

(2018) 05 CAT CK 0009

In the Central Administrative Tribunal

Case No : Original Application No. 4122, 4123 Of 2013

Sunder Lal And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 31-05-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Disabilities Act, 1995 — Section 32, 33

Citation : (2018) 05 CAT CK 0009

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

Bench : Division Bench

Advocate : S K Rungta, Shivankur Shukla, Amit Sinha, Vaibhav Pratap Singh

Final Decision : Allowed

Judgement

K N Shrivastava, Member (A)

1 .Since common issues of facts and laws are involved, it was decided to dispose of these two O.As. by this common order.

O.A. No.4122/2013

2. 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 relief:-

"b) Respondents may be directed to allocate the applicant Indian Administrative Service against one of the reserved/backlog vacancies for persons suffering from hearing impairment in place of IRS (C&CE) on the basis of his performance in CSE 2007 with all consequential benefits arising out of the upgradation of service of the applicant by treating his appointment to IAS from the date when joined IRS (C&CE)."

3. The factual matrix of the case (O.A. No.4122/2013), as noticed from the records, is as under:-

3.1 The applicant is suffering from hearing impairment (HI). He appeared in Civil Services Examination (CSE), 2007 and based on his general merit, he was selected and allotted Indian Revenue Service (Customs & Central Excise) (IRS (C&CE)). It is stated that despite the Persons With Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 (for short "Disability Act 1995") coming into existence, the reservation of seats in CSEs for candidates belonging to physically handicapped (PH) categories was not done till the year 2005.

3.2 The candidates selected on their own merits were being adjusted against the vacancies reserved for PH categories, which was in violation of] O.M. dated 29.12.2015 issued by the Department of Personnel & Training (DoPT). In this O.M., comprehensive guidelines have been laid down for the implementation of the provisions of Disabilities Act 1995. Paragraph 6 of the O.M. clearly indicates that a PH candidate selected in general merit can be appointed against un-reserved vacancy. This paragraph reads as under:-

"6. Appointment against unreserved vacancies: In the posts which are identified suitable for persons with disabilities, a person with disability cannot be denied the right to compete for appointment against an unreserved vacancy. Thus a person with disability can be appointed against an unreserved vacancy, provided the post is identified suitable for persons with disability of the relevant category."

3.3 The *ibid* DoPT O.M. also stipulates the methodology for computation of vacancies for reservation for PH category candidates as well as the methodology for effecting the reservation and maintenance of rosters for PH categories.

3.4 A landmark judgment of Hon'ble Supreme Court came in the case of Govt. of India through Secretary & another v. Ravi Prakash Gupta & another, (2010) 7 SCC 626, wherein the following dictum was issued:

"17. While it cannot be denied that unless posts are identified for the purposes of Section 33 of the aforesaid Act, no appointments from the reserved categories contained therein can be made, and that to such extent the provisions of Section 33 are dependent on Section 32 of the Act, as submitted by the learned ASG, but the extent of such dependence would be for the purpose of making appointments and not for the purpose of making reservation. In other words, reservation under Section 33 of the Act is not dependent on identification, as urged on behalf of the Union of India, though a duty has been cast upon the appropriate Government to make appointments in the number of posts reserved for the three categories mentioned in Section 33 of the Act in respect of persons suffering from the disabilities spelt out therein. In fact, a situation has also been noticed where on account of non-availability of candidates some of the reserved posts could remain vacant in a given year. For meeting such eventualities, provision was made to carry forward such vacancies for two years after which they would lapse. Since in the instant case such a situation did not arise and posts were not reserved under Section 33 of the Disabilities Act, 1995, the question of carrying

forward of vacancies or lapse thereof, does not arise."

Thus, it became mandatory for the authorities concerned to carry forward unfilled vacancies of PH categories for two years.

3.5 The respondents, while allotting the applicant IRS (C&CE) pursuant to his selection in CSE 2007, adjusted him against the vacancy meant for PH category, albeit he was selected in general merit.

3.6 The Tribunal in the case of N. Shravan Kumar v. Union Public Service Commission & another (O.A. No.1893/2000) along with seven other O.As., which included the O.A. Nos.2105/2009 filed by Mr. Rahul Mittal and 2402/2009 filed by Mr. Pankaj Kumar Srivastava, vide order dated 08.10.2010, issued the following dictum:

"10. To sum on the basis of above discussion:

(a) the Disabilities Act provides for reservation for physically handicapped to the extent of three per cent, one per cent each for visually handicapped, hearing impaired and persons with loco motor disability and cerebral palsy,

(b) the reservation would be applicable from the year 1996, regardless of identification under Section 32 of the Disabilities Act;

(c) the candidates selected on their own merit would not count among the reserved category and would be counted as unreserved category as per the DOP&T's OM of 29.12.2005;

