
(2014) 11 SHI CK 0118
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 7744 of 2010

Inder Jyoti Chauhan

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-11-2014

Acts Referred:

Administrative Tribunals Act, 1985 — Section 20, 21, 21(1), 21(3)
Constitution of India, 1950 — Article 14, 16, 16(4), 16(4)(A)

Citation : (2014) 11 SHI CK 0118

Hon'ble Judges : Mansoor Ahmad Mir, C.J; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Shikha Chauhan and Jasbir Singh, Advocate for the Appellant; Ashok Sharma, Assistant Solicitor General of India, Rahul Mahajan and Rajnish Maniktala, Advocate for the Respondent

Judgement

Tarlok Singh Chauhan, J.—The petitioner by medium of this writ petition has questioned the order passed by the learned Central Administrative Tribunal, Chandigarh Bench, Chandigarh on 12.11.2010 whereby it quashed the order dated 4.9.2006 whereunder the petitioner had been held entitled to the benefit of reservation from the date of joining with a condition that in the recruitment roster she would not be entitled to consume the reservation point for initial appointment.

2. It appears that the petitioner had applied for post of Lower Division Clerk as general category candidate and this fact was recorded in her service book. Some time later, the petitioner applied for change of category from general category to Scheduled Caste on the ground that she could not submit her certificate earlier as she had lost the same. The competent authority allowed the change of category (from General to Reserved) vide order dated 20.6.2004 and it was subsequently, vide letter dated 4.9.2006 that the competent authority held the petitioner "is entitled to the benefits of reservation from the date of joining but in the recruitment roster she shall not consume the reserved point for initial appointment."

3. This order came to be challenged by 5th respondent, who preferred Original Application No. 1029-HP/09 before the learned Central Administrative Tribunal, Chandigarh. It was contended therein that he was appointed as Lower Division Clerk against the quota reserved for Scheduled Caste vide order dated 14.11.1990. He joined his duty on 22.11.1990, whereas the petitioner had been appointed as Lower Division Clerk on 6.1.1988 against the vacancy falling in the share of general category. Vide order dated 24.6.1993, 5th respondent was promoted as Upper Division Clerk. A provisional seniority list of Upper Division Clerks as on 31.8.1998 was drawn up and circulated which was followed by final seniority list in which the name of 5th respondent figured at serial No. 16 as an Scheduled Caste candidate whereas the name of the petitioner appeared at serial No. 15 as a general category candidate. The respondents further circulated the final seniority list of Upper Division Clerks as on 1.4.2002 wherein the name of 5th respondent appeared as reserved category candidate at serial No. 14, whereas the name of the petitioner appeared at serial No. 13 as a general category candidate. 5th respondent was promoted as Assistant in terms of the order dated 23.10.2002 and assumed the duty of that post on that very day. Later, he was promoted as Section Supervisor vide order dated 6.3.2003. The final seniority list of Section Supervisors as on 31.12.2006 was circulated vide order dated 2.3.2007 wherein the name of 5th respondent figured at serial No. 8 as an Scheduled Caste candidate, whereas the name of the petitioner did not figure in the list as by that time she had not been promoted to the post of Section Supervisor. Yet, another final seniority list of Section Supervisors was circulated vide letter dated 4.2.2008 wherein the name of 5th respondent appeared at serial No. 8 as an Scheduled Caste candidate, whereas the name of the petitioner again did not figure in this list as she had not been promoted as Section Supervisor by that time.

4. Notably the 5th respondent did not challenge the change of category before the Tribunal but was only aggrieved by the grant of benefit in favour of petitioner from "the date of her entry into service". He maintained that since the petitioner had been appointed as Lower Division Clerk in general/open category, she could not now take U-turn and claimed the benefit of reservation from the date of her appointment as she was estopped by own act and conduct. It was further claimed that in case such benefit is granted, the same would be unconstitutional being contrary to Articles 14 and 16 of the Constitution of India. It was also contended that granting of benefit to the petitioner after 20 years especially when 5th respondent had already been promoted several times would amount to take away the vested right already accrued in his favour. Lastly, it was contended that the petitioner had made a false declaration at the time of entry into service and, therefore, was not entitled to the benefit of reservation.

