

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 2324/2015

Reserved on 05.05.2016
Pronounced on 16.05.2016

**Hon'ble Dr. Birendra Kumar Sinha, Member (A)
Hon'ble Smt. Jasmine Ahmed, Member (J)**

Anil, Age-21 years
Roll No.2201202966
Registration- ID- 51101954642
S/o Shri Mohan,
VPO-Gorar,
Tehsil-Kharkhoda, District-Sonepat,
Haryana. ... Applicant

(By Advocate: Mr. Sachin Chauhan)

VERSUS

1. Union of India: Through
The Secretary,
Ministry of Personnel, Public Grievances
& Pension, Govt. of India,
Department of Personnel & Training,
North Block, New Delhi

2. Staff Selection Commission,
Through the Chairman,
S.S.C., Block No.12,
CGO Complex, Lodhi Road,
New Delhi-3. ... Respondents

(By Advocate Mr.Gyanendra Singh)

O R D E R

Smt.Jasmine Ahmed, Member(J):

The prayer made in the present Original Application filed under Section 19 of Administrative Tribunals Act, 1985 read thus:-

"8.1 To quash & set aside the order dated 07.05.2015 and to further direct the respondent that applicant be given offer of appointment in pursuance of his selection to the post of Multi Task (Non-Technical) in the recruitment

process of MT (NT) Staff Examination-2014 by taking Delhi (Code-II) as the state preference of the applicant with all consequential benefit including seniority, promotion and pay & allowance.

Or/and

(i) Any other relief which this Hon'ble Court deems fit and proper may also be awarded to the applicant."

2. The factual matrix of the case is that the applicant applied for the post of Multi Tasking (Non-Technical) in pursuance of the Memorandum dated 07.05.2015 being fully eligible, he was allowed to appear in the recruitment process initiated by Staff Selection Commission (SSC) for the post of MT (Non-Technical). It is to mention here that applicant applied for the above said post under OBC category and the mode of filing of application was online registration. Accordingly, the applicant was allotted registration ID as 51101954642 for the recruitment process for MTS Examination, 2014. While applying online, counsel for applicant categorically states that the applicant gave preference of State/UT for the post of Multi Task (Non-Technical) for Delhi (11). The applicant appeared in written test for paper-I for the post of MT (Non-Technical), vide roll no. 2201202966 and the applicant successfully passed the written examination scoring 99.25 marks under OBC category which is much more than the cut-off marks of OBC category i.e. 96.75.

3. It is mentioned by the counsel for the applicant that subsequent to passing the paper-I, the applicant was subjected for paper-II (short essay/letter in English and vernacular language) and applicant appeared in paper-II accordingly, and scored 38.00 marks. The counsel for applicant categorically mentioned that the cut-off marks of

paper-II for OBC category is 38.00 marks which the applicant easily scored under the OBC category. But surprisingly despite scoring higher marks than the cut-off of marks under the category of OBC in the selection process, the applicant was not called for appointment but surprisingly other candidates whose name appeared alongwith applicant in the final declared result were given offer of appointment and also got the appointment.

4. Being shocked, the applicant in order to get the reason for not offering the appointment to him. he preferred an application under Right to Information Act to SSC. On 19.12.2014, SSC replied to the RTI application preferred by the applicant stating that the applicant has filled the State code in the on line verification of data as Rajasthan i.e (12) instead of Delhi and the applicant has not been able to score marks as per the cut-off marks declared for the State of Rajasthan in the present selection process, accordingly he has not been offered appointment.

