

(2018) 07 CAT CK 0024

In the Central Administrative Tribunal

Case No : Original Application No. 579 Of 2018

Divyanshu Patel

APPELLANT

Vs

Government Of India And Ors

RESPONDENT

Date of Decision : 25-07-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2018) 07 CAT CK 0024

Hon'ble Judges : Dinesh Gupta, J;K.N. Shrivastava, Member (A)

Bench : Division Bench

Advocate : Neeraj Kumar Jain, T N Singh, Vikas Kumar Singh, Harvinder Oberoi

Final Decision : Allowed

Judgement

K.N. Shrivastava, Member (A)

1. Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main reliefs:-

"i. To allow this application by setting aside the Order No.13013/10/2017-AIS.I dated 17.1.2018 passed by the Under Secretary to the Government of India, Ministry of Personnel, Public Grievance and Pensions, Department of Personnel and Training;

ii. Direct the respondent to allocate service to the applicant as I.A.S. as being insider S. No.2 for U.P. Cadre by way of treating him as O.B.C. (Non-creamy Layer) on the basis of recommendation made by the Union Public Service Commission and as per letter dated 14.10.2004 of the DOP&T.

iii. Direct the respondent to maintain the seniority of the applicant in I.A.S. cadre over his junior by way of sending him on training forthwith with all consequential benefits."

2. Factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicant appeared in Civil Services Examination (CSE), 2016. He had claimed benefits of reservation of OBC in the service under mGovernment of India. He secured 204th rank in the list of candidates recommended by the Union Public Service Commission (UPSC) for appointment on the basis of CSE, 2016. His candidature was recommended for appointment under the OBC category.

2.2 The DoPT O.M. dated 08.09.1993 (Annexure A-10) reserves 27% of vacancies in civil posts and services under the Government of India for OBC category. It also provides for exclusion of the socially advanced persons/sections from the benefits of reservations for OBC. In the Schedule attached to this O.M., an exhaustive list of categories is given to whom the OBC benefits are not available. In common parlance, the Schedule defines the creamy layer, to whom such benefits are denied.

2.3 Dealing with the service category in the exclusion list, as indicated in its Schedule, the ibid O.M. dated 08.09.1993 stipulates as under:-

"II Service Category A. Group A/Class I officers of the All India Central and State Services (Direct Recruits).

Son(s) and daughter(s) of

(a) parents, both of whom are Class I officers;

(b) parents, either of whom is a Class I officer."

2.4 The applicant participated in the Preliminary Examination of CSE, 2016 and qualified for the Civil Services (Main) Examination, 2016. He cleared the Main Examination as well and was called for interview. Finally, the UPSC, vide Annexure A-9 letter, addressed to DoPT, recommended his candidature for appointment with his merit serial no.204.

2.5 In all, 1099 candidates were declared successful by the UPSC. The applicant, together with other successful candidates, was directed to undergo training at Lal Bahadur Shastri National Academy of Administration, Masoori from 28.08.2017 to 08.12.2017. He was, however, not allocated any service.

2.6 The DoPT Portal on 03.08.2017, qua the applicant, indicated that "Your OBC (Non-creamy Layer) is under verification".

2.7 An OBC candidate, Rahul Dhote having 209th rank, i.e., below the applicant, had been allocated for IAS out of total 180 posts earmarked for IAS cadre.

2.8 The applicant, through his advocate, submitted a detailed Annexure A-13 representation to DoPT regarding non-allocation of service to him.

2.9 As no immediate action was taken by the DoPT on his ibid representation, the applicant approached this Bench of the Tribunal in O.A. No.4366/2017 seeking a declaration that he belongs to OBC (non-creamy layer category) and thus he is entitled for allocation of service against OBC vacancies of CSE, 2016. The Tribunal disposed of the ibid O.A. vide order dated 12.12.2017; the operative

part of which reads as under:-

"In view of the matter, without entering into the merits of the issue, at this stage, this OA is disposed of with a direction to the Secretary, DOP&T to examine the representation of the applicant dated 25.10.2017 in the light of the documents furnished by him and to dispose of the same by passing a reasoned and speaking order within a period of one month from the date of receipt of a copy of this order. In the event the applicant is found to be genuine OBC category candidate, he shall be sent for the training, after allocation of service, in accordance with rules in terms of his ranking in the final select list."

