
(2014) 01 AHC CK 0239

Allahabad High Court

Case No: Writ A. No. 16535 of 2013

Dharmendra Singh

APPELLANT

Vs

U.O.I. and Others

RESPONDENT

Date of Decision: Jan. 7, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2014) 2 ALJ 106 : (2014) 2 UPLBEC 1217

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Advocate: S.K. Tripathi, Bidhan Chandra Rai and Shailendra Singh, Advocate for the Appellant; Govind Saran and Tarun Varma, Advocate for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Sudhir Agarwal, J.

Heard Sri. B.C. Rai, learned counsel for petitioner and Sri. Tarun Varma, learned counsel for respondents. The substantive relief sought in this writ petition filed under Article 226 of the Constitution is that respondents should consider candidature of petitioner in the recruitment of Sub-Inspectors in Railway Protection Force (in short "RPF") including Railway Protection Special Force (in short "RPSF") which commenced pursuant to advertisement published in daily newspaper "Employment News, 30th April - 6th May 2011".

2. Petitioner claims to be an Other Backward Class (hereinafter referred to as "O.B.C.") category candidate, presently serving in Delhi Police as Constable (Dog Hand), PIS No. 28031159, having been enlisted/enrolled on 30.1.2003.

3. In the recruitment in question for RPF/RPSF, the cut of date for the purpose of minimum and maximum age was 1.7.2011 and the prescribed age limit was 20 to 25

years. However, the advertisement also said that, the applicant, if a Central Government Civilian employee (in O.B.C. category), who has rendered not less than three years regular and continuous service as on 1.7.2011, for them the maximum age limit would be extended upto 33 years. This Court is not concerned with respect to other provisions relating to relaxation provided in the Advertisement, para 4(d).

4. Taking advantage of the aforesaid clause, petitioner applied in the recruitment in question, and was issued a call letter for appearing in written examination. He was allotted Roll No. NCR/GEN/M/441733. He appeared in written test and qualified. Thereafter he also qualified physical efficiency test and physical measurement test. At every stage of test/examination, wherever he was required to fill in the form, he claimed his category as O.B.C. and also submitted declaration form as per Annexure-E to the advertisement. Lastly petitioner was issued a viva voce letter in February 2013. When appeared in viva voce, he raised grievance before the Board and authorities concerned that despite his claiming candidature as O.B.C., it is being considered as general. Respondents authorities rejected his claim observing that the declaration certificate of O.B.C., which was necessary to be appended with application form was not found appended with application form. However petitioner was allowed to participate in viva voce test. His candidature as such was not rejected, though petitioner, if treated as general, he was obviously overage by applying para 4(c) read with the provision of relaxation provided in para 4(d), of the advertisement.

5. After viva voce was over, petitioner made a representation to respondents No. 3 and 4 on 18.2.2013 requesting that his candidature be treated in O.B.C. category. When required, he submitted all his relevant documents in the Office of respondent No. 3. Since respondents did neither respond nor informed him about change of category, he has come to this Court with the prayer that respondents should be directed to treat him in O.B.C. category.

6. The respondents have filed counter affidavit sworn by Sri. Baboo Lal, ASC (P) Railway Protection Force, North Central Railway, Allahabad. It is said that in para 8-B(h) of the advertisement, it was provided as a mandatory/compulsory condition for O.B.C. candidates to annex a self declaration/certificate regarding Creamy Layer. If such declaration is not enclosed, the application is liable to be rejected on the ground of violation of the said provision. There was another guide line laid down by Railway Board vide Circular dated 16.8.2011 (Annexure CA-2 to the counter affidavit) clarifying that the candidates applying against reserved vacancies and/or seeking age relaxation, they must furnish requisite caste-certificate and self declaration of non creamy layer status in the prescribed format along with application form, and, if for any deficiency, their claim for reserved status is not to be entertained, candidature/application of such candidate, fulfilling all the eligibility conditions of general candidate, may be considered under general vacancies only and not as reserved. Petitioner, thus was treated to be a general candidate and as such was

permitted to appear in written, physical efficiency test and viva voce. He never raised any objection regarding the said status. Petitioner was overage as general candidate on 1.7.2011 despite granting relaxation considering his central services under Rule 4(d)(9) of the advertisement. It is said that there appears to be some clerical mistake on the part of respondents on account whereof despite being overage, he was allowed to appear and now he is trying to take advantage thereof claiming his candidature as O.B.C. He cannot be allowed to take undue advantage of such inadvertent mistake committed on the part of respondents. He never submitted a self declaration regarding creamy layer and hence was treated as general candidate.

