



2024:DHC:8138



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

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Date of Decision: 19th September, 2024+ **W.P.(C) 12014/2015****JITENDER YADAV**

.....Petitioner

Through: Ms. Esha Majumdar, Mr. Setu Niket,
Ms. Unni Maya S., Mr. Ishan Singh and Ms.
Chetna, Advocates.

versus

UNION OF INDIA & ORS

.....Respondents

Through: Mr, Sandeep Kumar Mahapatra,
CGSC with Mr. Tribhuvan, Advocate for R-1 and
R-2 with Mr. Arun Bakshi, Deputy Secretary and
Mrs. Mankiran Kaur Nagra, Assistant Executive
Officer.

None for Respondent No.3.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking writ in the nature of certiorari quashing the impugned final result dated 06.11.2013 whereby Respondent No.3 was selected and appointed under the OBC category as Staff Car Driver (Ordinary Grade) pursuant to Advertisement No.01/2011. Writ of mandamus is sought to Respondents No.1 and 2 to select and appoint the Petitioner under OBC category with all consequential benefits.
2. At the outset, it may be noted that Respondent No.3 who is the selected candidate and whose appointment is under challenge was served but



chose not to appear and vide order dated 07.11.2017 his right to file counter affidavit was closed. This writ petition was listed on 18.09.2024 and none appeared for Respondent No.3. Even today, there is no representation on his behalf and the Court proceeds to hear this petition which is of the year 2015 in his absence.

3. To the extent relevant and necessary factual matrix is that in December, 2011, Respondents No.1 and 2/Rajya Sabha Secretariat issued advertisement No.01/2011 inviting applications for appointment to various posts including 3 vacancies in the post of Staff Car Driver (Ordinary Grade) which included 01 in Unreserved category, 01 in OBC category and 01 in SC category. Petitioner applied for the post of Staff Car Driver (Ordinary Grade) in the OBC category and appeared in the written examination in June, 2013, result whereof was declared on 06.11.2013. Respondent No.3/Sh. Tej Pal was at No.1 in the merit list in the OBC category and was selected.

4. It is averred in the writ petition that Tej Pal was wrongly selected as he did not belong to OBC category as per Central List of OBCs for State of Delhi as on 20.12.2011. Since his date of birth is 22.09.1983, he was ineligible to apply under the UR category being overage as maximum age under the advertisement was 27 years as on 20.12.2011. Petitioner represented on 23.12.2013 to recommend his name for selection instead of Tej Pal. By O.M. dated 18.02.2014, Petitioner was informed that selection of the candidates was subject to their eligibility which was yet to be decided.

5. Petitioner filed a writ petition in this Court being W.P. (C) No.7500/2013 challenging the final result on the ground that Tej Pal was liable to be adjusted against UR vacancy and consequently the appointment



of one Bhim Singh against the UR vacancy was bad in law. He also sought his appointment in the OBC category. Bhim Singh who was Respondent No.4 in the said petition, filed a reply taking a stand that he did not belong to the OBC category and was rightly selected in the UR category, a position contested by official Respondents, who also subsequently filed an application contending that the issue of eligibility of Tej Pal had been kept in abeyance till the decision in the writ petition. It was also stated by them that even if Tej Pal was found to be ineligible under OBC category, the vacancy would be carried forward to the subsequent recruitment year.

6. Writ petition being W.P. (C) No.7500/2013 was allowed by the learned Single Judge vide judgment dated 24.08.2015 and final result was quashed. This judgment was challenged by Respondents No.1 and 2 herein in LPA No.696/2015 titled ***Rajya Sabha Recruitment Cell & Anr. v. Jitender Yadav & Ors., 2016 SCC OnLine Del 5596***, wherein the Division Bench set aside the judgment dated 24.08.2015 and upheld the final result dated 06.11.2013 and the appointment of Tej Pal against the OBC vacancy. It is pertinent to mention that while W.P. (C) No.7500/2013 was pending, Petitioner filed W.P. (C) No.5243/2014 again challenging the final result dated 06.11.2013 and a direction to Respondents No.1 and 2 to declare the Petitioner as a selected candidate under OBC category and appoint him. Basis the submission made by Respondents No.1 and 2 that expeditious steps would be taken to take a decision with regard to filling up the three vacancies, the writ petition was disposed of with liberty to the Petitioners to take remedies as per law in case of surviving grievance.

