

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
New Delhi

(14)

O.A. No.2029/1999
MA 1990/1999
MA 1991/1999

New Delhi, this 2nd day of the January, 2000

HON'BLE MR. V.K. MAJOTRA, MEMBER (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

1. Kishan Lal
S/o Shri Ramautor
R/o V.P.O. Pota
Distt. Mahendergarh,
Haryana.

2. Kabul Singh,
S/o Shri Ramautor,
R/o V.P.O. Pota
Distt. Mahendergarh,
Haryana.

... Applicants

(By Advocate: Shri S.K. Gupta)

Versus

1. Govt. of NCT of Delhi
Through Chief Secretary,
5, Sham Nath Marg,
Delhi.

2. Commissioner of Police, Delhi
Police Headquarters,
I.P. Estate,
New Delhi.

3. Dy. Commissioner of Police
IIIrd Bn. DAP,
Delhi.

... Respondents

(By Advocate: Shri Rajinder Pandita)

ORDER

By SHANKER RAJU, MEMBER (J) :

The application is filed by two applicants having same cause of action and identical reliefs prayed by them. The applicant has filed MA 1990/1999 for joining together in one application as the grievances and reliefs prayed are identical. The present MA is allowed.

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2. The applicants have challenged the orders dated 31.10.1996 issued separately whereby their candidatures for the post of Constable (Executive) in Delhi Police have been cancelled as the caste is not covered under the category of OBC. The applicants are seeking benefits granted by the Tribunal in OA 2410/1996 alongwith other connected OAs vide order dated 24.10.1997 in the case of Parmender Kumar and Ors. Vs. Commissioner of Police and Ors., and also claimed the benefits of orders passed by the High Court in CWS 1770, 5687 & 6097/98 in CW 1073/98 dated 24.09.1998 which was upheld by the Hon'ble Apex Court in SLP No.3130/99 on 15.03.1999.

3. The applicants belong to Ahir (Yadav) community and applied for the post of Constable (Executive) in Delhi Police by attaching the OBC certificate. The OBC certificates showed that they belong to Ahir (Yadav) community issued by the Competent Authority. Applicants have been provisionally selected for the posts of Constable (Executive) and later failed to produce the required OBC certificates and their caste was not included in the OBC list issued by the Central Government as well as State of Haryana. Their candidatures for the posts of Constable (Executive) have been cancelled. They represented against the order of cancellation. The learned counsel for the applicants contended that in a similar case the Central Administrative Tribunal in OA 2410/96 alongwith other connected OAs in the case of Parmender Kumar and Ors. Vs. Commissioner of Police and Ors., vide order dated 24.09.1997 allowed the cases of similarly situated candidates. According to him the aforesaid OA was

carried before the Hon'ble High Court in CWP 1073/1998. According to him the Hon'ble High Court vide order dated 24.09.1998 observed as under:-

"After having heard the parties' counsel, we are of the prima-facie view that in the facts of this case there can be no controversy about retrospectivity of the said O.M. The said O.M. has as Annexure lists of the OBCs. With respect to the state of Haryana the list contains the names of castes/communities which shows that against old entries No.26, it is mentioned: Gawala, Gowala. Against this old entry a new entry in the list contains mention of Gawala, Gowala, Ahir/Yadav. The learned counsel appearing for the respondents state that this new entry does not add any new cast or community to the existing list. In case any new cast/community was to be added, there would have been a separate entry. Against the existing old entry number 26, words. These words have been also mentioned in the entry, which is only by way of clarification of the existing entry. It is submitted that Ahir/Yadav Gowala/Gawala are synonyms and the Government has only clarified an existing fact. In view of this it cannot be said that Ahir/Yadav have been added afresh to the Central list vide O.M. dated 6th December, 1996 as independent castes. Therefore, the question of retrospectivity does not arise. It will be deemed that they were there earlier also. If that is so the respondents could legitimately be considered of OBC category for purposes of recruitment. Accordingly, we are not inclined to continue the ex-parte interim stay order dated 4th March, 1998 as modified by order dated 30th July, 1998. The application of the petitioner for interim relief (CM 1770/1998) is hereby dismissed. The other two applications for vacation of ex-parte interim stay stand disposed of.

The above is only a prima facie view for purpose of deciding the present application. The appointments made in pursuance of the directions of the Tribunal will be subject to final result of the Writ Petition and the respondent will not be entitled to plead special equities in their favour if the decision in the writ petition ultimately goes against them."