(d) vacancies not filled in a particular year would be carried forward and would lapse if not filled up for the next two years;

(e) reservation was not made under Section 33 of the Disabilities Act and, therefore, the question of carry forward and lapsing of posts does not arise;

(f) those selected on their own merit would not be counted among the reserved category candidates;

(g) the persons belonging to the non-disabled category who have secured lesser marks than the persons belonging to the disabled category cannot be recommended for appointment disregarding the claim of the candidates of disabled category on the basis of the posts available for them; and

(h) advantage of reservation has to be given to the physically handicapped candidates after working out the number of vacancies available on the basis of total number of posts recommended and the backlog vacancies."

The order of the Tribunal in N. Shravan Kumar's case (supra) was upheld right up to Hon'ble Apex Court.

3.7 The Union Public Service Commission (UPSC), in compliance of the Tribunal's order in N. Shravan Kumar (supra), worked out the backlog vacancies reserved

for PH category candidates from the years 1996 to 2009 and submitted a comprehensive proposal to DoPT, Govt. of India vide letter dated 30.08.2011. As a part of this exercise, they also indicated re-allocation of Services in CSEs 2006, 2007, 2008 and 2009 to the candidates belonging to three disabled categories, namely, visually handicapped (VI), HI and loco motor disability and cerebral palsy (LDCP).

3.8 In the context of applicant, the UPSC had recommended to allot him IAS on the basis of his selection in CSE 2007. The IAS vacancy recommended for allotment to the applicant belonged to CSE 2006.

3.9 The grievance of the applicant is that despite a clear recommendation made by the UPSC in his favour for allotting him IAS, the DoPT has taken no decision in his case.

Aggrieved by the non-allotment of IAS to him, the applicant has filed the present O.A. praying for the relief as indicated in paragraph (2) above.

4. The applicant has pleaded the following important grounds in support of the reliefs claimed:

4.1 The applicant was allotted IRS (C&CE) in CSE 2007 in disregard to the reservation prescribed in Section 33 of the Disability Act, 1995.

4.2 In terms of DoPT O.M. dated 29.12.2015, he was entitled to the benefits of reservation.

4.3 The Hon'ble Supreme Court in Ravi Prakash Gupta (supra) as well as its recent judgment in Union of India & another v. National Federation of the Blind & others (Civil Appeal No.9096/2013) decided on 08.10.2013, has mandated that the reservation for PH category is to be computed on the basis of vacancies in total cadre strength and not in the identified posts only.

4.4 The applicant has been recommended for allotment of IAS by the UPSC against one of the backlog vacancies, but the same has not been given effect to.

O.A. No.4123/2013

5. The facts of this case are identical to that of the applicant in O.A. No.4122/2013, Mr. Sunder Lal, except that he suffers from LDCP and he appeared in CSE 2006. He was selected in general merit and allotted Indian Audit & Accounts Service (IA&AS) without implementing the scheme of reservation. He had also appeared in CSE 2008 for better allocation of Service and got 1110 marks but he was not recommended for allocation of any Service on the basis of his performance in CSE 2008, purportedly for the reason that the respondents had been adjusting the persons with disabilities selected on their own merits against vacancies notified as reserved for different categories of disabilities.

6. On the basis of his performance in CSE 2006, the UPSC, vide its letter dated 30.08.2011 addressed to DoPT, referred to hereinabove, has recommended for

allotting him IAS against the backlog vacancy of the year 2004.

7. This applicant has also pleaded almost the same grounds, as have been pleaded by Sunder Lal, applicant in O.A. No.4122/2013.

8. Pursuant to the notices issued, the respondents entered appearance. Separate replies have, however, have been filed only behalf of respondent No.1 in these two O.As., to which rejoinders have been filed by the applicants.

9. On completion of pleadings, these cases were taken up for hearing the arguments of the parties on 27.04.2018. Arguments of Mr. S K Rungta, learned senior counsel for applicants and that of Mr. R N Singh, learned counsel for respondents were heard.

10. Mr. S K Rungta, learned senior counsel for applicants submitted that in terms of the directions of this Tribunal in N. Shravan Kumar (supra), the UPSC had carried out a detailed exercise re-working out the vacancies in various Services reserved for PH categories, and has also allocated these vacancies to the selected PH category candidates in CSEs 2006, 2007, 2008 & 2009. The applicant, Mr. Sunder Lal, who was initially allotted IRS (C&CE) pursuant to his selection in CSE 2007, has been recommended for IAS against the backlog vacancy of 2006. Likewise, the applicant, Mr. Abhishek Singh, who was initially allotted IA&AS pursuant to selection in CSE 2006, has been recommended for IAS against the backlog vacancy of 2004.