7. It is further averred that application being C.M. No.21286/2014 was filed by Respondents No.1 and 2 in the disposed of writ petition to place on



record the decision taken by the Competent Authority whereby claim of the Petitioner for appointment was rejected. The application was disposed of on 07.08.2015 with liberty to the Petitioner to challenge the decision in accordance with law. Subsequent thereto, Petitioner filed the present writ petition challenging the final result dated 06.11.2013 and selection of Respondent No.3 as also seeking appointment to the post of Staff Car Driver (Ordinary Grade).

8. Learned counsel for the Petitioner submits that Tej Pal whose date of birth is 22.09.1983 was ineligible to apply under UR category being overage. He could get the benefit of age relaxation only under the OBC category to which he did not belong as per Central List of OBCs for the State of Delhi as on 20.12.2011. Petitioner was 2nd in the merit list in the OBC category and placed in the waiting list and therefore, once Respondent No.3 was found ineligible by Respondents No.1 and 2, being next in the merit list in the OBC category, Petitioner ought to have been given appointment. It is strenuously argued that no doubt, the Division Bench had upheld the appointment of Tej Pal in the OBC category as also the final result impugned herein, however, once Respondents No.1 and 2 themselves cancelled the candidature of Tej Pal due to non-receipt of fresh OBC certificate, benefit of cancellation should go to the Petitioner as he was No.2 in the merit list.

9. Learned counsel submits that Petitioner was in the waiting/reserved list which remained valid for a period of 18 months and effect should be given to the waiting list which was also the view of the Department as brought forth in the noting placed on record by Respondents No.1 and 2 along with an affidavit dated 29.07.2023. Contrary to this stand in the



noting, Respondents No.1 and 2 have now taken a stand that the reserve panel having lapsed, Petitioner cannot be appointed and/or law mandates carrying forward of the OBC vacancy to the next recruitment year, which was done. It is also argued that Petitioner has been litigating from 2013 and pointing out that selection of Tej Pal was illegal as he did not belong to OBC category and once the stand of the Petitioner is vindicated as Tej Pal was unable to produce the requisite OBC certificate, it would be unfair to deny the benefit of cancellation of his candidature to the Petitioner. Reliance is placed on the judgment of the Division Bench of this Court in ***Delhi Subordinate Services Selection Board and Others v. Mohd. Vaquar Khan, 2024 SCC OnLine Del 2015***, wherein the Division Bench has observed that where the Department is responsible for delay in cancellation of candidatures of candidates, the eligible candidate cannot be deprived of his entitlement to be appointed to the post in question. Reliance is also placed on the judgment of the Supreme Court in ***Dinesh Kumar Kashyap and Others v. South East Central Railway and Others, (2019) 12 SCC 798***, wherein the Supreme Court has painfully noted that though the validity of the panel was only 2 years and since the last merit list was published in March, 2014 and validity had expired in March, 2016, however, the Appellants who had approached the Courts with promptitude cannot suffer only because the matter was pending in the Court.

