

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 359/2002

Wednesday, this the 11th day of June, 2003

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

Pradeep.A.,
TC-41/2512,
Anduvilakathu Veedu,
Thottam, Manacaud,
Trivandrum-695 009.

- Applicant

By Advocate Mr S.Mohammed Al Rafi

Vs

1. Union of India represented by
its Secretary,
Ministry of Personnel, P.G. & Pensions,
Department of Personnel & Training,
New Delhi.
2. The Secretary,
Ministry of Tribal Affairs,
New Delhi.
3. Union Public Service Commission,
represented by Secretary,
New Delhi. - Respondents

By Advocate Mr KR Rajkumar, ACGSC

O R D E R

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The question that arises for consideration in this O.A. is whether on the facts of the case, the applicant who availed himself of the concession of reservation for Other Backward Community(OBC) in the All India Civil Services Examination, 2000 and obtained 391st rank could be excluded from allocation to one or the other of the 427 posts for which the said Civil Services Examination was held.

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2. The applicant, Shri A. Pradeep, is aggrieved by A-1 communication dated 13.2.2002 by which he was denied allocation to any service on grounds of alleged lack of OBC post in any of the services for which the Combined Civil Services Examination was held in 2000. According to the applicant, he had indicated his preferences for 19 of the notified services and on declaration of the final results placing him at 391st rank, he was subjected to the required medical examination including the Part-II thereof, which was done only in the case of finally successful candidates, who were sure to get any one of the services they preferred. The applicant would state that under Central Secretariat Service which came under the 2nd respondent and which he had indicated as his 15th preference, there were large number of unfilled vacancies. The applicant would refer to Rule 2 of Civil Service Examination(CSE) Rules, 2000 and contend that even if he could not be considered for the preferred services, he was still entitled to be considered for residuary services not preferred by him. The summary of reliefs sought for is as under:

- i) Call for the entire records leading to A-1 and quash A-1 order.
- ii) Declare that the applicant is entitled to get allocation of service under the services preferred by him and direct the 1st respondent to allocate service to the applicant and appoint him in any of the services preferred by him.

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iii) Declare that the applicant is entitled to get allocation of service in residuary services not preferred by him as per Rule 2 of Civil Service Examination Rules 2000 and direct the first respondent to allocate service to the applicant and appoint him in any of the residuary services not preferred by him.

3. The respondent-1 filed a reply affidavit producing R-1 being the list of 26 services including 19 services preferred by the applicant and the respective vacancy position with regard to reserved and unreserved categories. There were 427 vacancies in the 26 services. The number of vacancies earmarked for OBC was 100 in all. The applicant was considered for allocation to a service of his preference in the light of Rule 2 of the CSE Rule 2000, but he could not secure a service due to his low merit position vis-a-vis OBC category. The applicant was considered for residuary services for which no preference was indicated by him. Here also he could not reach upto the required merit level. The Last OBC candidate who could secure a service is at 384th rank. The applicant being at 391st rank, therefore, could not complain of any discrimination. A place in the select list, inspite of availability of vacancies, would not confer any indefeasible right on a candidate in regard to appointment. Reliance is placed on the Apex Court's decision in Shankarsan Dash Vs Union of India, 1991 SCC(L&S), 800. According to the respondents, allotment or nonallotment to a service would depend upon the preferences indicated, the comparative merit position, availability of vacancy in the respective categories

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etc. When there is no OBC vacancy, a candidate, who availed himself of his claim as an OBC candidate cannot claim allocation to an unfilled, unreserved vacancy as it would be contrary to the law laid down by the Supreme Court in R.K.Sabharwal Vs State of Punjab and others, (1995) 2 SCC, 745. The respondents would, therefore, urge that the O.A. is not maintainable and hence is liable to be dismissed.

4. In his rejoinder, the applicant, pointing out that there were admittedly unfilled unreserved vacancies in various services including at least three services preferred by him, would contend that it was unjust to deny the applicant any one of the posts that remained unfilled. A contention was also raised to the effect that out of 427 declared vacancies, 115 posts (i.e. 27%) should have been earmarked for OBC category, whereas only 100 were earmarked. The case advanced by the applicant is that if 115 posts were earmarked for OBC, the applicant would have got one service or the other.

