



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

% Judgment reserved on : 25.05.2022
Judgment delivered on : 01.06.2022

+ W.P.(C) 8201/2019

SUNIL POOJA Petitioner

versus

STAFF SELECTION COMMISSION Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Anil Singal, Advocate

For the Respondent : Mr. Vikrant N. Goyal, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

1. In the present case, Petitioner is assailing the impugned order dated 16.05.2019 in O.A. No.2426/2013 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the 'Tribunal') whereby her O.A. was dismissed.

2. Facts, in brief, in the present case are, that the Respondent herein issued Notification on 14.07.2012, inviting applications for selection of candidates to the post of Data Entry Operators (in short, "DEO"). Reservation was provided in favour of OBC candidates. The selection process consisted of a written examination and a skill test.



The Petitioner while submitting her application claimed the status of OBC for the purpose of reservation. It is stated that a Certificate dated 08.06.2009 was also submitted supporting her stand that she belongs to the OBC category. It is not disputed that the Petitioner had successfully cleared the written test and had also undergone skill test / typing test. The objections raised by the Respondent with respect to the OBC Certificate was, that it is only such certificate, which is obtained within three years preceding the last date/cut-off date as per the Notification which would be valid. Since the OBC certificate was a few months prior to the cut-off date, which was 01.08.2012, the Petitioner was held to be disentitled from being considered under the OBC category.

3. There is no dispute that the Petitioner had cleared the written test and had obtained 150.5 marks in the written test, the cut-off marks for an OBC candidate in Delhi being 150. It is also not disputed that the Petitioner had applied under the OBC category. Having cleared the written test, the Petitioner was asked to appear for the Data Entry Speed Test and Typing Test on the computer for the post of DEO vide letter dated 11.02.2013 issued by the Respondent for 03.03.2013.

4. Mr. Anil Singal, learned counsel appearing on behalf of the Petitioner would submit that the Petitioner had applied for the post of DEO under OBC category and had stated so in her application though she had not submitted the certificate along with the application. Subsequently, after having successfully cleared the written test, the Petitioner appeared for the Data Entry Speed Test and Typing Test on



the computer on 17.03.2013. At the time of appearing for the Speed Test/Typing Test, the Petitioner had attempted to submit an OBC Certificate dated 17.12.2012 in terms of Clause (iii) of the Call Letter dated 11.02.2013 issued by the Respondent. Clause 1 (a)(iii) is extracted below :

“You should furnish the relevant OBC certificate in the format prescribed for Central Government jobs, as per Annexure VII of the notice, issued by the Competent Authority at the time of Skill Test. The certificate must be dated on or before the date of skill test”

5. He further submits that though the Petitioner had carried the OBC Certificate dated 17.12.2002 on the date of skill test, i.e. 17.03.2013, the Respondents refused to accept the same. The name of the Petitioner did not figure in the final list of the successful candidates.

6. Aggrieved by this, the Petitioner approached the Tribunal vide O.A. No.2426/2013 seeking to quash and set aside the final result dated 22.05.2013 as well as a direction to the Respondent to consider the application under OBC category and recommend her name for the post of Data Entry Operator with all consequential benefits including seniority and arrears of pay from the date her junior in merit was so appointed.

7. The Tribunal did not agree with the contentions raised by the Petitioner on the basis that the Notification for employment dated 14.07.2012 clearly mandated that certificate preceding three years



from the cut-off date as per Notification alone would be accepted. The Tribunal also observed that though the Petitioner herein claimed that she submitted a Certificate dated 17.12.2012 but the same does not find mention anywhere in the Original Application filed before the Tribunal. The Petitioner relied upon the judgment of the Hon'ble Supreme Court in *Ram Kumar Gijroya vs. Delhi Subordinate Services Selection Board and Anr.*, bearing Civil Appeal No.1691/2016.

8. Thus on the above basis, the Tribunal did not find any merit and dismissed the Original Application vide the impugned judgment.

9. Aggrieved by the dismissal of her original application, the Petitioner filed the instant writ petition.

10. Mr. Anil Singal, learned counsel for the Petitioner reiterated his argument and stand taken by him before the learned Tribunal.

11. In any case, in the present case, Mr. Anil Singal would submit, that the Petitioner had indeed attempted to submit the OBC certificate dated 17.12.2012 at the time of Data Entry Speed Test and Typing Test on computer held on 17.03.2013. Mr. Singal submits that the only requirement expected from an OBC candidate is that he or she initially mentions the category in the application form and submit the document any time subsequently at the time of verification.

