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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Date of Decision: 24.05.2017**

% **LPA 195/2017**

SWADEEP KUMAR

..... Appellant

Through: Md. Azam Ansari, Advocate

versus

ALLAHABAD BANK & ANR

..... Respondents

Through: Mr. Rajesh Gautam, Advocate with
Mr. Anant Gautam, Advocate for
respondent No.1.
Mr. Rajat Arora, Advocate for R2.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

VIPIN SANGHI, J. (ORAL)

CM Appln. No. 10798/2017

1. For the reasons stated in the application, the delay is condoned.
2. The application stands disposed of.

LPA No. 195/2017 and CM Appln. No. 10800/2017

3. Issue notice. Notice is accepted by learned counsel for the respondents.

4. We have heard learned counsels and proceed to dispose of the present Letters Patent Appeal.

5. The present appeal is directed against the judgment dated 20.12.2016 rendered by the learned Single Judge in Writ Petition (C) No. 8470/2016. By the impugned judgment, the said writ petition has been dismissed by the learned Single Judge on an interpretation of paragraph V of the advertisement and the relevant recruitment rules which stipulates that each candidate should obtain the minimum cutoff score in each subject test, and also the minimum total score, to be considered for being short-listed for interview.

6. The appellant is an Ex-Serviceman having rendered 16 years, 3 months and 2 days service between 30.12.1997 to 31.03.2014. He was discharged from the Army on 09.08.2014. Respondent No.2/ The Institute of Banking Personnel Selection invited applications to fill up clerical cadre posts in 19 Public Sector Banks. On 21.08.2014, the appellant applied online. He applied as an OBC by claiming that he is a 'Jat', as Jats were categorized as OBC. He also disclosed that he is an Ex-Serviceman. The appellant cleared the online exam conducted by the respondent on 20.12.2014. He secured the minimum cut-off score, and was finally short-listed for interview. He was called for interview on 10.02.2015. On 31.03.2016, the combined result of CWE (Common Written Examination) and interview was published, and the appellant was declared successful having scored 44.80. On 11.04.2016, the appellant was also issued a joining letter by respondent No.1-Allahabad Bank, requiring him to join the post on 19.04.2016.

7. However, the appellant was not permitted to join the post. It so transpired that after the appellant had made his application in August, 2014, vide judgment dated 17.03.2015, rendered by the Supreme Court in ***Ram Singh & Others Vs. U.O.I.***, (2015) 4 SCC 697, the 'Jats' were no longer classified as 'Other Backward Class' (OBC). The effect of the said decision was that the appellant was liable to be considered as a general category candidate. At the same time, he was an Ex-Serviceman. Since the appellant was denied joining by respondent No.1, he preferred the aforesaid writ petition.

8. The stand taken by the respondents in their counter affidavit in the writ proceedings was that though the appellant had secured the over-all marks which were more than the cut-off for the general category candidates, he had secured only 8 marks in the English language paper i.e. 'T3 EL', whereas the cut-off for the General Category candidates was 10 marks. The learned Single Judge interpreted paragraph V of the advertisement and the relevant recruitment rules to hold that the candidates must not only secure the minimum combined score which is fixed for the purpose of cut-off, but also in each individual paper, the minimum cut-off marks have to be secured. Since the appellant was found not to have secured 10 marks in English language paper, the writ petition was dismissed.

9. The submission of learned counsel for the appellant is that the appellant does not, and need not assail the reasoning adopted by the learned Single Judge with regard to interpretation of paragraph V of the advertisement. The submission is that the respondents misled the learned Single Judge with regard to the minimum cut-off marks fixed for the English

language paper for the General category candidates, who were Ex-Servicemen. The submission is that after the judgment was rendered by the learned Single Judge, the appellant has been able to download from the website of the Institute of Banking Personnel Selection, i.e. respondent No.2 the cut-off marks over all, as well subject wise, for the examination in question in respect of General Category candidates, who were Ex-Servicemen, and for the said category of candidates, the minimum cut-off marks in English language as per the published result is only 6 marks, whereas the appellant had secured 8 marks, admittedly. Thus, it was not correct for the respondents to claim before the learned Single Judge that the appellant had not secured the minimum cut-off marks in English language. The respondents had treated the appellant as a General category candidate, all right, but could not have ignored the fact that he was also an Ex-serviceman.

10. Learned counsel for the appellant has drawn our attention to the letter received by him for the purpose of inviting him for the interview. In the said letter, his category has been shown as 'OBC' which he was at the time when he made the application but, subsequently, it was nullified by the Supreme Court. The sub-category was shown as "EXS" which is the abbreviation for the category of Ex-Servicemen. Pertinently, the said letter states ***"Category Qualified Under: EXS"***. Therefore, when the letter inviting the appellant for interview was issued, the respondents were very much conscious that the appellant was invited for the said interview by treating him as an Ex-Serviceman.

