



W.P. (MD) No.29209 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.01.2023

PRONOUNCED ON : 12.01.2023

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

W.P(MD).No.29209 of 2022

P.Ramesh

...Petitioner

Vs

**1.The National Commissioner for Backward Classes
Represented by its under Secretary (Admin)
Trikoot-1
Bhikaji Cama Place
New Delhi 110 066**

**2.The Chief Commissioner of Customs
Office of the Chief Commissioner
Customs House
Chennai**

...Respondents

Prayer : Writ Petition has been filed under Article 226 of Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order issued by the first respondent in F.No.NCBC/09/08/06/2019-AT dated 25.09.2020 and quash the same on the ground that the same is arbitrary, illegal and without any legal basis and



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consequently directing the respondents to reconsider by OBC guidelines by passing the Speaking order in the petitioner's complaint, by appointing the petitioner for the post Sepoy within time frame stipulated by this Court.

For Petitioner : Mr.K.Asok Kumar Ram

ORDER

(Made by **R.VIJAYAKUMAR,J.**)

The present writ petition has been filed challenging an order passed by the first respondent herein under which the request of the writ petitioner for furnishing of OBC certificate of certain candidates selected as Sepoy recruited in the year 2008 was rejected.

2.The petitioner had applied for the post of Sepoy under a notification issued by the second respondent in the year 2008. The petitioner had attended a preliminary interview on 26.05.2008 and he was awarded 96 out of 100 marks. In the final interview, the petitioner was awarded 130 marks out of 300. However, the petitioner was not selected.

3.The non selection was challenged by the petitioner before the Central Administrative Tribunal in O.A.No.738 of 2010. The said application was



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dismissed by the Central Administrative Tribunal on 11.10.2011. The said order was challenged by the writ petitioner in W.P(MD).No.28478 of 2011. The writ petition was also dismissed on 23.02.2017. After dismissal of the writ petition, the petitioner had approached the second respondent under Right to Information Act, to furnish the list of selected candidates and the marks obtained by them. After perusal of the information furnished, the petitioner came to know that only the final interview marks were taken into consideration and not the preliminary interview marks of the petitioner were considered for selection.

4.The Information Officer has further furnished information on 16.08.2012 that, out of 18 OBC selected candidates, only 3 of them have submitted their OBC certificates. A perusal of the copy of community certificate indicate that many non certificate holders were also selected under OBC category. The Central Public Information Officer furnished information on 05.07.2012 about the application forms and caste certificates of the selected candidates. However, OBC certificates were not furnished. Hence, the petitioner had filed an appeal before the first respondent on 30.11.2019. However, the said appeal filed under Right to Information Act was dismissed by the first respondent under the impugned order dated 25.09.2020 on the ground that the



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subject matter has been decided by the Central Administrative Tribunal, Chennai and Madras High Court. This order is under challenge in the present writ petition.

5. According to the learned counsel for the petitioner, only after dismissal of the writ petition, he came to know that many candidates selected under OBC category did not belong to that category at all. That apart, many candidates have submitted only their community certificates and not OBC certificates. He had further contended that the petitioner belongs to OBC category and he had also applied under the said category. The petitioner has produced OBC certificate. The candidates who do not belong to the OBC category or who have not produced OBC certificates have been selected and the petitioner has been left out. This irregularity came to his knowledge only after dismissal of the writ petition. Hence, he has filed the present writ petition challenging the order passed by the appellate authority under Right to Information Act and for a mandamus to appoint the petitioner for the post of Sepoy.

6. At this stage of admission, we have heard the argument on the side of the petitioner and perused the records produced before us.



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7.The petitioner had applied for the post of Sepoy as called for by a notification issued by the second respondent in the year 2008. However, he was not selected. The non selection was challenged by the writ petitioner before the Central Administrative Tribunal, Chennai in O.A.No.738 of 2010 and the same was dismissed on 11.10.2011. The petitioner had challenged the said order before this Court in W.P(MD).No.28478 of 2011. The Hon'ble Divisional Bench of this Court was pleased to dismiss the writ petition. Paragraph Nos.6 and 7 are extracted as follows:

“6. The learned counsel appearing for the petitioner strenuously contended that in the notification issued calling for applications in March 2008, the procedure of conducting final interview was not mentioned or indicated and therefore, the selection of candidates on the basis of their performance in the final interview was contrary to the notification. The said submission is unacceptable and invalid for the fact that the employment notification need not contain the details of the procedure to be adopted for appointment to various posts in the Government. It is always open to the Competent Authority to prescribe different methods of selection depending on each posts, for which the recruitment is conducted. In the instant case, the Selection Committee had adopted the procedure in terms of the instructions issued by the Board and the petitioner, having participated in the selection, cannot subsequently complain against the method of selection, particularly having failed to secure the required marks for ultimate selection.