5. The official respondents filed reply and opposed the petition on the ground that under the provisions of Article 16(4)(A) of the Constitution, there is a reservation in promotion for Scheduled Caste and Scheduled Tribe employees against the posts reserved for them in the roster as per rules and, therefore, 5th

respondent could not seek any rights against the petitioner and such challenge was not only bad in law but was also not maintainable. It was further averred that the official respondents had accepted the plea of the petitioner and thereafter treated her as a reserved candidate from the date of initial appointment. It was also contended that unintentional negligence which may occurred at the instance of an employee, if traced at a later stage, could be set right as the same was duly supported by rules and once this was done, then the consequential benefits flowing from the order could not be denied. 5th respondent had enjoyed the benefit of negligence of the petitioner so far by getting the promotion to the post of Section Supervisor and now no right of 5th respondent was taken away by the petitioner. Rather reserved community category employee's right was being protected as per the rules.

6. The petitioner also opposed the petition by filing a reply wherein it was claimed that 5th respondent was much junior to the petitioner and had been promoted as Upper Division Clerk later than the petitioner and, therefore, could not claim promotion prior to her to the post of Section Supervisor. The petitioner also took a specific ground regarding the non-maintainability of the Original Application on the ground of delay and laches. It was then contended that the petitioner at the time of initial appointment mistakenly could not give correct information regarding her caste but that did not mean that she did not belong to the Scheduled Caste category and, therefore, could be denied the benefit of reservation.

7. It is this order of the learned Tribunal, which has been challenged by the petitioner on various grounds as taken in the petition.

8. We have heard learned counsel for the parties and have also gone through the records carefully.

9. The petitioner has vehemently argued that she has acquired her caste by birth which could be only lost by death and, therefore, having suffered disadvantages of belonging to that caste, she is entitled to all the benefits of reservation and cannot be denied the benefit thereof. In support of such contention, the petitioner has relied upon the judgment of this Court in Meena Devi vs. Himachal Pradesh State Subordinate Services Selection Board, CWP No. 5744 of 2010 decided on 9.8.2011 and a judgment of this Bench in Smt. Neetu vs. The State of H.P. and others, CWP No. 3139 of 2009, decided on 19.6.2014.

10. We need not to go into this question because as already observed earlier, even 5th respondent had not challenged the change of category of the petitioner from general to schedule caste before the Tribunal but was only aggrieved by grant of benefit in her favour from the "date of her entry into service".

11. The petitioner would then contend that once it is undisputed that she belongs to Scheduled Caste, then she is not only legitimately but legally entitled to all the benefits as available to this category. She had already suffered much because even as per the office order dated 4.9.2006, she would be entitled to the benefit

of reservation from the date of joining but then in the recruitment roster, she has been held not entitled to consume the reservation point from initial appointment.

12. On the other hand, 5th respondent would contend that the petitioner having opted under the general category could not be permitted to turn around and claim benefit of reservation that too to the disadvantage of 5th respondent. In support of his contention, he has relied upon the single Bench judgment of Rajasthan High Court in Kumari Nikita vs. Centralised Admission Coordination Committee and Others 2000 (3) Rajasthan L R 664, a Division Bench judgment of Punjab and Haryana High Court in Sandeep Singh Vs. Punjab University, Chandigarh and others, and lastly upon the judgment of Hon''ble Supreme Court in J. and K. Public Service Commission Vs. Israr Ahmad and Others, .

13. We have gone through the aforesaid judgments and find that all these judgments deal with the cases wherein the candidate had applied as a general category candidate, but after having failed to qualify or get selected in the general category had sought the change of category. The Courts in this background held that once a candidate had chosen to opt under general category, he could not be allowed the change of status and make fresh claim. However, this is not the fact situation obtaining in the present case. The petitioner had applied as a general category candidate and was selected as a general category candidate and joined the services. She did not even consume the roster point of the reserved category, it is only thereafter that the petitioner chose to opt the category to which she was entitled.

14. Learned counsel for 5th respondent would then contend that Article 16(4) was only an enabling provision and it neither imposed any constitutional duty nor conferred any fundamental right for reservation and, therefore, the petitioner was not entitled to the benefits of reservation. In support of his submission, he has relied upon the judgment of the Hon''ble Supreme Court in Ajit Singh and Others Vs. State of Punjab and Others, .