11. Learned counsel also refers to the rejoinder filed by the appellant in the writ proceedings, to submit that at the time of submission of his application on 21.08.2014, the appellant was not eligible for applying to the post in question, except as an Ex-serviceman – who were granted age relaxation. The application of the appellant was entertained, despite his being about 35 years of age at the time of making his application (the age limit for OBC candidates was 31 years). Thus, it is clear that the appellant's application was entertained despite his age being about 35 years, only on account of the fact that he was an Ex-serviceman.

12. On the other hand, learned counsels for the respondents submit that since the appellant could not be considered as an OBC candidate, he was eligible to be considered only as a general category candidate, and on that premise, the appellant was found to be not eligible since he had secured 8 marks in English language, whereas the cut-off was 10 marks. At the same time, the respondents do not dispute the fact that the cut-off marks in English language paper in respect of general category Ex-servicemen candidates was 6 marks. They do not dispute the printout downloaded from the website of respondent No.2, which is placed on record as Annexure A-3 along with the present appeal.

13. Having heard learned counsel and perused the record, we are of the view that the denial of employment to the appellant by the respondents to the post of SWO-A (Clerical Cadre) –IV in the respondent No.1 bank is completely illegal and unjustified. Since “Jats” were classified as an Other Backward Class when the appellant made his application in response to the advertisement issued by the respondents on 21.08.2014, he fairly claimed

the benefit as an OBC candidate. After making of the online application, the Supreme Court vide judgment dated 17.03.2015 declared that “Jats” could not be classified as an Other Backward Class. The effect of the said decision was that the appellant was liable to be considered as a general category candidate. At the same time, the appellant was also an Ex-serviceman and in his online application, he had clearly disclosed that he is an Ex-serviceman, and he had even sought to avail of the higher age limit prescribed for the said category, i.e. Ex-serviceman. The appellant in response to the query “*Are you an Ex-serviceman*”, responded by saying “*Yes*”. He also disclosed the actual service rendered in Army which may be counted for qualifying as an Ex-serviceman (in months) as 195. He disclosed his Date of Birth as 15.07.1979 and his age completed as on 01.08.2014 as 35 years.

14. Pertinently, in the advertisement issued by respondent No.2, the age (as on 01.08.2014) was prescribed as minimum 20 years and maximum 28 years. However, relaxation of upper age limit was granted in respect of several categories, including for Scheduled Castes/ Tribes of 5 years; Other Backward Classes of 3 years; Persons with Disability of 10 years; “*Ex-servicemen/ Disabled Ex-servicemen: actual period of service rendered in the defence forces + 3 years (8 years for Disabled Ex-servicemen belonging to SC/ST) subject to a maximum age limit of 50 years*”. There were other categories as well, in respect whereof age relaxation was granted, which are not relevant for our purpose.

15. Clearly, as declared by the appellant himself, he was well above 28 years of age on the date of making of the application (and even $28+3=31$

years even if he was to be considered as an OBC candidate), since he declared his age as on 01.08.2014 as 35 years. It is only for the reason that the application of the appellant was entertained by the respondents as an Ex-serviceman that he was permitted to take the written examination.

16. It is also pertinent to note that the advertisement issued by the respondents provided in clause (v) under the heading “Cut-off Score” that *“Each candidate will be required to obtain a minimum score in each test and also a minimum total score to be considered to be shortlisted for interview. Depending on number of the State/UT wise vacancies available, cutoffs will be decided and candidates will be shortlisted for interview.”*. Thus, the respondents being conscious of the marks obtained by the appellant in the different subjects/ tests, as well as the overall marks obtained by him, issued him the interview letter.

17. As we have noticed hereinabove, in the interview letter, the category of the appellant was noted as “OBC”. However, the sub-category was noted as “EXS” which stands for Ex-servicemen. Pertinently, under the heading “Category Qualified Under”, the category was mentioned as “EXS”, i.e. Ex-servicemen. Thus, it is obvious that the respondents treated the appellant as qualified on the basis that he had secured the cutoff marks or higher, in each of the subjects/ tests and the overall marks equal to or more than the cutoff marks under the category of Ex-servicemen, and it is only for that reason that he was called for interview.

18. The respondents even issued the allotment letter to the appellant allotting him to Allahabad Bank under the “OBC–EXS” vacancy. Merely

because, subsequently, the respondents realized that the appellant was not entitled to reservation under the OBC category, could not have been a ground to deny him his post without even examining whether he was entitled to the said post upon being considered as a general category Ex-servicemen candidate.

19. The stand taken by the respondents before the learned Single Judge that the cutoff marks for the English test, as applicable to the appellant, were 10 is clearly incorrect and the appellant is right in pointing out that he being a general category Ex-serviceman candidate, the cutoff marks in English test wherefor had been fixed as 6, he stood qualified and his candidature could not be cancelled.

20. For all the aforesaid reasons, we allow the present appeal. The operative part of the impugned order is set aside, while not disturbing the interpretation of para V of the advertisement as adopted by the learned Single Judge.

21. The respondent No.1 shall issue the communication to the appellant allowing him to join within the next four weeks.

VIPIN SANGHI, J

DEEPA SHARMA, J

MAY 24, 2017

SI / B.S. Rohella