
(2018) 04 CAT CK 0069

In the Central Administrative Tribunal

Case No : Original Application No. 1417 Of 2016

Renu Yadav

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 02-04-2018

Acts Referred:

Citation : (2018) 04 CAT CK 0069

Hon'ble Judges : Raj Vir Sharma, J;Praveen Mahajan, Member (A)

Bench : Division Bench

Advocate : Ajesh Luthra, Gyanendra Singh

Final Decision : Dismissed

Judgement

Praveen Mahajan, Member (A)

1. The applicant is an OBC candidate belonging to 'AHIR' community which is notified as OBC, both for the State of Haryana as well as by the Central Government.

2. In response to an Advertisement issued to fill up various posts by the Staff Selection Commission (SSC) by way of Combined Graduate Level Examination-2015 (CGLE-2015), the applicant applied for the same and participated in the said process of selection. It is stated in the OA that the result of the examination was declared wherein the applicant was shown as having scored 436 marks. The applicant was called for the interview scheduled to be held on 15.03.2016. In para 3 of the interview call letter, it was stated that the OBC certificate mentioning creamy layer status should be indicated on the Certificate which must have been obtained between 12.06.2012 upto 09.12.2015.

3. On 15.03.2016, the applicant produced two OBC Certificates issued by the State of Haryana dated 25.03.2013 and 15.02.2016. The first certificate dated 25.03.2013 is issued in the name of the applicant alongwith the name of her father, whereas the second certificate dated 15.02.2016 is issued in her favour

with the name of her husband, after marriage. The applicant states that the competent authority did not consider either of the two certificates as valid, and she was forced to submit a printed form indicating change in her Category and treating her as Unreserved on the premise that her OBC Certificates are not valid. She was informed that since her OBC Certificates are not in the required format she would not be interviewed, if she fails to fill up and submit the printed form tendered by SSC.

4. Another OBC Certificate dated 17.03.2016 was issued in her favour by the Tehsildar, Rewari in the format as required for appointment to the posts. The applicant approached the respondents and submitted the fresh OBC certificate requesting for grant of benefit of OBC status. In the meanwhile, the applicant was directed to appear and participate for the Computer Proficiency Test on 27.03.2016 vide call letter dated 05.03.2016 of the respondents, which she complied with.

5. The applicant in the OA contends that she has wrongly been denied the reservation and concessions admissible to candidates belonging to OBC category. Her apprehension is that as unreserved candidate she may not get selected to any of the posts or at best would get selected only for the post of Auditor. It is averred that the three certificates issued in her favour are proof enough that she belongs to OBC category and does not belong to the creamy layer. Hence the benefits available to OBC category should not be denied to her.

6. In support, the applicant has relied upon the judgment of Ram Kumar Gijroya Vs. DSSSB & Anr., (Civil Appeal No.1691/2016 arising out of SLP (C) No.27550/2012.

7. Feeling aggrieved with the action of Para 7 the Respondents denying her OBC status she has sought the following reliefs :-

"a) Hold and declare that the respondents have illegally denied OBC status including non-creamy layer status to the applicant to which she is entitled to

b) Direct the respondents to further consider and process the applicant's candidature in CGLE-2015 upon accord of relaxations and concessions admissible to OBC class.

c) Accord all consequential benefits

d) Award costs of the proceedings; and

e) Pass any order/relief/direction(s) as this Hon'ble Tribunal may deem fit and proper in the interests of justice in favour of the applicants."

8. In their counter reply, the respondents submit that as per the Scheme of examination the applicant was called to appear in the interview on 15.03.2016. As per the Corrigendum dated 26.05.2015 the applicant was required to submit the OBC Certificate issued between the period 12.06.2012 to 09.12.2015, in the prescribed format. On both these parameters, the condition was not fulfilled. The

OBC certificates dated 25.03.2013 and 15.02.2016 were not issued within the stipulated time frame of 12.06.2012 to 09.12.2015. The applicant herself signed an Undertaking on 15.03.2016 accepting that although she applied and qualified the written part of Examination in OBC category but since she could not furnish the OBC certificate issued in the prescribed format as per Notice of Examination, 2015, she may be treated as an Unreserved category candidate. Hence her category was changed from OBC to Unreserved.

9. During the course of hearing the learned counsel for the applicant, Shri Ajesh Luthra vociferously argued that the action of the respondents is arbitrary and needs to be rectified. Going over the facts of the case, he submitted that validity period of the OBC certificate in respect of creamy layer status has been clarified vide OM dated 31.03.2016 of Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training. He averred that what is relevant is the income earned during the three financial years preceding the year of appointment based on the date of issue of OBC Certificate. The Government has been liberal enough to stipulate that even self attested copy of non-creamy layer certificate can be accepted by the employment authority subject to verification. However, the spirit of this clarification has been totally ignored by the respondents and the applicant has wrongly been denied the benefit of OBC category.

10. In support of his arguments he relied upon the judgment of Manjusha Banchhore Vs. Staff Selection Commission & Anr. (WP (C) No.7304/2010 and Ms. Shanti Vs. Staff Selection Commission (OA No.1309/2014). He drew the attention of the Court to paras 9 to 15, reproduced below :-

"9. As per the petitioner she was faced with a Hobson's choice because she was informed that the caste certificate furnished by her with the application form submitted by her when she applied for the post i.e. the certificate dated December 12, 2003 was not in the prescribed proforma and thus she could not be treated as an OBC candidate. As per the petitioner she was told that if she did not submit the undertaking she would not be interviewed. The choice she faced was 'take it or leave it'. She gave the undertaking notwithstanding that she has submitted the photocopy of the certificate and at the interview had produced the original.

