
(2021) 04 CAT CK 0034

In the Central Administrative Tribunal

Case No : Original Application No. 3406 Of 2017, Contempt Petition No. 386 Of 2018

Rohit Kumar & Others

APPELLANT

Vs

Govt. Of NCT Of Delhi & Others

RESPONDENT

Date of Decision : 08-04-2021

Acts Referred:

Citation : (2021) 04 CAT CK 0034

Hon'ble Judges : L. Narasimha Reddy, J;A. K. Bishnoi, Member (A)

Bench : Division Bench

Advocate : Ajesh Luthra, Esha Mazumdar, Anuj Kumar Sharma, Amit Anand

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

OA No.3406/2017

1. The Delhi Subordinate Services Selection Board (DSSSB), the 2nd respondent herein, issued an advertisement in the year 2012 for selection to the post of Grade IV (DASS)/LDC with Code No.68/12. The applicants and the number of others participated. Another notification for the same post was issued at the relevant time with, Code No.48/12. The combined examination for both the advertisements was held on 16.11.2014 and the typing skill test was held in May, 2015. The results were declared on 11.05.2016 for the Post Code No.68/12. Through another notice dated 15.12.2016, the results for other post code were also declared. The applicants were not selected.

2. The applicants state that the respondents did not operate the waiting list, though quite large number of vacancies remained unfilled. The respondents issued a communication dated 10.07.2017, furnishing the particulars of vacancies, and the manner in which they were filled. It was stated that on account of operation of the horizontal reservation, certain vacancies had to be earmarked for different categories, such as ex-servicemen, and due to non-

availability of candidates, they have to be carried forward to the next selection. It was mentioned that the posts under the categories of unreserved, OBC etc. were filled in excess of the notified vacancies. This OA is filed with a prayer to direct the respondents to fill the resultant vacancies by operating the merit list.

3. The applicants contend that the respondents did not select the required number of candidates against the notified number of vacancies, and in addition to that, several candidates, who were selected, did not join and quite large number of resultant vacancies have arisen. They submit that the respondents failed to operate the reserve list, as provided under the law. Reliance is placed upon the judgment of the Hon'ble Supreme Court in *Rajesh Kumar Daria Vs. Rajasthan Public Service Commission & Ors.*, MANU/SC/7813/2007.

4. On behalf of the respondents, a detailed counter affidavit is filed. The break-up of vacancies that were notified and those that were filled, is furnished. They contend that in addition to the vertical reservation in favour of the various social groups, such as OBC and SC/ST, horizontal reservation in favour of ex-servicemen, sports candidates etc. is also provided, and on account of non-availability of the candidates in the respective categories, the vacancies had to be carried forward to the subsequent selection. It is stated that three selections have taken place thereafter, and while many of the applicants participated therein, some of them were selected also.

5. An interim order was passed in the OA, directing the respondents not to carry forward the vacancies. Alleging that the order was violated, CP No. 386/2018 was filed. The applicants pleaded that despite the interim order of the Tribunal, prohibiting the carrying forward of the vacancies, the vacancies were carried forward. The respondents stated that the selection process was completed, by the time the OA was filed, and no fresh steps were taken thereafter.

6. We heard Mr. Ajesh Luthra, learned counsel for the applicants and Ms. Esha Mazumdar, Mr. Anuj Kumar Sharma and Mr. Amit Anand, learned counsel for the respondents.

7. The subject matter of the OA is the selection in pursuant of the advertisement issued in the year 2012. The written test was held in the year 2014, the typing test in the year 2015 and the results were declared in 2016 for one advertisement, and in the year 2017 for another advertisement. It is common that if the candidates, who were selected, do not report to duty, or join, for their own reasons, and if the resultant vacancies arise within one year from the date of declaration of the results, the reserve, or waiting list is operated; so that the vacancies do not remain unfilled. In the instant case, a peculiar situation has developed.

8. We are concerned with Code No.68/12. In all, 1683 vacancies were notified, and out of them, 736 were available for UR, 567 for OBC, 159 for SC and 221 for ST. In addition to the vertical reservation noted above, there was a horizontal reservation in favour of the ex-servicemen-243 vacancies, Physically

Handicapped-57 and Sports category - 164. Adequate number of candidates were not available for ex-servicemen, PH and SP etc.. By the time, the impugned order dated 10.07.2017 was issued, the situation was: (a) against 736 UR vacancies, 189 were earmarked for horizontal reservation and after exclusion thereof, the available vacancies were 547, but 681 were filled. Similarly, for OBC, the earmarked vacancies were 567, the posts under horizontal reservation were 139; 428 were available, but 532 were selected. For SC, the corresponding figure are 159, the posts under horizontal reservation was 40, available were 119 but 151 were selected. Though some dossiers came to be returned, it was evident that by that time, the respective categories were filled in excess. The OM issued by the DoPT in 1987 is to the effect that wherever the vacancies earmarked for horizontal reservation are not filled, they shall be carried forward for the next selection. Therefore, the respondents carried forward the vacancies.

9. It is true that the Hon'ble Supreme Court held that the vacancies earmarked for horizontal reservation be not carried forward. That was on interpretation of the relevant provision of law. Once the provisions of law applicable to Delhi Administration mandate carrying forward of the vacancies, they cannot ignore it. The applicants did not choose to challenge such an OM.

10. Whatever be the permissibility of operating the reserve or waiting list within one year from the date of publication of the results or the date of arising of vacancies on return of dossiers, the facility ceases to be available once the next selection process has commenced. In the instant case, as many as three selections with Post Code Nos.62/15, 2/17 and 20/18 have taken place. The respondents stated that many of the applicants took part therein, and some of them were also selected and appointed. Therefore, the question of operating the merit list, referable to the advertisement of the year 2012, at this stage does not arise.

11. The OA is, accordingly, dismissed. There shall be no order as to costs.

CP No.386/2018

12. In view of the dismissal of the OA, the Contempt Case is also closed.