7. In the rejoinder affidavit, petitioner has disputed this fact and in para 6 thereof, it is said that a declaration certificate was appended to the form and a copy thereof is filed as Annexure 2 to the rejoinder affidavit.

8. Sri. Tarun Varma, learned counsel appearing for respondents, stated that the declaration by applicant, about O.B.C. status, in format at Annexure-E to the advertisement, as provided in para 8(B)(g)(v), was not appended along with application form and, therefore, his candidature as O.B.C. was rejected in view of Para 8(B)(h)(x) of the advertisement read with the Railway Board Circular dated 16.8.2011 and he was treated in general category which was also a mistake, since he was overage as a general candidate. He sought to fortify the submission by placing before this Court original application form of petitioner in which self declaration form in Appendix-E is not appended with the application form.

9. Sri. B.C. Rai, learned counsel appearing for petitioner, on the contrary, has seriously disputed this fact and claims that O.B.C. certificate in the prescribed format as also the self declaration form in Format-E was duly appended by him along with application form. He drew my attention to Annexure 2 to the rejoinder affidavit and para 6 thereof stating that the said declaration was in Format-E but it appears that respondents have lost the said document somewhere and taking advantage of their own wrong or fault, are trying to victimize the petitioner. He contended that for the fault of respondents, petitioner cannot be made to suffer.

10. The short question up for consideration is whether petitioner is liable to be considered as O.B.C. candidate or not.

11. There is a serious factual dispute, whether the self declaration in Annexure-E to the advertisement, was actually appended by petitioner along with his application form or not. The O.B.C. Caste certificate in the prescribed format-D is admittedly a part of petitioner's application form and on this aspect there is no dispute.

12. At this stage, considering divergent stand taken by both the parties, from pleadings, straight way, it is difficult to hold, whether self declaration From-E was actually submitted by petitioner along with his application form or not. Since here is a case of oath versus oath, this Court now will look into circumstantial evidence to

find out truth.

13. If the petitioner is considered to be a general candidate, admittedly he was overage as per the advertisement. If he is considered to be O.B.C. and Central Government employee, he is well within the relaxed age limit prescribed in the advertisement.

14. The candidature of petitioner at the very initial stage was not cancelled by respondents and Railway Board Circular dated 16.8.2011 does not come into picture since petitioner did not fulfill all the eligibility conditions of a general candidate, therefore, could not have been considered as a general candidate.

15. Respondents, admittedly did not cancel application form of the petitioner and issued call letter permitting him to appear in written examination but in the roll number allotted to petitioner he was shown a general candidate. The same status continued in the subsequent stages also. Petitioner, therefore, was made aware since very beginning that he is allowed in the recruitment as a general candidate and not a reserved one. In the call letter issued for written examination there is an endorsement at the bottom which reads as under:

As per Railway Board's Guidelines considered UR instead of OBC due to insufficient documents.

16. This endorsement made it very clear that the documents submitted by petitioner to claim O.B.C. status had some deficiency. There is nothing to show that petitioner tried to find out deficiency, and made any attempt to rectify the same after receiving call letter for written examination. The written examination was held on 12.8.2012. Then, when call letter for viva voce was issued, calling upon petitioner for viva voce on 5.2.2013, in this letter also there is an endorsement at bottom which reads as under:

As per Railway Board's Guidelines considered as UR instead of O.B.C. due insufficient documents.

17. This letter also makes it very clear that the document submitted by petitioner claiming O.B.C. status were deficient and hence his claim for O.B.C. was not accepted by respondents. At this stage of viva voce also, there is nothing to show that the petitioner made any attempt to remove the deficiency. In his letter dated 18.2.2013 also he has not said anything regarding the aforesaid declaration certificate. For the first time, petitioner claimed to have submitted a letter dated 1.3.2013 (Annexure 6 to the writ petition) in which he has requested respondents to accept his declaration certificate along with other documents. In this letter also petitioner has not claimed anywhere that the self declaration in Form-E was already submitted by him along with his application form and there was no deficiency. In fact, he never contested this issue and on the contrary, this letter of 1.3.2013 clearly shows that when he got information that self declaration in Form-E was not