2.10 In compliance of the *ibid* order of the Tribunal dated 12.12.2017, the DoPT (respondent), vide its impugned Annexure A-1 order dated 17.01.2018, has rejected the claim of the applicant that he belongs to OBC (non-creamy layer). The main reasons, indicated in it by DoPT in rejecting his claim, are the following:-

(i) The applicant's father was appointed as Post Office Clerk in Central Government at the age of 23 years and subsequently, his father was further recruited as Lecturer, which is a Group A post, in Maharani Lal Kunwari Post Graduate College, Balrampur under State Government of Uttar Pradesh.

(ii) Since his father was directly recruited to the said Group A post, in terms of Annexure A-10 O.M. of DoPT dated 08.09.1993, he does not fall under non-creamy layer category.

(iii) The DoPT, vide its letter dated 14.10.2004 (Annexure A-11) written to the Chief Secretaries of all the States/Union Territories, has clarified as under:-

"4 (v) Will the sons and daughters of parents of whom husband is directly recruited Class 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?"

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7. In regard to clause (v) of para 4, 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."

Aggrieved by the impugned Annexure A-1 letter dated 17.01.2018 of DoPT, the applicant has filed the instant O.A. praying for the reliefs, as indicated in paragraph (1) above.

3. In support of the reliefs claimed, the applicant has pleaded the following important grounds:-

3.1 The impugned Annexure A-1 letter dated 17.01.2018, rejecting the

representation of the applicant dated 25.10.2017, is contrary to the clarificatory letter dated 14.10.2004 issued by the DoPT as well as the representations dated 25.10.2017 and 22.12.2017 of the applicant wherein various Court's decisions have been relied upon.

3.2 In the case of Secretary, M/o Personnel, Public Grievances & Pension v. Tanu Kashyap & another (W.P. (C) No.16191/2006) decided on 05.10.2007, the Hon"ble High Court of Delhi has clearly observed that since the father of the respondent therein had reached to Class I post after the age of 40 years, in terms of DoPT O.M. dated 08.09.1993, he would fall under the non-creamy layer category. The relevant paragraph 9 of the said judgment is extracted below:-

"9. In order to show that the post held by the respondent No. 1's father was comparable to the Government post, reliance was placed by learned Counsel for the petitioner, before us as well as before the learned Tribunal, to the Order No. 11021/6/86/CSW dated 22.9.1986 of the Department of Coal. In terms of option 2, Clause (a) Sub-clause (iv) of the said Order dated 22.9.1986, pay scale of Rs. 1130-2400 is stated to be equivalent to Rs. 1640-2900. The pay scales of Rs. 1640-2900 and Rs. 2000-3500, in accordance with the notification of the Central Commission, related to Class-II officers of the Central Government. Thus, orders dated 22.9.1986 suggest that there was equivalence of posts of the persons working in Coal India Ltd. or Eastern Coal Fields Ltd. with the employees of the Central Government. The father of the respondent No. 1 admittedly joined the job in the pay scale of Rs. 725-1325 on the basis of which it cannot be said that he would belong to the creamy layer as it is not Group-A/Class-I post. At the age of 40 years, he was enjoying the pay scale of Rs. 1130-2400, equivalent to Rs. 1640-2900, which is again Class-II post. He was promoted to the scale of Rs. 1640-2900 after he had crossed the age of 40 years, i.e. at the age of 40 years 4 months and 12 days. Therefore, father of the respondent No. 1 neither joined Class-I post nor he could get promotion to the Class-I post before he attained the age of 40 years. On this happening, therefore, he would not fall in the creamy layer of OBC."

3.3 This applicant's father joined as a Post Office Clerk in Group "C" (Class III) post at the age of 23 years on 07.05.1980. He was appointed as Lecturer in Group "A" / Class I on 12.09.2000 at the age of 43 years. As such, the father of the applicant neither joined Class I post nor could he get promotion/induction to the Class I post before he attained the age of 40 years, and, therefore, the applicant has to be considered belonging to OBC non-creamy layer category.

