

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.15/2013

M.A.No.9/2013

with

O.A.No.16/2013

Order Reserved on: 25.10.2016

Order pronounced on 02.12.2016

Hon'ble Shri V. Ajay Kumar, Member (J)

Hon'ble Dr. Birendra Kumar Sinha, Member (A)

O.A.No.15/2013:

1. Shri Laxman
S/o Shri Ram Sarup
Working as Asstt Binder
Under Govt. of India Press
Faridabad (Haryana)

2. Miss Ashmi Baby
D/o Shri C.C.Baby
Working as Asstt Binder
Under Govt. of India Press
Faridabad (Haryana).

3. Shri Deepak Arora
S/o Shri Dharam Pal Arora
Working as Asstt Binder
Under Govt. of India Press
Faridabad.

4. Shri Himanshu Sharma
S/o Shri Satish Chander
Working as Asstt Binder
Under Govt. of India Press
Faridabad.

... Petitioners

(By Advocate: Ms. Jyoti Singh, Senior Counsel with Mr. Manjeet Singh Reen)

Versus

Union of India & Others, through

1. The Secretary
Ministry of Urban Development & Poverty Alleviation
Nirman Bhawan
New Delhi – 110 001.
2. The Director
Directorate of Printing
Govt. of India Press
Nirman Bhawan
New Delhi – 110 001.
3. The Manager
Govt. of India Press
Faridabad (Haryana). ... Respondents

(By Advocate: Dr. Ch. Shamsuddin Khan)

with

O.A.No.16/2013:

Shri Narender Kumar
S/o Shri Sudershan Kumar
Working as Asstt Binder
Under Govt. of India Press
Faridabad. ... Applicant

(By Advocate: Ms. Jyoti Singh, Senior Counsel with Mr. Manjeet Singh Reen)

Versus

Union of India & Others, through

1. The Secretary
Ministry of Urban Development & Poverty Alleviation
Nirman Bhawan
New Delhi – 110 001.

2. The Director
Directorate of Printing
Govt. of India Press
Nirman Bhawan
New Delhi – 110 001.

3. The Manager
Govt. of India Press
Faridabad (Haryana).

... Respondents

(By Advocate: Dr. Ch. Shamsuddin Khan)

ORDER

By V. Ajay Kumar, Member (J):

Since the questions of fact and law are similar in both the aforesaid OAs, they are being disposed of by this common order. For the sake of convenience, we have taken the facts from OA No.15/2013.

2. M.A.No.9/2013 in OA No.15/2013, for joining together, is allowed.

3. The applicants in both the OAs, who belong to Unreserved category and are working as Assistant Binders in the 3rd Respondent-Government of India Press, Faridabad, Haryana, filed the OA questioning the impugned Annexures A1(Colly.) and A2(Colly.), Office Memorandums dated 27.12.2012 and 28.12.2012 respectively, whereunder the services of the applicants were sought to be terminated.

4. This Tribunal, on 02.01.2013, while issuing notices to the respondents directed them to maintain status quo as on the said date, as an interim measure, which was extended from time to time, and as a result, the applicants are being continued in service till date.

5. The brief facts of the case are that the respondents, vide Annexure A3-Advertisement published in November, 2007 called for applications for selection to the posts of Group 'C' and 'D' by direct recruitment including the post of Assistant Binder among other posts. Total 45 posts of Assistant Binder at Government of India Press, Faridabad, i.e., 23 unreserved, 1 SC, 4 ST, 17 OBC were advertised for selection. The qualifications required for selection are that (i) Matriculation (10th) pass from recognized School or Board (ii) Certificate of successful completion of apprenticeship under the Apprenticeship Act, 1961 or Certificate of successful completion of Vocational Course, at + 2 level in Printing Technology.

6. The applicants, who belong to unreserved category and who fulfill all the eligibility criteria have applied and in pursuance of the same, and also in pursuance of the selection done, i.e., trade test and interview, by the recruitment board, the respondents shown the names of the applicants under Unreserved category, along with others, vide the Annexure A5 declaration of panel for the post of Assistant Binder dated 09.02.2008. In pursuance of the said selection, the applicants were appointed as Assistant Binders w.e.f. 22.02.2008, and were kept on probation for a period of two years.

