

(Reserved on 11.11.2019)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

Original Application No. 330/00476/2016

This the **05th** day of **December, 2019.**

HON'BLE MS. AJANTA DAYALAN, MEMBER (A)
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Sounbir Singh, Aged about 25 years, S/o Sri Man Singh, R/o Vill. & PO- Saray Daud, District - Mathura.

.....Applicant

By Advocate: Shri Vinod Kumar

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi - 110001.
2. The Director General of Ordnance Services, Master General of Ordnance Branch, Integrated Head Quarter of MOD (Army), New Delhi-110011.
3. The Commandant, Central Ordnance Depot (COD), Agra – 282009, C/o 56 APO.
4. The Administrative Officer, Central Ordnance Depot (COD), Agra – 282009.
5. Sri Hari Om, S/o Sri Bachchoo Lal, Selected Fireman, C.O.D., Agra – 282009, C/o 56 APO.

.....Respondents

By Advocate : Shri Raghvendra Pratap Singh
Shri N.P. Singh

ORDER

DELIVERED BY: HON'BLE MS. AJANTA DAYALAN, (MEMBER-A)

Present OA has been filed by the applicant Sounbir Singh seeking quashing of order dated 09.02.2016 (Annexure A-1). The applicant has also sought his appointment on the post of Fireman against vacancy meant for general category candidate. Same prayer for his appointment is made in the interim relief as well.

2. In the OA, the applicant has stated that in response to the notification published by the respondents in Rozgar Samachar dated 13-19.08.2010, the applicant applied for the post of Fireman. According to him, the total posts advertised were initially 15 but later enhanced to 19 posts. The applicant applied under OBC category being a Jat by caste. He appeared for physical test as well as for written examination. In the final result of 190 candidates, the applicant was at Sl. No. 189. The applicant appeared in interview and thereafter vide letter dated 08.01.2011 (Annexure A-4), he was informed that he has been recommended for selection and he was asked to report alongwith original certificates and documents. However, later the whole selection process was cancelled on technical grounds by the respondents' department. The cancellation was challenged before this Tribunal by some other candidates in OA Nos. 180/2011 as well as 262/2011, which were allowed by this Tribunal vide order dated 21.12.2012. Thereafter, the applicant being similarly situated to the applicants of OA Nos. 180/2011 and 262/2011 made a representation dated 21.01.2013 (Annexure A-5) to the respondents' department seeking his appointment. Having received no response from the respondents, the applicant filed OA No. 402/2013 on the analogy of OA Nos. 180/11 and 262/2011. The Tribunal vide its order dated 09.04.2013 (Annexure A-6) allowed the same relief as in other OAs, to the applicant as well. In compliance of the order of this Tribunal, the applicant was recommended for selection to the post of Fireman under OBC quota vide letter dated 11.04.2013 (Annexure A-7) subject to verification of his original documents. In compliance of this letter dated 11.04.2013, the applicant reported at the respondents' office for verification of his documents. However, the authorities stated that the Jat community is not considered an OBC category by the Government of India as on cut off date fixed by the Depot in the notification. The applicant's request to give him appointment under general category as statedly he had secured more marks than the last selected general category candidate was not agreed to and

he was advised that direction will be sought from higher authorities. Thereafter the applicant submitted an application dated 02.05.2013 (Annexure A-8) requesting for his appointment under general category as the last selected general category candidate had secured less marks than him. When no decision was taken by the respondents on his application dated 02.05.2013, he filed OA No. 1722/2014 in this Tribunal which was disposed of on 09.09.2015 (Annexure A-9) directing the respondents to decide representation dated 02.05.2013 by passing a reasoned and speaking order within three months. On receipt of this order, the applicant made a fresh representation dated 30.09.2015 (Annexure A-10). In compliance of the order dated 09.09.2015, the impugned order dated 09.02.2016 has been passed by the respondents.