10. After the result was declared, name of the petitioner was not to be found in the merit list of successful candidates. The reason was she having obtained 449 marks and the last empanelled candidate in the unreserved category had obtained more marks. But, in the OBC category the last empanelled candidate had obtained 402 marks.

11. Petitioner's request to be treated as an OBC candidate was turned down. She approached the Central Administrative Tribunal by filing O.A. 2414/2009, and unfortunately for her, the counsel engaged did not have a Hawks Eye. The learned counsel had a very simple case to plead. The same was that the

advertisement dated October 18-24, 2003 inviting applications did not require the candidates to submit or file any certificate with respect to the eligibility. It was clearly indicated to the candidates that the applications of all would be treated as provisional, subject to the candidates satisfying the prescribed eligibility conditions. After the result of the preliminary examination was declared, on April 24, 2004 a Public Notice was issued requiring those who had successfully cleared the Preliminary Examination to submit applications in the prescribed form and furnish the requisite certificates as per the format prescribed. The petitioner submitted the application in the prescribed form but did not file a certificate as per proforma along with the application. She obtained a certificate on August 02, 2004 and filed the same. Due to the examination process being challenged, matter did not proceed ahead till when petitions challenging the selection process were disposed of and result declared on February 08, 2008. The petitioner was called for an interview on March 04, 2008 with a direction that she would bring along the original OBC certificate. If only the counsel had pleaded that it was not a case of acquiring eligibility after the prescribed cut off date but was a case of producing a certificate as per proforma prescribed which petitioner did on August 02, 2004, the Tribunal would have simply been called upon to decide whether in the absence of cut off dates prescribed to furnish documents, coupled with the fact that the department consciously left open filing and scrutiny of certificates at a subsequent stage, could the Staff Selection Board have obtained the undertaking in question from the petitioner.

12. The plain answer would be that the Staff Selection Commission could not have compelled the petitioner to furnish the undertaking

13. Be that as it may, in the absence of a well drafted petition before it, the Tribunal considered the question whether the petitioner was bound by the undertaking given by her. The Tribunal has held that the petitioner would be bound by the undertaking and that her plea of having been forced to sign the same was not made good.

14. The Tribunal over looked the fact that something must have happened which led the petitioner to furnish the undertaking. The language of the undertaking shows a legal input, and we take judicial notice of the fact that in various cases we have come across identically worded undertakings. It is obvious that the respondents have a standard form undertaking. That apart, the only circumstance under which the petitioner could have furnished the undertaking would be that the department was not willing to accept the certificate dated December 12, 2003 nor the certificate dated August 02, 2004, and this would have meant that if petitioner insisted upon being treated as an OBC candidate she would not have been interviewed at all. She was faced with a Hobson's choice.

15. As the adage goes : Men can lie but circumstances do not lie. The circumstances are such that they speak for themselves. The only conclusion has

to be that the petitioner was compelled to submit the undertaking."

11. The learned counsel contended that the applicant had no option but to sign a printed undertaking as asked to do by the Staff Selection Commission despite being in possession of valid OBC Certificates.

12. Rebutting the averments of the applicant strongly, the learned counsel for the respondents, Shri Gyanendra Singh vehemently reiterated the issues already raised in the counter. He argued that the respondents are bound by the norms prescribed by their advertisement to ensure fair play in conduct of an exam. He emphasized that if sanctity of such norms is allowed to be flouted by each candidate to suit her whims, as per convenience, then the consequences could be chaotic. He submitted that in the instant case, the applicant voluntarily gave an undertaking (on 15.03.2016) in which she accepted that she applied and qualified the written part of Examination in OBC category but could not furnish the OBC certificates issued in the prescribed format, and hence, she may be treated as an unreserved category candidate. She cannot now be allowed to retract from her statement. The learned counsel further contended that the case law relied upon by the applicant is clearly distinguishable from the facts of the current case. The applicant in the present OA, already stands selected as Assistant in CSS. The voluminous examination process having attained finality and the applicant already being in a government job, any intervention by the Tribunal is not warranted.

14. We have gone through the facts of the case and considered the rival contentions carefully.

15. It is not disputed that the applicant belongs to OBC Category. However, the fact remains that she failed to produce the OBC Certificates, issued between the stipulated dates, as required under the Scheme of the exam nor were her certificates in the prescribed format. The benefits granted to the applicants, in the relied upon citations, is in those cases where denial of the OBC status would have resulted in denial of livelihood to the applicant. The same is not applicable to the facts of the present case. The applicant stands selected in CSS and is working as an Assistant. This fact was confirmed by the applicant in person, in Court, at the time of hearing. Undoubtedly, judicial intervention is warranted where technicalities tend to impinge upon the civil right of the citizens (applicants) but would it really be fair to intervene and wish away the prescribed provisions, laid down by the Commission, to ensure smooth conduct of an exam where thousands of candidates take the exam? Should it be left for each applicant to circumvent every laid down parameter, as per their convenience? The answer is obviously ?no?. A large amount of thought and preparedness goes into conducting an exam of this magnitude by the concerned agency to ensure that uniformity and objectivity, the touchstones of fair play and justice, are maintained. This can only be achieved if the prescribed norms are strictly adhered to by every candidate. Intervention in the laid down norms (dates and formats included) should be used sparingly and limited only to those cases where

not doing so would result in irreparable damage to the applicant or result in ousting him/her from the system. In our considered view, the facts of the case do not call for such intervention. Hence we find no reason to interfere with the impugned order. OA is dismissed. No costs.