

CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

OA No. 060/00070/2014

Date of decision: 16.2.2015

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CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

Bhupinder Singh son of Sh. Bansidhar, resident of Village Seka, Post Office Mandhana, Tehsil Narnaul, District Mahendergarh.

...APPLICANT

BY ADVOCATE : Shri Rajbir Singh

VERSUS

1. Staff Selection Commission Karnataka, (Kerala Region), 1st Floor, E-Wingh, Kendriya Sadan, Koramangala, Bangalore, (Kerala), through its Regional Director.
2. Staff Selection Commission (Central Region), Allahabad, District Allahabad.

...RESPONDENTS

BY ADVOCATE: Shri D.R. Sharma

ORDER**HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-**

The applicant, by means of the present Original Application, assails an order dated 29.10.2013, whereby his candidature for the post of LDC under OBC category has been cancelled on the ground of relevant certificate not being as per instructions and he has been declared failed in the revised result issued by the Staff Selection Commission (Headquarters) under general category.

2. Broadly speaking the facts, which led to filing of the present Original Application, are not disputed. The respondent no.1, Staff Selection Commission (for short, "SSC") issued an advertisement for recruitment to the post of Data Entry Operator and Lower Division Clerk (for short, "LDC"), which are to be filled up through Combined Higher Secondary 10+2 Level Examination, 2012, which consisted of 2-tier examination, firstly a candidate was to appear in the written examination which was to be followed by a skill test. The applicant, who belongs to OBC category, being fully eligible, applied for the post of LDC and was allowed to appear in the written examination held on 06.03.2013. He was also called for typing test and was declared pass and accordingly his name was placed at serial no.20 of the select list of candidates qualified against the combined higher secondary 10+2 examination of 2012. However, by the impugned order dated 29.10.2013 the applicant has been informed that his candidature has been cancelled for the said post,

as he has not qualified in the revised list issued by respondent no.1 under un-reserved category. Hence the Original Application.

3. Shri Rajbir Singh, learned counsel appearing on behalf of the applicant submitted that once the applicant belongs to the OBC category, even if he did not submit the OBC certificate on the cut off date, it does not take away his valuable right of consideration under the OBC category because his caste falls within the said category even now. In support of his contention the learned counsel relied upon a judgment passed by the Hon'ble Delhi High Court in the case of **Hari Singh v. Staff Selection Commission**, 2010 (6) SLR 543.

4. The respondents contested the claim of the applicant by filing a detailed written statement wherein they submitted that since the applicant was not in possession of a valid OBC certificate as per the conditions stipulated in the advertisement, i.e., the cut off date, therefore his case was considered under the reserved category. It is also submitted that the applicant has concealed the vital material fact from this Court as he had already submitted an undertaking to the respondents to consider his case under the unreserved category, if he is found to be not in possession of a valid OBC certificate in terms of the DoPT instructions. It is thereafter the respondents re-considered his case by treating him as unreserved category and since he did not secure the marks which were secured by the last candidate in the unreserved category, the impugned order has been passed.

5. Shri D.R. Sharma, learned counsel appearing on behalf of the respondents firstly submitted that the O.A deserves to be dismissed on the ground that the applicant is trying to mislead this Court by not bringing the true facts and has concealed the material facts from this Court that he had already submitted an undertaking to consider his claim under the un-reserved category if he is ineligible under reserve category. Hence the OA be dismissed with exemplary cost. He further submitted that since his candidature was provisionally considered as per the advertisement, he cannot be allowed to say that his case is to be considered under the OBC category despite his being not in possession of a valid OBC certificate on the cut off date, that too in terms of DoPT instructions dated 8.9.1993. To buttress his submission he placed reliance upon a judgment passed by the Hon'ble Allahabad High Court in Writ Petition no.33940 of 2013 in the case of **Om Prakash Yadav v. Union of India & others** and the judgment passed by the Hon'ble Delhi High in the case of **Delhi Subordinate Services Selection Board & Anr. v. Ram Kumar Gijroy & Ors.**, LPA no.562/2011 decided on 24.01.2012.

6. We have given our thoughtful consideration to the entire matter and have gone through the pleadings on record with the able assistance of the learned counsel appearing for the respective parties.

7. The question, which arises for consideration is whether the applicant, who belongs to OBC category and was not in possession of a

valid OBC certificate in terms of DoPT instructions dated 8.09.1993, can be allowed to avail the benefit of OBC by considering his claim for appointment under the said category?