appended along with his application form, he made an attempt to remove deficiency by supplying those documents. Had he submitted this document earlier, there was no reason for not mentioning this fact in the aforesaid letter. This circumstance is sufficient to belay the stand of petitioner that the document, i.e., self declaration in Form-E was submitted by him along with his application form and that being so, I find the stand of respondents to be reliable and creditworthy. Since there is a clear indication in the advertisement that in absence of requisite documents, application form itself would be rejected, I have no hesitation in holding that failure on the part of petitioner in observing the same, has rightly been held fatal to consider his candidature as O.B.C. The mere fact that despite his being overage as general candidate, he was allowed to appear in various tests cannot help him in rendering his candidature to be valid when, admittedly, as a general candidate he is overage. The entire aspect can be considered from another angle. As per petitioner's own stand, he applied as O.B.C. candidate. Respondents rejected his claim and did not accept him as an O.B.C. candidate. They made it very clear and allowed the petitioner to appear in the recruitment as a general candidate. This fact was clearly made known to petitioner by mentioning in the call letter issued to petitioner permitting him to appear in the written examination. There is nothing on record to show that petitioner ever disputed or contested this action/decision of respondents in rejecting petitioner's candidature as O.B.C. and allowing him to appear in the recruitment as general candidate. In fact, he acquiesced to the action of respondents and appeared as a general candidate. At least, there is nothing on record to show that in any known manner, petitioner contested the decision of respondents in rejecting petitioner's status as O.B.C. and allowing him to participate as general candidate. The situation continued when another call letter for viva voce was issued and there also it was mentioned that petitioner's claim as O.B.C. has been rejected and he is being allowed to appear in the selection as a general candidate. Here also, there is no overt action on the part of petitioner to challenge the aforesaid decision before any appropriate forum including a Court of law. In the so called representation, which the petitioner submitted after appearing in the viva voce, there also petitioner has not stated anywhere that the requisite declaration was submitted by him along with the application form and the respondents must trace out such declaration or allow the petitioner to file a duplicate or second copy thereof. Contents of petitioner's representation, on the contrary, show that he supplied the aforesaid declaration for the first time with the request to respondents to accept the same. This fact is sufficient to demonstrate that even while submitting the said representation, petitioner did not claim at all that the due declaration in format Appendix-E was ever submitted by him at the time of filing his application form. Respondents, repeatedly, time and again have made it known to petitioner that his candidature has been rejected as O.B.C. This decision has not been challenged and there is no relief sought in this writ petition that the aforesaid decision communicated to petitioner vide frequently issued call letters should be quashed. In absence of any challenge to the said decision, the question of directing

respondents to consider the petitioner as O.B.C., even otherwise cannot arise.

18. Though petitioner has relied on catena of decisions, but, in my view, none of the aforesaid authorities shall help him in the case in hand.

19. First one is [Charles K. Skaria and Others Vs. Dr. C. Mathew and Others](#), . That was a case relating to admission in Post Graduate Course in Medicines. There 10 per cent weightage was provided for those who had a Post Graduate Diploma. Clause 12 of the prospectus required that true copies of all the documents must be produced along with application. However, there was mention in para 4 of the prospectus that selection of the candidates will be made according to Government Memorandum dated 14.7.1976 as modified from time to time and shall be deemed to have been incorporated *ibid*. Referring to this paragraph, an order was issued by Special Secretary to Government that since the result of students of Medical College, Trivandrum shall be available after the last date of receipt of application to Post Graduate Course, though the result of another Medical College, i.e., at Calicut, the result shall be published before the last date, in order to give equal right of consideration to students of two colleges, the students of Medical College, Trivandrum shall be given 10 per cent weightage treating them to have obtained Post Graduate Diploma which would be subject to the condition that Diploma certificate shall be produced by them before finalizing selection, of the course in question. It was contended on behalf of other candidates that students of Trivandrum Medical College should not be allowed this benefit. This contention was negated by learned single Judge of the High Court, reversed by a Full Bench and the Apex Court ultimately approving" the view taken by learned single Judge, set aside judgment of Full Bench. Court after reading various clauses of the prospectus found that for the purpose of attracting weightage of 10 per cent, one was only required to possess such qualification and not the proof thereof. This aspect has been clarified in para 20 of the judgment. The Court found that there was nothing specifically provided in the prospectus that proof must have been appended with the application form. Looking to the purpose and object, the Court observed that the prospectus itself permits Government to modify the method and hence there was nothing objectionable when the Government directed Selection Committee to give credit for diploma, even if authentic copies of diploma was not appended to the application for admission. It also considered the matter from another angle to hold the condition directory by discussing in para 26 of the judgment that whatever was permissible on the part of candidate, he has already done, i.e., he has participated in the Diploma examination, i.e. written, oral and practical etc. but so far as the result part is concerned, it is not in his control and thus he cannot be discredited for something over which he has no control. The Court said, He acquires the degree or diploma only when the results are officially made known. Until then his qualification is inchoate. But once these events happen his qualification can be taken into account in evaluation of equal opportunity provided