10. Learned counsel appearing on behalf of Respondents No.1 and 2, on the other hand, submits that the present petition is barred by constructive *res judicata* as Petitioner seeks quashing of the final result dated 06.11.2013, the validity of which stands adjudicated and upheld by the Division Bench of this Court in LPA No.696/2015 in the earlier round of litigation. No doubt,



2024:DHC:8138



the learned Single Judge allowed W.P.(C) No.7500/2013 vide judgment dated 24.08.2015 holding that Tej Pal should have been adjusted against the UR vacancy and if so adjusted, the resultant OBC vacancy should be filled by the Petitioner being the next available OBC candidate and consequently set aside the result dated 06.11.2013, however, the Division Bench set aside the said judgment and upheld the final result as well as the appointment of Tej Pal in the OBC category. Judgment of the Division Bench was not assailed by the Petitioner and has attained finality and thus it is not open to the Petitioner to question the final result once again in the present petition.

11. It is further argued that Tej Pal had submitted an OBC certificate which was valid as per Central List of OBCs but the same was dated 27.06.2014 and he was thus asked to submit a fresh certificate indicating that he was an OBC candidate as on 20.12.2011, the last date of the application. Tej Pal, however, did not submit the requisite certificate despite sufficient opportunities and his candidature was therefore cancelled and vacancy was carried forward and filled in the next recruitment year. It is also contended that a reserve/waiting list has life of 18 months and cannot be operated indefinitely. Reliance of the Petitioner on the noting dated 31.07.2014 to argue that reserve panel was extended by six months, is misconceived as this was only a proposal and not a final decision. It is submitted that the final decision was taken in 2015 after the matter was referred to Staff Selection Commission ('SSC') and a clarification was received that no reserve list is to be maintained for regular open examinations for nominating candidates against non-joining of selected candidates and vacancies remaining unfilled are generally carried forward to the next year by the user department.



12. Heard learned counsel for the Petitioner and learned counsel for Respondents No.1 and 2 and examined their contentions.

13. By this writ petition, Petitioner seeks quashing of the final result dated 06.11.2013 wherein Tej Pal was at No.1 in the merit list in OBC category and therefore selected. Respondents No.1 and 2 had invited applications for 3 vacancies in the post of Staff Car Driver (Ordinary Grade) vide advertisement No.01/2011. Both Petitioner and Tej Pal had applied under OBC category against 01 OBC vacancy, Tej Pal was selected as he was higher in merit while Petitioner was at No.2 in the merit list. Petitioner raised a grievance that Tej Pal ought to have been appointed against UR vacancy and his appointment as OBC candidate was erroneous and Petitioner deserved to be appointed being at serial No.2 in the merit list. Not getting a favourable response from Respondents No.1 and 2, Petitioner filed W.P. (C) No.7500/2013 which was allowed vide judgment dated 24.08.2015 by the learned Single Judge and the final result dated 06.11.2013 was quashed to the extent of appointment of Tej Pal and Bhim Singh, who was Respondent No.4 therein and Respondents No.1 and 2 were directed to issue an appointment order in favour of the Petitioner.

14. Respondents No.1 and 2 carried the judgment in appeal before the Division Bench in LPA No.696/2015. After setting out the facts in detail, the Division Bench captured the controversy arising before it in paragraph 6 of the judgment dated 07.10.2016 which is relevant and is extracted hereunder, for ready reference:-

“6. The controversy in the present case is whether the second respondent Tej Pal Singh, who had secured the first rank in the merit list, should be appointed against the unreserved vacancy or against the OBC vacancy on account of having availed the benefit of age relaxation of 3 years



available to an OBC candidate for the purpose of eligibility. Depending upon the answer, either Bhim Singh, the third respondent, or Jitender Yadav, the first respondent, would be appointed to the post of Staff Car Driver. In other words, if Tej Pal Singh is appointed against the unreserved vacancy, the first respondent Jitender Yadav would be appointed against the OBC vacancy. On the other hand, if Tej Pal Singh is appointed against the OBC vacancy, the third respondent Bhim Singh would secure appointment against the unreserved vacancy”.