12. He further submits that Respondents could have and ought to have accepted the OBC certificate dated 17.12.2012 on 17.03.2013 when the Petitioner had given her Data Entry Speed Test and Typing Test on computer. Since the Respondents had refused to accept the



said OBC certificate, the Petitioner was unable to submit it for verification. Resultantly, inspite of having cleared the written test as well as Data Entry Speed Test and Typing Test on computer, the name of the Petitioner did not figure in the final list of selected candidates dated 22.05.2013.

13. Mr. Singal relies upon the judgment of *Hari Singh vs. Staff Selection Commission and Anr.*, reported in 170 (2010) DLT 262 decided on 06.04.2010 by a Division Bench of this Court. He also relies on the case of *Ram Kumar Gijroya (supra)* rendered by the Hon'ble Supreme Court on 24.02.2016 to buttress his point.

14. Mr. Singal also relies upon O.M. No.36011/1/2012-Estt.(Res.) dated 08.10.2015 of the DoPT.

15. On the other hand, Mr. Vikrant N. Goyal, learned counsel appearing for the Respondents submits that as per the Notification dated 14.07.2012, the candidates belonging to the OBC category had to submit along with their application before the cut-off date, a copy of the OBC certificate, which was issued within three years preceding the cut-off date mentioned in the said Notification. This, Mr. Goyal, contends was to ensure that the candidates belonging to the creamy layer within the OBC category do not apply for the post of DEO.

16. He further submits that there would be no way that the Respondents could verify whether an OBC category candidate does or does not belong to the creamy layer in order to ensure that the jobs



reserved for the OBC category candidate do not get withered away to undeserving or creamy layer OBC candidates.

17. He further refers to Annexure R4 at page 85, which is a format of the certificate to be produced by OBC category candidates and invites our attention to paragraph at the bottom, which reads as under :-

“This is also to certify that he/she does not belong to the persons/sections (Creamy Layer) mentioned in Column 3 of the Schedule to the Government of India, Department of Personnel and Training O.M. No.36012/22/93-Estt.(SCT), dated 08.09.1993 and modified vide Government of India, Department of Personnel and Training, O.M. No.36033/3/2004-Estt (Res) dated 09.03.2004 and 14.10.2008.”

18. On the basis of the above, Mr. Goyal submits that the Petitioner was aware of the requirements of this format as well as Note I of the Notification dated 14.07.2012, inviting candidates for the purpose of selection to Data Entry Operators. The said Note I categorically emphasizes that the OBC Certificate was required to be obtained within three years preceding the cut-off date as mentioned in the Notification. He, thus, submitted that the Petitioner failed to do so and the OBC Certificate referred to by her, dated 08.06.2009, would be beyond three years period as mandated by the Notification.

19. In so far as the contention raised by Mr. Singal regarding the claim of the Petitioner that she had brought with her the OBC Certificate dated 17.12.2012 for submission to the Respondent at the



time of Data Entry Speed Test and Typing Test on computer held on 17.03.2013 is concerned, he submitted that if this version of the Petitioner were true, there was no reason why the Respondents would not have accepted the certificate. There is also no plausible reason, given by the Petitioner, as to why there is no mention at all about this, in the Original Application as filed before the learned Tribunal.

20. Mr. Goyal would submit that having regard to the lacuna in the OBC Certificate dated 08.06.2009, being beyond the prescribed time, coupled with the absence of reference to the OBC Certificate dated 17.12.2012 and the subsequent claim of having attempted to submit the same on 17.03.2013, would disentitle the Petitioner from being considered for the post of DEO. Mr. Goyal submits that the present writ petition ought to be dismissed on that score.

21. We have heard both the counsel for the parties and have perused the documents on record and after careful consideration, we are of the view that the Petitioner has made out a case in her favour.

22. In the present case, the only controversy, which is to be resolved is, whether a candidate belonging to any of the reserved categories, would become disentitled for consideration, in case the Certificate is submitted to the Authorities subsequent to the date of examination but before the selection process is completed.

23. This issue is no more *res integra*, established by judgments of this Court having been upheld by the Hon'ble Supreme Court. We



would deal with the position of law after dealing with the facts which arose in the present case.