3.4 Identical view has been taken by the Madras Bench of this Tribunal in O.A. Nos.1132, 1133 & 1175 of 2014 (Rohith Nathan & another v. Union of India & others), which has been re-confirmed by the Hon"ble High Court of Madras in W.P. (C) Nos.6387 to 6389 of 2017 vide judgment dated 31.08.2017.

3.5 The impugned order of the DoPT does not correctly interpret the judgment of Hon"ble Supreme Court in the case of Ashoka Kumar Thakur v. Union of India &

others, (2008) 6 SCC 1. The DoPT has failed to notice that the father of the applicant remained in Group "C" till the age of 40 years.

3.6 The UPSC had selected the applicant earlier as Assistant Commandant in CRPF under the OBC category. He was also issued appointment letter dated 09.12.2013 to that effect. Hence, declaring him ineligible for the benefits of OBC category after he has qualified CSE, 2016, is unfair. The impugned Annexure A-1 order of the DoPT interprets paragraph 4 (v) of its letter dated 14.10.2004 in a very narrow sense.

3.7 The applicant had clearly indicated the annual salary of his father as `5,20,000/- per annum at the time of filling up of his application form for CSE, 2016, which is less than `6,00,000/- per annum prescribed for the creamy layer. The applicant's candidature was accepted by the UPSC and he was allowed to participate in the selection process.

4. Pursuant to the notice issued, the respondent entered appearance and filed its reply, in which following important submissions have been made:-

4.1 The applicant has been recommended by the UPSC for appointment on the basis of CSE, 2016 under the OBC category and not under the general merit. While doing so, the UPSC has stated as under:-

"the claims of the candidates for belonging to Scheduled Castes/Scheduled Tribes/OBC candidates have been accepted on the basis of the original certificates brought by them. As cases have occurred in the past, where candidates obtained Scheduled Caste/Scheduled Tribe/OBC certificate even though they did not actually belong to these categories, government may, if considered necessary, further verify the veracity of these documents before making offer of appointment.

....There may be some cases through the OBC certificates have been issued to the candidates, the "creamy layer" status may be doubtful keeping in view the income/status of the parents of the candidates as per the declaration of the candidates vide columns 13 (K) and (I) in the Detailed Application Form. It is, therefore, requested that the Government may, in such cases, like to ensure that such candidates do not attract "creamy layer" provision and offers of appointment to these candidates may be made after the Government satisfy themselves in this respect also.

....Based on the information supplied by the candidates the Government may satisfy themselves about the genuineness of their OBC claim. These candidates have been provisionally treated as OBC candidates subject to the Government satisfying themselves about the genuineness of their OBC claims."

4.2 The applicant's father was appointed as a Post Office Clerk at the age of 23 years and subsequently, he was appointed to the post of Lecturer, which is a Group "A" post, in Maharani Lal Kunwari Post Graduate College, Balrampur under State Government of Uttar Pradesh.

4.3 The creamy layer category, in the context of the benefits of reservation for OBC, is determined in terms of DoPT O.M. dated 08.09.1993. This O.M. lays down six criteria for determining the creamy layer status of the candidates claiming the benefit of reservation as OBC. In category II (b) of the Schedule to the ibid O.M., the reservation meant for OBC candidates shall not apply to son(s) and daughter(s) of persons, either of whom is a Group "A"/Class I officer (direct recruit) of the All India Central & State Services. Since the applicant's father was appointed to a Group "A" post, hence he fell in the creamy layer category in terms of the said O.M. dated 08.09.1993.

4.4 The DoPT letter dated 14.10.2004 (Annexure A-11) has dealt with the applicant's claim that he should not be treated to be falling in creamy layer, inasmuch as at the age of 40 years or below his father was only in Group "C".

4.5 The applicant has referred to the case of Mr. Tanu Kashyap (CSE 2004) and Mr. G Babu (CSE 2013). In this regard, it is stated that the fathers of these persons were working in Public Sector Undertaking and their claim of OBC (non-creamy layer) was rejected by applying Income/Wealth Test (category VI of the Schedule to O.M. dated 08.09.1993). However, in the instant case, non-creamy layer claim of the applicant has not been accepted on the basis of direct recruitment of his father to Group "A" post and thus covered in category II A of the Schedule to O.M. dated 08.09.1993. The claim of the applicant has not been rejected on the basis of Income/Wealth Test.