3. According to the applicant, the order passed by the respondents dated 09.02.2016 is not as per the Tribunal's order dated 09.09.2015. This is because the impugned order is non-speaking and is without reason. The applicant has reiterated his argument that he had secured 53 marks, which is more than the marks secured by the last selected general category candidate – Hari Om who is respondent no. 5. He has also stated that in view of this, the order dated 09.02.2016 is liable to be quashed. It is also alleged that this order is illegal, arbitrary and malafide and the applicant needs to be granted relief by giving him appointment under general category.

4. The respondents have contested the claim of the applicant. The respondents have stated that in pursuance of the notification of August 2010, the applicant applied for the post of Fireman as OBC candidate, as is clear from para 4.4 of the OA. He was declared pass having serial no. 189 as OBC candidate. Letter dated 11.04.2013 (Annexure A-7 of the OA) issued to the applicant clearly states that he has been 'recommended for selection to the post of FIREMAN in Other Backward Class (OBC) category in this depot.'. They have further stated that before issuance of this letter, in OA No. 180/2011, this

Tribunal passed order dated 21.12.2012. Based on this order, the department reconsidered the entire selection process and in the said proceedings, respondent no. 5 was appointed as general category candidate against vacancies of general quota in Fireman category. Now the applicant has approached this Tribunal that his candidature be considered as general category candidate and he be appointed in place of respondent no. 5 having higher merit. The respondents have further stated that the case of the applicant has been considered in the light of directions issued by this Tribunal and his claim has been rejected as he applied as OBC candidate. He, therefore, cannot be given appointment in place of general category candidate at this stage. They have stated that accordingly the representation of the applicant has been rejected and order dated 09.02.2016 has been passed, which is legal and valid order and does not deserve any interference by this Tribunal as respondent no. 5 will suffer irreparable loss and injury.

5. On main merit of the case, the respondents have corroborated most of the facts given by the applicant. Only they have added that the respondent no. 5 applied as a general category candidate for the post of Fireman against the same notification. They have further stated that the merit of the applicant has to be calculated against OBC category as he applied as OBC candidate and he cannot now be appointed against general category.

6. The respondents have further stated that after the judgment of this Tribunal dated 21.12.2012 in OA No. 180/2011, the entire previous selection was processed and the respondents finalized the proceedings and issued letters dated 03.02.2013 and 04.05.2013 and respondent no. 5 joined on the post of Fireman on 14.05.2013 (Annexure CA-1). It is further stated that the applicant himself was not a party to the OA Nos. 180/2011 and 262/2011 and as such the aforesaid relief was not extended to the applicant. The respondents have further stated that it was the applicant who furnished wrong information and appeared in the selection as OBC though Jat community had no reservation in

the Central Government and hence, his case was not coming under OBC category.

7. The respondents have finally averred that the applicant has not approached with clean hand. He has given false statement before the respondents which is contrary to the facts. Only five vacancies were available for general candidates. Therefore, the case of the applicant is covered under the pronouncement of Hon'ble Supreme Court in the case of Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav and he is not entitled to any relief from the Tribunal. The applicant has also filled up his application form as an OBC candidate, which is illegal and the respondents have rightly rejected his claim for appointment as Fireman. Once he has applied as OBC candidate, he cannot now seek parity with the general candidates.

8. Accordingly, the respondents have concluded that the applicant has no grounds or justification for grant of any relief to him and the OA needs to be dismissed.

9. We have heard counsels of opposing parties and have also gone through the pleadings in this case including written arguments submitted by the parties. We have also given our thoughtful consideration to the entire matter.

10. Most of the facts are not disputed. The applicant applied in response to the advertisement of 2010 is not disputed. He was recommended for selection for the post of Fireman is also not disputed. The selection process was reconsidered in view of order of this Tribunal passed in OA No. 180 of 2011 and OA No. 262 of 2011 is also not disputed. The applicant was not party in OA No. 180 of 2011 or in OA No. 262 of 2011 is also not disputed. The applicant filed separate OA No. 402/2013 in which the Tribunal vide order dated 09.04.2013 directed him to be given similar relief and benefit as to the applicants in other two OAs is also not disputed. Letter dated 11.04.2013

(Annexure A-7) was subsequently issued to the applicant in compliance of the order of this Tribunal is also not disputed. The applicant appeared and produced his original documents is also not disputed.