24. Though the Respondent took an objection that the OBC Certificate, which was originally submitted or sought to be submitted by the Petitioner was prior to the three years' period preceding the cut-off date as mentioned in the Notification dated 14.07.2012, according to the Respondent, the cut-off date in the said Notification was 01.08.2012 and the earlier OBC Certificate of the Petitioner was issued on 08.06.2009. On this edifice, the Respondents disentitled the Petitioner from being considered to the post of Data Entry Operator under the OBC Category. As per the Respondents, this measure is undertaken to ensure that the person belonging to OBC Category does not fall within the creamy layer thereto.

25. This reasoning is obviously flawed for the reason that the aspect of creamy layer would relate to the financial status of the person belonging to the OBC Category. According to the Wealth Tax Act, a financial year commences from 1st of April of that year to the 31st of March of the succeeding year. Going by this logic, the OBC Certificate dated 08.06.2009 would appear to be valid, through till the period ending 31.03.2010. A perusal of the instructions issued to the candidates, dated 14.07.2012, particularly, Clause 4 thereof, makes it clear that the Certificate required to be submitted to the Respondent should be in possession of the candidates at the time of skill test/typing test. It is also interesting to note that the same Notification also contains the following condition :



“A candidate in whose case a certificate of eligibility is necessary may be admitted to the Examination but the offer of appointment will be given only after the necessary eligibility certificate has been issued to him by the Government of India.”

26. During the course of argument, counsel for the Respondent had referred to the format of Certificate to be produced by OBC Candidates to contend that the said Certificate was not in terms of either the format or the Notification. However, we find that at the end of the said format, the instructions given to the candidates categorically mentioned as under in bold:-

“A candidate should furnish the relevant OBC Certificate in the format prescribed for Central Government jobs as per Annexure-VII issued by the Competent Authority at the time of skill test. The Certificate must be dated on or before the date of the skill test.”

27. We have also perused the counter affidavit filed on behalf of the Respondent, in particular, sub-para (iv) to para 3 wherein the following was submitted:-

“In the present case, the cut-off date of reckoning for OBC status of the candidate and also for determining the creamy layer status was 01.08.2012. Hence, the Petitioner should have submitted an OBC Certificate issued between 02.08.2009 and 17.03.2013, being the last day of skill test/typing test.”

The same submission, *albeit*, differently worded, was reiterated by the Respondent in its counter affidavit at para 4 of the parawise



reply on merits, which is as under :-

“According to the instructions contained in the Call Letter, the candidates were advised to submit relevant OBC Certificate issued upto the date of skill test.”

28. In view of the above, to satisfy ourselves in respect of the OBC status, as also the creamy layer status of the Petitioner, we closely examined the OBC Certificate dated 07.12.2012 issued by the Competent Authority and which was filed on record along with the rejoinder by the Petitioner. It is noteworthy that the Respondents had not disputed either the veracity or the authenticity of the two OBC Certificates in question. Their objection is limited to the Certificates not being within the three years' period as stipulated in the Employment Notification.

29. The objection raised by the Respondents on the above aspect, is frivolous and has no legs to stand on. It is an admitted case of the Respondents that a valid certificate could have been submitted with it between the period 01.08.2012 through till 17.03.2013, the day the Petitioner attended the skill test. The reliance upon the earlier OBC Certificate dated 08.06.2009 appears to be valid in view of the meaning of the word 'Financial Year' as contained in the Wealth Tax Act, 1957. The second OBC Certificate dated 07.12.2012 could not have been objected to, at all, by the Respondents as per their own admissions, both in the pleadings as well as the documents.

30. The Tribunal did not deal with the afore-stated facts, which have emerged from a perusal of the pleadings as well as the



documents placed on record by the Petitioner. The Tribunal also did not deal with the ratio laid down by the Hon'ble Supreme Court in the case of *Ram Kumar Gijroya (supra)* and perfunctorily sidelined the same by observing as under :-

“...Whatever may be the relevance of the proposition laid down therein, vis-à-vis SC/ST candidate, it is very much necessary that the certificate should be of recent period, in the context of OBC candidates...”

Since we find that the Tribunal did not appreciate the admissions in the pleadings or the documents, as also having overlooked the law as settled by this Court as well as Hon'ble Supreme Court, the impugned order necessitates judicial review of the same.

31. Ordinarily, the certificates in respect of candidates belonging to the OBC category may have to be furnished along with the application depending upon the instructions mentioned in the Employment Notification. However, no straightjacket formula can be formulated for such submission and it appears that a delayed submission of such certificate shall not prove to be the cause for disentitlement from consideration of such candidate by the Authorities.

