
(2018) 12 CAT CK 0153

In the Central Administrative Tribunal

Case No : Original Application No. 1190 Of 2013

Pradeep Kumar

APPELLANT

Vs

All India Institute Of Medical Science

RESPONDENT

Date of Decision : 20-12-2018

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2018) 12 CAT CK 0153

Hon'ble Judges : Nita Chowdhury, Member (A), S.N. Terdal, J

Bench : Division Bench

Advocate : M.K. Bhardwaj, K.P. Gautam

Final Decision : Dismissed

Judgement

Nita Chowdhury, Member (A)

1. By filing this OA, the applicant is seeking the following reliefs:-

"i) To direct the respondents to declare the applicant as selected candidate for appointment to the post of Operation Theater Assistant in AIIMS and issue necessary directions for appointment of applicant to the said post of OTA.

ii) To declare the action of the respondents in changing the final result as notified vide notification no.91/2012 as illegal and unjustified.

iii) To direct the respondents to operate result notification no. 91/2012 dated 17.09.2012 and consider the applicant for appointment to the post of Operator Theater Assistant in AIIMS with all consequential benefits."

2. Brief facts of the case as enumerated in the OA are that in August, 2010, the respondents issued Advertisement for appointment to the post of Operation Theater Assistant (OTA) in AIIMS. As the applicant was fulfilling all the eligibility conditions, therefore, he also applied through proper channel for consideration of his claim to the said post.

2.1 The applicant was issued admit cadre to appear in the written test scheduled for 28.7.2012 in SC category in which he appeared and declared successful and therefore, he was called for interview on 28.8.2012.

2.2 The result of written test as well as interview was declared by the respondents vide notification no.91/2012 dated 17.9.2012. A perusal of the said notification makes it clear that the result has been declared category wise, i.e., General, SC, ST and OBC. The applicant has been declared successful in SC category as his name is appearing at Serial No.3 against his roll no.1036 with rank 187.

2.3 After declaration of the aforesaid result, the respondent was required to issue offer of appointment after verification of documents. However, when nothing was done for long, the applicant approached the respondent for the reason for delay.

The applicant alleged that he was informed that the needful would be done without any delay.

2.4 However, all of a sudden in February, 2013, the respondent issued another notification dated 19.2.2013 by terming the same as final result notification wherein the name of the applicant was deleted and included two more names, i.e., Mr. Rakesh Roy and Mr. Sugan Chand Singh, Roll No.1177 and 1315 without recording any reasons as to why and on what basis, they removed the name of the applicant from the select list.

2.5 Aggrieved by the same, the applicant approached the respondent personally and requested to consider his claim as well. However, when nothing was done, the applicant approached National Commission for Scheduled Caste, which was received by the said Commission on 25.2.2013. However, no action whatsoever has been taken on the said representation.

2.6 When the respondents have proceeded further to give appointment to the other selected candidates, therefore, the applicant has left with no remedy except to approach this Tribunal seeking the reliefs as quoted above.

3. In response to notice, reply has been filed by the respondent in which the result of written test as well as interview was declared by the respondents vide notification No.91/2012 dated 17.9.2012. A perusal of the said notification makes it clear that the result has been declared category wise i.e. general, SC, ST and OBC. The applicant has been declared successful in SC category. It has been clearly mentioned in the said notification that the list of selected candidates has been prepared on the basis of final result of written test as well as interview. The applicant's name is appearing at Serial No.3 against Roll No.1036 with rank 187. However, after declaring the result, all related files & documents were forwarded to recruitment section for further action but on verification, it was found that some of the candidates from reserved categories, who have been extended relaxation, are required to be considered as successful in their own

category and not in UR category as per DOP&T guidelines.

3.1 Accordingly in compliance with DOP&T guidelines, the result was again recalculated and prepared which resulted in shifting of some successful candidates of SC/OBC category from UR to SC/OBC category and thereby inclusion of some candidates against the vacancy created by shifting. Since there were only 166 posts advertised candidates exceeding the number could not be accommodated, hence, hence, stand deleted from the list. The result on both the occasions has been declared on the basis of merit and category of the candidates. That by rectifying the mistake, which took place and by such recalculation, none of the rights of the applicant have been effected. In fact no right can be claimed to have accrued to the applicant on the basis of such erroneous calculation and such an erroneous calculation could have been rectified by the AIIMS at any point of time.

3.2 It is further stated that after examining the result by the recruitment cell, it was found that 10 candidates belonging to reserved categories who had claimed age relaxation and were granted such relaxation were erroneously placed in the list of UR candidates on merit. However, as per the DOP&T instructions on the subject, they should have been appointed against the post reserved for their respective categories as they have claimed age relaxation. Accordingly, the matter was referred to the examination section for revision of the result already notified by them keeping in view the above observations. Therefore the result was revised by the examination section. In the revised result, 08 candidates of reserved category who in the pre-revised result were selected under reserved category found placed in the revised result under own merit. Further two unreserved candidates, who did not find place in the revised result and consequently, two candidates belonging to reserved category namely, S/Sh. Pradeep Kumar Roll No.1036 in SC category and Shri Jitender Singh Roll No.1124 in OBC category, who were earlier selected under reserved quota have been left out.

