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Court : Central Administrative Tribunal CAT Principal Bench New Delhi

Decided On : Sep-24-2012

Judge : The Honourable Dr. Veena Chhotray, Member (a) & the Honourable Dr. Dharam Paul Sharma, Member (J)

Appeal No. : O.A. NO.3985 of 2010 with O.A. 3244 of 2011 & O.A. 3245 of 2011

Appellant : Mithilesh Kumar and Others

Respondent : Staff Selection Commission, Through Its Chairman and Others

Judgement :

Dr. Veena Chhotray:

As the main issue involved in all these OAs is identical, they are being disposed by this common order. The common issue of law raised for our adjudication is the legal sustainability of non-consideration of candidature as an OBC on the ground of the Caste Certificate, in the prescribed format, not being submitted within the cut off date, in contravention of the conditions stipulated in the Advertisement Notification. To be even more specific, the issue centres around the non-creamy layer certificate not being within the prescribed time limit of the preceding 3 years of the cut off date.

2. The applicant in the OA No.3985/2010 is represented by Shri R.K. Sharma and the applicants in OA Nos. 3244/2011 and 3245/2011 by Shri Subhash Mohanty. The respondents counsel in all these OAs is Shri S.M. Arif. We have given detailed hearing to the learned counsels on both the sides and also carefully considered the material on record.

3. The claims in all these OAs have arisen out of the Combined Graduate Level Examination-2010 held by the Staff selection Commission for filling up various Group B and Group C posts under the Government of India. The relevant Advertisement /Notification was dated 30.01.2010. The applicants of all these OAs are agitating claims for consideration under the OBC category. Whereas Mithilesh Kumar (OA No.3985/2010) was not allowed to appear in the interview; Ravinder Kumar and Ms Pooja Yadav (respectively OA No.3244 and 3245 of 2011) were allowed to appear only as UR category candidates. The first one has resultantly challenged the validity of the impugned condition as incorporated in the Advertisement Notification and the interview call letter, together with prayer for issuance of certain directions in his favour. The other two, on the other hand, are seeking relief by way of selection to the post in terms of their higher preferences, by virtue of being treated as OBC candidates.

3(a) The OA No.3985/2010 (Mithilesh Kumar) seeks by way of relief:

Quashing the impugned orders/action/inaction;

A direction for not requiring the applicant to produce OBC / Non-Creamy Layer Certificate issued by the Competent Authority three years prior to 2.3.2010 and consider his case under OBC category on the basis of the OBC Certificate.

Further, a declaration that his non-consideration as an OBC has been ultra-vires, null and void and ineffective from its inception, being violative of Articles 14 and 16 of the Constitution.

3(b) The names of the applicants in the OA No.3244/2011 (Ravinder Kumar) and the OA No.3245/2011 (Pooja Yadav) have been recommended for the posts of Auditor/Junior Accountant/UDC. The relief sought through the OA 3244/2011 is for

a direction for recommending the name of the applicant for appointment as Inspector (CE, PO, Exam) or Sub-Inspector (CBI) as per the preference exercised in the application with seniority and other consequential benefits.

3(c) On similar lines, the applicant in the OA 3245/2011 is seeking directions for recommendation of her name for appointment as Inspector (CE, , PO, Exam) or as Inspector IT, AEO or as Sub-Inspector CBI, as per the preferences exercised in the application with seniority and other consequential benefits.

On prayers seeking interim relief, directions were issued in the OAs 3244/2011 and 3245/2011 that any appointment made in this regard shall be subject to the outcome of the OAs.

4. The brief facts as relevant in the present context are being recapitulated below:

4(a) OA No.3985/2010 (Mithilesh Kumar): The applicant is working as an LDC in the UPSC. He had applied in response to the Advertisement Notification for CGLE-2010. Along with the Application he had submitted the OBC Certificate dated 19.9.2003 (Annex. A/7). The applicant was issued Admission Certificate in the OBC category. He was also allowed to appear Tier-I and Tier-II examinations and declared qualified for interview in similar capacity (Annex A/2, A/3, A/4 and A/6 respectively). The call letter for interview had directed the applicant to bring the supportive documents in original which, inter alia, included the OBC Certificate. It is submitted that the interview was scheduled on 19.10.2010, but he was not allowed to appear in the interview. Instead he was told that he was not to be considered under the OBC category as the OBC Certificate dated 19.9.2003 was more than three years old on the closing date i.e. 2.3.2010. Subsequently the applicant obtained another OBC certificate dated 22.10.2010 (Annex A/1 with the Rejoinder). However, it is admitted that this Certificate was never submitted by the applicant to the Commission.

