

MAT 1826 of 2023
with
IA No. CAN 2 of 2023

Md. Khairul Mandal
Vs.
Union of India & Ors.

Mr. Partha Sarathi Das
Md. Hafiz Ali
Ms. Shanta Sarkar

.... For the Appellant.

Mr. Pulakesh Bajpayee

.... For the UoI/Respondents.

The present appeal has been preferred challenging a judgment dated 2nd August, 2023 passed by the learned Single Judge in a writ petition being WP 7737 of 2019.

The said writ petition was preferred by the writ petitioner/appellant, namely, Md. Khairul Mandal (hereinafter referred to as Khairul) challenging *inter alia* a memo dated 11th August, 2018 issued by the respondent no. 6 by which Khairul was removed from the post of Constable (GD) and a memo dated 16th January, 2019 issued by the appellate authority being the respondent no. 5. By the impugned judgment the learned Single Judge arrived at a finding that Khairul belongs to Muslim Mandal category which cannot be categorized as OBC (A) as per the Central List and that the orders impugned in the writ petition were in conformity with Rule 23 of the Sashastra Seema Bal Rules, 2009 (hereinafter referred to as 2009 Rules).

Mr. Das, learned advocate appearing for the appellant submits that Khairul participated in the selection process conducted by the Staff Selection Commission on the rudiments of the caste certificate issued in his favour by the competent authority, as annexed at page 37 of the paper book. The authenticity of the said certificate has not been disputed by the respondents. It is also not a case that Khairul had misled the authorities or had suppressed any material information and in view thereof, the impugned order of termination dated 28th March, 2018 passed, placing reliance upon clause XII of the letter of appointment dated 27th May, 2014, is not sustainable in law.

He argues that it was never disclosed by the authorities that candidates belonging to OBC category (A) as per the Central List would be eligible to participate in the selection process. The certificate produced by Khairul was duly verified and he was issued a letter of appointment on 27th May, 2014.

Mr. Das, strenuously argues that neither did the respondent no. 3 nor did the respondent no. 5 consider Khairul's claim in the proper perspective and proceeded without granting any weightage to the fact that Khairul had neither practiced any fraud and nor had furnished any false information. Such arguments, as advanced before the learned Single Judge, were glossed over and no

finding was returned on the same. Such infirmity warrants interference in the present appeal.

Mr. Bajpayee, learned advocate appearing for the respondents denies and disputes the contention of Mr. Das and submits that Khairul did not fulfill the eligibility criterion for participation in the selection process and appointment in the concerned post. Candidates belonging to OBC category (A) as per the Central List were entitled. Knowing fully well that he does not belong to OBC (A) category in Central List, Khairul applied for participation. In the Staff Selection Commission notification, as annexed at page 25 of the supplementary affidavit, it was categorically stated that the candidates must be in possession of the certificates in the format prescribed by Government of India. The proforma of the application required to be filled up and submitted by a candidate, as annexed at page 48 of the paper book, would reveal that there was a specific clause, being clause 8, calling for '*serial number of the caste in the Central List of OBC (A)*'.

He further argues that in the appointment letter dated 27th May, 2014 itself it was categorically stated that the appointment is provisional and is subject to verification of Schedule Caste/Schedule Tribe/OBC Certificate. By a letter dated 21st January, 2007, the Deputy Commandant requested the District Magistrate to intimate whether "Muslim Mandal" '*community comes under the central list of OBC category or otherwise...*' In

response thereto, by a memo dated 14th February, 2017 it was intimated that ‘*no sub-caste namely “Muslim Mandal” has yet been enlisted in the Central list of OBCs for the State of West Bengal*’.

Indisputably, Khairul belongs to ‘Muslim Mandal’ community which is recognized of a Backward Classes under the Government of West Bengal notifications, as would be explicit from the caste certificate issued by the competent authority annexed at page 37 of the paper books. On the basis of the said certificate Khairul applied for participation in the selection process in the prescribed application. However, Khairul did not fill up clause 8 of the same which provides for discloser of ‘*serial number of the caste in the central list of OBCs*’. Upon verification of the caste certificate it was confirmed by the competent authority that there is no sub-caste, namely, Muslim Mandal in the Central List of OBCs for the State of West Bengal, as would be explicit from the memo dated 14th February, 2017 issued by the competent authority. The selection notification issued by the Staff Selection Commission also provided for production of a certificate in the format prescribed by the Government of India.

We are unable to accept the argument of Mr. Das that Khairul fulfilled the eligibility criteria to participate in the selection process and for appointment. The fact that Khairul applied as an OBC candidate belonging to the State List surfaced upon verification and in terms of the

conditions of provisional appointment, a show cause notice was issued. Considering the reply submitted by Khairul, a reasoned decision was taken and the same was also affirmed by the appellate authority. From the said sequence of facts, it is explicit that the respondents have complied with the principles of natural justice. No legal right of Khairul was infringed and as such the learned Single Judge rightly refused to interfere with the orders impugned in the writ petition.

Upon dealing with all the factual issues, the learned Single Judge, arrived at specific findings and we do not find any error, least to say any patent error of law in the judgment impugned, warranting interference in appeal.

Accordingly, the appeal and the connected application are dismissed.

There shall, however, be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Reetobroto Kumar Mitra, J.) (Tapabrata Chakraborty, J.)