
(2020) 09 CAT CK 0101

In the Central Administrative Tribunal

Case No : Original Application No. 1716 Of 2018, Miscellaneous Application 2162 Of 2019

Ankit Soni

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 17-09-2020

Acts Referred:

Citation : (2020) 09 CAT CK 0101

Hon'ble Judges : L. Narasimha Reddy, J; Mohd. Jamshed, Member (A)

Bench : Division Bench

Advocate : Nalin Kohli, Vikarmaditya Singh, Manisha

Final Decision : Allowed

Judgement

L.Narasimha Reddy, J

1. The applicant was a candidate for Civil Service Examination of 2016. He secured the rank of 636 and belongs to OBC category. The candidates in the OBC category, who secured in the ranks below him were allocated to Indian Police Service (IPS). The applicant however was denied such allocation by treating him as falling within the creamy layer. He filed this OA with a prayer to direct the respondents to treat him as the one, not in the non-creamy layer and to post him in his Home State as per his ranking.

2. The applicant contends that his father joined the service of the Medico Legal Institute, Government of Madhya Pradesh, as a Class-III employee. It is stated that though his father was promoted to Class-I category before he attained the age of 40 years, the clarification issued by the Government of India in this behalf is to the effect that it is only when the father of a candidate was inducted into Class-II and has been promoted to Class - I below the age of 40 years, that the candidate has to be treated in falling in the creamy layer.

3. On behalf of the respondents, a detailed counter affidavit is filed. According to them, the father of the applicant was promoted to Class-I when he was 39 years

of age and accordingly the applicant was treated as falling within the creamy layer. Various contentions urged by the applicant are denied.

4. We heard Sri Nalin Kohli, Sri Vikramaditya Singh and Ms.Manisha, learned counsel for the applicant and Sri Rajeev Kumar and Sri R.V.Sinha, learned counsel for the respondents.

5. The basic facts of the OA are not in dispute. The applicant was a candidate in CSE 2016 and he was assigned the rank of 636. He belongs to OBC. The lists published by the UPSC and DoPT discloses, that OBC candidates, with slightly lesser rank upto 656 were also allotted to IPS. The only reason on account which the applicant was not allotted to IPS was that he is within the creamy layer. Therefore the entire controversy revolves around the question as to whether the applicant is falling within the creamy layer or not.

6. The concept of creamy layer was evolved by the Hon'ble Supreme Court in its judgement in Indra Sahani Vs.Union of India {(1992) Supp.3 SCC 217}. According to this, if the income of an OBC candidate's parent is upto a specified limit or his parents have occupied any of the specified positions, he shall not be entitled to the benefit of reservation. The detailed parameters in this behalf were stipulated by the Government of India, Department of Personnel and Training in their memo dated 08.09.1993. They read as under :

"The undersigned is directed to refer to this Department's OM No.36012/31/90.Estt. (SCT), dated the 13th August, 1990 and 25th September, 1991 regarding reservation for socially and Educationally Backward Classes in Civil Posts and Services under the Government of India and to say that following the Supreme Court judgement in the Indra Sawhney and others Vs. Union of India and others case [Writ Petition (Civil) No.930 of 1990] the Government of India appointed as Expert Committee to recommend the criteria for exclusion of the socially advanced persons/ sections from the benefits of reservations for Other Backward Classes in civil posts and services under the Government of India."

2. Consequent to the consideration of the Expert Committee's recommendations this Department's Office Memorandum No.36012/31/90-Estt.(SCT), dated 13.8.90 referred to in para (1) above is hereby modified to provide as follows :

(a) 27% (twenty seven percent) of the vacancies in civil posts and services under the Government of India, to be filled through direct recruitment, shall be reserved for the Other Backward Classes. Detailed instructions relating to the procedure to be followed for enforcing reservation will be issued separately.

(b) Candidates belonging to OBCs recruited on the basis of merit in an open competition on the same standards prescribed for the general candidates shall not be against the reservation quota of 27%.

(c) (i) The aforesaid reservation shall not apply to persons/sections mentioned in column 3 of the Schedule to this office memorandum.

