

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/00252/2020

HYDERABAD, this the 22nd day of October, 2020.

**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**



Rooplal Sunil S/o Rooplal Shanker,
Aged about 27 years, Occ : Unemployee,
Gr. -C8, R/o 8-4-369/253, Banjaranagar,
Borabanda, Hyderabad.

...Applicant

(By Advocate : Mr. J. Sudheer)

Vs.

1. Union of India,
Rept. By its Joint Director (Recruitment),
ESIC, Panchadeep Bhavan, CIG Marg,
New Delhi.

2. The Regional Joint Director,
ESIC, Head Office, Adarshnagar,
Hyderabad.

3. Banothu Venkateswarlu, S/o and age not known,
The Regional Joint Director,
ESIC, Head Office, Adarshnagar, Hyderabad,
(notice has to be sent through R2 as the
Address is not known to the applicant)

....Respondents

(By Advocate : Mr.N.Srinivasa Rao, SC for ESIC
Mr.K.R.K.V.Prasad for R-3)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:



2. The O.A. has been filed aggrieved by the action of the respondents in not considering the case of the applicant for the post of Stenographer.
3. The brief facts of the case are that the applicant belongs to Schedule Tribe Community. He is fully qualified to be recruited as Stenographer. While so, the respondents organization issued a notification calling for applications from eligible candidates for recruitment as Stenographers and Upper Division Clerks in the respondents organization. Applicant, being qualified and eligible, applied for the post of Stenographer. The respondents organization vide letter dated 21.06.2019 informed the applicant to download the call letter for online written examination on 14.07.2019 for recruitment to the posts of stenographers in the respondents organization. The applicant got 133.25 marks out of 200 in the written exam, while the 3rd respondent got only 109 marks. A representation was made by the applicant on 30.10.2019 to the 1st respondent admitting that a mistake occurred in the application form about caste status and the same may be rectified as the mistake occurred due to oversight and further requested to treat him as a ST candidate for selection. However, the final list of selected candidates for the post of Stenographer for the State of Telangana was released by the respondents on 20.03.2020. The applicant was not selected and, therefore, the OA.

4. The contentions of the applicant are that he made a mistake in filling up the application form regarding his caste status of ST. However, he has been meritorious as far as the marks are concerned as he got 133.25 whereas the 3rd respondent who was selected in ST quota, got only 109 marks. Therefore, for the sake of a simple mistake, merit should not be compromised. The Courts have been holding that a human error committed by a examinee / aspirant for selection, shall not lead to deny him selection, though meritorious and that doing so would take away the very essence of selection which is nothing but picking up the meritorious candidates amongst the aspirants for the post. More so, when the mistake is not in regard to marks scored but in regard to the community particulars of the concerned candidate. In other words, if incorrect information is given by mistake is in regard to hall ticket number, roll number, social status etc., the same should not be the basis to reject the candidature of a meritorious candidate. The applicant approached the 2nd respondent about the mistake committed in regard to his social status and he was informed that he would be given an opportunity to rectify the mistake in the application form on the date of skill test. In the admit card, his community was shown as UR category. The skill test is only a qualifying test and the actual selection is based on the marks obtained in the Phase-I test (Written Test). On the date of skill test i.e. 20.10.2019, the applicant was asked to submit a written representation at the examination centre to rectify any mistakes in the application and to provide correct information. The applicant accordingly submitted representation and completed his skill test successfully. The applicant made a representation on 30.10.2019 to the 1st respondent, admitting that a mistake occurred in his application form with regard to his



caste status and requested that the same may be rectified as the mistake occurred due to oversight. The applicant has also furnished a copy of the latest ST certificate to the respondents. In spite of giving documentary evidence about his community, respondents have not considered his case, which is unfair and illegal.



5. The respondents in their reply statement state that the OA has not been filed against any impugned order and, therefore, the Tribunal should not entertain the OA. The applicant has shown his caste as Unreserved while uploading the online application. He started taking curative steps only after declaration of the Phase-I result and while attending Phase-II test after 7 months. The applicant has owned his mistake of wrongly indicating the caste. There is no proof that he contacted the respondents seeking rectification of the mistake. The respondents have not assured him that he will be given an opportunity to rectify the mistake. The admit card captures the information available in the application form wherein his caste was shown as 'Unreserved'. Further, the assertion of the applicant that he submitted a representation on 20.10.2019 is not true. The important instruction at column 6(e) of recruitment notification states that once the application is submitted, it cannot be changed. The details of the application, after the last date of submission of application, cannot be changed. Applicant has applied for Unreserved category and, therefore, he cannot be considered for the post against ST category. The mistake may be inadvertent but it is a mistake, which cannot be ignored. Therefore, the request of the applicant to consider his community status as ST and select him for the post of Stenographer, cannot be considered.