5. The counsel for the applicant states and drew our attention to page no. 16 of the OA and showed that applicant has filled up registration form for the State/UT of domicile as Delhi (11). He further states that second stage of examination is only qualifying in nature and any aspirant can apply to the second stage of examination, subject to passing the first stage of examination, getting minimum declared cut- off marks for the State he applied for. Counsel for the applicant vehemently argued that applicant has never filled up form for the on line verification as State code Rajasthan (12) and states that as per the declared result of examination also it cannot be accepted as it

was very much known to the applicant that he has scored in the first stage of examination 99.25 marks for the State code of Delhi under OBC category and the cut-off of marks for State of Rajasthan (12) is much higher being 113.75 marks, so it is the contention of counsel for applicant being fully well aware about the cut-off marks of both the places, i.e. Delhi and Rajasthan, it is not acceptable that the applicant would have filled up the on line form showing his State code as Rajasthan, as it is his argument that the second stage examination is subject to passing of first stage of examination. Hence, knowing fully well that his scored mark is less than 113.75, i.e of Rajasthan, how can he fill up State code of Rajasthan?. As per the advertisement notice issued by SSC there is no provision to change the State at the time of document verification. On the contrary, the candidates are not even allowed to change even the centre for examination and as per the scheme of examination it was mandatory to choose a centre within such State/UT for which the applicant is applying.

6. The counsel for the applicant also states that that the on line filling was done by the officer of the respondents, the applicant has only put his signature hurriedly as in a day at least 100 of candidates were called during on line document verification and the error occurred due to hurry or oversight but the centre code is correctly filled as 2201. He also states there is no provision in the examination scheme as notified to change the State preference (State code) at the time of on line document verification. On the contrary, the instruction in the advertisement lays down that even change in examination centre will not be allowed. He also states that once the respondents allowed him

to sit in paper-II and the applicant has scored 38 marks in paper II which is the cut off marks for OBC category, now the respondents are estopped from taking any other plea as it will amount to approbate and reprobate on the part of respondents on their own action.

7. The counsel for the respondents vehemently opposes the contention of counsel for applicant and states that the form has been filled up by the applicant himself and during online verification of data it was found that the applicant himself mentioned his State code as Rajasthan with the corresponding State code as 12 instead of Delhi. As he himself changed his State code as Rajasthan while on line registration was done for document verification naturally, the respondents have considered him against the vacancies for State of Rajasthan and as the cut-off marks in paper-I under OBC category in the Rajasthan State declared as 113.75 marks, accordingly the applicant failed to meet the cut-off percentage for the State of Rajasthan and hence has not been selected. He also states that this is second round of litigation before this Tribunal and the Tribunal vide order dated 04.02.2015 directed the respondents to consider the representation dated 30.12.2014 of the applicant and in pursuance of the order of this Tribunal, the respondents already passed the speaking and reasoned order as per the direction of this Tribunal and nothing survives after that. He also states that para 10 of the common instructions as provided to the candidates as per Notification states as under:-

“.... Only a single application will be entertained for each State/UT. In case of multiple application for on-line application, the last application for which part-I and part-II registration have been completed will be accepted. For off-line application, the Regional Director/Deputy Director at

his/her discretion, will accept only one of the application. Candidates intending to apply for the post in more than one State/UT should submit separate application for each State/UT to the Regional Office having jurisdiction over such State/UT.....”

He states that as per this instruction, the respondents have dealt with the application of the applicant and while it came to notice that the applicant has filled State code of Rajasthan, the candidature of the applicant has been cancelled as not scoring the cut off marks for the State of Rajasthan under OBC category. He also states that as per para 15 of the guidance for the candidates, the decision of the Commission in all matters, relating to eligibility, acceptance or rejection of the application, penalty for false information, mode of selection, conduct of examination(s) and interviews, allotment of examination centres, selection and allotment of posts/organizations to selected candidates will be final and binding on the candidates and no enquiry / correspondence will be entertained in this regard....” He also stated about the undertaking under para 23 which states “I hereby declare that all statements made in this application are true, complete and correct to the best of my knowledge and belief. I understand that in the event of any information being found suppressed/false or incorrect or ineligibility being detected before or after the examination, my candidature/appointment is liable to be cancelled...”. He states that as the information given by the applicant found to be incorrect and contradictory, the candidature of the applicant has been cancelled by the respondents which cannot be termed in any way illegal or arbitrary.