(ii) The rule of exclusion will not apply to persons working as artisans or engaged in hereditary occupations, callings. A list of such occupations, callings will be issued separately by the Ministry of Welfare.

(d) The OBCs for the purpose of the aforesaid reservation would comprise, in the first phase, the cases and committees which are common to both the lists in the report of the Mandal Commission and the State Government's Lists. A list of such cases and communities is being issued separately by the Ministry of Welfare.

(e) The aforesaid reservation shall take immediate effect. However, this will not apply to vacancies where the recruitment process has already been initiated prior to the issue of this order.

Similar instructions in respect of public sector undertakings and financial institutions including public sector banks will be issued by the Department of Public Enterprises and by the Ministry of Finance respectively effective from the date of this Office Memorandum."

7. In the schedule, the constitutional posts are indicated in Clause-I. Clause-II deals with the service category. Relevant in this behalf is clause (b). It reads as under :-

Group B Class II officer of the Central & State Services (Direct Recruitment)

Son(s) and daughter (s) of

(a) Parents both of whom are Class II Officers

(b) Parents of whom only the husband is a Class II officer and he gets into Class I at the age of 40 or earlier.

(c) Parents, both of whom are Class II officers and one of them dies or suffers permanent incapacitation and either one of them has had the benefit of employment in any Institutional Organisation like UN, IMF, World Bank, etc, for a period of not less than 5 years before such death or permanent incapacitation.

(d) Parents, of whom the wife is a Class I Officer (Direct Recruit or pre-forty promoted) and the husband is a Class II officer and the husband dies or suffers permanent incapacitation. Provided that the rule of exclusion shall not apply in the following cases : (a) Parents both of whom are Class II officers and one of them dies or suffers permanent incapacitation. (b) Parents, both of whom are Class II officers and both of them die or suffer permanent incapacitation, even though either of them has had the benefit of employment in any International Organizations like UN, IMF, World Bank, etc. for a period of not less than 5 years before their death or permanent incapacitation. The criteria enumerated in A&B above in this category will apply mutatis mutandi to officers holding equivalent or comparable posts in PSUs, Banks, Insurance Organisations, Universities, etc., and also to equivalent or comparable posts, and positions under private employment. Pending the evaluation of the posts on equivalent or comparable basis in these institutions, the criteria specified in Category VI below will apply

to the officers in these institutions.

8. According to this, if the father of a candidate was a Class-I officer, he would not be titled to claim the benefit of reservation. In the course of implementation of this, certain doubts were expressed by various implementing agencies. They were dealt with by the DoPT through their communication dated 14.10.2004. The relevant portion thereof reads as under:

"I am directed to invite your attention to the Schedule to this Department's OM No.36012/22/93-(SCT) dated 8th September, 1993 which contains the criteria to determine the creamy layer amongst the OBCs. In regard to the children of the persons in civil services of the Central and State Governments, it provides that son(s) and daughter(s) of :

- (a) Parents both of whom are directly recruited Class I/Group A officers;
- (b) Parents, either of whom is a directly recruited Class I/Group A officer;
- (c) Parents , both of whom are directly recruited Class I/Group A officers, but one of them dies or suffers permanent incapacitation;
- (d) Parents, either of whom is a directly recruited Class I/Group A officer and such parent dies or suffers permanent incapacitation and before such death or such incapacitation has had the benefit of employment in any International Organization like UN, IMF, World Bank, etc. for a period of not less than 5 years;
- (e) Parents, both of whom are directly recruited Class I/Group A officers and both of them die or suffer permanent incapacitation and before such death or such incapacitation of the both, either of them has had the benefit of employment in any International Organization like UN, IMF, World Bank, etc. for a period not less than 5 years;
- (f) Parents both of whom are directly recruited Class II/Group B officers;
- (g) Parents of whom only the husband is a directly recruited Class II/Group B officer and he gets into Class I/Group A at the age of 40 or earlier;
- (h) Parents, both of whom are directly recruited Class II/Group B officers and one of them dies or suffers permanent incapacitation and either of them has had the benefit of employment in any International Organization like UN, IMF, World Bank, etc. for a period of not less than 5 years;
- (i) Parents of whom the husband is a Class I/Group A officer (direct recruit or pre-forty promoted) and the wife is a directly recruited Class II/Group B officer and the wife dies; or suffers permanent incapacitation; and
- (j) Parents, of whom wife is Class I/Group A officer (Direct Recruit or pre-forty promoted) and the husband is a directly recruited Class II/Group B officer and the husband dies or suffers permanent incapacitation shall be treated as falling in creamy layer.