5. When the case was in progress, this Tribunal wanted the respondents to furnish information in respect of the following aspects:

"(i) When there are admittedly 427 vacancies the question as to how the applicant, holding Rank No.391, can be excluded from one or the other services, has to be answered with reference to particulars of allocation of the meritorious candidates.

ii) What is the position of the vacancies in relation to the 19 services for which the applicant has exercised option.

iii) Have all the vacancies in the notified services including the 19 services which the applicant had exercised option been filled, with reference to the date of closure of the cadre.

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iv) Are there unfilled vacancies in relation to any of the services, and if so, the details thereof."

In answer to the queries mentioned above, respondent-1 filed another affidavit furnishing the required information. With regard to the 1st query as to the exclusion of the applicant being the 391st rank holder as against 427 declared vacancies to be filled, it is submitted by the respondents that out of the aggregate number of 427 vacancies, 244 earmarked for General(unreserved candidates), 100 for OBCs, 54 for SCs and 29 for STs. Candidates falling under OBC, SC and ST who have availed of any of the concessions in the eligibility criteria or who failed to get recommended in the General Merit are recommended for appointment, if any, by relaxed standards upto the number of vacancies earmarked for each category. As per the rules, only OBC could compete against OBC vacancies, SC candidates against SC vacancies and ST candidates against ST vacancies. Similarly, General Category candidates can compete only against General (unreserved vacancies). While reserved candidates who are included in the merit list by any relaxed standard or condition cannot be considered against General(unreserved) vacancies or against vacancies of a different category, those reserved category candidates who do not avail of any relaxation in regard to eligibility condition like age, number of chances etc. and get included in the General Merit list without relaxing the standard can be considered against both General(unreserved) vacancies on the strength of their merit position and the relevant reserved category vacancies due to their belonging to that particular reserved categories. The respondents would clarify that since OBC candidates including the applicant who are included in the

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merit list by a relaxed standard can be considered only against OBC vacancies, they cannot appropriate vacancies earmarked for General, SC or ST categories. However, it has been shown that two of the top ranking OBC candidates were able to get choice of service in the general merit, and 26 OBC candidates could get service of their choice only in the OBC merit list. Had they been considered only under General merit, they would have got services which were given lower preference. Since the total number of vacancies reserved for OBC was 100 and 26 candidates had to be brought down from the General category in order to give them their choice of service, the remaining vacancies available for OBC category were only 100-26, i.e. 74. That being the position, the applicant, inspite of his place in the rank list could not get a post which was earmarked for OBC category. He could not be considered for any other category for the reason that his position in the merit list was on account of the fact that he availed of the reservation benefit as an OBC candidate. With regard to the other queries, the respondents have filed details of servicewise OBC vacancy position and allotment made against those vacancies vide R-A/1 to R-A/7 to show that the allocation did not come down to the level of the applicant as all the OBC vacancies were filled by candidates occupying higher rank positions. With regard to the query concerning the position of unfilled vacancies, the respondents submitted that on the basis of CSE 2000 results, 55 General (unreserved) vacancies in 7 services and 6 SC vacancies in 3 services could not be filled up as sufficient number of General and SC candidates were not available for allocation. The relevant

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details are furnished as R-A/7. The respondents would submit that since all the 100 OBC vacancies were allocated to 100 OBC candidates who obtained rank positions higher than the applicant, it was not possible to consider the applicant against any other vacancies. If the applicant was considered for allocation against any vacancy which was not reserved for the OBC, it would have resulted in OBC reservation in the relevant service/posts in excess of the stipulated quota of 27%. In this respect, the respondents would rely on R.K.Sabharwal Vs State of Punjab and others, (1995) 2 SCC, 745.

6. We have heard Shri Mohammed Al Rafi, learned counsel for the applicant and Shri K.R.Rajkumar, learned ACGSC.

7. Learned counsel for the applicant, amplifying the pleadings in the O.A. and the rejoinder stated that when there were altogether 427 vacancies to be filled and the applicant got 391st rank, it was unjust and unfair to exclude him from the various services. Learned counsel would submit that admittedly there were still unfilled vacancies and that the whole exercise of drawing up a merit list of 427 candidates matching an equal number of vacancies would be a futile one if some of the successful candidates were to be left without allocation to any services. According to the applicant's counsel, even as per the Supreme Court's decision in R.K.Sabharwal's case, reserved category candidates can compete for unreserved posts and in the event of their appointment to the said post, their number cannot be added and

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taken into consideration for working out the percentage of reservation. In this view of the matter, the applicant's prayer merited to be granted, learned counsel for the applicant would urge.