15. We have gone through the judgment and are of the firm opinion that the same does not in any manner support the claim of 5th respondent. 5th respondent has clearly unequivocally stated before the learned Tribunal that he did not dispute that the petitioner belongs to a Scheduled Caste category and had in fact not even challenged the validity of the change of category. He had only questioned the benefit given to her with effect from the date of her entry into service as would appear from paragraph 18 of the impugned judgment, which reads as under:

"18. In view of the fact that the applicant herein has not challenged the validity of the change of category as such, we would not go into the legal appropriateness thereof and would confine ourselves to the impugned order, Annexure A-1, vide which the grant of that benefit to her was ordered with effect from the date of her entry into service."

16. 5th respondent has thereafter relied upon the judgment of the Hon''ble

Supreme Court in *Bimlesh Tanwar Vs. State of Haryana and Others*, *Union of India (UOI) and Another Vs. S.K. Goel and Others*, and *H.S. Vankani and Others Vs. State of Gujarat and Others*, to contend that the settled things cannot be unsettled after such a long lapse of time.

17. We have gone through the aforesaid judgments and are of the opinion that the same do not apply to the given facts and circumstances of the case. 5th respondent has sought to defeat the claim of the petitioner on the ground of delay and laches by claiming that in case her claim is allowed the settled things would be unsettled. At this stage, we may notice that 5th respondent had himself preferred the Original Application only on 15.12.2009 questioning an order which had been passed more than three years back on 4.9.2006. The petitioner in her reply had raised a specific objection regarding the Original Application being barred by limitation. However, the learned Tribunal brushed aside this objection by according the following reasons:

"13. The official respondents reiterated the correctness of the impugned order. It was averred that it is too late in the day for the applicant to raise a challenge thereto inasmuch as the impugned order had been granted in the year 2004, while the O.A. was filed only in the year 2009. This plea was also raised by the official respondents and also respondent No. 5 in the course of the resistance offered to the plea raised by the applicant for condonation of delay in filing of the O.A. Respondent No. 5 also averred that the plea for conversion of category had been rightly made by her and justly allowed by the competent authority."

18. This finding of the learned Tribunal cannot be countenanced and is not sustainable in teeth of the decision of the Hon"ble Supreme Court in *Ramesh Chand Sharma Vs. Udham Singh Kamal and Others*, wherein the Hon"ble Supreme Court held as under:

"4. The respondent No. 1 Udham Singh Kamal on 2nd June, 1994 filed Original Application (O.A.) before the Himachal Pradesh Administrative Tribunal. This O.A. was admittedly beyond the prescribed period of limitation of three years as provided under Section 21 of the Administrative Tribunals Act, 1985. As regards the limitation in paragraph 5, the first respondent has stated as under:

"The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985."

This averment clearly indicates that the first respondent was all along asserting that he had filed O.A. within limitation but it was not so. The appellants in both these appeals have raised a contention that the O.A. was beyond three years and, therefore, the same was barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. Despite this objection raised by the appellants, the first respondent did not file any application for condonation of delay. Section 21(3) of the Act gives power to the Tribunal to condone the delay if sufficient cause is shown.

5. Section 21 reads as under:

"21. Limitation - (1) A tribunal shall not admit an application,

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) xxxx xxxx xxxx xxxx

(3) Notwithstanding anything contained in sub-section (1) or subsection (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in subsection (2), if the applicant satisfies the Tribunal, that he had sufficient cause for not making the application within such period."

Relying upon the aforesaid provisions, it was contended on behalf of the appellants that the O.A. filed by the first respondent Udham Singh Kamal was barred by limitation. No application for condonation of delay was filed. In the absence of any application under Sub-section (3) of Section 21 praying for condonation of delay, the Tribunal had no jurisdiction to admit and dispose of O.A. on merits. It was, therefore, contended that the Tribunal has totally overlooked the statutory provision contained in Section 21 of the Act and, therefore, impugned order be set aside.

