
(2019) 04 CAT CK 0028
In the Central Administrative Tribunal
Case No : Original Application No. 72 Of 2015

Brijesh Beniwal

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 26-04-2019

Acts Referred:

Citation : (2019) 04 CAT CK 0028

Hon'ble Judges : Nita Chowdhury, J;S.N. Terdal, J

Bench : Division Bench

Advocate : M.K. Bhardwaj, D.S. Mehandru

Final Decision : Dismissed

Judgement

1. By filing this OA, the applicants are seeking the following reliefs:-

"i) To quash and set aside the impugned order dated 03.09.2014 and direct the respondents to allocate the Zone to the applicant as per their merit and by following the principle of merit-cum-preference and declare their action of allocating zones against the rules as illegal and unjustified and accordingly set aside such orders.

ii) to direct the respondents to allocate Jaipur Zone to both the applicants consequent upon their selection and appointment as Central Excise Inspector.

iii) To allow the OA with costs.

iv) Any other relief's as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case to meet the ends of justice."

2. In the instant OA, the applicant is impugning the order dated 3.9.2014 passed by the respondents in compliance of earlier Order passed by this Tribunal in OA No.3292/2012 dated 2.5.2014. The contents of the same reads as under:-

"This Order is being made in compliance of the Order dated 02.05.2014 passed by the Hon'ble CAT, Principal Bench, New Delhi in M.A. No.2742/2012 in O.A.

No.3292/2012 filed by Shri Pravesh Kumar Dabas & 3 Others Vs. Union of India & Ors.

2. The Hon'ble CAT, Principal Bench, New Delhi vide their Order dated 02.05.2014 in M.A. No.2742/2012 in O.A.3292/2014 filed by Shri Pravesh Kumar Dabas & 3 Others directed that :-

"to reconsider the representations of the applicants and pass a reasoned and speaking order within a period of three months from the receipt of a copy of this order. While passing the order, one thing which the respondents have to clearly keep in mind is that their policy does not envisage that candidates (reserved category candidates) at the bottom of the list in the respective category will be adjusted against unreserved vacancies in the category and doing that has been mistake on their part".

3. In this regard, it may be stated that in the O.A. No.1720/2012, Shri Pravesh Kumar Dabas, Shri Brijesh Beniwal, Shri Dharmendra Singh are the applicants who have been selected for the post of Inspector, Central Excise through Staff Selection Commission on the basis of Combined Graduation Level Examination, 2006.

4. Shri P.K. Dabas & other 3 have submitted their preferences and they have been allocated the zones as below:-

Sl No

Name S/Shri

Cate -gory

Rank No. (in 2006 exam)

Preferences submitted at the time of initial allocation

Zone allocated

1.

Pravesh Kumar Dabas

UR

SLD/01019

Delhi, Chandigarh, Vadodra, Jaipur, Mumbai-I

Bangalore

2.

Brijesh Beniwal

UR

SLD/01138

Jaipur, Delhi, Chandigarh, Vadodara, Bhopal

Bangalore

3.

Dharmendra Singh

UR

SLD/01145

Jaipur, Delhi, Chandigarh, Vadodara, Bhopal

Bangalore

4.

Jitendra Kumar

Ur

SLD/01014

Lucknow, Delhi, Vadodara, Mumbai-I, Chandigarh

Bangalore

5. The candidates for the post of Inspector (Central Excise) were allocated upto the Rank Nos., as per DOP&T's OM dated 9.10.2017 which is as follows:-

Sl. No.

Zone

Last allocation

1.

Delhi

SLD/00192

2.

Chandigarh

SLD/00224

3.

Jaipur

SLD/00069

4.

Lucknow

SLD/00174

5.

Vadodara

SLD/00966

6.

Bhopal

SLD/00419

7.

Mumbai-I

SLD/00819

8.

Bangalore

SLD/01172

As per the merit-cum-preference system, the option/preference is called for from all the candidates and thereafter, cadres are allotted strictly as per merit, taking into consideration, their preferences and the availability of vacancies in the relevant zone/category. Thus, a candidate with higher rank gets his first preference, a person with lower rank gets his second preference and so on. Accordingly, Shri Pravesh Kumar Dabas, Shri Brijesh Beniwal, Shri Dharmendra Singh and Shri Jitendra Kumar were allocated to Bangalore CX Zone.

6. As per Department of Personnel and Training O.M. No.36012/72/2-009-Estt. (Res.) dated 04.06.2010 relating to the implementation of the Orders of the Hon'ble CAT in the matter of Shri Surender Singh vs. UOI and Others, re-allocation was made for General Category candidates upto the Rank Numbers, as given below:

Sl. No.

Zone

Last allocation

1.

Delhi

SLD/00347

2.

Chandigarh

SLD/00496

3.

Jaipur

SLD/00539

4.

Lucknow

SLD/00439

5.

Vadodara

SLD/01007

6.

Bhopal

SLD/00448

7.

Mumbai-I

SLD/00872

8.

Bangalore

SLD/01172

7. As such, S/Shri Pravesh Kumar Dabas, Brijesh Beniwal, Dharmendra Singh and Jitendra Kumar were allocated to Bangalore CX zone as per their rank numbers.

8. In view of the principle followed in allocation of zones and respective merit for each zone as detailed in para 6 above. It has not been found feasible to consider the cases of S/Shri Pravesh Kumar Dabas, Brijesh Beniwal, Dharmendra Singh and Jitendra Kumar for change in allocation of Zone as per the extant rules/scheme guidelines.

