

(2012) 08 DEL CK 0067

In the Delhi High Court

Case No : Writ Petition (C) 4871 of 2012

Union of India and Others

APPELLANT

Vs

Chander Narayan Joshi

RESPONDENT

Date of Decision : 14-08-2012

Acts Referred:

Citation : (2012) 08 DEL CK 0067

Hon'ble Judges : Siddharth Mridul, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Jagjit Singh and Mr. Amit Dubey, for the Appellant; Sudarshan Rajan, S. Ritam Khare, Rajat Agnihotri and Mr. Amit Anand, for the Respondent

Judgement

Badar Durrez Ahmed, J.

CAV. 841/2012

The learned counsel for the caveator is present. The caveat stands discharged.

CM 9994/2012(Delay in re-filing)

The delay in re-filing the appeal is condoned.

This application stands disposed of. WP(C) 4871/2012 & CM 9993/2012

1. This writ petition is directed against the order dated 07.03.2012 passed in OA No. 3841/2011. By virtue of the said order the Tribunal had concluded as under:-

As the 12 waitlisted candidates were not shown in the order of their merit and on the basis of their caste, it cannot be said from the proceedings of this case as to the point at which the applicant's name would fall within the aforesaid 11 unfilled vacancies. We, therefore, direct the respondents to identify the 11 candidates out of those 12 in the Annexure A-3 waiting list in accordance with their merit position and thereafter nominate all of them against those vacancies as per the roster. The aforesaid directions shall be complied with, within a period of two months from the date of receipt of a copy of this order. This original

Application is accordingly disposed of. There shall be no orders as to costs.

It appears that according to the Tribunal there were 11 vacancies which were unfilled. However, that, to us, does not seem to be a correct position.

2. 45 vacancies for Staff Nurses were notified by the Railway Recruitment Board. These Staff Nurses were to be deployed in Central Hospitals at New Delhi and the Ambala Division. Initially a list of 42 candidates who had been selected by the Railway Recruitment Board had been sent. This was followed by a second batch of 3 candidates totalling 45 as against the 45 vacancies. A panel of 12 extra candidates was drawn up by way of a replacement panel. The respondent was placed in the list of extra candidates.

3. It is the case of the petitioners that 7 vacancies had arisen on account of the fact that persons who had been selected had either not joined or had been declared medically unfit. Out of the 7, 3 vacancies were for the unreserved (General) category. The other vacancies were for SC and OBC candidates. Consequently a request was made to the Railway Recruitment Board to forward a set of 7 candidates from the list of extra candidates. It appears that the Railway Recruitment Board sent in only 3 candidates, 2 of which were against the unreserved (General) category. It is the case of the respondent that out of the vacancies which arose on account of persons not joining or not declared medically fit, there were only 3 vacancies in respect of unreserved category. One of those vacancies was filled in by an OBC candidate who was taken in against that unreserved vacancy. That person was already in the original panel of 45 at Serial No. 21. This meant that there were only two vacancies available for the unreserved category and those were filled in by the names forwarded by the Railway Recruitment Board by virtue of the letter dated 12.12.2011. The learned counsel for the petitioner drew our attention to paragraphs 4, 5 and 6 of the counter affidavit filed before the Tribunal. It is apparent from a reading of the said paragraphs that in respect of the said 45 posts there were 23 vacancies in total for the unreserved category and they were all filled in by the initial panel as well as the replacement panel. The respondent did not figure in these 23 vacancies because he was low down in order of merit in the list of extra candidates.

4. However, we find that this aspect of the matter has not at all been considered by the Tribunal. The Tribunal has also not ascertained as to whether there were 7 vacancies or there were 11 vacancies as indicated by it. The petitioners' case is that there were only 7 vacancies and the respondent's case is that there were 11 vacancies. Anyhow, the petitioners' case is also that all the unreserved vacancies have been filled and since the respondent is an unreserved candidate he cannot be considered at all.

5. In view of the fact that the Tribunal has not examined these aspects and has not returned clear cut findings in respect of them, we feel that the Tribunal's order ought to be set aside and the matter be remitted to the Tribunal for

consideration afresh.

The impugned order is set aside and the matter is remitted to the Tribunal for considering the matter afresh in the light of the observations made in this order. The parties shall appear before the Tribunal in the first instance on 10.09.2012. The writ petition stands disposed of accordingly. There shall be no order as to cost.