4(b) OA No.3244/2011 (Ravinder Kumar): The OBC Certificate in this case enclosed with the Application was dated 21.5.2002 (Annex P/2). In this case also upto Tier-II the applicant had been allowed to participate as an OBC candidate. The applicant had subsequently secured another OBC Certificate dated 31.7.2010

(Annex P/5) and produced both the Certificates at the time of interview on 18.10.2010. However the aforesaid Certificates were not accepted. Instead on an undertaking (to the effect that since he has not furnished the OBC Certificate issued prior to the closing date i.e. 2.3.2010, he would not claim appointment under the OBC category and may be considered as a general category candidate), the case of the applicant was considered under the general category. (As per the averment in the OA, this undertaking had been taken under coercion; though it is rebutted by the respondents). In the final results notified on the web site on 7.1.2011, the applicant was recommended in the unreserved category for appointment to the post of Auditor/Junior Accountant/UDC. However, on 31.1.2011, the applicant submitted a representation in the Special Cell constituted by the SSC, praying for recommendation of his name to the posts of his higher preferences as per the application, while treating him as an OBC candidate. This was on the ground that whereas the applicant had secured 475 marks, the minimum marks secured by the last candidates selected under the OBC category for Inspector (Central Excise) were 467 and for Sub-Inspector, CBI were 465. As per the stand taken, inter alia, in the representation, the undertaking by the applicant in this respect had been made under coercion. This representation is stated to have been of no avail.

4(c) OA 3245/2011 (Ms. Pooja Yadav) - The facts of this case also are on similar lines as in the OA No.3244/2011. The OBC Certificate initially submitted with the Application in this case was dated 19.4.2005. (Annex P/2). The Certificate subsequently obtained was dated 24.6.2010 (Annex P/6). Both these Certificates had been produced at the time of interview held on 18.10.2010. However, the OBC Certificates had not been accepted. Further, on an undertaking as in the case of Ravinder Kumar, in the final results the applicant had been recommended as an unreserved category candidate for appointment to the post of Auditor/Junior Accountant/UDC. Since the applicant had secured 485 marks as against the minimum marks of 467 for Inspector (CE), 479 for Inspector, IT and AEO and 465 marks for Sub-Inspector, CBI (all posts of higher preferences as per the application); she made a representation dated 31.1.2011 in the Special Cell of the SSC praying for recommendation for her appointment under the OBC category against these posts (Annex P/9). The representation has not been responded to.

5. The Applicants contentions - both substantive and legal:

5(a) Substantive contentions:

5(a)(i): It is contended that all the applicants in these cases had been issued Admit Cards and also allowed to participate in the examination upto Tier-II and even declared qualified for interview as OBC category candidates. Hence the respondents could not refuse their candidature as OBC at a subsequent stage.

5(a)(ii): It is not in dispute that the applicants are covered under the OBC category, within the non-creamy layer. In all these cases, the original certification had been re-certified by the Competent Authority by issuing subsequent Certificates (though after the cut off date). Further in the OAs 3244/2011 and 3245/2011 both the Certificates i.e. the original as well as the subsequent ones, had been submitted at the time of interview.

5(a)(iii): The OA 3985/2010 (Mithilesh Kumar) also avers as an additional argument that the applicant has already been working as LDC in the UPSC and the appointment had been on the basis of the 2003 Caste Certificate enclosed by him along with the Application in question for CGLE-2010. It would also be contended that his application had been forwarded through proper channel and the pay scale granted to the applicant in the UPSC would not bring him under the creamy layer.

5(a)(iv): In OA 3244/2010 (Ravinder Kumar) it would be averred that the delay in getting fresh Certificate - though applied prior to the cut off date was also in the background of the stipulation in the Advertisement Notification of the applicants being required to submit the Certificates only when sought by the Commission after declaration of result of Tier-I Examination.