8. It is borne out from a conjunctive perusal of the pleadings that when advertisement was issued by the SSC it was made clear that the participation in the selection process is provisional, subject to scrutiny by the SSC. In para-4 of the important instructions to the candidates, in the above advertisement, it was made clear that candidates seeking reservation benefits available for SC/ST/OBC/PH/Ex-Servicemen must ensure that they are entitled to such reservation as per eligibility prescribed in the notice. Even under clause 4 (c) they were required to submit the requisite certificate in the prescribed form at the time of skill/typing test, otherwise their claim under the said category will not be accepted and their candidature will be considered under general/unreserved category. The applicant, being an OBC candidate, applied for the post and participated in the selection process. Later on, it was transpired that he is not in possession of a valid OBC certificate in terms of DoPT instructions dated 8.9.1993, which mandates that a person claiming benefit under the OBC category should have a certificate having been issued within three years preceding the cut off date. The applicant though was having an OBC certificate but that was of an earlier year. Knowing fully that he did not have the certificate as asked for by the SSC, he chose to apply. When he was confronted with the fact of not having a

valid certificate, he gave an undertaking on 06.03.2013 that his case be considered under general category, which even otherwise as per the advertisement, the respondents were obliged to do so. From these facts, one cannot find fault with the impugned order. Hence the OA deserves to be dismissed. There is a reason behind rejection of benefit under the OBC category to the applicant because as per the instructions, the competent authority, is to issue a certificate of OBC to a concerned person and also to make a positive averment that he does not belong to creamy layer because the benefit of OBC can be claimed only if he does not fall within the definition of "creamy layer". Even otherwise, once he had already given an undertaking to consider his claim under the unreserved category, if he does not submit the OBC certificate, then at this stage he cannot be allowed to turn around and question the action of the respondents in considering his claim under the unreserved category. His action would be barred by the principle of estoppel. Our view finds support from the judgment in the case **Harpal Kaur Chahal (Smt.) v. Director Punjab Instructions & Ors.**, 1995 Supp. 4 SCC 706, **Ashok Kumar Sharma & Others vs Chander Shekhar & Another**, (1997) 4 SCC 18 and **Ashok Kumar Sonkar v. Union of India & Ors.**, (2007) 4 SCC 54. It is relevant to quote here the observation made by their Lordships of the Hon'ble Supreme Court in the case of **Harpal Kaur Chahal** (supra), which reads as under:

"2. It is contended for the appellant that since the appellant had been appointed by the duly constituted Departmental

Selection Committee and as on the date of interview since the appellant had the qualification, her selection and appointment cannot be said to be illegal. We find no force in the contention. It is to be seen that when the recruitment is sought to be made, the last date has been fixed for receipt of the applications. Such of those candidates who possessed of all the qualifications as on that date alone are eligible to apply for and to be considered for recruitment according to rules. Since the appellant had not possessed the Physical Training Instructor qualifications as on that date, her illegal consideration by the Board and recommendation for appointment and the appointment made in furtherance thereof are illegal. Therefore, we cannot accept the contention of the learned counsel in that behalf."

9. We may also quote the observations of the Hon'ble Supreme Court in the case of **Ashok Kumar Sharma** (supra), which reads as under:

"The Review petitions came up for final hearing on March 3, 1997. We heard the learned counsel for the review petitioners, for the State of Jammu and Kashmir and for the 33 respondent So far as the first issue referred to in our order dated 1st September, 1995 is concerned, we are of the respectful opinion that majority judgment (rendered by the Dr. T.K. Thommen and V. Ramaswami, JJ) is unsustainable in law,. the proposition that where applications are called for prescribing a particular date as the last date for fling the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their application ought to have been rejected at the inception

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itself. This proposition is indisputable and in fact was not doubted or disputed in the majority Judgement. This is also the proposition affirmed in *Rekha Chaturvedi (Smt.) v. University of Rajasthan and others* [1993 Suppl. (3) S.C.C 168]. The reasoning in majority opinion that by allowing the 33 respondents to appear for the interview, the Recruiting Authority was able to get the bests talent available and that such course was in furtherance of public interest is, with respect, an impermissible Justification It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have allowed to appear for interview."

10. Now considering the judgement cited by the applicant in the case of **Hari Singh** supra) we may record here that the same is not applicable to the facts and circumstances of this case. In that case the applicant therein applied for OBC certificate prior to the cut off date and after noticing the same the Hon'ble High Court came to the conclusion that for the fault of the authorities in not issuing the certificate, despite his application being prior to the last date of submission of application forms, the applicant cannot be made to suffer and, therefore, considering those peculiar facts in mind, it was held that since he had already applied to the competent authority for issuance of OBC certificate before the cut off date, it was directed that his candidature be considered under OBC category, which is not the position in the present case. In the case in hand he was not in possession of the certificate and he even did not apply for a certificate in the lines of DoP&T instructions and he himself has given an undertaking to consider his claim under the general category, if found not possessing valid certificate.

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11. No other point was argued.

12. In the light of the above discussion, this OA is dismissed being devoid of any merit leaving the parties to bear their own costs.

(Rajwant Sandhu)
Member (A)

(Sanjeev Kaushik)
Member (J)

Place: Chandigarh

Dated: 16.2.2015

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