11. The main point of dispute is that at the time of verification, the applicant was found to be of Jat community which is not covered under OBC under Central Government at the relevant point of time. This fact has been stated clearly by the respondents in the impugned order dated 09.02.2016. It is also not disputed by the applicant himself. The applicant has also not disputed that he had originally applied under OBC category. The sole claim of the applicant is now to be considered under general category having secured more marks than the last selected general category candidate. The fact that the applicant secured more marks than the last selected general category candidate is not disputed by the respondents. However, they have clearly stated that the respondent no. 5 had originally applied under general category and his claim was considered accordingly. The selection proceedings were accordingly finalised and appointment orders were issued on 03.02.2013 and 04.05.2013. The respondent no. 5 joined on the post of Fireman on 14.05.2013 (Annexure CA-1). The respondents have also stated that now there is no vacancy in the cadre of Fireman available for the applicant's case to be considered. They have further averred that the applicant having initially applied in OBC category cannot now claim consideration under general category. He can also not claim parity with the general category candidate.

12. We find that the applicant had originally applied in OBC category. His original certificate of Jat community does not justify his candidature under OBC category at the relevant point of time under Government of India is not disputed by the applicant himself. The sole claim of the applicant is that he should now be considered under general category candidate. We do not find any justification for this claim. It is open for any candidate to initially apply under any particular category. The applicant himself applied initially under

OBC category. Now, at this stage when the selection process is over and when all vacancies of Fireman have been filled up, we do not see any justification for granting the relief claimed by the applicant that he be considered under general category. It will effectively mean cancelling the appointment of respondent no. 5 for no fault of his. The respondent no. 5 applied under general category right from beginning and was selected by the respondents' department in compliance of this Tribunal's order dated 21.12.2012 passed in OA Nos. 180/2011 and 262/2011. We, therefore, do not find any justification in the claim of the applicant.

13. We also note that in the OA, the applicant has stated categorically in para 4.3 of OA that initially 15 posts of Fireman were advertised, which were later enhanced to 19 posts. The department in their counter affidavit has categorically stated that this is a misrepresentation and only 05 posts were available for general candidates (para 16 of CA) and all these posts have been filled. Respondent no. 5 joined on 14.05.2013 (para 11 of CA). The applicant is, therefore, trying to obtain the benefit by wrongful misrepresentation and means. It is settled law that one who comes to equity must come with clean hands. Further, the appointment of respondent no. 5 was made in accordance with this Tribunal's order dated 21.12.2012. Clearly the respondent no. 5 cannot at this stage be affected adversely for mistake / omission committed by the applicant.

14. We also observe that the call letter sent to the applicant on 11.04.2013 clearly states that he has been recommended for the post of Fireman in OBC category in the depot. It also states that his 'selection is provisional till finalization of Police verification/attestation process and verification of original certificates from concerned issuing authority.' Hence, there was no ambiguity in the call letter issued to be applicant. We also note from Annexure RA-1 of rejoinder affidavit given by the applicant himself that in a similar advertisement issued by the respondents' department in January 2016, it was clearly stated

in paragraph 15 that the caste certificate is to be based on Union Government list for such certification as only this would be admissible. We note that this is not original advertisement issued in 2010. However, that advertisement has not been given either by the applicant or by the respondents. But this advertisement of 2016 has been given by the applicant himself which does not in any manner support his own case. We feel that it can be safely concluded that there was no ambiguity in the original advertisement issued in 2010. There was clearly no ambiguity in the call letter issued to the applicant in April 2013.

15. In view of all above, we find no merit in the OA and the OA is dismissed.
No costs.

(RAKESH SAGAR JAIN)
MEMBER-J

(AJANTA DAYALAN)
MEMBER-A

Anand...