6 . Heard Sri J. Sudheer, learned counsel for the applicant, Sri N. Srinivasa Rao, learned Standing Counsel for ESIC and Sri KRKV Prasad, learned counsel appearing for Respondent No.3, and perused the pleadings on record.



7. It is not under dispute that the applicant appeared for the examination held for selection to the post of Stenographer advertised by the respondents. The applicant passed in the written examination held on 14.07.2019 and got 133.25 marks against the maximum of 200 marks. The grievance of the applicant is that 3rd respondent, who was selected against ST quota, got only 109 marks. The claim of the applicant is that since he is meritorious, he should be selected. However, the facts of case indicate that the applicant, while making his application online, has shown his status as -Unreserved. Therefore, the respondents have considered him against Unreserved category and he could not be selected for the said category. However, the applicant after appearing at the Phase-I test, started representing to the respondents to change his community status from Unreserved to ST category. The rule at Column 6(e) of recruitment notification dated 01.03.2019, against which the applicant appeared in the examination, clearly states that once an application is submitted, it cannot be modified. Therefore, utmost care has to be taken to fill up an application form. There can be no change in the community once the examination process has been initiated. The last date for submission of applications was 15.04.2019. After the said date, one cannot ask for change of community. Therefore, the request made by the applicant is against the condition laid in the notification. The mandatory instructions in the notification have to be

strictly followed as held by the Hon'ble Supreme Court in the *State of Tamil Nadu & Ors v G. Hemalathaa & Anr* in Civil Appeal No. 6669 of 2019, decided on 28.8.2019. The relevant paras are extracted hereunder:



10. *In her persuasive appeal, Ms. Mohana sought to persuade us to dismiss the appeal which would enable the Respondent to compete in the selection to the post of Civil Judge. It is a well-known adage that, hard cases make bad law. In Umesh Chandra Shukla v. Union of India, Venkataramiah, J., held that:*

"13.... exercise of such power of moderation is likely to create a feeling of distrust in the process of selection to public appointments which is intended to be fair and impartial. It may also result in the violation of the principle of equality and may lead to arbitrariness. The cases pointed out by the High Court are no doubt hard cases, but hard cases cannot be allowed to make bad law. In the circumstances, we lean in favour of a strict construction of the Rules and hold that the High Court had no such power under the Rules."

11. *Roberts, CJ. in Caperton v. A.T. Massey held that:*

"Extreme cases often test the bounds of established legal principles. There is a cost to yielding to the desire to correct the extreme case, rather than adhering to the legal principle. That cost has been demonstrated so often that it is captured in a legal aphorism: "Hard cases make bad law."

12. *After giving a thoughtful consideration, we are afraid that we cannot approve the judgment of the High Court as any order in favour of the candidate who has violated the mandatory Instructions would be laying down bad law. The other submission made by Ms. Mohana that an order can be passed by us under Article 142 of the Constitution which shall not be treated as a precedent also does not appeal to us."*

8. The respondents also cited the judgments of the Hon'ble Supreme Court in *Bhupender Singh and others Vs. State of Punjab & Others (2005 SCC 262)* and *Shanker K Mandal & Others Vs. State of Bihar & Others (2003 9 SCC 519)*, which squarely apply to the case of the applicant. The applicant states that it is an inadvertent mistake. The examination is a competitive examination wherein candidates from all over the country appear. The conditions of the notification have to be strictly followed in order to ensure that there is fairness in selection. Any relaxation of the conditions would lead to

grievances to other candidates, who made similar mistakes and could not come over to the Tribunal. Therefore, by considering the case of the applicant, the Tribunal would in a way do injustice to other candidates, who had similar issues while filling up the application for selection to different posts advertised by the respondents. Admittedly, the case of the applicant is not supported by the rules and law. Hence, we do not find any merit in the OA which calls for dismissal. Accordingly, dismissed. No order as to costs.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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