15. After a detailed analysis of the rival submissions of the parties, facts of the case and law on the subject, the Division Bench set aside the judgment of the learned Single Judge and upheld the final result dated 06.11.2013 observing that Tej Pal was rightly appointed to the post of Staff Car Driver (Ordinary Grade) against the OBC vacancy and not against the UR vacancy. Appointment of Bhim Singh was upheld against the vacancy in the UR category. This judgment was never assailed by the Petitioner and has attained finality. In light of this judgment, it is rightly argued by Respondents No.1 and 2 that Petitioner cannot challenge the validity of the final result dated 06.11.2013 once again in the present writ petition and it is not open to this Court in view of the binding judgment of the Division Bench to once again enter into adjudication of the legality or otherwise of the final result. Relevant paragraphs from the judgment of the Division Bench are as follows:-

“22. We would like to refer to the decision of the Constitutional Bench of the Supreme Court in the case of Union of India Vs. Ramesh Ram and Anr. (2010) 7 SCC 234. The Supreme Court, in this case, was dealing with reserved category candidates, who had secured a meritorious position in the Civil Service Examination without availing any concession or relaxation, so as to qualify for selection in the general list as well as the reserved category list. Challenge to the constitutional validity of sub-rule (2) to (5) to Rule 16 of the Civil Service Examination Rules was made on the ground that reserved backward classes candidates, who had qualified as a part of the general list, but availed the benefit given to reserved category candidates to get a service of their choice, would



continue to hold their general status and not occupy or reduce the reserved category post. Rejecting the said challenge, it was held that when meritorious candidates are adjusted against reserved category vacancy in view of their preference, the seats vacated by them in the general category would be allotted to those competing in the general category. If this principle is not followed, then possibly aggregate reservation would exceed 50%

23. *The underlying principle behind this judgment is that referring to the applicable Rules, when a reserved category candidate takes benefit of a concession because he belongs to the said category, then his appointment has to be counted as a part of the reserved pool for the purpose of computing the aggregate reservation quota, if the Rules so require and stipulate. The reservation quota pool and the general unreserved pools are two separate categories as such, with the rider that other backward classes are also part of the general pool when they do not take benefit of any concession or relaxation as they belong to a backward class. If such relaxation or benefit is claimed, unless the Rules or stipulation are to the contrary, the candidate would not belong to the general pool and would be covered under the reserved pool. The decision in Ramesh Ram and Others (supra) is also relevant for it repeatedly refers to, and draws a distinction between meritorious candidates who have not availed of any concession or relaxation in the eligibility criteria at any stage of the examination and have secured enough marks to place them in the general pool or the general qualifying standard. The Supreme Court has emphasized and referred to the requirement that such candidates should not have availed any concession or relaxation in the eligibility criteria. Therefore, it follows that where a candidate has obtained the post by virtue of relaxation or concession on account of the fact that he belongs to a backward class, then he would be treated as belonging to a reserved category unless there is a stipulation to the contrary by way of a specific enactment, rule, or instruction.*

24. *The difference between vertical and horizontal reservation has been highlighted to meet and reject the contention of the third respondent that age relaxation having been granted to general category candidates in specific cases, the benefit of age relaxation to OBC candidates etc. was not in the nature of an exemption for reserved category candidates alone. Relaxation of age in the general cases, where applicable, would not be covered under Article 16(4) of the Constitution, but would be relaxation granted to these general category candidates for specific reasons. Such relaxations would have to meet the test of equality under Article 14 of the constitution, and should not be discriminatory. The candidates who were to take advantage or concession of the aforesaid relaxation would qualify in the same category, i.e., unreserved or general candidates. In a given case, where there is horizontal reservation, candidates belonging to the*



categories so classified would possibly be entitled to the benefit in the manner and mode elucidated in the aforesaid decisions.