5(a)(v): Another argument extended by the learned counsel in OAs 3244/2011 and 3245/2011 would be that this condition had been waived in the Advertisements for the subsequent CGEL Examinations pertaining to the years 2011 and 2012. In support, copy of a call letter dated 7.10.2011 issued to one Satya Pal Yadav in the context of CGLE-2011 would be enclosed as Annex A/9 with the Rejoinder (in Ravinder Kumars case) would be referred. This ran as follows:

(iv) You should possess the OBC certificate in the format prescribed for Govt. of India post as per the notice of the examination. Candidates claiming OBC status may note that certificate on creamy layer status should have been obtained within three years before closing date i.e. 15.04.2011 (16.04.2008 to 30.11.2011 i.e. date of completion of interview).

5(a)(vi): As regards the undertaking given by the applicants in the OAs 3244/2011 and 3245/2011, it is averred that the same had to be done under coercion, as the applicants had no other alternative. Hence the factum of the undertaking as such is contended not to affect prejudicially the rights of the applicants while agitating claims for consideration as OBC candidates.

5(a)(vii): The applicants of both the aforesaid OAs (Ravinder Kumar and Ms Pooja Yadav) also sought to justify their claims on the basis of the marks scored by them. As these marks were much higher than the scores of the last selected candidates under the OBC category in the preferred posts, their denial for appointment against the said posts is averred to be arbitrary and unsustainable in law.

5(a)(viii): In the peculiar context where the applicant (OA 3985/2010) had not been allowed to appear in the interview, the learned counsel, Shri R.K. Sharma would also raise an oral averment that the claims of the applicant should have been considered as an unreserved category candidate. For this purpose, averment of the benefit of age relaxation as a departmental candidate has also been made by the learned counsel.

5(b) Legal Pleas:

5(b)(i) The foremost legal ground raised in all these OAs is that a person acquires OBC status by birth and by notification of that caste as per the Constitutional provisions. A Certificate issued by the Competent Authority to its effect is thus only an affirmation of facts already in existence. Reliance has been placed on the Delhi High Courts Judgment in the case of Tej Pal Singh and Anr vs GNCT of Delhi and Anr {120 (2005) DLT 117}.

5(b)(ii): In the OA 3985/2010 (Mithilesh Kumar), challenging the legal sustainability of the impugned condition itself (i.e. certification regarding non-creamy layer being within the preceding three years of the cut off date), the same is averred to be in contravention of Articles 14 and 16 of the Constitution. The learned counsel, Shri R.K. Sharma would argue that by incorporating such conditions, the Respondents were taking away the right of 27% reservation for employment purposes under the Constitution of India. It would also be argued that the applicant, even being an OBC, had a right to be considered on his own merit as a general category candidate.

5(b)(iii): In OA 3985/2010 (Mithilesh Kumar) reliance has been placed on the decision of the Coordinate Bench (PB) of the Tribunal rendered on 6.1.2010 in OA No.1059/2008 (Ajay Kumar vs UOI and Ors). In this case dealing with the issue of delayed submission of the OBC Certificate in the prescribed format, allowing the OA directions had been issued for consideration of the claims under the OBC category.

5(b)(iv): In OAs 3244/2011 and 3245/2011, besides the decision in Tej Pal Singhs case (supra), a number of other judicial pronouncements have also been relied upon viz.:

Deepak Vs. Competent Authority for the purpose of Admission to Engineering Course in Government Engineering College, Pune {AIR 1997 Bombay 1 DB}, to contend that the requirement that caste certificate must accompany application form should not be insisted upon as a precondition for accepting the application forms and for considering the claims of the candidates in particular reserved category.

NCT of Delhi and Anr vs Poonam Chauhan {152 (2008) DLT 224 (DB)} decided by the Honble High Court of Delhi to contend that Clause 3 of the GOI O.M. dated 25.7.2003 on the subject of OBC Certificate did not stipulate any bar on consideration of caste certificate issued subsequent to the date of closing of receipt of applications.

DSSSB and Anr vs Anu Devi and Anr {SLR 2010 (2) decided by the Honble Delhi High Court, to contend that a candidate becomes eligible under the OBC category the day the caste he belongs to is notified by the appropriate authority as a backward caste. The Honble Court further observed that submission of the requisite certificate is only a ministerial act and not on the same footing as acquisition of the educational qualification.

