

28.06.2023
sayandeep
Sl. No. 02
Ct. No. 12

MAT 1170 of 2022
With
CAN 1 of 2022

Sunil Shaw
-Versus-
Union of India & ors.

Ms. Sima Ghosh

.....for the petitioner

Mr. Anirban Mitra

.....for the UOI

The appellant in response to the notification dated 24.01.2015 issued by Staff Selection Commission applied through online for the appointment to the post of Constable (GD) in CAPF. On receipt of application of the appellant, he was issued roll number. On being successful in physical efficiency test and written examination, he was called for Detailed Medical Examination/certificate verification conducted between 10.05.2016 to 07.06.2016. During the detailed medical examination/ document verification held on 12.05.2019, the appellant produced community certificate issued by District Magistrate cum District Collector, Balia, Uttar Pradesh issued on 01.10.2015. The appellant was not selected as he obtained less marks than the cut-off marks of 79 for U.P. candidate. The appellant filed writ petition, i.e., WPA 5281 of 2022 challenging non -selection.

In the writ petition, the appellant has contended that one Nabani Mahato who also got 43 marks was selected on the ground that she belongs to naxalite area in Birbhum, West Bengal. According to the appellant, he also belongs to same district in West Bengal, a naxalite area. On this ground, the appellant claimed that the respondents ought to have selected him also.

The respondent stated in their affidavit-in-opposition that appellant had produced community certificate dated 1.10.2015 issued by District Magistrate cum District Collector, Balia, Uttar Pradesh mentioning that he is a resident of State of Uttar Pradesh and not in the same category of Nabani Mahato.

The learned Judge, considering the two documents dated 1.10.2015 produced by the appellant on 12.05.2016 at the time of document verification, dismissed the writ petition.

Challenging the said order of dismissal, the petitioner has come up with the present appeal.

In the appeal, the respondent filed affidavit-in-opposition against the stay application. Counsel appearing for the appellant on 20th June, 2023 submitted that she is not going to file any reply to the affidavit-in-opposition filed by the respondents and she will be ready to argue the matter and made submissions today.

Learned counsel appearing for the appellant submitted that learned Single Judge failed to consider the documents produced by the appellant to show that he is a resident of Birbhum, West Bengal, a naxalite area. One Nabani Mahato, another candidate who obtained same marks in same district was selected.

Learned counsel appearing for the appellant referred to two certificates filed along with the stay petition i.e. Residential Certificate dated 09.05.2016 and the Community Certificate dated 18.10.2016 issued by the Sub-Divisional Officer, Birbhum Sadar, Suri, Birbhum, West Bengal. Learned counsel further submitted that the residential certificate dated 09.05.2016 was obtained along with certificate for other backward classes only in October, 2016 and hence the same was not produced before the respondents on the date of document verification. Learned counsel also relied on the notification issued by the Staff Selection Commission in pursuant to the order of the Hon'ble Apex Court dated 17.08.2017, extending the time limit for production of community certificate.

Learned counsel appearing for the respondents reiterated the averments mentioned in the affidavit-in-opposition filed in CAN 1 of 2022 and he submitted that on the date of certificate verification held on 12.05.2016, the appellant has produced Caste Certificate and Domicile Certificate both dated

1.10.2015 issued by the authorities of Balia District, Uttar Pradesh. The appellant was treated as a U.P. candidate and the cut-off marks in U.P. candidates was 76 whereas the appellant obtained only 43 marks and hence appellant was not selected. The notification dated 17.08.2017 issued by the Staff Selection Commission in pursuant to the order of the Hon'ble Apex Court is only to the candidates who have not produced community certificate on the date of verification on time. In the present case, the appellant has produced two certificates issued by the District Magistrate cum District Collector, U.P. and hence the appellant cannot rely on the notification dated 17.08.2015 issued by Staff Selection Commission and prayed for dismissal of the appeal.

Heard Ms. Sima Ghosh, learned counsel appearing for the appellant as well as Mr. Anirban Mitra, learned counsel appearing for the respondents. Perused the materials on record.

From the above materials, it is seen that after being successful in physical efficiency test and the written examination, the petitioner was called for Detailed Medical Examination/ Document verification on 12.05.2016. On that day, the appellant produced two certificates dated 01.10.2015 issued by District Magistrate cum Collector, Balia, Uttar Pradesh to show that he belongs to OBC and is a resident of Balia

District, U.P.. It is not the case of the appellant that on 12.05.2016 he produced resident certificate dated 09.05.2016 issued by the Sub-Divisional Officer, Birbhum, West Bengal. Similarly, it is not the case of the appellant that after detailed medical examination/document verification conducted on 12.05.2016, he submitted community certificate to the respondents.

When the documents dated 09.05.2016 and 18.10.2016 were not produced before authorities at the time of document verification before final selection, this Court in the writ proceedings cannot take note of these documents. The contention of the learned counsel for the respondent that the notification dated 17.08.2017 issued by the Staff Selection Commission is not applicable to the case of the appellant since it was issued only for the candidates who have not submitted the community certificate before the cut-off date at the time of documents verification. In the present case, the appellant has produced two documents dated 01.10.2015 before the respondent authorities on the date of document verification. Hence, the notification dated 17.8.2017 is not applicable to the appellant.

In any event, he obtained the said certificate only after the document verification done on 12.05.2016 and he has not produced any materials to show that these documents were submitted before the final selection.

On the failure of the appellant to produce the documents to substantiate his contention that he belongs to Birbhum District, West Bengal, a naxalite area, the respondents and learned Judge rightly relied on the document dated 01.10.2015 issued by District Magistrate cum District Collector, Balia, Uttar Pradesh dated 01.10.2015 and held that the appellant belongs to OBC community in the State of Uttar Pradesh. There is no error in the order of the learned Judge warranting interference by this Court.

In view of the above, the present appeal is dismissed.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(V.M. Velumani, J.)

(Rai Chattopadhyay, J.)