4. The aforesaid order has been carried by the respondents in the SLP No. 3130/1999, the Hon'ble Supreme Court dismissed the SLP vide order dated

15.03.1999. The applicants contended that after decision of the Hon'ble Supreme Court, they have filed this OA claiming benefits of the Judgement (Supra). The applicants prayed for quashing and set aside the orders of cancellation of the candidatures and issuance of orders of appointment. The applicants have also filed MA 1991/1999 for condonation of delay in filing the OA on the ground that they are seeking benefits of the Judgement against which SLP was rejected on 15.03.1999 and the order has contained the finality on 15.03.1999. According to him the delay is not intentional and prayed for condonation of the delay. The learned counsel for the respondents has contested the OA on various issues including the preliminary objection. On merit, there is no contest by the respondents.

5. The learned counsel for the respondents has taken a preliminary objection that the application is barred by Section 20 of the Central Administrative Tribunals Act, 1995. According to him the applicants have come without exhausting the remedies available to them. To propagate this plea the learned counsel for the respondents relied upon the Judgement of Full Bench of the Tribunal in the case of B. Parmeshwar Rao Vs. Divisional Railway Manager in OA 27/1990 reported in Vol. 2 page 250 of the Full Bench cases and further reliance have been placed to the Judgement of the Hon'ble Apex Court in the case of S.S. Rathore Vs. State of M.P. (1990 AIR SC 10). According to the respondents' counsel, the applicants have not made any representation against the order of cancellation of their candidatures. We find from para 4.7 of the

counter affidavit that the contention of the applicants that they have made representation immediately after the impugned orders have been controverted vis-a-vis applicant No. 2 Kabul Singh. But for ~~the~~ ^{the} applicant No.1 Kishan Lal, they have denied the receipt of any representation.

6. Section 20 of the Central Administrative Tribunals Act, 1985 stipulates as under:-

- (1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.
- (2) For the purposes of Sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,-
 - (a) if a final order has been made by Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or
 - (b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.
- (3) For the purposes of sub-section (1) and (2), any remedy available to any applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.

According to this provision, a Government servant cannot approach to this Tribunal unless he has availed of all the remedies available to him under the Rules. The remedies would be either an ^m appeal or a representation.

7. We have carefully considered the contention of both the counsels and perused the record.

8. In our view the applicant has to avail all the remedies only when the same are available to him under the Statutory Rules. The remedy which is not available to him as per the Rules would not be necessarily be exhausted by him. On being asked about availability of any remedy under the Rules against cancellation of candidatures, the learned counsel of the respondents cannot give a satisfactory reply. No Statutory Rules have been shown to us to indicate that against cancellation of the candidatures any remedy is available to a Police Official. We have also carefully considered the Judgement of the Constitutional Bench of the Apex Court in the S.S. Rathore's case (Supra). There also what has been laid down that the remedy should be provided under the Statutory Rules. After carefully considering the relevant material, we find that the objection taken by the learned counsel of the respondents is not legally valid and the same is liable to be rejected.

9. The next contention of the learned counsel for the respondents is that the OA is barred by the limitation as the applicants candidatures were cancelled on 31.10.1996 and they have approached to the Tribunal on 16.09.1999. The learned counsel for the respondents relied on catena of decisions to substantiate his plea. The learned counsel for the applicant relied upon the Judgement of Hon'ble Apex Court in the case of P.K. Ramachandran Vs. State of Kerala (JT 1997 (8) SC 18)

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and Mohd. Khalil Vs. UOI (1997 (3) SLJ CAT 54). According to the learned counsel for the respondents, the application is liable to be dismissed as per the Section 21 of the Administrative Tribunals Act, 1985. The learned counsel for the respondents further contended that the Tribunal has no power to condone of delay. We have carefully considered the contention of the applicant regarding limitation. We find that the similarly situated candidates have approached to the Tribunal in OA 2410/1996 alongwith other connected OAs which was disposed of vide order dated 24.10.1997. The aforesaid OA was carried to Hon'ble High Court and vide order dated 24.09.1998, a direction was issued appointing the candidates. A Special Writ Petition was also rejected against the order of the High Court on 15.03.1999. According to the applicants they have filed the OA within six months from the date of rejection of SLP. The learned counsel for the applicants has relied upon the Judgement of this Tribunal in OA 1348/1999 decided in the case of Ajay Kumar Vs. Govt. of NCT and Ors. vide an order dated 20.10.2000 whereby the delay in similar circumstances was condoned and the applicants were given the benefits of the Judgement in Parmender Kumar's case (Supra). The learned counsel for the applicants has also relied upon the Judgement of the Hon'ble Apex Court in the case of K.C. Sharma Vs. UOI (1997 (6) SC 721) and contended that if the application is filed within one year from the date of order of the Hon'ble Apex Court, the delay would be condoned. Relaying upon this Judgement the Tribunal in the case of Raj Bai Vs. UOI and Ors. in OA 2670/1999 vide an order dated 31.08.2000 granted the same relief to the applicant.