Hari Singh vs Staff Selection Commission and Anr {WPC No.11928/2009 {2010 V AD (DELHI) 599} where it was held that ..a candidate cannot be denied his Constitutional Right of reservation on the basis of a mere undertaking, obviously at the respondents instance. This was more so when the undertaking itself was not acted upon by the respondents and also in view of the fact that the time limit set for submission of such a certificate had not been treated as sacrosanct by them.

Further, to contend that the prescription in the public notice in question that the closing date for receipt of application would be treated as the date of reckoning of OBC status of the candidate including being within the non-creamy layer, is a prescription evolved for the benefit of the candidates and not for ousting them from the benefit of reservation.

Also that the prescription in the Note appended to Clause 4 (B) does not get whittled down merely by acceptance of an OBC certificate issued on a later date. A candidate who is certified as belonging to an OBC and as not belonging to the creamy layer on a later date than the one fixed by the advertisement cannot be assumed to be as falling under the creamy layer on any date of issuance of the certificate.

The learned counsel, Shri Subhash Mohanty would lay particular emphasis on the judgment of Hari Singhs case (supra), particularly the logical inferences drawn from Paras 47 and 48 of the judgment.

6. Opposing the claims, the Respondents submission is that these OAs are fit to be dismissed. The following salient arguments have been advanced:-

6.1 As per the clear stipulation in the Advertisement Notification, the scrutiny of eligibility and other such conditions was not prescribed in the initial stages and the candidature was accepted provisionally. This was in view of the large number of applications handled by the Commission.

6.2 Making us run through the text of the Advertisement Notification, Shri S.M. Ariff, the learned counsel for the respondents would aver that the SSC had acted in consonance with the terms and conditions specified in the Notification. It would also be the submission of the learned counsel that the Commission could not be expected or mandated to deviate from the set terms and conditions of the Advertisement Notification, in order to accommodate particular candidates. The learned counsel would also refer in this context to their averment in the Counter about the condition regarding the non-creamy layer certificate being within the preceding three years of the closing date is based on the DoPandT instructions vide O.M. No.36033/3/2004-Estt.(Res.) dated 09.03.2004.

6.3 It would also be argued that admittedly the applicants in all these OAs did not have the OBC certificates in the prescribed format on the cut off date. The factum of their obtaining subsequent certificates was irrelevant to the basic issue, as per the learned counsel for the respondents.

6.4 In Mithilesh Kumars case, the claim of the applicant for being treated as a departmental candidate would be rebutted. Drawing our attention to the No Objection Certificate issued by the existing employer i.e. UGC (Annex A/8), it would be highlighted that the same had been issued on 15.10.2010, which was subsequent to the cut off date i.e. 2.3.2010. Shri Arif would also submit that the applicant had not applied initially through proper channel and the NOC was given only for attending the interview. Hence the claim for availing age relaxation on the ground of being a departmental candidate would be stated to be untenable.

6.5 Even regarding the rival submission for consideration of the applicants claim as a general category candidate would be sought to be not tenable, since no such relief has been claimed in the OA. Further as per the submission in their Counter Affidavit, the applicant had not been allowed to appear in the interview even as a UR category candidate since he was over age.

6.6 As regards the case laws relied upon by the counsels for the applicants, it would be the submission of the respondents learned counsel that these had been decided on their own merits. It would also be argued that the decisions being referred by the applicants learned counsels were mostly Single Bench Judgments. Further, it would be submitted that the judgment of the Delhi High Court in Hari Singhs case had already been stayed by the Apex Court. The learned counsel, Shri S.M. Arif would produce before us the Delhi High Courts recent decision dated 24.1.2012 in the cases of Delhi Subordinate Services Selection Board and Anr vs Ram Kumar Gijroya and Ors (LPA 502/2011) and Ms. Renu vs The Chairman/Secretary, D.S.S.S.B and Ors (Writ Petition (C) No.8087/2011) and rely extensively upon it. It would be his submission that by this judgment after distinguishing the preceding other cases, the latest law on the subject has been laid down by the Honble High Court. The decision of a Coordinate Bench of the Tribunal (PB) in OA 1684/2011 (Dibyaranjan Gouda vs Staff Selection commission) dated 16.05.2012 relying upon the decision in Ram Kumar Gijroya and Ms. Renu cases (supra) would also be cited by the learned counsel, Shri S.M. Arif.