4.6 The applicant, despite being non-eligible candidate for availing reservation meant for OBC (non-creamy layer), has been laying his claim against OBC vacancies in IAS, which have already been filled up by other eligible OBC candidates. The allocation of service to the candidates is done as per his/her preference subject to fulfillment of other conditions, like medical fitness, eligibility for availing reservation as per CSE Rules and extant instructions on the subject. Service allocation process involves chain reaction; if a vacancy is consumed, the same is not available for next candidate and so on.

5. On completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 13.07.2018. Arguments of Mr. Neeraj Kumar Jain, senior counsel for applicant and that of Mrs. Harvinder Oberoi, learned counsel for respondent were heard.

6. Both the parties, by and large, stressed on their respective pleadings. We have considered the arguments of both the sides and perused the materials placed on record.

7. Annexure A-10 O.M. dated 08.09.1993 lays down the criteria to examine the claim of a candidate whether he/she belongs to OBC (non-creamy layer) category/ This O.M. also makes it clear that OBC reservation is available only to non-creamy layer category. The Schedule attached to this O.M. elaborates the exclusion list.

8. Admittedly, the father of the applicant joined as a Post Office Clerk, which is Class III/Group "C" post in the pay scale `260-480 on 07.05.1980. Subsequently, he was selected to a Group "A" post, i.e., Lecturer in Maharani Lal Kunwari Post Graduate College, Balrampur under State Government of Uttar Pradesh. At that time, he was 43 years old. The Schedule attached to Annexure A-10 DoPT O.M. dated 08.09.1993 deals with such a case, as noticed in paragraph 2.3 above. The rationale behind excluding a candidate whose father is a Class I / Group "A" officer is that such a candidate would have received all facilities and privileges for pursuing his education in a most beneficial manner, and such a candidate would not have suffered vagaries of poverty / economic constraints in any manner. A close reading of this O.M. and the Schedule attached to it would indicate that they have taken note of the ground reality that the basic education of a candidate, aspiring to prepare for CSE, would have been over by the time his/her parents cross the age of 40 years. This alone is the plausible reason for prescribing the age limit of 40 years.

9. In the instant case, admittedly, the applicant's father was a Post Office Clerk, which is a Class III/Group "C" post. His father had continued in that capacity till he attained the age of 40 years. Only at the age of 43 years, he was fortunate enough to get selected to a Group "A" post of Lecturer in a college in Uttar Pradesh. Hence, it is crystal clear that the applicant has suffered the vagaries of economic constraints all through his basic education. Certainly, his parents were not able to provide him the kind of facilities, which the parents, in Class I Government services, provide to their children. Hence, we are of the view that the DoPT, in their impugned Annexure A-1 order dated 17.01.2018, has not correctly interpreted the rationale of its own O.M. dated 08.09.1993 as well as the clarification provided in its letter dated 14.10.2004. We have no doubt that in terms of the clarifications provided in DoPT letter dated 14.10.2004 the applicant belongs to non-creamy layer category of OBC. The UPSC and the concerned entities of the Central Government had clearly interpreted 08.09.1993 O.M. and the clarifications given in DoPT letter dated 14.10.2004 in considering the candidature of the applicant in CSE, 2013 and in offering him appointment to the post of Assistant Commandant, CRPF.

10. Another touchstone to be applied for determining creamy layer is the Income / Wealth Test criteria. At the time when the applicant applied for CSE, 2016, the income limit prescribed was `6,00,000/- per annum. The applicant had indicated clearly that his parents' annual income was `5,20,000/- per annum only. This fact has not been disputed by the respondent anywhere and hence it has to be accepted.

11. In the conspectus of discussion in the pre-paragraphs, we hold that the applicant belongs to non-creamy layer category of OBC and hence, he is entitled for receiving the OBC reservation benefits. He has secured 204th rank in CSE, 2016 and since an OBC candidate, Rahul Dhote having 209th rank, i.e., below the applicant, had been allocated IAS, the applicant also deserves to be allocated

IAS.

12. We accordingly allow this O.A. and direct the respondent to allocate IAS to the applicant, with all consequential benefits. This shall be done within a period of two months from the date of receipt of a copy of this order. No order as to costs.