7. While things stood thus, one Shri Puneet who belongs to SC category and one Shri Nafe Singh, who belongs to OBC category, who were not selected as Assistant Binders, though applied along with others, filed OA No.2318/2008 claiming that persons who had done apprenticeship much after them had been selected, ignoring their seniority and in violation of the principle decided by the Hon'ble Apex Court in **U.P.State Road Transport Corporation and Another v. U.P.Parivahan Nigam Shishukhs Birozgar Sangh and Others**, (1995) 2 SCC 1. However, the said OA was dismissed by this Tribunal. Aggrieved by the same, the said Puneet and Another, filed WP(C) No.26/2009, which was finally disposed of by an order dated 20.07.2010 of the Hon'ble High Court of Delhi.

8. It is necessary, for better understanding of the facts, to quote the relevant paragraphs of the aforesaid decision, in detail, as under:

"1. Petitioners Puneet and Nafe Singh underwent apprenticeship training at the Government of India Press Faridabad and successfully completed the apprenticeship for a period of two years. Nafe Singh underwent apprenticeship from 7.10.1997 to 6.10.1999. Puneet underwent apprenticeship from 7.10.1998 to 6.10.2000.

2. They applied for being appointed as Assistant Binders when respondent No.3 issued an advertisement in the month of November 2007 to fill up 23 unreserved seats, 1 seat in SC category, 4 seats in ST category and 17 seats in OBC category. It may be noted that whereas Nafe Singh applied under the OBC category, Puneet applied under the SC category.

XXXXXXXX

26. To summarize on the legal position, pertaining to direct recruitment posts of a technical nature, declared as „Non Selection“ posts, persons who have apprenticeship certificates have to be put in a seniority list as per the direction No.4 issued by the Supreme Court in U.P.Road State Transport Corporation's case and after subjecting the eligible candidates to a trade test and an interview, all those who are declared suitable for being appointed, irrespective of their merit which

actually need not be tested at all and the test being restricted to determine suitability, be offered appointment in order of seniority.

27. Vide CM No.9237/2010 our attention was drawn to the fact that sensing a scam in the recruitment process, a vigilance enquiry has been ordered. We were called upon to call for the report of the vigilance enquiry, which has yet to be borne for the reason the vigilance enquiry is still on.

28. We need not wait for any report in view of the legal position, as per our understanding above, which requires us to dispose of the instant petition setting aside the impugned order dated 20.11.2008 and disposing of the instant writ petition as also OA No.2318/2008 by passing the directions to the 3rd respondent to redraw a list of empanelled candidates, not on the basis of their merit position, but on the basis of their seniority reckoned from the dates they successfully obtained the apprenticeship certificates, subject to their suitability. We clarify that if on the basis of the trade test and the interview which was conducted, suitability can be culled out de hors the merit, same should be done and if not the candidates be re-subjected to a trade test with the focus of the test being to determine suitability and not the relative merit.

29. We clarify that since appointments in the unreserved category and the ST category are not in question for the reason one petitioner applied for the sole post in the SC category and the other applied for a post in the OBC category, needful would be done only in respect of the SC and OBC candidates and not the candidates in the unreserved category and ST category.

30. Needful be done within a period of 4 months from today. Till the directions issued are complied with, existing empanelled candidates in the category of SC and OBS shall continue to work. "

9. The Contempt Case (C) No.224 of 2011, which was filed alleging non-compliance of the aforesaid order, has been disposed of by an order dated 17.09.2012 of the Hon'ble High Court of Delhi, and the relevant paragraphs therein read as under:

"A reading of the judgment alongwith operative directions culled out above would show that the court declared the post in issue i.e, the post of Assistant Binders as a non selection post. The court further directed respondents to redraw a list of empanelled candidates not on the basis of merit but on the basis of seniority reckoned from the date the petitioners had successfully obtained an apprenticeship certificate, subject to their suitability. Lastly, the court made it clear that the said exercise would be confined to SC and OBC categories only, and not, qua candidates who fell in the unreserved and ST categories.

Accordingly, the respondents pursuant to the said judgment drew up a fresh seniority list. As indicated above the petitioner No.2 has been included in the re-drawn panel. This

aspect is disclosed in the respondents' affidavit dated 9.12.2011. The position with respect to the same has been re-affirmed by Ms. Chauhan, learned counsel for the respondents.