7. On perusal of the materials on record and after hearing counsel for the parties, we are of the opinion that the explanation sought to be given before us cannot be entertained as no foundation thereof was laid before the Tribunal. It was open to the first respondent to make proper application under Section 21(3) of the Act for condonation of delay and having not done so, he cannot be permitted to take up such contention at this late stage. In our opinion, the O.A. filed before the Tribunal after the expiry of three years could not have been admitted and disposed of on merits in view of the statutory provision contained in Section 21(1) of the Administrative Tribunals Act, 1985. The law in this behalf is now settled, see *Secretary to Government of India and Others v. Shivam Mahadu Gaikwad*, [1995] Supp. 3 SCC 231."

19. Even in this case as regards the limitation, 5th respondent in paragraph 3 has stated as under:

"That the applicant declare that the Original Application is within limitation, however in the facts and circumstances as mentioned in the application under Section 21 of the Administrative Tribunal Act, the delay, if any, may be condoned

in terms of the application."

The averments clearly indicates that 5th respondent was all along asserting that he had filed the Original Application within limitation, but

it was not so. The petitioner on the other hand had raised a specific plea that the Original Application was barred by limitation as would be clear from the reply to this para, which reads thus:

"That the contents of this para of original application are vehemently denied being wrong and misconceived. The decision to grant the benefit of reservation to the answering respondent was taken as back as on 20.7.2004 and applicant has approached this Hon"ble Tribunal in December, 2009 and therefore, present original application badly suffers from delay and laches on the part of applicant. Therefore, present original application is liable to be dismissed on this score alone."

20. Despite this objection raised by the petitioner, 5th respondent did not file an application for condonation of delay under Section 21(3) of the Act, which gives power to the Tribunal to condone the delay, if sufficient cause is shown.

21. Once the question of limitation had been raised, it was incumbent upon the learned Tribunal to have answered the same. Now, in case the Original Application preferred by 5th respondent is seen, the same is ex-facie barred under the provisions of Section 21 of the Administrative Tribunals Act as the Original Application was preferred on 15.12.2009 whereby challenge had been laid to an order dated 4.9.2006 i.e. an order passed more than three years prior to filing of the petition.

22. Learned counsel for 5th respondent would then contend that in the Original Application it was not only the order dated 4.9.2006 which was under challenge, but he had also challenged the order dated 26.10.2009 and, therefore, the Original Application was within time. In so far as the laying challenge to the order dated 26.10.2009 is concerned, the said order was only consequential as it only implemented the earlier order dated 4.9.2006. Even if this order is quashed, the same would be of no avail since the basic order dated 4.9.2006 would still remain operative.

23. Lastly, it would be noticed that the Tribunal below has allowed the petition only on the ground that an opportunity of hearing ought to have been afforded to 5th respondent before granting the benefit of reservation to the petitioner and then on this ground alone it has quashed the order dated 4.9.2006. We are afraid that such approach on the part of the Tribunal is not legal or even justified because at best the Tribunal could have directed the official respondents to afford an opportunity of hearing to 5th respondent before giving effect to the order dated 4.9.2006 but then in no event could the petition have been allowed in a manner as has been done in this case.

24. We cannot be unmindful of the fact that the petitioner had not taken any

undue benefit at the time of recruitment by not declaring herself to be belonging to Scheduled Caste. She had applied and joined as a general category candidate without availing the benefits of the relaxed standards. She had not even consumed the roster point of Scheduled Caste candidate. It is the birth alone which is a criteria for deciding as to whether the persons belong to the Scheduled Caste or not. Since the petitioner is a Scheduled Caste by birth and this fact was not even disputed by 5th respondent, therefore, she is entitled to all the benefits as are available to the Scheduled Caste. Moreover, 5th respondent admittedly was appointed much after the petitioner and the mere fact that he had availed the benefits of reservation by itself cannot create a right in his favour that too over and above the petitioner. Therefore, it can safely be held that while granting benefit to the petitioner in terms of the order dated 4.9.2006, no rights of 5th respondent had been infringed so as to entitle him to prefer a claim before the Tribunal.

25. In view of the aforesaid discussion, we find merit in this petition and the same is accordingly allowed and the order dated 12.11.2010 passed by the learned Central Administrative Tribunal Chandigarh Bench, Chandigarh in O.A. No. 1029-HP/09 titled Janki Nand Kashyap vs. Union of India and others is quashed and set-aside and the petitioner is held entitled to all the benefits as per order dated 4.9.2006. The parties are left to bear their own costs. The pending application(s), if any, stands disposed of.