

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 23rd DAY OF APRIL, 2002

Original Application No. 373 of 1998

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MAJ.GEN.K.K.SRIVASTAVA, MEMBER(A)

Yuv Raj Singh, son of Shri Kamta
Prasad, Mohalla Tola Shamsabad
Agra.

.... Applicant

(By Adv: ShriM.K.Upadhya)

Versus

1. Union of India through Secretary
(Posts) Ministry of Communication
Dak Bhawan, Sansad Marg, New Delhi.
2. Post Master General, Agra
Region Agra.
3. Senior Superintendent Post
Offices, Agra Division, Agra.
4. Assistant Superintendent of Post
Offices Central), Sub Division
Agra.
5. Jagdish Prasad Bishan, son
of Shri Deep Chand, R/o Mohalla
Tola Ward No.1, Shamsabad, Agra.

... Respondents

(By Adv: Shri Avnish Tripathi/Shri O.P.Gupta)

O R D E R(Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

By this OA u/s 19 of A.T.Act 1985 applicant has
challenged the order dated 26.12.1996 by which
respondent no.5 Jagdish Prasad was appointed as
E.D.Runner Shamsabad in district Agra.

the facts in short giving rise to this application
are that for appointment as E.D.Runner in Shamsabad
post office district Agra, names were requisitioned
from employment exchange Agra. The employment exchange

sponsored five names, including name of the applicant Yuv Raj Singh and respondent no.5. The applicant belongs to OBC reserve category, whereas respondent no.5 belongs to SC category. The selection proceedings as usual were continued and respondent no.5 was selected for appointment. Though in high school he had secured 49% marks whereas the applicant had secured 58.6% marks. When the respondent no.5 was appointed by the impugned order dated 26.12.1996 applicant challenged the same by filing a complaint before the superior authorities. Superior authorities took the view that the appointment of the respondent no.5 was contrary to rules as according to high school certificate his merit was lower than the applicant. The appointment was revoked and a decision was taken to terminate the appointment of respondent no.5. Consequently, a notice was issued on 3.7.1997 terminating the service of the respondent no.5 which was challenged in this Tribunal by filing OA 739/97. This applicant also made an application for ^{impleadment} employment in the aforesaid OA but his application was rejected by order dated 19.3.1998 and the OA was allowed finally by order dated 18.2.1999. The operative part of the order reads as under:-

".... We, therefore, allow this OA and quash the impugned notice dated 3.7.97. There shall be no order as to costs."

This order has become final as it was not challenged before any superior court.

The applicant approached Hon'ble High court against the order dated 19.3.1998 by which his application for ^{impleadment} employment was rejected. The writ petition filed by the applicant was registered as writ

as writ petition no.30589/98. The writ petition was disposed of finally on 8.10.1998 by the following order.:

" it was therefore rightly pointed out by Shri Tewarinthat petitioner may be permitted to file an original application before the C.A.T. To this, it may be added that if the petitioner is a necessary opp. party, he can always make OA in accordance with the procedure prevalent in the CAT and with regard to delay in filing the same he may suitably explain the same by making the reference to the OA No.739/97, which shall be taken to due notice moved before the CAT." With the aforesaid observation, the writ petition is finally disposed of."


After the aforesaid judgement applicant has filed this OA. The submission of ~~Shri X X X X X X X X X X~~ learned counsel for the applicant is that as the policy of reservation was not applicable the respondent authorities had no option but to make selection on the basis of merit and the alleged preference given to the respondent no.5 was contrary to law and is hit by Art.14 of the Constitution of India. It is submitted that the facts stated by the applicant that he secured 58.6% marks, whereas respondent no.5 secured only 49% marks, are not disputed by the respondents. They have only tried to justify the appointment of respondent no.5 on the basis of preference. It is also submitted that on complaint of the applicant the authorities of the department had realised their mistake and they initiated action to terminate the appointment of respondent no.5 and served a notice dated 3.7.1997 but it was quashed by this

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Tribunal in OA No.739/97 without giving opportunity of hearing to the applicant. It is submitted that the order passed in OA No.739/97 will not be binding on the applicant and this Tribunal should examine the claim of applicant afresh in accordance with law.

The counsel for the respondents on the other hand, has submitted that the appointment to a reserve category on the basis of preference had been approved by a Full bench of this Tribunal in a case of 'M.Satyashila Reddy Vs. Union of India and Ors, 1999(2) A.T.J, pg-606. It is also submitted that this Tribunal, following the aforesaid Full Bench judgement, has also taken the same view in OA No.1156/94 by order dated 30.5.01, a photostat copy of the order has been placed before us. The submission of the counsel for the respondents is that even though the departmental authorities initiated action against the respondent no.5 that was un-called for and the judgement in favour of respondent no.5 by this Tribunal cannot be disturbed which has become final so far department is concerned.

We have carefully considered the submissions of the learned counsel for the ^{parties. The} applicant has challenged the appointment of respondent no.5 only on the ground that in high school he had secured less marks than the applicant and as the applicant was higher in merit he should have been selected. It has also been submitted that the preference ~~should not be~~ given to respondent no.5 is illegal and it vitiates the selection of respondent no.5. However, precisely this controversy was subject matter of consideration before the Full Bench in 'Satya Shila Reddy Vs. Union of India & Ors(Supra) and the Full Bench has answered the question in the following manner.

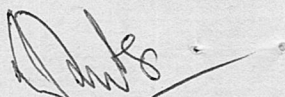


" The condition that "preference will be given to ST/SC/OBC would mean that the candidates belonging to ST/SC/OBC even if placed below the names of other candidates/ General categories candidates, in the merit list, would be entitled to appointment in preference to other candidates/general categories candidates- Both general categories and ST/SC/OBC candidates are entitled to equal consideration for the purpose of selection- if no candidate belonging to ST/SC/OBC finds place in the merit list or no eligible ST/SC/OBC candidate is available for the post, then only general categories or other categories candidate will be considered and selected in accordance with the rules."

Thus, the Full Bench has approved the process of selection on the basis of preference. The respondent no.5 being of SC category has been preferred for appointment. The aforesaid view has been followed by this Bench in the judgement dated 30.5.01 Sushi Kumar Vs. Union of India & Ors in OA 1556/94.

In the facts and circumstances narrated above, in our opinion the applicant is not entitled for any relief.

The OA is accordingly dismissed. However, there will be no order as to costs.


MEMBER (A)


VICE CHAIRMAN

Dated: 23rd April, 2002