

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 639/97

New Delhi, this the 5th day of December, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman (J)
Hon'ble Shri K. Muthukumar, Member (A)

Ex. Constable Rohtash Kumar
s/o Shri Budh Ram,
r/o 153, Champa Puri,
Gali No. 1, Charkhi Dadri,
Rohtak Road, Distt. Bhiwana (Hr.) ...Applicant

(By Advocate: Shri Shankar Raju)

Versus

Union of India through

1. Secretary,
North Block,
Ministry of Home Affairs,
New Delhi.
2. Commissioner of Police,
I.P. Estate, Police Head Quarters,
M.S.O. Building, New Delhi.
3. Dy. Commissioner of Police,
North District,
Civil Lines, Delhi. ...Respondents

(By Advocate: Shri Ajesh Luthra proxy for Ms Jyotsana Kaushik)

O R D E R (ORAL)

Dr. Jose P. Verghese, Vice-Chairman (J)-

The petitioner has filed this OA at the initial stage of his recruitment finding that his recruitment was cancelled and service as constable was terminated on the ground that the petitioner has produced a false certificate that he belongs to ST community.

After notice respondents filed a reply stating that petitioner's service as constable was terminated on the ground that the respondents have given the benefit of his caste certificate as if the petitioner belonging to ST

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community and both relaxation on chest measurement as well as a vacancy belonging to the ST community was also granted to the petitioner wrongly. (9)

Counsel for the respondents also submitted that the petitioner had approached this court on a previous occasion vide OA No. 935/96 wherein this court had directed the respondents to deal with the representation filed by the petitioner in accordance with law without being influenced by the rejection of that application.

Before the operative part was dictated, counsel for the respondents made an observation that the first part of that order indicates that the court was considering the same impugned order of termination on merit, and in the present OA challenging the same termination order cannot be made all over again, and the same may amount to res judicata.

On record we find that the disposal of the representation also was done in a routine manner and it is not in accordance with law as directed them to do, by our previous order dated 8.5.1996. Moreover, the petitioner in this OA is challenging the order passed on the representation of the petitioner that being a fresh order and the same was not available to the petitioner at the time when he filed the previous OA, the present OA cannot be rejected on the ground of res judicata.

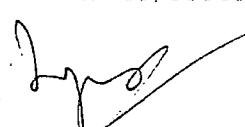
We have considered the entire aspect of the case which was submitted by the counsel for the petitioner that no deliberate misrepresentation or fraud has been committed on his part when he submitted a caste

(10)

certificate. It was also submitted that the caste certificate indicated that the petitioner belonged to a tribe but the respondents on their own treated the said certificate as if it is a S.T. caste certificate and given the benefit of relaxation as well as the vacancy otherwise available only for a reserved member of the ST community.

Counsel for the petitioner also submitted that the petitioner has been working as constable and respondents have themselves wrongly treated the case of the petitioner as ST while the petitioner was and is all the time an SC candidate only. The only order that can be passed today is, to direct the respondents to reconsider the case of the petitioner since he has been wrongly selected against a vacancy which is otherwise meant for ST community candidate only. In case no ST candidate is still available to fill up the said post, respondents may consider offering the post of constable in the circumstances to the petitioner who admittedly is a SC candidate, under the rules of exchange, thereafter reserve a subsequent vacancy on the basis of a carryforward rule, for the ST candidate in the next selection. It goes without saying that the direction being given with respect to the vacancy reserved for ST candidate in the circumstances is, on the basis that there cannot be any estoppel against the vacancy reserved for the ST, that being a statutory requirement of quota rule.

With this, this OA is disposed of with no order as to costs.



(K. Muthukumar)
Member (A)
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(Dr. Jose P. Verghese)
Vice-Chairman (J)