25. *Reservation legislations under Article 16(4) of the Constitution are enacted in order to protect and promote the interests of backward or socially disadvantaged groups, these being the OBCs, SCs and STs. These measures do not offend the equality clause since Article 16(4) safeguards the concern of certain classes and shields their legitimate claims in the domain of public employment. In case of legislation for affirmative action, the general principle governing reservation is that when any relaxation or concession is granted to the backward classes relating to eligibility qualifications whether in nature of marks, age, etc., the selection of the said candidate would be in the reserved category even if the said candidate had secured a meritorious position or rank, thus enabling him to qualify as a general category candidate. This principle would, however, be subject to a stipulation or a provision to the contrary in the recruitment rules, the applicable enactment, or in the advertisement/brochure pursuant to which applications were invited. This is an exception to the general principle and in the absence of an express provision enabling such exception, the general principle as stated above, would be applicable by default. There is sound and good reason for the same, for when a candidate meets the minimum eligibility criteria only in view of the relaxation or concession granted to him for belonging to a backward class, he would not then qualify as a general or unreserved category candidate. This migration would be impermissible even if the said backward class candidate secures a higher meritorious position. In such cases, the exemption or benefit granted to the reserved category candidate would not be unwritten and negated because of the marks or gradations subsequently secured. There is a connecting chain between the candidate concerned, and the concession or relaxation granted by virtue of his belonging to a backward class, which chain when linked, is not broken or destroyed because of subsequent gradation of marks, which are higher or better than the unreserved or general candidate. The first door access matters. The aforesaid ratio takes care of the argument that a relaxation or concession in fee granted to backward classes, which is the norm and a general practice, would not bar the reserved category candidate from qualifying in the general category, for the reason that fee prescribed is not an eligibility qualification but a condition to enable a person to participate in the selection process, if he is otherwise eligible. A relaxation in age or marks secured, on the other hand, would directly relate to the prescribed eligibility qualification, which can be different for general candidates and backward classes etc. Relaxation or concession of fee is, therefore, not regarded as "relaxation" or "concession" which would affect a candidate's selection in the open competition.*



26. *In view of the above, we uphold the final result dated 6th November, 2013 and hold that Tej Pal Singh, the second respondent herein, who was eligible on account of availing age relaxation, was rightly appointed to the post of Staff Car Driver against the OBC vacancy and not the unreserved vacancy. Consequently, we uphold the appointment of Bhim Singh the third respondent to the post against the vacancy in the general category. The present Letters Patent Appeal is allowed and the impugned judgment dated 24th August, 2015 is set aside. The Writ Petition (C) No.7500/2013 will be treated as dismissed. There will be no order as to costs."*

16. Learned counsel for the Petitioner has vehemently argued that the judgment of the Division Bench cannot come in the way of the Petitioner as Respondents No.1 and 2 have themselves cancelled the candidature of Tej Pal. No doubt, the candidature of Tej Pal has been cancelled but this was on account of his not having furnished a fresh OBC certificate as required, on the last date of receipt of the application. This cannot aid the Petitioner for questioning the final result, which is the relief sought in the present writ petition. Even otherwise, Respondents No.1 and 2 have categorically stated and rightly so that once the candidature of Tej Pal in OBC category was cancelled, the vacancy was carried forward to the next recruitment year as per the advice/clarification sought from SSC and has been filled, which is in consonance with law. Petitioner has placed reliance on a file noting wherein a decision was taken, according to him, for extending the validity of the panel for 06 months. This position is not correct and as brought forth by Respondents No.1 and 2, this was only a proposal, after which the matter was sent to SSC for clarification. SSC clarified that no reserve list is maintained for regular open examinations for nominating candidates against non-joining of selected candidates and unfilled vacancies are carried forward to the next year by the user departments. In light of this position, the reserve



2024:DHC:8138



list cannot be operated and the judgments relied on by the Petitioner will be of no avail as the facts in the said judgments were completely different. Petitioner therefore cannot claim appointment against the OBC vacancy advertised vide advertisement No.01/2011.

17. In view of the above, writ petition is dismissed as being devoid of merit.

JYOTI SINGH, J

SEPTEMBER 19, 2024/shivam