The issue, therefore is outstanding only with regard to petitioner No.1 as he along with 5 other applicants has been left out from the re-drawn panel. This aspect is also referred to in the aforementioned affidavit of the respondents dated 9.12.2011.

In so far as the petitioner no.1 is concerned, the following remark has given in the re-drawn panel:

".... 5. Puneet S/o Sh.Ramesh Chand (SC): Non availability of SC vacancy, not covered for UR category as he got 56 marks against the UR standard of 60 marks out of 100 marks...."

Based on this remark Mr. Mittal, learned counsel for the petitioner No.1 submits that the respondents have once again in violation of the judgment of this Court applied the merit criteria as against seniority and suitability criteria, which is adverted to in the judgment of this Court dated 20.07.2010.

As against this Ms. Chauhan has submitted that while petitioner No.1 is suitable, in terms of the judgment of this Court, his seniority is lower than the other two applicants in the SC category. She submits that the seniority of the other two candidates i.e. Shri Sultan Singh and Shri Narender Kumar is of that vintage 1995 and 1996 respectively. She states that the petitioner's seniority is of the year 2000, and therefore, his name is not included in the re-drawn panel. In rejoinder learned counsel for the petitioner says that the respondents ought to have considered the petitioner in the unreserved category based on the criterion of seniority and suitability.

According to me, this was clearly not the scope of the judgment, and therefore, arguments in this regard cannot be entertained. This position is also clear on perusal of the observations of the Division Bench in paragraph 29 of the judgment wherein it is made clear that they were considering appointments only in the SC and OBC category and not in the unreserved category.

In my view, no case for contempt is made out. The same is accordingly dismissed.

Needless to say that, in so far as the petitioner No.2 is concerned, the judgment of this Court dated 20.7.2010, would be implemented."

10. Certain others, who were also not selected, filed OA Nos.983/2008, 1927/2008 and 612/2009, all of which were disposed of on 08.10.2010 by way of separate orders, after noting the operative

portion of the Judgement of the Hon'ble High Court in WP(C) No.26/2009, as under:

"3. In view of the above, the OA is disposed with a direction to the respondents to consider the case of the applicants and take action in terms of the above directions of the Hon'ble High Court, and pass appropriate orders within a period of two months from today. No costs."

11. Thereafter, the respondents vide Annexure A12, Office Orders dated 31.10.2012, by quoting the orders of the Hon'ble High Court in WP (C) No.26/2009, dated 20.07.2010 and in CCP No.224/2011 dated 17.09.2012 and while stating that in pursuance of the said orders of the Hon'ble High Court that they have redrawn the panel and submitted the same to the Hon'ble High Court for approval and the applicants along with certain others have not been included in the redrawn panel and accordingly the services of the applicants stand terminated on completion of one month's notice on 29.11.2012. When the applicants filed OAs questioning the said order, the respondents by virtue of the Show Cause Notices dated 27.11.2012 (Annexure A10 (Colly.)) withdrawn the said termination orders dated 31.10.2012 and accordingly, the applicants withdrawn the said OAs. Even after submission of categorical replies to the said Show Cause Notices by the applicants, the respondents issued the impugned termination orders dated 27.12.2012 (Annexure A1(Colly.)) to the applicants.

12. The respondents filed a detailed counter, while not seriously disputing the aforesaid facts but strenuously submitting that they have approval for redrawing the panel by excluding the names of the

applicants and accordingly their impugned action terminating the services of the applicants is legal, valid and sustainable.

13. Heard Mrs. Jyothi Singh, the learned Senior Counsel with Mr. Manjeet Singh Reen, learned counsel for the applicants and Dr. Ch. Shamsuddin Khan, the learned counsel for the respondents, and perused the pleadings on record.

14. In short, the controversy is when the Hon'ble High Court while deciding the WP(C) No.26/2009, filed by S/Shri Puneet and Nafe Singh, who belong to SC and OBC categories respectfully, categorically stated in unambiguous terms "that since appointments in Unreserved category and ST category are not in question, needful would be done only in respect of the SC and OBC candidates and not the candidates in the unreserved category and ST category", whether the respondents are empowered to disturb the applicants, who belongs to General category and can terminate their services.