XXX XXXXXX

4 (v) Will the sons and daughters of parent of whom husband is directly recruited Class III/Group C or Class IV/Group D employee and he gets into Class I/Group A at the age of 40 or earlier be treated to be falling in creamy layer ?

The clarification for this doubt/question was provided in para-7 in regard to Clause-v , which reads as under :

"7. In regard to clause (v) of para4, it is clarified that the sons and daughters of parents of whom only the husband is a directly recruited Class II/Group B officer who gets into Class I/Group A at the age of 40 or earlier are treated to be in creamy layer. If the father is directly recruited Class III/Group C or Class IV/ Group D employee and he gets into Class I/ Group A at the age of 40 or earlier, his sons and daughters shall not be treated to be falling in creamy layer."

9. From a perusal of para-7 extracted above, two things become clear.

(a) The candidate would fall into the creamy layer, if his father was directly recruited into Class-II/Group-B and thereafter was promoted to Class-I/Group-A at the age of 40 years.

(b) The candidate does not fall into creamy layer in case the induction was into Class-III/Group 'C' even if he was promoted to Group- I below the age of 40 years.

10. The applicant herein falls into the second category referred to above. The record is clear to the effect that his father was inducted into Class-III in the year 1981. The respondents have furnished the particulars of the father of the applicant, in their counter affidavit at page-7. They are as under :

9. That the Government of Madhya Pradesh, vide email dated 31.08.2017 [Annexure A-4], forwarded a letter dated 31.08.2017 of office of the Director of Medico legal Institute. Vide this letter the following was informed :-

(i) The status of the following posts mentioned in the above table interms of Group ('A'/'B'/'C'/'D')/Class(I/II/III/IV)intheState Government :-

(a) Junior Medical Officer Nonmedical - Class III

(b) Medical Officer Nonmedical - Class II

(c) Junior Forensic Specialist Nonmedical -

Class I

(ii) Is there any promotional post(s) between 'MEDICAL OFFICER (Non Medical)' and 'JUNIOR FORENSIC SPECIALIST (Non Medical)', if so, the details along with Group / Class of that post(s) : NO

(iii) The details of posts to which the candidate's father was directly recruited along with its Group/Class in the Government of Madhya Pradesh-Junior Medical

Officer Class III.

(iv) Complete details of promotion of candidate's father along with Group/Class of post, date of promotion etc. as per State Government's records :-

Name of the Post

Pay scales of posts provided by the candidate

Date of appointment/

promotion to the post

Age at the time of appointment/promotion

Junior Medical Officer Non Medical Class-III

350- MONTH FIX PAY

26-10-1978

28

Medical Officer N.M. Class-II

350 DA 100-1920 w.e.f. 01.04.1981

06.02.1981

30

Junior Forensic Specialist Class-I

Rs. 3000- 4500

08-08-1990

40 (actual age 39 years 10 Months 10 days, as DOB is 29.09.1950)

SENIOR FORENSIC SPECIALIST , CLASS I

1200- 16500

01-08R-2002

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11. Once the induction was into Class-III, it makes no difference whether his promotion to Class-I was below or above the 40 years of age. The result is that the applicant ought not to have been treated as falling within the creamy layer.

12. While admitting the OA, an interim order was passed to the effect that the selection of the last candidate under the OBC category in the IPS referable to CSE 2016 shall be subject to the result of this OA. We are not posted with the relevant particulars nor the concerned candidate is before us. It is for the respondents to take further steps either by displacing the last selected candidate

in that category or by adjusting the applicant in any available vacancy or by creating supernumerary post. On his part, the applicant has declared that he does not claim the benefit of seniority from the year 2016. The respondents shall complete the necessary exercise in this behalf, within two months from today.

13. O.A. is allowed accordingly. There shall be no order as to costs.