

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 1505/2015

Reserved on: 31.01.2017
Pronounced on: 7.02.2017

**Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)**

Sunil Kumar Yadav
S/o Shri Jagdish Prasad Yadav
R/o Vill. Panera
Post – Banar
Teh-Kotputli, Jaipur
Rajasthan ... Applicant

(Through Shri Ajesh Luthra, Advocate)

Versus

1. Commissioner of Police
PHQ, MSO Building
IP Estate, New Delhi
2. The Deputy Commissioner of Police
(Recruitment Cell)
New Police Lines
Kingsway Camp,
Delhi.
3. The Deputy Commissioner of Police
(Establishment)
PHQ, MSO Building
IP Estate, New Delhi. ... Respondents

(Through Mrs. P.K. Gupta, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The facts of the case are that the applicant appeared in the recruitment process of 2012 for the post of Constable (Driver) as

an OBC candidate. He obtained 72 marks and for OBC candidates, the cut-off was 73. Therefore, he could not make the grade. However, later on it was detected that answer option for Question No.53 was incorrect and re-evaluation was done. On reevaluation, his marks increased to 73 but at the same time, the cut-off marks also increased to 74, as a result he could not be included.

2. On re-evaluation, 45 candidates who were selected in previous results were out of merit, which includes candidates who, on reevaluation, have 72 marks and one candidate who had 73 marks but younger to the applicant. The department retained these candidates and did not cancel their appointment on the understanding that the Hon'ble Supreme Court in Civil Appeal Nos. 2525-2516 of 2013, **Rajesh Kumar and others etc. Vs. State of Bihar and others etc.**, in some other case of selection, has held that "Such of the appellants as do not make the grade after reevaluation shall not be ousted from service, but shall figure at the bottom of the list of selected candidates based on the first selection in terms of advertisement." In case these 45 persons are not taken out, the applicant does not get selected though he has 73 marks, which is more than 72 obtained by many who have been retained in service, and also is elder to the candidate, Raj Kiran Yadav, who was born on 23.05.1990 whereas the applicant was born on 29.07.1989, both having obtained 73 marks on re-evaluation.

3. Learned counsel for the applicant states that, first of all, the respondents have selectively used the judgment of the Hon'ble Supreme Court as para 19 of the judgment states as follows:

"19. In the result, we allow these appeals, set aside the order passed by the High Court and direct that –

(1) answer scripts of candidates appearing in 'A' series of competition examination held pursuant to advertisement No. 1406 of 2006 shall be got re-evaluated on the basis of a correct key prepared on the basis of the report of Dr. (Prof.) CN Sinha and Prof. KSP Singh and the observations made in the body of this order and a fresh merit list drawn up on that basis.

(2) Candidates who figure in the merit list but have not been appointed shall be offered appointments in their favour. Such candidates would earn their seniority from the date the appellants were first appointed in accordance with their merit position but without any back wages or other benefit whatsoever.

(3) In case writ petitioners-respondent nos. 6 to 18 also figure in the merit list after re-evaluation of the answer scripts, their appointments shall relate back to the date when the appellants were first appointed with continuity of service to them for purpose of seniority but without any back wages or other incidental benefits.

(4) Such of the appellants as do not make the grade after reevaluation shall not be ousted from service, but shall figure at the bottom of the list of selected candidates based on the first selection in terms of advertisement Page 12 No.1406 of 2006 and the second selection held pursuant to advertisement No.1906 of 2006.

(5) Needful shall be done by the respondents – State and the Staff Selection Commission expeditiously but not later than three months from the date a copy of this order is made available to them."

4. According to learned counsel, para 19 (2) quoted above clearly states that candidates who figure in the merit list but

have not been appointed shall be offered appointments in their favour and will earn their seniority from the date the appellants were first appointed in accordance with their merit position but without any back wages or other benefits thereon. Accordingly, if the respondents had prepared a merit list based on re-evaluation, then the applicant would come within this revised merit list and be eligible for appointment. It is argued that para 19 (4) should be read in consonance with 19 (2) above, which means that the respondents should prepare a revised merit list and then appoint those who have come in the revised merit list first. It is further added that the judgment in *Rajesh Kumar and others (supra)* by the Hon'ble Supreme Court was in exercise of discretionary power under Article 142 of the Constitution without laying down any ratio and the respondents should have treated it as a judgment in personam and not apply it in all such cases, treating it as a law laid down by the Hon'ble Supreme Court. It is stated that as a result, less meritorious candidates have been appointed whereas the applicant who is more meritorious and younger to *Raj Kiran Yadav*, who also obtained 73 marks like him, could not get selected and this is gross travesty of justice.

5. Learned counsel for the respondents states that the applicant has not made any challenge to the selection process. It is further stated that in OA 834/2016, **Rajinder Singh (Constable) Vs. Delhi Police and others through Commissioner of Police, Delhi** decided by the Tribunal on 12.09.2016, the same issue concerning the same recruitment process was under consideration. In that case, the earlier marks

obtained were 76 and the cut-off was 77. On re-evaluation, the applicant's marks went up to 77 but the cut-off marks also went up to 78. Similar relief was sought by the applicant in that case. The said OA was dismissed holding that since the applicant therein had obtained less marks vis-à-vis the cut-off, he had no right to be considered for appointment.

6. We have heard the learned counsel for the parties, gone through the pleadings available on record and perused the judgments cited.

7. We note that in *Rajinder Singh (Constable) (supra)*, the applicability of para 19 in totality, particularly the directions of the Hon'ble Supreme Court in para 19 (2) had not been gone into specifically. Therefore, it would not act as a precedent in the present case. Para 19 (2) specifically provides that candidates who figure in the merit list (revised) but have not been appointed, shall be offered appointment in their favour. Even the principles of natural justice would require so. It is not the applicant's fault that answer to Question No.53 was wrong. Therefore, what is relevant is the merit list formed after re-evaluation and if in that the applicant comes within the merit list, denying him appointment would be an act of injustice on the part of the respondents. The respondents, however, state that now there are no vacancies though in their counter affidavit, in reply to para (F), they have stated as follows:

"F.It clearly shows that out of the 181 vacancies reserved for OBC candidates, 180 candidates have already joined the department and

14 cases are under process, as such, no vacancy is available at present in respect of OBC category."

8. Going by the above reply, it would appear that there were a total of 194 vacancies but we need not go into that. Based on para 19 of the judgment of the Hon'ble Supreme Court, quoted above, the department has retained 45 candidates, some of whom have now on reevaluation got 72 marks and Raj Kiran Yadav is younger to the applicant, though with the same marks, namely 73. The Hon'ble Supreme Court has also stated that they will be at the bottom of the list. Therefore, the only solution seems to be that the respondents prepare a revised merit list based on re-evaluated marks and then fill up the vacancies according to this merit list and, if the applicant qualifies in this merit list for appointment, he should be appointed. After the vacancies are filled up, if there are some candidates left out of 45 candidates whom the respondents decided to retain, then the department would have to create supernumerary posts for that purpose till such time vacancies arise in future.

9. The OA is disposed of with the direction to revise the merit list as stated above and fill up the post strictly according to the revised merit list and directions above. There shall be no order as to costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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