This issues with the approval of Member (P&V), CBEC."

3. During the course of arguments, learned counsel for the applicants submitted that allocation has to be done in terms of the provisions contained in para 11 of DOP&T OM dated 4. 6.2010 but the respondents have done the same wrongly.

4. On the other hand, respondents have stated that they have strictly complied with the provisions contained in the DOP&T OM dated 4.6.2010 and have filed their additional affidavit in which they have stated that the Board vide its letter dated 16.9.2009 allocated the candidates selected for the post of Inspector (Central Excise, Preventive Officers & Examiner) through SSC on the basis of CGLE, 2006 in pursuance of DOP&T OM dated 9.10.2007. The work of allocation of selected candidates as made in Jaipur Zone is mentioned as under:-

Category

Rank No. of the candidates for CGLE, 2006 who was allocated Jaipur Zone

21 General Category vacancies for Jaipur Zone

General Category

69

1st General Vacancy

OBC candidates selected against General Standards

125*

3rd General Vacancy

166*

4th General Vacancy

175*

5th General Vacancy

453*

6th General Vacancy

569*

7th General Vacancy

637*

8th General Vacancy

683*

9th General Vacancy

930*

10th General Vacancy

1122*

11th General Vacancy

1125*

12th General Vacancy

1163*

13th General Vacancy

1165*

14th General Vacancy

1213*

15th General Vacancy

1246*

16th General Vacancy

1319*

17th General Vacancy

1474*

19th General Vacancy

1480*

21st General Vacancy

SC Candidates selected against General Standards

1374*

18th General Vacancy

ST Candidates selected against General Standards

76*

2nd General Vacancy

1476*

20th General Vacancy

They further stated that the candidates with rank No.1476 belong to ST Category but as he was selected against General Standard, hence, he was allocated to Jaipur Zone against General Category vacancy and not against ST Category vacancy. Furthermore, the candidate with rank No.1347 was allocated to Chennai CX Zone and not Jaipur Zone.

5. Counsel for the applicants strenuously argued against the additional affidavit filed by the respondents and stated that in fact the applicants have been discriminated against despite having better merit position, they were not

allocated the Jaipur Zone but the averments made by the respondents in their additional affidavit are very clear. Both the counsels for the parties relied upon the para 11 of the DOP&T OM dated 4.6.2010 on the subject of Allocation of Zones to Inspectors (Central Excise) - Implementation of the orders of the Central Administrative Tribunal in the matter of Shri Surender Singh vs. UOI and others (OA No.3494/2009). The relevant para 11 of the said OM is reproduced as under:-

"11. Keeping all aspects in view, it is suggested that after the selection process for the post is completed by the Staff Selection Commission, the Commission should arrange the candidates in the order of merit as disclosed by the aggregate marks finally awarded to each candidate. Thereafter, the Commission should prepare a list of candidates to be recommended against unreserved vacancies and separate lists of candidates to be recommended against vacancies reserved for the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes. The candidates belonging to the Scheduled Castes, Scheduled Tribes and the Other Backward Classes who have not availed themselves of any of the concessions or relaxation in the eligibility or the selection criteria, at any stage of the examination and who after taking into account the general qualifying standards are found fit for recommendation by the Commission should be included in the list of candidates to be recommended against unreserved vacancies. The number of candidates recommended by the Commission, in the first instance, should be equal to the total number of vacancies reduced by the number of candidates belonging to the Scheduled Castes, the Scheduled Tribes and Other Backward Classes included in the list of candidates to be recommended against unreserved vacancies. Allocation of zones to candidates recommended against unreserved vacancies may then be made by the Department of Revenue strictly by following the principle of merit-cum-preference. However, candidates belonging to the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes recommended against unreserved vacancies may be adjusted against reserved vacancies if by doing so, they get the zones of their higher reference. Thereafter, the candidates recommended against the vacancies reserved for the Scheduled Castes, Scheduled Tribes and Other Backward Classes may be allocated zones strictly by following the principle of merit-cum-preference."

6. We further observe that in the aforesaid OM, the DOP&T specifically clarified that the candidates belonging to the Scheduled Castes, Scheduled Tribes and the Other Backward Classes who have not availed themselves of any of the concessions or relaxation in the eligibility or the selection criteria, at any stage of the examination and who after taking into account the general qualifying standards are found fit for recommendation by the Commission should be included in the list of candidates to be recommended against unreserved vacancies. However, candidates belonging to the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes recommended against unreserved vacancies may be adjusted against reserved vacancies if by doing so,

they get the zones of their higher reference. Thereafter, the candidates recommended against the vacancies reserved for the Scheduled Castes, Scheduled Tribes and Other Backward Classes may be allocated zones strictly by following the principle of merit-cum-preference. Having regard to the aforesaid averments made by the respondents in their additional affidavit, we find that the respondents have strictly acted in terms of the provisions of para 11 of the said OM while allocating Jaipur zone to the candidates and the fact that the applicants having their merit position at SLD/01138 and SLD/01145 respectively. However, while the counsel for the applicants strenuously presented the case of the applicants but he has not been able to contradict the factual position as indicated by the respondents. Hence, we do not find any merit in this OA.

7. In the result, for the foregoing reasons, the present OA is accordingly dismissed. There shall be no order as to costs.