

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO.129/2019

Dated : 8th July 2019

CORAM:- HON'BLE R.VIJAYKUMAR, MEMBER (A)
HON'BLE RAVINDER KAUR, MEMBER (J)

Suraj Ramkrushna, Pachpande Age 27, R/A Nhavi,
Taluka-Yaval, District Jalgaon-425524.

...Applicant

(By Advocate Shri Vicky Nagrani)

Vs.

1. The Union of India, Through the Secretary, Ministry of Defence, South Block, New Delhi-110001.
2. The Director General, Ordnance Factories, Ordnance Factory Board, 10, Shahid Khudiram Bose Road, Kolkatta-700001.
3. Principal Director, Ordnance Factory Recruitment Centre (OFRC) Ambajhari, Nagpur-440021.
4. Senior General Manager, Ammunition Factory, Khadki, Pune-411003.
5. Manik Limbabuwa Giri At Post Sawangi Bk, Tal-Basmat, Hingoli, Hingoli, Maharashtra (MH)-431705.

...Respondents

(By Advocate Shri P.Khosla).

Reserved on :- 13.06.2019

Pronounced on:- 07.07.2019

O R D E R

R.Vijaykumar, Member (A)

This application was filed on 14.02.2019 challenging the result of direct recruitment of Industrial Employees (Semi Skilled), the result of which was published on 3.8.2018 and in which the

applicant did not find a place. The respondents also published the cut-off marks for the final select list in which, for the Machinist Trade, the lowest ranking OBC candidate secured 59 marks and was selected. The applicant also inquired about his marks and he was informed that he had obtained 60 marks and had been included in the General category because at the time of filling the form, he had opted for OBC Creamy Layer instead of OBC Non-Creamy Layer. He also obtained a copy of the result of the examination in his case which was available online and has confirmed these details of his marks. Under section 19 of the Administrative Tribunal Act, 1985 he has sought the following reliefs :-

"a) This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same quash and set aside the impugned select list qua the Respondents No.5..

b) This Hon'ble Tribunal may further be pleased to hold and declare that his candidature be considered under OBC category since he had enclosed the copy of certificate at the time of filling up the form.

c) This Hon'ble Tribunal may further be pleased to direct the Respondent No.3 to proceed further with the Recruitment process considering the case of the Applicant under OBC category and if he qualifies all the remaining test as per recruitment process appoint the applicant on the post of

(Machinist) at Ammunition Factory, Khadki, Pune since he was qualified the same by securing 60 marks with all consequential benefits i.e. above the cut off marks.

d) Costs of the application be provided for.

e) Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed".

2. The applicant submits that while filling the online form along with attachments of relevant documents, against caste option, the applicant had opted for OBC Creamy Layer instead of OBC Non-Creamy Layer. His application was made against Employment Advertisement No.10201/11/0209/1718 dated 29.05.2017 (Annexure-A2) and while applying, he asserts that he had enclosed the mark sheet for the Xth standard, certificates of NCVT and also OBC caste certificate along with Non-Creamy Layer certificate. He also submits that his Admit Card (Annexure-A6) dt. 10.09.2017 mentioned his category as OBC which led him to believe that he had been correctly categorised. He appeared in the written exam on 10.9.2017 for which the above mentioned results were declared. He argued that even though he had made an error in selecting OBC creamy layer as his option in his application form, he had enclosed the non-creamy layer certificate and this minor error cannot be held

against him. He refers to the decision of the Hon'ble Apex Court in **Dolly Chhanda v. Chairman, JEE and Others (2005) 9 SCC 779**, in which it is held at para 7 that:

"7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement for benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature."

3. Official respondents 1 to 4 referred to the admission of the candidate on making his wrong option, as a result of which, he was placed in the unreserved category. As a result of their selection, out of 24 vacancies for OBC non-crea, u ;auer 24 candidates have been selected and 17 candidates appointed at the time of filing reply.

4. The short point in this case is that the applicant had selected a wrong option while filing the online application form and was placed under the unreseved category as against the OBC (non-creamy layer category) to which he belonged. He refers to Instruction No.XXVI which reads as follows:

"Request for change/correction in any particular in the application form shall not be entertained under any circumstances of OFRC/OFB will not be responsible for any consequence arising out of non-acceptance of any correction/addition/deletion in any particular filled in application form, whatsoever the reason may be."

Therefore, learned counsel for the applicant argued trhat he could not have made any correction in the format given the nature of the system and the instructions. Further under instruction No.16(vi) it is stated that only a single application would be entertained and candidates making multiple applications could be rejected outright without notice. He also refers to the validity of his OBC certificate by reference to DOPT O.M.No.31.03.2016. Learned counsel for the applicant argues that the applicants bona fides were clearly without doubt but he had been penalised for a minor error which could have been ignored in view of the rulings of the Hon'ble Apex Court in **Dolly Chhanda (supra)**. Learned

counsel also mentions without producing any evidence or previous affirmation in the OA that the applicant had sent a letter seeking correction to the respondents after filing his application.

5. The respondents have referred to the FAQs published in the application process wherein a question had been posed and answered as under:

"I have entered incorrect details in Part I of my registration process (OR) I want to change the factory where I want to apply. How can I proceed by modifying Part details?"

Ans: After completing Part I of the registration process, the candidate will receive a Application Registration Number on his registered mobile number. Thereafter the candidate should complete Part II of the registration process by logging into APPLICANT LOGIN with his Application Registration Number (ARN)+ Date of Birth (OR) Password. The candidate can view the details entered in Part I of the registration process in his Login ID. If the candidate wants to change any detail that he/she has entered in Part I, then he/she will have to delete the entire registration and apply afresh. The candidate will be provided an option to delete or confirm their registration. In case the candidate was of the opinion that the details furnished in PART-I are wrong then he/she should delete his/her registration by clicking on 'CANCEL REGISTRATION'. Once this is done, the candidate will be able to re-apply with original mobile number, email id and other details."

