
(2011) 11 DEL CK 0361
In the Delhi High Court
Case No : LPA 354 of 2011

Balwant Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1)

Citation : (2011) 4 ILR Delhi 453

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Santosh Kumar, for the Appellant; Anjana Gosain, for UOI, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The appellant impugns the order dated 04.01.2011 of the learned Single Judge dismissing W.P.(C) No.10847/2009 preferred by the appellant as belonging to the OBC category and seeking a direction to the respondents to allow him "to be subjected to interview" and to grant him "benefits in compliance with / as per Hon'ble Delhi High Court's order of 30.04.2007 and as per their own letter of 9th April, 2008."

2. The appellant was vide letter dated 15.12.2000 of the respondent No.2 Airports Authority of India (AAI) appointed to the post of Senior Superintendent (Engineer Civil) at Gaya Airport, Gaya on ad-hoc basis for a period of six months only. However, the said ad-hoc appointment of the appellant was continued till termination thereof vide letter dated 30.11.2004. It was mentioned in the said termination letter that the appellant had been appointed without any advertisement, without calling candidates from Employment Exchange and without following the recruitment procedure for any appointment; that his appointment was thus irregular, illegal, void and invalid; nevertheless, the appellant was being paid one month's salary in lieu of notice period and retrenchment compensation. The appellant along with certain others filed W.P.(C)

No.19770-72/2004 challenging such termination. The said writ petition as also several other petitions including those transferred to this Court, were decided "amicably" vide order dated 30.04.2007. The said order records that services of nearly 130 personnel working in different offices of respondent No.2 AAI all over India were terminated on the ground that they were appointed on ad-hoc basis without following the recruitment process and further records the settlement arrived at as under:

1. Petitioner as well as other employees whose services were terminated on similar grounds would be given an opportunity for selection in the proposed recruitment of Group C and Group D posts.

2. For Group D posts, suitability of the candidates would be adjudged by interview and wherever applicable, a trade test for the specific occupation. Additionally, suitability may be adjudged on the basis of familiarity with office procedures, basic knowledge of reading and writing, identification of files, notings thereon etc.

3. For Group C posts, a written objective test, which would assess the aptitude, General Knowledge, the job knowledge, proficiency in English language would be held. A typing test would also be held. However, those of the petitioners/terminated employees who have qualified the typing test of the respondents earlier would be considered for exemption. This would be applicable where the record of typing test passed earlier is available. In addition, candidates would be interviewed.

4. Respondents would make available 50% of the vacancies for the petitioners and others whose services have been terminated subject to their qualifying the objective written / trade test, 50% vacancies to be filled based on the merit amongst the petitioners and others, whose services were terminated subject to their qualifying the written objective and trade test being selected in interview.

5. Age relaxation would also be made available to the petitioner and others whose services have been terminated. As regards weightage for experienced and knowledge peculiar to the respondent organization, the same stands provided by provision of 50% of the vacancies being made available to them.

3. The respondent No.2 AAI vide its letter dated 09.04.2008, with reference to the order dated 30.04.2007 (supra) informed the appellant that it had advertised vacancies in the grade of Junior Executive Engineer (Civil) and Junior Executive Engineer (Electrical) and gave a one time opportunity to the appellant to apply for one of the posts which he may desire and have the qualifications for. The appellant was further informed that though the last date for receipt of applications as per the advertisement had already expired, the appellant was still being given opportunity to apply.

4. The appellant in response thereto applied and appeared in the examination held on 03.08.2008 for the said purpose.

5. Upon the appellant not being called for the interview, the appellant first filed a writ petition in the Patna High Court and upon being confronted as to how that Court would have jurisdiction, withdrew that writ petition on 22.06.2009 with liberty to approach this Court. Thereafter the writ petition from which the present appeal arises was filed with the prayer as set out hereinabove.

6. The case of the appellant in the writ petition inter alia was that he had through the medium of Right to Information Act, 2005 learnt that the eligibility marks fixed for being called for interview pursuant to the examination held on 03.08.2008 was 40% for General Category as well as OBC Category candidates; that he had secured 35% marks and for the reason whereof he had not been called for interview. The contention of the appellant was / is that the eligibility marks could not be the same for the General Category as well as the OBC Category candidates; that the eligibility marks for the OBC Category candidates ought to have been lower than for the General Category candidates and had it been 35%, as also fixed for SC/ST Category candidates, the appellant would have qualified to be called for interview; moreover, as per the order dated 30.04.2007 in the earlier writ petition, 50% of the seats have to be reserved for the candidates, as the appellant, who were earlier appointed on ad-hoc basis and whose services had been terminated and which had also not been done.