32. We have also perused the judgment of the Hon'ble Supreme Court in the case of *Ram Kumar Gijroya (supra)*, which considered the judgment rendered by the learned Single Judge in the case of *Pushpa vs. Government of NCT of Delhi and Ors.* bearing WP(C) No.9112/2008 dated 11.02.2009 as well as the judgment rendered by



a learned Division Bench of this Court in the case of *Tejpal Singh and Ors. Vs. Government of NCT of Delhi*, reported in *ILR 2001 Delhi 298* and held in its para 14 and 16 as under :-

“14. The Division Bench of the High Court erred in not considering the decision rendered in Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] . In that case, the learned Single Judge of the High Court had rightly held that the petitioners therein were entitled to submit the OBC certificate before the provisional selection list was published to claim the benefit of the reservation of OBC category. The learned Single Judge correctly examined the entire situation not in a pedantic manner but in the backdrop of the object of reservations made to the reserved categories, and keeping in view the law laid down by a Constitution Bench of this Court in Indra Sawhney v. Union of India [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] as well as Valsamma Paul v. Cochin University [Valsamma Paul v. Cochin University, (1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713] . The learned Single Judge in Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] also considered another judgment of the Delhi High Court, in Tej Pal Singh [Tej Pal Singh v. Govt. (NCT of Delhi), 1999 SCC OnLine Del 1092 : ILR (2000) 1 Del 298] , wherein the Delhi High Court had already taken the view that the candidature of those candidates who belonged to the SC and ST categories could not be rejected simply on account of the late submission of caste certificate.

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16. In Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] , relevant paragraphs from Tej Pal Singh [Tej Pal Singh v. Govt. (NCT of Delhi), 1999 SCC OnLine Del 1092 : ILR (2000) 1 Del 298] have also been extracted, which read thus: (Pushpa case [Pushpa v. Govt.



(NCT of Delhi), 2009 SCC OnLine Del 281] , SCC OnLine Del para 11)

“11. ... ‘15. The matter can be looked into from another angle also. As per the advertisement dated 11-6-1999 issued by the Board, vacancies are reserved for various categories including SC category. Thus in order to be considered for the post reserved for SC category, the requirement is that a person should belong to SC category. If a person is SC he is so by birth and not by acquisition of this category because of any other event happening at a later stage. A certificate issued by competent authority to this effect is only an affirmation of fact which is already in existence. The purpose of such certificate is to enable the authorities to believe in the assertion of the candidate that he belongs to SC category and act thereon by giving the benefit to such candidate for his belonging to SC category. It is not that petitioners did not belong to SC category prior to 30-6-1998 or that acquired the status of being SC only on the date of issuance of the certificate. In view of this position, necessitating upon a certificate dated prior to 30-6-1998 would be clearly arbitrary and it has no rationale objective sought to be achieved.”

(emphasis supplied)

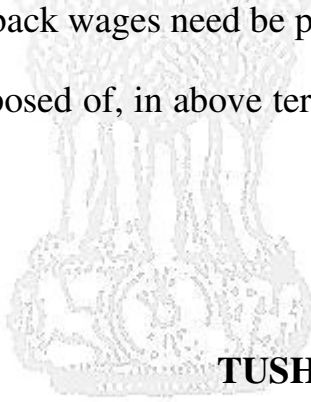
33. On a careful and deep consideration of the entire conspectus, both factual and legal, we are fully satisfied that the Petitioner had valid OBC Certificate as on 17.03.2013, the day of the skill test, the OBC Certificate being issued on 17.12.2012. In our considered opinion, OBC Certificate dated 17.12.2012 fully satisfied the criteria



stipulated in the instructions of the Call Letter as well as those contained in the Notification dated 14.07.2012.

34. In view of the above, we hereby quash and set aside the impugned order dated 16.05.2019 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. 2426/2013 and direct the Respondents to consider the name of the Petitioner under OBC category and recommend her name for the post of Data Entry Operator and issue an appointment letter to that effect with all consequential benefits including seniority from the date her junior in merit were so appointed. Since the Petitioner did not discharge any duties, no back wages need be paid by the Respondents.

35. The petition is disposed of, in above terms, with no orders as to costs.



TUSHAR RAO GEDELA, J

SANJEEV SACHDEVA, J

JUNE 01, 2022

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