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Ajit Kumar Vs. Upsc and anr.

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Court : Delhi

Decided On : Oct-13-2014

Judge : S.Ravindra Bhat

Appellant : Ajit Kumar

Respondent : Upsc and anr.

Advocate for Def. : Ms. Manisha Rana Singh

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Decided on:

13. 10.2014 + W.P.(C) 1292/2014 AJIT KUMAR ..... Petitioner Through: Sh. Ravi Sikri, Sr. Advocate with Sh. Deepank Yadav and Sh. R. Majumdar, Advocates. Versus UPSC AND ANR. ..... Respondents Through: Sh. Manish Mohan, CGSC with Ms. Manisha Rana Singh and Sh. Gaurav Sharma, Advocates, for Resp. No.2. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE VIPIN SANGHI MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT) % 1. We have heard learned counsel for the parties.

2. The limited grievance agitated before the Court by the petitioner is as to his entitlement to be considered for selection and appointment to one of the Central Civil Services in terms of the Civil Services Examination 2006 (hereafter referred to as CSE-2006). The petitioner is an orthopaedically handicapped candidate suffering from disability, more particularly cerebral palsy, and is classifiable as

Locomotor Disability. In terms of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereafter referred to as the Act), especially Sections 32 and 33, 3% of all vacancies in all the Central Government services and posts under the Union and other covered establishments are to be earmarked to be filled by persons with disabilities. The Act, Rules and W.P.(C) 1292/2014 Page 1 other instructions framed, mandate that such 3% has to be further subdivided into 1% each for three defined categories, i.e. Visually Impaired (VI), Hearing Impaired (HI) and those with Locomotor Disability (LD).

3. The petitioner had urged that his non-consideration and consequent rejection of candidature for the vacancies under the Act was arbitrary. He had approached the CAT earlier by filing O.A. No.2717/2010, which was disposed of by following the previous order in N. Shravan Kumar etc. v. UPSC and Anr. (in O.A. No.1893/2009, decided on 08.10.2010). The respondents were directed to consider the petitioners representation and pass appropriate orders. In the second round, the petitioner urged that consequent upon the judgment of the Supreme Court in Govt. of India thr. Secretary and Anr. v. Ravi Prakash Gupta and Anr. in SLP(C) 14889/2009 [2010 (7) SCC626, the UOI and all its agencies were required to consider the entire cadre and not merely earmarked posts for the purposes of reservation under the Act. It was thus urged that on the basis of such classification, for the period 1996-2006, a total number of 1147 vacancies had arisen to be filled up, of which 33 were to be earmarked under the Act. In terms of the provisions, 1/3rd of these, i.e. 11 posts were to be filled by persons with LD. Arguing that the records revealed that-of the 11 posts filled during that period, one was, in fact, treated as falling in the General Category, (on the basis of replies received in 2012 to the queries under the RTI Act, 2005), which has not been disputed before this Court - learned counsel submitted that the respondents were bound to fill one vacancy for the period 1996-2006 by a LD candidate, which was clearly available. It was submitted that in these W.P.(C) 1292/2014 Page 2 circumstances, the fact that the final judgment in Ravi Prakash Gupta (supra), affirmed the ruling of this Court meant that the authorities were duty-bound to carry out review and take appropriate remedial action - an aspect which has been overlooked by the CAT.

4. Learned counsel for the UPSC urged that the petitioner has approached this Court after considerable delay and pointed out that on an earlier occasion, the CAT had followed the judgment in N. Shravan Kumar (supra) which reasoned that the claim was time-barred. Learned counsel urged that the petitioner was appointed pursuant to CSE-2009 and allotted the Indian Defence Accounts Service (IDAS). Secured with the knowledge that he is included as a regularly appointed candidate in one of the Civil Services, he is now choosing to approach the Court, which is clearly a time-barred grievance.

5. Learned counsel for the petitioner, however, urged that even though the selection was made pursuant to CSE-2009, till date the petitioner has not accepted that appointment order, so as to cause him prejudice in these proceedings.

6. The above discussion would show that for the period 1996- 2006, a total of 1147 vacancies had arisen in all the Central Civil Services which were subject to the annual CSE. After the declaration of law in Ravi Prakash Gupta (supra) and subsequent judgment in UOI and Anr. v. National Federation of the Blind and Ors. (Civil Appeal No.9096/2013) [2013 (10) SCC772, it is now incumbent upon the executive government to calculate the reservation for the physically handicapped and secondly work out the roster points after taking into account the entire vacancies. So viewed, the entirety of the W.P.(C) 1292/2014 Page 3 available cadre from which 3% vacancies had to be worked out was 1147. Clearly, 33 of those vacancies fell to the share of persons with disabilities so defined under the Act. 11 of these, i.e. 1/3rd were to be filled from amongst candidates with LD. The petitioner is one of such candidates; there is no dispute about that. The limited question is as to whether the one vacancy - which the petitioner urges was subsequently treated as a general merit candidate, has not been filled at all. The UPSCs position before the CAT was not that such vacancy had been filled, but that the petitioners dossiers were not made available to it, to take a positive stand eitherway. The second argument was that the Department of Personnel and Training (DOPT) had not made any subsequent recommendation after treating the disabled category candidate Nagargoje Madan Bibhishan as general merit candidate. It is further urged that such treatment - mandated by a Division Bench

judgment of this Court in UOI v. Pankaj Kumar Srivastava (W.P.(C) 4902/2013, decided on 11.10.2013) is a matter of appeal by Special Leave before the Supreme Court.

7. It is evident that there is no dispute in essential and basic particulars. One, that the petitioner is in fact a disabled candidate falling within the LD category. Secondly, that he did participate in the CSE-2006 and secured 1001 marks. However, his ranking is not known. Apparently, one Sh. Ajay Kumar Dixit (Rank

470) was appointed as against an LD vacancy. After the judgment in Ravi Prakash Gupta (supra), the respondents apparently conducted a suo motu review and appointed one Sh. Dinesh Kumar Thakur, who concededly ranked higher than Ravi Prakash Gupta, in CSE-2006 - some time in 2010/2012. In these circumstances, this Court is of the W.P.(C) 1292/2014 Page 4 opinion that the petitioners claim for consideration to the vacancy which exists, even if contingent upon the final decision of the Supreme Court in Union of India v. Pankaj Kumar Srivastava and Anr. [SLP (C) 10461/2014]., should be considered. This is because there is no dispute that 11 vacancies were to be filled from amongst LD candidates. Apparently 10 have been filled. This can be easily verified by the UPSC as well as the concerned cadre controlling authority - an exercise which shall be conducted as expeditiously as possible, and in any event within 10 weeks. Subject to such verification as to the total number of individuals who have been appointed to the LD reserved category between 1996-2006, an appropriate order shall be made either accepting the petitioners candidature or rejecting it. We make it clear, however, that even if the petitioners candidature is accepted, it would be conditional upon the final order of the Supreme Court to the extent that it deals with the adjustment of those candidates who have to be treated as either general merit candidates or disabled candidates for the purposes of selection and allocation of cadre. The entire exercise shall be carried out within 12 weeks. The writ petition is allowed to the above extent. S. RAVINDRA BHAT (JUDGE) VIPIN SANGHI (JUDGE) OCTOBER13 2014 ajk W.P.(C) 1292/2014 Page 5

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