11. Mr. Rungta further submitted that in an identical case titled Ravindra U Garkal v. Union of India & another (O.A. No.4121/2013) decided on 25.07.2017, this Tribunal had directed to allocate IAS to the applicant therein in accordance with the recommendations of UPSC to DoPT vide its letter dated 30.08.2011. He, thus, argued that the both the applicants herein are also entitled for identical reliefs.

12. Mr. Rungta also stated that in the case of Mr. Pankaj Kumar Srivastava (O.A. No.2402/2009), who was a co-applicant in N. Shravan Kumar's case (supra), the Union of India challenged the Tribunal's order before the Hon'ble High Court of Delhi in W.P. (C) No.4902/2013, which was dismissed and the order of the Tribunal was confirmed. However, the SLP No.19291/2014 filed by the Union of India against the ibid order of the Hon'ble High Court has been admitted and is still pending.

13. Concluding his arguments, Mr. Rungta prayed for grant of the same reliefs to the applicants herein, as have been granted by the Tribunal in Ravindra U Garkal's case (supra).

14. Per contra, Mr. R N Singh, learned counsel for respondents submitted that it is settled law that backlog vacancies cannot be carried forward beyond 2 years. He stated that the candidates, who have already been allocated various Services pursuant to their selection in respective CSEs, are not party to the present lis. Hence, any relief granted to these applicants would be a travesty of justice.

15. Mr. Singh further stated that in an identical situation in the case of Amit Goyal v. Union of India & others (O.A. No.458/2013 with connected cases) decided on 01.08.2016, the Tribunal has declined to interfere on the ground of non-joinder of party. He particularly drew our attention to paragraph 46 of the *ibid* judgment, which is reproduced below:-

"46. Acceding to the prayers of the applicant in all the three cases would mean large scale changes in the general list. We fully concur with the case of the respondents. The persons have joined, undergone training and are already ensconced in their respective service in different states. Now, to order a change in these parameters would amount to causing a drastic change. Such matters shall be deemed to unsettle the settled matters. More than that, the fact that the parties who would be affected by the order of this Tribunal should the OA be allowed not being impleaded, non joinder of parties in this case is held as fatal to the very O.A."

16. Mr. Singh further submitted that the respondents had filed Review Application before the Tribunal seeking review of its judgment in O.A. No.4121/2013 (Ravindra U Garkal), which was dismissed and the respondents are now in the process to file a Writ Petition in the Hon'ble High Court challenging the Tribunal's judgment.

17. We have considered the arguments of learned counsel for the parties and have perused the pleadings.

18. As is evident from the records, the respondents did not implement the reservation for PH category till CSE 2004, albeit the Disability Act, 1995 came into existence in the year 1995 itself. However, in terms of the judgment of Hon'ble Apex Court in Ravi Prakash Gupta (*supra*), the respondents were obliged to workout the backlog vacancies and allocate them to PH categories in future CSEs.

19. Further, in N. Shravan Kumar's (*supra*), the Tribunal had issued specific directions to the respondents, as noticed in paragraph 3.4 above.

The order of the Tribunal in said case has been upheld right up to Hon'ble Apex Court. The UPSC worked out re-allocation of Services to the PH category candidates selected in CSEs 2006, 2007, 2008 & 2009, and accordingly submitted a comprehensive proposal to DoPT vide its letter dated 30.08.2011. Recommendations of UPSC are on record. It has recommended that the applicant, Mr. Sunder Lal (O.A. No.4122/2013), pursuant to his selection in CSE 2007, may be allotted IAS against the backlog vacancy for the year 2006. Likewise, the UPSC has recommended that Mr. Abhishek Singh (applicant in O.A. No.4123/2013), who was initially allocated IA&AS pursuant to his selection in CSE 2006, be allotted IAS against the backlog vacancy of 2004.

20. We find that in an identical case of Ravindra U Garkal (*supra*), the Tribunal has already issued a direction for allotting him IAS in accordance with the

recommendations of UPSC. We find that the cases of these two applicants are identical to that of Ravindra U Garkal (supra). Hence, we are of the view that these applicants are also entitled for identical reliefs.

21. Accordingly, we allow these O.As. and issue the following directions to the respondents:-

(i) Mr. Sunder Lal, applicant in O.A. No.4122/2013 shall be allotted IAS against the backlog vacancy for the year 2006 as recommended by the UPSC.

(ii) Mr. Abhishek Singh, applicant in O.A. No.4123/2013 shall be allotted IAS against the backlog vacancy for the year 2004 as recommended by the UPSC.

(iii) The directions at (i) & (ii) supra shall be complied with within a period of three months from the date of receipt of a certified copy of this order.

There shall be no order as to costs.