15. The specific case of the respondents both in the impugned termination orders and in the counter filed in the OA, which was reiterated by their counsel at the time of hearing of the OA, is as under:

- (i) The Judgement dated 20.07.2010 in WP (C) No.26/2009 of the Hon'ble High Court of Delhi has been extended to the applicants of other categories also, i.e., SC and General categories, as per CAT, PB, New Delhi judgments

dated 08.10.2010 in OA Nos.983/2008, 1927/2008 and 612/2009.

- (ii) The revised panel whereunder the names of the applicants were excluded was having the approval of the Hon'ble High Court in Contempt Case (C) No.224/2011 dated 17.09.2012.

16. In view of the above specific stand of the respondents it is necessary to examine the orders in OA No.983/2008, 1927/2008 and 612/2009, which are verbatim same, though disposed of by way of separate orders, all dated 08.10.2010.

17. In OA No.1927/2008, the applicants herein were also made as party respondents, and hence, the orders passed therein are definitely binding on them. But whether this Tribunal while disposing of the said three OAs, passed any order either contrary to the orders passed by the Hon'ble High Court in WP(C) No.26/2009 dated 20.07.2010 and in CCP No.224/2011 dated 17.09.2012 or affecting the rights of the applicants in continuation of their services, is the question to be determined.

18. As extracted above, this Tribunal while disposing of the OA Nos.983/2008, 1927/2008 and 612/2009, by separate orders dated 08.10.2010, without going into the individual merits of the applicants therein, i.e., to which category they belonged to and if they belonged to Unreserved and ST categories, then also, will they be entitled for the benefit granted to the other categories such as SC and OBC, etc.,

summarily directed the respondents to consider the case of the applicants and take action in terms of the directions of the Hon'ble High Court in WPC No.26/2009. When once the Hon'ble High Court specifically directed that since the appointments in the unreserved category and the ST category are not in question, before them, in WP(C) No.26/2009, needful would be done only in respect of the SC and OBC candidate and not the candidates in the unreserved category and ST category, the contention of the respondents in WP(C) No.26/2009 were extended to other categories such as unreserved and ST category, by virtue of the orders of this Tribunal dated 08.10.2010 in OA No.983/2008, 1927/2008 and 612/2009, is unsustainable, unreasonable and against to the record.

19. The other contention of the respondents that the redrawn panel, purported to be prepared in pursuance of the orders of the Hon'ble High Court in the said WP (C) No.26/2009, whereunder the names of the applicants were excluded was approved by the Hon'ble High Court vide its Order dated 17.09.2012 in Contempt Case No.224/2011, also falls to the ground being not supported by the said order itself.

20. The said Contempt Case was filed in WP (C) No.26/2009, whereunder, out of the two petitioners, namely, Shri Puneet belongs to SC and Shri Nafe Singh belongs to OBC, and the Hon'ble High Court while disposing of the said CC, as extracted above, while categorically reiterating that the exercise directed to be done in the WP(C) No.26/2009 would be confined to SC and OBC categories only, and

not, qua candidates, who fell in the unreserved and ST candidates, observed that "Accordingly, the respondents pursuant to the said judgment drew up a fresh seniority list."

21. Though there was a reference of a fresh seniority list, but there was no discussion or consideration or observation of any sort about the Unreserved and ST categories or any of the candidates who belongs to said categories. More particularly, when the petitioner in the Contempt Case, who belongs to SC category, submitted that if he was not eligible under SC category, he should have been considered in the Unreserved category based on the criteria of seniority, the Hon'ble High Court in the said order dated 17.09.2012, while rejecting the said submission, reiterated that in WP (C) No.26/2009 they were considering appointments only in the SC and OBC category and not in the Unreserved category.

22. Therefore, reference of any fresh or redrawn seniority list/panel in the order dated 17.09.2012 in Contempt Case No.224/2011, cannot empower the respondents to disturb the position of the applicants, who belong to unreserved category, in any manner.

23. In the circumstances and for the aforesaid reasons, both the OAs are allowed and the impugned orders are quashed and set aside with all consequential benefits. No order as to costs.

(Dr. Birendra Kumar Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)