the selection committee has the result before it at the time of - not after-the selection is over. To sum up, the applicant for post-graduate degree course earns the right to the added advantage of diploma only if (a) he has completed the diploma examination on or before the last date for the application, (b) the result of the examination is also published before that date, and (c) the candidate's success in the diploma course is brought to the knowledge of the selection committee before completion of selection in an authentic or acceptable manner. The prescription in the prospectus that a certificate of the diploma shall be attached to the application for admission is directory, not mandatory, a sure mode, not the sole means. The delays in getting certified copies in many departments have become so exasperatingly common that realism and justice forbid the iniquitous consequence of defeating the applicant if, otherwise than by a certified copy, he satisfies the committee about his diploma.

(Emphasis added)

20. The aforesaid judgment, therefore, does not help petitioner since the conditions in the advertisement in the case in hand are totally different and admit no such principle as has been found and discussed by the Court in *Charles K. Skaria* (supra).

21. The next authority is a Division Bench decision of Delhi High Court in [Hari Singh Vs. Staff Selection Commission and Another](#), . There Hari Singh, the petitioner applied in O.B.C. category and his candidature as O.B.C. was entertained by recruiting authorities. Subsequently, petitioner was not declared selected since his O.B.C. certificate, submitted, was not found in prescribed format and, therefore, respondents-authorities treated him a general candidate. Petitioner's admit card issued for permitting him to appear in the examination clearly admitted him as a O.B.C. category candidate. Subsequently, much after various examinations/tests were held, recruiting agency issued a letter requiring O.B.C. category candidates to submit their caste certificate in prescribed Format of Central Government Offices as per Annexure-VIII failing which their candidature would be treated as unreserved category candidate subject to fulfillment of other eligibility conditions. The Court found that the respondents themselves called upon petitioner to submit O.B.C. certificate in prescribed format even after last date of submission of application form, now they cannot go back to take a stand that the O.B.C. certificate in the prescribed format was not submitted along, with application form and, therefore, the status of O.B.C. cannot be claimed. This is evident from the discussion made by the Court in para 39 and 40. The Delhi High Court found that respondents themselves do not treat the, condition in prospectus to be mandatory. This case has been decided on its own facts and, therefore, has no application to the facts of the present case.

22. In [Deepak Chavan Vs. Competent Authority for the purpose of admission to the Engineering Courses, Govt. Engineering College, Pune and others](#), , the direction with regard to submission of documents along with application form was found

contrary to an earlier order issued by the Court and, therefore, this decision also lends no support to petitioner.

23. The other decisions are [Dolly Chhanda Vs. Chairman, JEE and Others,](#) , [Anil Kumar Vs. Union of India,](#) , [Mrs. Valsamma Paul Vs. Cochin University and others,](#) , [Miss Neha Achrekar Vs. Directorate of Technical Education,](#) , Km. Nisha Yadav v. State of U.P. and others (Special Appeal No. 288 of 2011) decided on 1.3.2011, Sachin Arora and another v. State of U.P. & others (Special Appeal Defective No. 460 of 2011) decided on 30.5.2011, [Shaitan Singh Vs. State of Rajasthan and Another,](#) , [T.N. Rugmani and Another Vs. C. Achutha Menon and Others,](#) , [N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others,](#) , [Ajeeth Singh Yadav and Others Vs. State of U.P,](#) and [State Bank of India Vs. Om Narain Agrawal and Others,](#) which I have gone through very carefully and in depth study thereof shows that none of these authorities renders any help to petitioner, since the facts and issue involved therein are totally different. In the present case, the status of petitioner as O.B.C. was specifically rejected by the respondents at the very initial stage of recruitment. This decision was known to petitioner while issuing the very first call letter to him permitting him to appear in written test. From that date and onwards, petitioner never raised any dispute challenging the said decision and did not approach any appropriate forum for adequate relief in this regard. Even in this writ petition, there is no challenge to the aforesaid decision and order of respondents rejecting petitioner"s candidature as O.B.C. and treating him general candidate. In absence of any challenge to the order already passed by respondents rejecting petitioner"s candidature as O.B.C. question of issuing a writ of mandamus directing the respondents to consider the petitioner as O.B.C. does not arise and, therefore, the case in hand stands on a totally different pedestal.

24. In the ultimate result, I do not find any good ground so as to entitle the petitioner to the relief he has sought for in this writ petition.

25. The writ petition is devoid of merit. Dismissed. No order as to costs.