4. Heard learned counsel for the parties and perused the material placed on record.

5. Counsel for the applicant submitted that respondents acted in most arbitrary and unjustified manner as they removed the name of the applicant from the list of selected candidates in spite of being declared successful on the basis of merits in competitive examination and interview, which amounts to violation of Articles 14 and 16 of the Constitution of India and the said action is also violation of principles of natural justice as the name of the applicant has been removed from the list of successful candidates without disclosing any reason.

5.1 Counsel also contended that there is no such rule or law which permits the respondents to change the final result just to favour their own candidates as two candidates, whose names have been included in the subsequent result belongs to General category and their marks are less than the marks of three SC category

candidates.

6. Counsel for the respondents contended that revised result was issued after taking into consideration of DOP&T OM dated 1.7.1998, which clearly provides that only such SC/ST/OBC candidates, who are selected on the same standard as applied to general candidates, shall not be adjusted against reserved vacancies. In other words, when a relaxed standard is applied in selecting an SC/ST/OBC candidates, for example in the age limit, experience qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates etc., the SC/ST/OBC candidates are to be counted against reserved vacancies. Such candidates would be deemed as unavailable for consideration against unreserved vacancies and as such there is nothing illegality in the action of the respondents.

6.1 Counsel further contended that initial final result which was declared on 17.9.2012 was not declared in consonance with the provisions of DOP&T OM dated 1.7.1998 and the same was later on rectified and revised final result was declared and based on the provisions of the said OM dated 1.7.1998, the candidates were given offer of appointment to the said post.

6.2 Counsel also contended that the applicant was at the bottom of the revised Final Result which was issued on 19.2.2013 but changes were required to be made after verification of their certificates as only after verification of the certificates, factual aspects of the matter came to the notice of the respondents with regard to the fact that which reserved categories candidates had availed relaxation and how their candidatures have been dealt with.

7. After having noted the averments and contents of the respective parties, this Court finds that the issue involved in this case is confined to the fact that whether the act of the respondent issuing final list of selected candidates those offered the said post vide Letter dated 19.3.2013 in the garb of DOP&T instructions revising the final result which was earlier declared vide Result Notification No.91/2012 is sustainable in the eyes of law or not.

8. The respondents' counsel produced the DOP&T OM dated 1.7.1998 which reads as under:-

"Subject: Relaxation and concessions for SCs and STs - clarification regarding.

The undersigned is directed to refer to this Department's O.M. No.36012/99-Estt. (SCT) dated May 22, 1989 and to clarify that the instructions contained in the O.M. apply in all types of direct recruitment whether by written test alone or whether test followed by interview or by interview alone.

2. O.M. dated May 22, 1989 referred to above and the O.M. No.36012/2/96-ESTT (RES) dated July 2, 1997 provide that in cases of direct recruitment, the SC/ST/OBC candidates who are selected on their own merit will not be adjusted against reserved vacancies.

3. In this connection, it is clarified that only such SC/ST/OBC candidates who are selected on the same standard as applied to general candidates shall not be adjusted against reserved vacancies. In other words, when a relaxed standard is applied in selecting an SC/ST/OBC candidates, for example in the age limit, experience qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates etc., the SC/ST/OBC candidates are to be counted against reserved vacancies. Such candidates would be deemed as unavailable for consideration against unreserved vacancies."

From the aforesaid OM, it is quite clear that DoP&T clarified that only such SC/ST/OBC candidates who are selected on the same standards as is applied to general categories shall not be adjusted against reserved vacancies. It was further stated that when a relaxed standard is applied in selecting an SC/ST/OBC candidate, for example in the age limit, experience, qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates etc. the SC/ST/OBC candidates are to be counted against reserved vacancies. We also take note of the fact that this OM was issued by way of clarification of instructions contained in the OM dated 2.7.1997, which provided that the SC/ST/OBC candidates selected on their own merit will be adjusted against reserved vacancies. This OM clearly indicates that while issuing the OM dated 2.7.1997 Government of India was of the view that if the standard applied in selection of SC/ST/OBC candidate is equal to the standard applied in selection of general category candidates, the appointment of reserved category candidates would not be counted against reserved vacancies. Further, in other words also, if the candidates who are selected on their own merit, without relaxed standards along with candidates belonging to the other communities will not be adjusted against the reserved share of vacancies, which means that if a reserved category candidate does not avail any relaxed standard then his case can be considered against unreserved vacancy if he secured higher marks than General category candidate, but if reserved candidate has availed any kind of relaxed standard then he cannot be considered against General category seat even if he secures marks equivalent or higher to the general category candidates.

9. Applicant's contention that initial final Result Notification no.91/2012 dated 17.9.2012 has to be given effect to, is not acceptable in view of the fact that respondents are duty bound to comply with the provisions of DOP&T OM dated 1.7.1998 before finalization of the list of selected candidates having regard to the provisions of the said OM.

10. It is relevant to mention that the Hon'ble Supreme Court in case of Deepa E.V. Vs. Union of India & Ors. (Civil appeal No. 3609/2017) decided on 06.04.2017 wherein after considering the O.M as noticed above dated 01.07.1998 have negated the submission as raised by the petitioner therein and which is similar to that made by the applicant before this Court that candidate

who have availed the relaxed standard cannot be adjusted against the vacancy of General Category even though he secured higher marks than General category candidates.

11. In the result and for the foregoing reasons, this Court finds no reason to entertain the present OA and to quash the impugned selection on the grounds raised by the applicant in this OA. Hence, O.A is dismissed being devoid of merit. There shall be no order as to costs.