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In our considered view taking into consideration the submission made by the applicants in the application for condonation of delay and in view of the ratio laid down by the Hon'ble Apex Court, the delay in filing the present application where the applicants have prayed for extension of benefit of Judgement is not intentional. In view of the powers conferred to this Tribunal under Section 21 (3) of the Central Administrative Tribunals Act, 1985, we condone the delay in filing the OA. The contention of the learned counsel for the respondents regarding limitation is rejected.

10. The learned counsel for the respondents has further taken an objection that the applicants have failed to implead the UOI which was a necessary party in this case. We have carefully considered the contention of the respondents as held by Full Bench of the Tribunal in the case of T.S. Gopi and Ors. Vs. Deputy Collector of Custom and Ors. (1989 (2) SLJ 336 CAT) that the UOI need not be implead in every case. Apart from it the orders are issued by the Deputy Commissioner of Police and if these orders are to be held invalid then without reference to any other party, the relief to the applicants can be granted by this party. Hence the contention of the learned counsel for the respondents is rejected.

11. It has been next contended by the learned counsel for the respondents that the applicant No. 2 Kabul Singh has filed a Writ Petition No. 737/1997 before the Hon'ble High Court and the same is still pending as such the applicant cannot maintain two remedies at

different forums. According to the counsel for the respondents, the applicant No.2 did not disclose this fact in para 7 of the OA. We have carefully considered this aspect and also heard the learned counsel for the applicants who has contended that the applicant bonafidely filed the Writ Petition alongwith others and on realising that the Writ would not be maintainable, he moved an application for withdrawal of his name from the Writ before the Hon'ble High Court in CM 2566/2000. The learned counsel for the applicants produced a copy of the order dated 5.4.2000 passed in CM 2566 in CW 737/1997 where the applicant No.2 Kabul Singh has been allowed to withdraw his name from the array of parties and against him the Writ Petition is dismissed as withdrawn.

12. In view of the aforesaid facts and the order of the Hon'ble High Court, we do not find any force in the contention of the learned counsel for the respondents. As such the same is rejected.

13. As regards the merit of the OA is concerned, the applicants admittedly belonged to Ahir Caste and the certificates of the same were tendered to the respondents at the time of their applications to the post of Constable (Executive). The Hon'ble High Court in its order dated 24.09.1998 (Supra) prima facie found that entry Ahir/Yadav was synonymous and the Government of India has only clarified its existence. According to the Hon'ble High Court Ahir/Yadav had not been been afresh to the Central list vide OM dated 06.12.1996 as

independent castes. The Ahir caste has been deemed to be there earlier and would be considered in OBC category for the purpose of recruitment.

14. The aforesaid observation of the Hon'ble High Court has attained finality as the same has also been affirmed by the Hon'ble Apex Court. In view of this the action of the respondents denying the benefit of OBC community to the applicants and cancelling their candidatures would not be legally sustainable.

15. The applicants are similarly situated persons and are also entitled for the benefit of a Judgement. Our view is fortified on the ratio laid down by the Hon'ble Apex Court in the case of Ashwani Kumar Vs. State of Bihar (1999 SCC (L&S) 265). In view of the ratio (Supra), we hold that the applicants are also entitled for the same relief as granted to the other candidates in the case of Parmender Kumar (Supra).

16. In view of the above discussion, we allow this OA. The Impugned orders dated 31.10.1996 collectively annexed as (Annexure A-1) cancelling the candidature of the applicants for the post of Constable (Executive) on the ground that the applicants do not belong to the category of OBC are quashed and set aside. The respondents are directed to issue appointment letters to the applicants, subject to the applicants being found otherwise eligible and the caste certificates show that the applicants belong to OBC category in order, with consequential benefits. It is made clear

that these appointments will be subjected to the outcome of CWP pending before Delhi High Court. No order as to costs.

S. Raju
(SHANKER RAJU)
MEMBER (J)

V.K. Majotra
(V.K. MAJOTRA)
MEMBER (A)

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