7. On a careful consideration of the respective averments and the material on record, we find the following aspects as relevant:

7.1 In view of the clear stipulation in the Advertisement Notice about the provisional acceptance of candidature at the initial stages including Tier-I and Tier-II examinations and the scrutiny regarding eligibility etc being undertaken only at a subsequent stage (Important Instructions to Candidates, Point 2, right in the beginning); the contention of any right having accrued in favour of the applicants by issuance of Admit Cards or being allowed to participate in Tier-I and Tier-II Examinations as OBC candidates, is not found acceptable.

7.2 Similarly, regarding the entitlement for reservation benefits, a number of instructions in the Advertisement had clarified that this could be claimed only in case of fulfillment of the conditions as prescribed in the Notice. The important instruction No.4 had, inter alia, stated that the candidates should also be in possession of the certificates in the prescribed format in support of their claim at

the time of application. Again Para 5 (C) - Process of Certification and Format of certificates - had inter alia, stated that candidates claiming OBC status may note that certificate on creamy layer status should have been obtained within three years before the closing date i.e. 02.03.2010. Note-I below had reiterated that the closing date was to be treated as the date for reckoning of the OBC Certificate of the candidate. Note-II had warned about a permanent debarment in case of fraudulent cases. Annexure VII with the Notification had mentioned about the non-creamy layer status in terms of the relevant instructions of the Government of India.

Thus, in neither of these cases despite being aware of the conditions, the applicants had enclosed the OBC Certificates in the prescribed format along with their applications. Procuring subsequent Certificates and in the cases of Ravinder Kumar and Ms. Pooja Yadav, producing them at the time of interview would not make their action to be in consonance with the terms and condition of the Advertisement.

7.3 The endeavour on the part of the applicants learned counsel, Shri Mohanty to refer to the Advertisement Notifications for the CGLE-2011 and 2012 is also not found to be relevant, since we are dealing with claims arising out of CGLE-2010. In any case, there remains a question mark on the authenticity of the document placed reliance upon (the interview call letter to a particular candidate) placed before us.

7.4 Mithilesh Kumars averment regarding the existing employment with UPSC to support the claim of belonging to OBC would not also help for the same reason as not being in accordance with the said terms and conditions of the Advertisement.

7.5 Again in Mithilesh Kumars case, the claim for consideration as a general category candidate is not found to be tenable. First of all, this is not a relief sought in the OA. Even factually, the contention of the application having been forwarded initially through proper channel has not been found to be correct. As per the respondents the case of the applicant could not be considered under the general category candidates because he was over age and was not entitled to age relaxation as a departmental candidate.

7.6 The challenge in the OA 3985/2010 to the relevant condition regarding the prescribed time limit of the non-creamy layer certificate is not sustainable in law either. The settled proposition of law in this regard is that ordinarily a candidate having participated in a recruitment process cannot challenge the very basis of it subsequently. Besides, the plea raised by the learned counsel as to the rights conferred by the Constitution for 27% reservation for the OBCs being taken away by this condition also lacks merit. As per the respondents, the relevant provisions have been incorporated keeping in view the GOI Notifications in this regard.

7.7 The reliance placed on behalf of the applicants on several judicial pronouncements needs to be considered in the light of the Delhi High Courts recent decision cited before us by the respondents.

8. In view of the critical significance of this decision to the issues under adjudication, we find it appropriate to deal in details with this Judgment. The decision in question is dated 24.1.2012 in the LPA No.502/2011 {Delhi Subordinate Services Selection Board and Anr vs Ram Kumar Gijroya and Ors} and WP(C) No.8087/2011 {Ms. Renu vs The Chairman/Secretary, D.S.S.S.B. and Ors}.

8.1 The LPA in question had been preferred by the respondents challenging the single Judges order allowing WP (C) 382/2009 and commanding the DSSSB and GNCTD to accept the OBC Certificates submitted by the respondents for selection to the posts of Staff Nurse in the Department of Health and Family Welfare, GNCTD, after the cut off date provided there for.