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7. Moreover, the learned Tribunal has also seen the original files relating to the subject selection and found no irregularity in the selection. The learned counsel appearing for the petitioner also attempted to raise an issue regarding additional vacancies filled up, other than what was notified. But the said issue was never raised before the Tribunal and therefore, it is not open to the learned counsel for the petitioner to canvass the said issue before this Court. Although the private respondents were impleaded as parties before this Court, against whom certain averments were made by the petitioner that they being ineligible for selection, We cannot go into those aspects since they were not made parties originally before the Tribunal. It is also to be seen from the finding of the Tribunal that the marks secured by the petitioner is far below than the marks secured by the selected candidates and hence, no grievance could be made out by the petitioner against the selected candidates.”

8.A perusal of the order passed by the Central Administrative Tribunal and the Division Bench of this Court clearly disclose that the petitioner has not raised the issue relating to the alleged irregularity in the selection of candidates under OBC category. The petitioner has chosen to raise this issue by way of application under Right to Information Act after dismissal of the writ petition. According to the writ petitioner, he came to know about this alleged irregularity



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only after dismissal of the writ petition and hence, he is entitled to file a fresh writ petition on the same cause of action raising a new ground.

9.A perusal of the records will clearly indicate that the petitioner had approached the authorities under Right to Information Act and obtained information on 24.02.2010, 16.08.2012, 05.07.2012 and 13.07.2012. The writ petition was disposed of by the Division Bench only on 23.02.2017. Therefore, it is clear that the petitioner was having knowledge about the alleged irregularity even while the writ petition was pending. However, he has not chosen to place the said material before the writ Court, even though the writ petition was pending for more than 5 years after the petitioner has received information under the Right to Information Act. The present writ petition has been filed challenging an order passed by the Appellate Authority under Right to Information Act and the Appellate Authority has refused to entertain the appeal on the ground that the petitioner's request for appointment as Sepoy has already been rejected by the Central Administrative Tribunal and the High Court. Therefore, it is clear that the petitioner is attempting to seek appointment as Sepoy for the second time raising new grounds.



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10. It is not the case of the petitioner that he was not aware of this ground while the writ petition was pending. The Appellate Authority under the Right to Information Act has passed the impugned order after disposal of the writ petition. This cannot be a ground for filing a fresh writ petition. The petitioner was having knowledge about the order passed by the original authority even while the petition was pending.

11. The Hon'ble Supreme Court in a judgment reported in **(1977) 2 SCC 806 (State of U.P. .vs. Nawab Hussain)** in Paragraph No.8 has held as follows:

“8.It is not in controversy before us that the respondent did not raise the plea, in the writ petition which had been filed in the High Court, that by virtue of clause (1) of Article 311 of the Constitution he could not be dismissed by the Deputy Inspector General of Police as he had been appointed by the Inspector General of Police. It is also not in controversy that that was an important plea which was within the knowledge of the respondent and could well have been taken in the writ petition, but he contented himself by raising the other pleas that he was not afforded a reasonable opportunity to meet the case against him in the departmental inquiry and that the action taken against him was mala fide. It was therefore not permissible for him to challenge his dismissal, in the subsequent suit, on the other ground that he had been dismissed by an authority subordinate to that by which he was



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appointed. That was clearly barred by the principle of constructive res judicata, and the High Court erred in taking a contrary view.”

12.A careful reading of the judgement of the Hon'ble Supreme Court makes it clear that the petitioner cannot be permitted to file a fresh petition raising new grounds which were already within his knowledge while the first writ petition was pending. The second writ petition on a new ground would be clearly barred under the principles of constructive resjudicata. The petitioner having had knowledge about the alleged irregularity in selection of candidates under OBC category and failed to raise the same before the Division Bench in W.P(MD).No.28478 of 2011. Having failed to do so, the petitioner cannot be permitted to file a fresh writ petition citing the order passed by the appellate authority under the Right to Information Act.

13.The present impugned order has been passed by the Appellate Authority under Right to Information Act. Any interference in the said order, would only result in furnishing of information to the writ petitioner. However, the petitioner has prayed for a mandamus to appoint him as Sepoy. The rejection of request for appointment of the petitioner as Sepoy has reached finality by



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order of this Court in W.P(MD).No.28478 of 2011. Therefore, by challenging an order passed by the Appellate Authority under Right to Information Act, the petitioner cannot seek to appoint himself as a Sepoy.

14.The Appellate Authority under Right to Information Act has rightly decided to reject the request of the petitioner on the ground that the issue has already been decided by the Central Administrative Tribunal and the High Court.

15.In view of the above said deliberations, we do not find any infirmity or illegality in the order passed by the first respondent warranting interference. The Writ Petition is devoid of merits and the same is dismissed. No costs.

(D.K.K.J.,)

(R.V.J.,)

12.01.2023

NCC: Yes/No
Index :Yes/No
Internet :Yes/No
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**D.KRISHNAKUMAR, J.
AND
R.VIJAYAKUMAR, J.**

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Pre-delivery Order made in
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