8. Heard the rival contentions of the parties and perused the documents on record.

9. It is not disputed that while filling up the form for the first stage of examination, the applicant has filled up the registration form vide registration ID 51101954642 where he has filled up State/UT as Delhi with the code no 11. It is also not disputed by the respondents even that the applicant scored much higher mark than the cut off mark under the OBC category for Delhi. It is also not disputed that in second tier of examination, the applicant has got the cut off marks of 38.00 which is the cut off marks of OBC category. The entire confusion started from the filling up of on line form for the on line verification of documents. It is the contention of the counsel for respondents that here at this stage the applicant has filled up the on line registration form and showed his State as Rajasthan. In this regard, he drew our attention to page no. 6 of his counter affidavit, wherein he showed that the applicant while filing on line verification of data has filled up the State column as Rajasthan with code no. 12. Hence, he states that this has been filled up by the applicant himself and accordingly the decision taken on this application by the respondents cancelling the candidature of the applicant is nothing wrong as he could not score the cut off marks under OBC category for State of Rajasthan, but while perusing page no 6 of the counter affidavit, we find though in the on line verification it has been filled up State as Rajasthan with code no. 12 but while filling up centre code it has been filled up the centre code no mentioned as 2201 which is the centre code for Delhi which is itself contradictory. The arguments of the counsel for respondents that para 10 of the common instructions for candidates states that if the candidate intend to apply for the post in more than one State/UT should submit separate application for each State/UT to the Regional office having jurisdiction over such State/UT. But we find that this is

not a case of applicant that he intended to apply for the post in more than one State/UT. If it was so, then in that case he had to apply for different State, filing more than one application. After perusing the documents on record, we find it does not reflect that the applicant intended to apply for the post in more than one State because the second tier examination is subject to successfully passing the first tier examination. Hence, as per the notification/rule/instruction the applicant would be allowed to appear in the second tier examination only after scoring minimum cut off marks for his / her category. Hence after qualifying for Delhi, the applicant had to be allowed for the second tier examination and the argument of counsel for applicant that the second tier examination is after the publication of result for the first tier examination. By any stretch of imagination, it cannot be accepted that knowing fully well that the applicant has scored lesser marks than the cut off marks for the State of Rajasthan he would filled up the form intentionally/ knowingly State code of Rajasthan while on line verification of documents. It is also there that the applicant has filled up centre code of Delhi only while on line verification of documents as 2201 which is the code no of Delhi. As per the Notification even if the applicant had filled up the changed State then the respondents should not have accepted or allowed him to appear for the second tier of examination and once they are accepting and allowing him to appear in the examination, the respondents cannot go back and take the plea of filling up the name of different State and cancelling his candidature. After hearing the arguments and after perusing the documents, it reveals that it may be human error or some misunderstanding on the part of applicant while filling up on line data. It cannot be termed as a case of furnishing incorrect information

with ulterior motive for getting some benefit as the applicant has already scored very good marks as per the cut off marks for State Delhi on the other hand it can be termed as human error or bonafide mistake not amounting to mislead with any hidden agenda. The matter is of recruitment of MTS and meritorious aspirant clearing both the aforesaid examination scoring higher marks have obviously a natural expectation that he shall be offered appointment. It is also assumed that the applicant who is appearing for MTS may not be very much computer friendly or accustomed with on line process.

10. In the result, after taking into account the facts and circumstances of the case, we feel the balance of convenience mostly weigh in favour of the applicant, hence direct the respondents that the applicant shall be considered for appointment for which he has qualified. Accordingly, the order dated 7.5.2015 is quashed and set aside. OA is allowed. No costs.

(Smt.Jasmine Ahmed)
Member (J)

(Dr.Birendra Kumar Sinha)
Member (A)

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