The Writ Petition No.8087/2011 had been preferred by the appellants impugning the order dated 29.4.2011 of the CAT (PB), dismissing the OA No.2427/2010 preferred by the petitioner seeking a direction for her appointment to the post of Matron in the Office of the DG, Prisons, in the OBC category.

8.2 In support of the claims by the candidates, various contentions had been raised like:

i) Reliance on the decision of the Delhi High Court on the judgment dated 11.2.2009 in WP (C) No.9112/2008 titled Ms. Pushpa vs Govt. of NCT of Delhi. This was on the point of the applicant having applied for the Certificate prior to the date of advertisement and the inability to submit the Certificate owing to the delay on the part of the authorities.

ii) The entitlement for consideration for appointment under the OBC category by virtue of the said status being by birth and not dependant upon a Certificate {Tej Pal Singh vs Govt. of NCT of Delhi (supra)} and DSSSB vs Ms. Anu Devi and Ors}.

8.3 On behalf of the DSSSB, however, reliance was placed on the decisions in:

(i) MCD vs Veena (2001) 6 SCC 571 laying down that persons holding OBC Certificates issued by other States cannot be treated as OBCs in Delhi.

(ii) Shankar K. Mandal vs. State of Bihar (2003) 9 SCC 519 - laying down that the cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant Service Rules and if there is no cut off date appointed by the Rules, then such date shall be as appointed for the purpose in the advertisement calling for the applications.

(iii) Ashok Kumar Sonkar vs Union of India (2007) 4 SCC 54 - laying down the proposition that the eligibility of the candidates has to be judged with reference to that date and that date alone is a well established principle of law.

(iv) Judgment dated 7.9.2010 of a Division Bench of the Delhi High Court in W.P.(C) No.1343/2010 titled Santosh Kumar Meena vs Govt. of NCT of Delhi - laying down that the reason why a cut off date cannot be ignored in an individual case is that there may be other persons who may have applied, had they known that the date of acquiring qualification was flexible.

(v) Order dated 20.1.2010 of Delhi High Court in W.P.(C) No.8362/2009 titled Dharmendra Saini vs Govt. of NCT of Delhi denying the relief to the petitioners who had remained careless and indifferent in taking timely steps not only in

obtaining the OBC Certificates but in submission of the same.

8.4 In view of the respective averments, the Honble High Court had framed the following legal question for adjudication:-

12. The common legal question to be adjudicated in the appeal and the writ petition thus is whether notwithstanding the advertisement inviting applications requiring the certificate of belonging to the Reserved Category being filed along with application by the cut off date, the delay in submitting the certificate can be condoned and appointment directed.

8.5 At the outset, the Honble High Court found it of foremost importance to reiterate the aspect that eligibility has to be determined as on the cut off date prescribed and no relaxation in this regard can be granted. It had also been opined that granting any relief to the applicants approaching the Court in such cases would tantamount to giving a benefit to such applicants to the prejudice of others. Reliance has been placed on the D.B. judgment dated 31.10.2011 in Narayan Lal Meena vs Govt. of NCT of Delhi (WP (C) 7767/2011).

8.6 The Honble High Court had further proceeded to examine the aspect as to whether the ratio laid down in Narayan Lal Meenas case in respect of eligibility qualification would also apply to submission of documents as the OBC Certificate. Para 14 of the Judgment had in this regard adverted to its earlier decision in Tej Pal Singhs case (supra) and noted that the distinction is obvious. While the qualification does not exist on the cut off date, the status as OBC exists which as has been held in Tej Pal Singh (supra) is not dependent on the certificate which is but a proof of such status.

The Honble High Court had also taken note of its judgment in WP (C) 8508/2007 titled Smt. Poonam vs GNCTD where the law developed was that the delay in submission of certificate could be overlooked only if the certificate had been applied for well before the cut off date but was issued subsequently and for no fault of the appellant.

However, these cases had been distinguished. Para 16 of the Judgment had dealt with at length the basis of the instructions on which its earlier judgment in Tej Pal Singhs case had been rendered. Incidentally the factum of Tej Pal Singhs judgment having been rendered by one of the Honble Judges who delivered the present judgment was also mentioned. Factually the case had been distinguished in as much as in Tej Pal Singhs case the advertisement had not prescribed the cut off date for the purpose of submitting the SC/ST/OBC Certificates. Accordingly both Tej Pal Singhs case as well as Annu Devis case had been found to be distinguishable and clear reasons had been spelt out as to why no need was felt to refer the matter to a larger Bench.