Therefore, they argue, the applicant was always at

liberty to correct the entries in Part-I. Instead, the applicant who had to complete his application process by first completing Part-I and then receiving the registration number following which, he had to complete Part-II or seek changes in Part-I, went ahead and filled up Part-II. As a result, he confirmed the details of his application form without change or correction of the alleged error made in the Part-I process. Admit Cards were prepared based on information supplied by candidates in their online applications and both OBC (Creamy Layer and OBC Non-Creamy Layer) were only mentioned as OBC without sub-qualification. They deny that the issue of Admit Card was a verification that the applicant had been classified under the OBC Non-Creamy Layer. They also state that based on the written test, they had called candidates equal to 1.25 times the vacancies for trade test and documentation verification. Since the applicant was considered under the UR category he did not qualify for the Trade Test and R-5 qualified for the Trade Test whereas R-5 was the last candidate included, even though he had obtained lesser marks. They also state that after the applicant had completed both Part-I and Part-II in the above manner there was no further scope for him to alter his

application details. In support of their case, they refer to a decision of the Hon'ble Apex Court in **Rakesh Kumar Sharma v. Government of NCT of Delhi and Ors., Civil Appeal No.6116 of 2013**, where the Hon'ble Apex Court ruled as under:

" It also needs to be noted that like the present appellant there could be large number of candidates who were not eligible as per the requirement of rules/advertisement since they did not possess the required eligibility on the last date of submission of the application forms. Granting any benefit to the appellant would be violate of the doctrine of equality, a backbone of the Fundamental Rights under our Constitution. A large number of such candidates may not have applied considering themselves to be ineligible adhering to the statutory rules and the terms of the advertisement."

The respondents also state that the applicant subsequently applied in the next advertisement and was appointed and has joined service on 24.1.2019.

6. Private Respondent No.5 has also filed his affidavit in reply where he reiterates his eligibility and denies the challenge of the applicant as contrary to rules.

7. Arguments of the learned counsels have been carefully considered and pleadings and law and precedents have been noted.

8. The Hon'ble Apex Court has held in **Rakesh Kumar Sharma** (supra) that the appellant could be part

of a large number of candidates who were not eligible and granting any benefit to the appellant would violate the doctrine of equality. It is only after such a hurdle is crossed can there be a consideration of whether the rulings of the Hon'ble Apex court in **Dolly Chhanda** (supra) for excusing a minor error could be considered. In the present case, the applicant is one of many and excusing an error made will fall foul of the doctrine of equality under the Constitution. It would still be possible to excuse such an error if the applicant could have pointed out to some ambiguity or error in the application process and instructions that created a disadvantage in his case. For this purpose, we need to look at the instructions that have been given at the time the advertisement. Reference to the instructions shows at para 9.4 (d) & (f), that candidates were required to fill up information at both the stages at Part-I and Part-II to be eligible for the written examination. Instructions 9.5 reads as under:

"9.5 Any duplicate applications with different trades/factories will be summarily rejected. The applicants are advised to submit only single application. However, if due to any unavoidable situation, if she/he submits another/multiple applications, then she/he must ensure that application with the higher Application Registration Number/ last application is complete in all respects like

applicants' details, examination centre, photograph, signature, fee etc. The applicants who are submitting multiple applications should note that only the applications with higher Application Registration Number/last application shall be entertained by OFRC and fee paid against one registration shall not be adjusted against any other registration or refunded under any circumstances."

9. Therefore, the instructions clearly set out the rule that the applicant could have submitted multiple applications with separate fees and incorporate his desired information with the result that the higher application Registration Number/last application would be entertained as specified in this instruction. The applicant did not adopt this course.

10. The respondents in their reply, and which has been reproduced above at para 5, the applicant also had the option of filing a single application in Part-I and then awaiting his Registration Number and log in details to make corrections before completing Part-II. He could also have deleted the registration and applied again if he so wished. The applicant did not avail this option. It is also quite apparent that the instructions bore no ambiguity and are quite self-consistent although possibly set out in great detail and in its prolixity, quite complex to a young

applicant.

11. It is also quite clear by reference to the advertisement and instructions in the table under instruction IV that the reference to OBC was strictly for OBC (NCL) with corresponding age relaxations. Therefore, the applicants have affirmed that they have treated OBC Creamy Layer candidates as unreserved candidates.

12. The case of the applicant only underscores the need for extreme care in filling up such online application for mass recruitments or at least, mass applications made against few posts and which is the hallmark of recent advertisements issued by Government Departments inviting applications for appointment.

13. The respondents have necessarily to adopt a uniform system for first, quickly issuing the Admit Card and for this purpose, it is the basic application data that they can depend upon to ensure fair and equal treatment for all those who had applied. The applicant cannot demand a special treatment since this would bring the respondents at fault under the provisions of the Constitution. Although the case of the applicant might invite sympathy considering the nature of the error, its

wider implications do not invite the need to intervene by granting reliefs of the kind sought by the applicant for which we need to rely on the rulings of the Hon'ble Apex Court in **Rakesh Kumar Sharma** (supra).

14. In the circumstances, this OA is dismissed without any order as to costs.

(RAVINDER KAUṚ) —
MEMBER (J)

(R. VIJAYKUMAR) 8/7/19
MEMBER (A)

B.

JD
9/7/19