8. Shri Rajkumar, learned ACGSC would draw support from the CSE Rules, 2000 and state that the rules were framed in the light of various pronouncements of the Supreme Court on the subject of reservation, allocation of candidates, vacancies etc. He too would rely on the decision of the Supreme Court in R.K.Sabharwal's case and submit that if OBC candidates like the applicant were also allocated to unfilled, unreserved posts, it would have caused excessive reservation beyond the permitted 27% for OBC. Learned counsel for the respondents would therefore maintain that the impugned A-1, being a very considered and speaking order, is well-founded.

9. We have given our anxious consideration to the claim of the applicant and the pleadings in the O.A. and the further contentions put forward by the respective counsel. It is not denied that members of the OBC get certain concessions by way of age relaxation, number of chances for the examination that can be availed of etc. The applicant admittedly availed of the special concession available to the OBC candidates. We notice that the applicant, placed at 391st rank in the common merit list of successful candidates in the All India Civil Service Examination 2000 has obtained that rank as an OBC candidate. In the list of 427 successful

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candidates for the CSE 2000, there were 100 vacancies earmarked for OBC. Against this there were 128 OBC candidates in the merit list. It is a fact that the applicant occupies 118th position amongst the successful OBC candidates. The list of the successful OBC candidates on the basis of the results of the CSE 2000, the allocation of the OBC candidates to various services both under general merit on a par with unreserved candidates and on their availing of the status as OBC candidates, the list of OBC candidates who were left out etc. are seen furnished as per the reply affidavit filed by the respondents. These details are available in Annexures R-A/1 to A/7. We have carefully gone through these also. First of all, it has to be remembered that posts in a cadre, and not vacancies, are reserved for OBC, SC, ST etc., as advised by each service in accordance with the rules and the principles laid down by the Apex Court in various decisions. It is also well settled that the methodology of reservation to be followed is such that it does not result in excessive reservation - vide Supreme Court's decision in R.K.Sabharwal's case(supra). The applicant's right was in relation to the posts reserved for OBC.

10. We notice from the particulars filed by the respondents that all the 100 posts have been allocated to the OBC candidates on the basis of the rank list. The last of the OBC candidates who got allocation is ranked 384th. The applicant's rank is 391st. Two OBC candidates on their own merit got adjusted against General (unreserved) Category posts. Apart from this, another 26 OBC candidates who were

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included in the General Merit list would not have got the chosen service in their order of preference except by bringing them under the OBC reserved category. In other words, they had to be considered for the purpose of allocation to the service of their preference by conferring the benefit of OBC reservation to them. Thus them consumed 26 posts out of a total of 100 posts available to the OBC category. This, we find, has led to the applicant not coming within the 100 candidates for absorption against the OBC reserve posts. If by reason of the fact that some of the successful OBC candidates occupying higher rank position than the applicant got themselves selected on merit under General category or if some of them declined to accept the post/appointment, the applicant would have moved closer to the zone of consideration for allocation to one or the other service depending on his relative merit position and order of preference. In this case, unfortunately, the applicant has not moved sufficiently upwards. It is undeniable that none below him has been considered for allocation to any of the services. As mentioned earlier, the last of the OBC candidates who got the allocation is ranked 384. The manner of drawing up the select list and the exercise of allocation have caused a situation where several unreserved posts down in the lower Group 'B' services remain unfilled in the absence of General category candidates and quite a few of the OBC candidates in the select list find themselves excluded as they cannot be adjusted against general category. The applicant is a victim of this unfortunate situation, as rightly pointed out by the Hyderabad Bench of the C.A.T. in a similar case in O.A.838/96 dated

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5.3.97 whereby the O.A. was permitted to be withdrawn by the applicant. We also notice that in another identical case considered by the Principal Bench of the C.A.T., (vide O.A.294/98 dated 3.5.99), the Tribunal did not find the action on the part of the respondents arbitrary and hence refused to interfere in the matter. In the latter case, the Tribunal however, spared some thought on the need to take appropriate coordinated action to avoid leaving persons like the applicant in that O.A. 'prisoners of hope'. We are in respectful agreement with the detailed findings of the order of the Principal Bench in O.A.294/98.

11. On the facts and in the circumstances of the case, we notice no arbitrariness in the application of the rules and instructions in this case and decline to interfere with the respondents' order A-1 dated 13.2.2002. The O.A. is accordingly dismissed, leaving the parties to bear their respective costs.

Wednesday, this the 11th day of June, 2003


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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