9. The Honble High Court had also dealt specifically with its earlier judgment in Hari Singhs case. Para 17 had dealt with this as follows:-

17. Mention may also be made of Hari Singh vs Staff Selection Commission 170 (2010) DLT 262 where another Division Bench notwithstanding the OBC certificate having not been filed by the stipulated date and following Tej Pal held a case for making provisional admission to have been made out but again in the peculiar facts of that case and accepting the explanation for non-submission thereof.

10. In order to reinforce the point regarding the sanctity of following the prescribed procedure as per the Advertisement Notification, the Division Bench Judgment dated 25.1.2010 in WP (C) No.10558/2009 titled Union Public Service Commission Vs GNCTD and other connected Writ Petitions had also been noted. Para 18 had mentioned about the view taken in its judgment regarding the procedure for making applications cannot be given a go by for accommodating a few people and if this is done there would be no obligation on anybody to follow any procedure resulting in an unmanageable situation. The conclusive observations as per Para 19 in this Judgment are extracted in to to:

19. Else, what has been observed by us qua qualification, equally applies to submission of OBC Certificate also. It is well-nigh possible that a number of other OBC candidates, though otherwise eligible but not in possession of the OBC Certificate by the cut off date, did not apply under the belief that being required to enclose the OBC Certificate along with the application and being not in possession

thereof, their applications would be deficient and not entertainable. It is yet further possible that, had such others applied and competed, the respondents in appeal and/or the petitioners in the writ petition may not have been eligible. The respondents in appeal and the petitioner in the writ petition were clearly in the know that their applications were incomplete and took a chance. This court cannot lay down a law which would encourage such practices. The terms and conditions mentioned in the advertisement were intended, to guide/instruct the prospective applicants and there is no reason to dilute the same. Even otherwise, the Court would be loathe to issue mandamus/directive contrary to the terms of selection/appointment (see Karnataka State Road Transport Corporation vs. Ashrafulla Khan (2002) 2 SCC 560, FCI vs Ram Kesh Yadav (2007) 9 SCC 531, Maharishi Dayanand University vs Surjeet Kaur JT 2010 (7) SC 179 and State of West Bengal vs Subhas Kumar Chatterjee (2010) 11 SCC 694).

11. The aforesaid decision of the Honble Delhi High Court has been followed by the Coordinate Bench of Tribunal (Principal Bench) in OA No.1684/2011 (Dibyanjan Gouda vs Staff Selection Commission) decided on 16.5.2012 cited by the respondents.

12. In view of the latest common judgment dated 24.1.2012 of the Delhi High Court relied upon by the respondents, the other judicial pronouncements cited on behalf of the applicants would not affect the final consideration of the issue. Further, as borne out from the extract cited above, the contention of the applicants learned counsel about the judgment in Hari Singhs case not having been considered is not correct. The stay granted by the Honble Apex Court in this case coupled with the law as propounded in Ram Kumar Gijroyas case is also found to be pertinent in this context.

13. To conclude, after a thorough consideration, we do not find the claims being adjudicated through these OAs as tenable either on facts or in the light of the law as laid down by judicial pronouncements. The applicant Mithilesh Kumars challenge to the impugned conditions in the Advertisement Notification and the interview call letter goes against the settled principle of law that a candidate, having participated in a selection process, is precluded from challenging the basis

of that process itself. Similarly, the relief claimed during the oral submissions in this OA, for being treated as a general category candidate, had not been claimed in the OA itself nor is it found to be maintainable on facts as highlighted by the respondents. In Ravinder Kumar and Pooja Yadavs cases both the applicants, after having given an undertaking and being recommended for appointment against certain posts, are now agitating claims for preferred posts. This is when they had been deficient in submitting the requisite OBC certificate along with the application form for consideration of their claims in the said category. The subsequent certificate obtained and submitted would not make any difference to this issue in view of the clear and unequivocal stipulation in the advertisement itself.

14. In view of the above, the OAs are found to be devoid of merit and dismissed hereby with no order as to costs.

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