the case may be, is false, his service will be terminated forthwith without assigning any reason and without any prejudice to such further action as may be taken under the provisions of IPC for production of false Certificate."

It therefore follows that once it is revealed that petitioner did not belong to SC/ST and petitioner did not belong to SC/ST, on verification, termination of service is unavoidable.

13. This Court, in its writ jurisdiction, does not sit in appeal over the proceedings or decision in disciplinary proceedings. The Supreme Court in *NAND KISHORE PRASAD vs STATE OF BIHAR* (AIR 1978 SC 1277) has held:

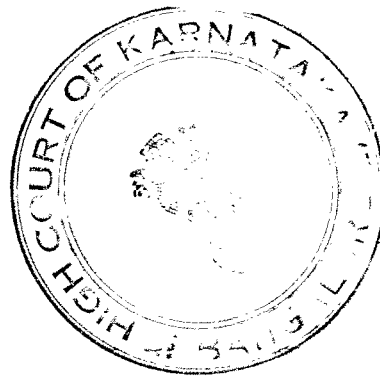
"If the disciplinary inquiry has been conducted fairly without bias or predilection, in accordance with the relevant

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disciplinary rules and the Constitutional provisions, the order passed by such authority cannot be interfered with in proceedings under Art, 226 of the Constitution, merely on the ground that it was based on evidence which would be insufficient for conviction of the delinquent on the same charge at a criminal trial."

14. There is therefore no merit in this petition. It is rejected.

Sd/-
JUDGE



rs/ujk/-