7. The respondent No.2 AAI filed a counter affidavit in the writ petition in which, it was stated that the order dated 30.04.2007 in the earlier writ petition was confined to Grade-C and Grade-D posts while the post of Junior Executive Engineer (Civil) for which the petitioner had applied and appeared in the exam held on 03.08.2008 was a Grade-B post; that the said order thus had no applicability to the said post but nevertheless facility of extension of date for making the application had been given to the appellant as an ad-hoc employee whose services had earlier been terminated. It is further pleaded in the counter affidavit in the writ petition that the relaxation for the OBC Category candidates stipulated in the advertisement for the said post was only in age and not in the eligibility / cut off marks; that the appellant who had not even qualified in the written examination had no right to be called for interview. The respondent No.2 AAI in an additional affidavit filed before the learned Single Judge also clarified that in the advertisement published in the Employment News in February, 2008 for the said post, it was clearly provided that the number of posts may vary; in the ultimate analysis, 65 posts belonged to General Category, 16 to the OBC Category, 9 to the SC Category, 7 to the ST Category, 2 to the Orthopedically Handicapped Category and 1 to the Hearing Handicapped Category. It is also reiterated that no candidate belonging to the General or OBC Category with marks in the written examination below 40% had been called for the interview. In yet further affidavit filed by the respondent No.2 AAI before the learned Single Judge, it is inter alia informed that the last candidate selected from the General Category had secured 43% marks in the written test and the last candidate selected from the OBC Category had secured 40% marks in the written examination and thus no wrong had been done in not calling the appellant who

had secured only 35% marks in the written examination for interview. It was also informed that there are 42 other candidates in the OBC Category between the appellant and the last candidate from the said category who was called for interview.

8. In the aforesaid state of affairs and pleadings, the learned Single Judge did not find any merit in the writ petition preferred by the appellant and dismissed the same.

9. The counsel for the appellant has relied on *Apurva and Another Vs. Union of India (UOI) and Another*, which concerns the Central Educational Institutions (Reservation in Admission) Act, 2006 and which will have no relevance here.

10. Insofar as the claim of the appellant to the benefit of the order dated 30.04.2007 in the earlier writ petition is concerned, we are of the view that the same has no relevance to the application by the appellant for the post of Junior Executive Engineer (Civil) for which the appellant had applied and which it is not disputed is a Grade-B post. The order dated 30.04.2007 was confined only to the Grade-C and Grade-D posts. Though from the letter dated 09.04.2008 (*supra*) of the respondent No.2 AAI inviting application from the appellant for the said post, it does appear that the respondent No.2 AAI also was then under the impression that the order dated 30.04.2007 would apply to the post of Junior Executive Engineer (Civil) also but in the face of the clear language of the order dated 30.04.2007 such misconception even if any of the respondent No.2 AAI cannot create any rights in the appellant and which do not flow from the order dated 30.04.2007. Thus the claim of the appellant to be called for interview in compliance of the order dated 30.04.2007 was misconceived.

11. De hors the order dated 30.04.2007, the only grievance of the appellant with respect to the selection process for the said post is that the respondent No.2 AAI was wrong in fixing the qualifying marks in the written exam as 40% for both General as well as OBC Category candidates. However, before we deal with the said aspect, we may notice that the challenge in the writ petition was not to the selection process. The writ petition was filed after the appointments had been made and those appointed were not even impleaded as parties. The counsel for the respondent No.2 AAI has also, in our view correctly, relying on *Rekha Vs. UOI 140 (2007) DLT 232 (DB)* contended that an aspirant who participates in selection process and does not succeed is debarred from challenging the said process. The appellant herein did not challenge the advertisement inviting applications for the posts; he rather participated in the selection process and cannot be permitted to challenge the same after remaining unsuccessful. The Supreme Court in *Amlan Jyoti Borooah Vs. State of Assam and Others*, has held that when a person appears in an interview without any demur and having accepted the change in the selection procedure sub silentio, by not questioning the same, he cannot later be permitted to turn around and contend that the procedure adopted was illegal. It was held that the petitioner in such case is estopped and precluded from doing so, the ratio being that candidates who take

part in the selection process knowing fully well the procedure laid down therein cannot be permitted to turn back and assail the same after having being declared unsuccessful. Similarly, in *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, it was held that it is now well settled that if a candidate takes a calculated chance and appears at the interview, then only because the result of the interview is not palatable to him, he cannot turn around and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. It was held that when a person appears in the examination without protest and when he finds that he could not succeed in the examination he files a petition challenging the examination, the Courts could not grant any relief to such a petitioner. To the same effect is *Union of India and Another Vs. N. Chandrasekharan and Another*, , *K.H. Siraj Vs. High Court of Kerala and Others*, and *Manish Kumar Shahi Vs. State of Bihar and Others*, . We may notice that the appellant in the writ petition also did not seek any such prayer.

12. We even otherwise do not find any merit in the contention of the appellant of there being any requirement for the eligibility / cut off marks for the OBC Category candidates to be lower than those stipulated for the General Category candidates. The counsel for the appellant has been unable to show any such right. The Supreme Court in *Chattar Singh and others Vs. State of Rajasthan and others*, held that SCs & STs stand as two separate classes while OBCs stand apart. It was further held that it is illogical and unrealistic to think that omission to provide same benefits to OBCs as were provided to SC/STs is void under Articles 16(1) & 14 of the Constitution of India. The Supreme Court denied relaxation of 5% in cut off marks to OBCs.

13. Moreover, the appointments were made over two years back. As aforesaid, there are as many as 42 candidates between the appellant and the last candidate appointed from the OBC Category. The appellant cannot be granted any relief in preference to those ahead of him. For this reason also, we do not find any right in the appellant at this stage.

14. There is thus no merit in the appeal. The same is dismissed. No order as to costs.