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Dinesh Kumar vs.union of India & Anr

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Court : Delhi

Decided On : Sep-04-2018

Appellant : Dinesh Kumar

Respondent : Union of India & Anr

Advocate for Def. : Ms. Jyoti Dutt Sharma, Mr. C.K. Bhatt, Mr. Anil Dabas

Advocate for Pet/Ap. : Mr. Rahul Sharma

Judgement :

$~27 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision :

4. h September, 2018 + W.P.(C) 4764/2017 DINESH KUMAR .....

... Petitioner
Through : Mr. Rahul Sharma, versus UNION OF INDIA & ANR Through : Ms. Jyoti Dutt Sharma and Mr. C.K. Bhatt, Advs. .....

... RESPONDENTS
Mr. Anil Dabas, Adv. for R-1. CORAM: HON'BLE MR. JUSTICE C.HARI SHANKAR JUDGMENT (ORAL) The candidature of the petitioner, who stood first in the merit % 1. list, in the selection, for the post of Management Trainee (Technical) in the Central Warehousing Corporation (hereinafter referred to as CWC - Respondent No.2 herein), was cancelled vide order dated 30th September, 2015, which read thus : ...Sir, please refer to your grievance petitioner forwarded

by Ministry vide reference cited above. In this regard, it is to inform that the Caste Certificate submitted by you was issued by Nayab Tehsildar whereas as per DOPT letter No.36012/22/93-Estt(SCT) officer authorised to issue Caste Certificate of OBC should not be below the rank of Tehsildar. Your submission that Nayab Tehsildar has been authorized to issue Caste Certificate is wrong as Haryana Govt. authorised Nayab Tehsildar - cum - Executive Magistrate. the Caste Certificate submitted by you has stamp of only Nayab Tehsildar and not Nayab Tehsildar cum Executive Magistrate. In view of the 15.11.1993 Whereas dated W.P.(C) 4764/2017 Page 1 of 15 above, it is not possible to consider your request. Yours faithfully, (Amit Goel) Asstt. Gen. Manager (Estt./IL) (Emphasis supplied) 2. The petitioner, in this writ petition, seeks quashing of the said order and, consequently his appointment as Management Trainee (Technical), with effect from the date when others selected in the same selection, were so appointed.

3. 4. The facts are brief. The petitioner applied, for the post of Management Trainee (Technical), in response to the advertisement circulated by the CWC in the Employment News edition for the week 8th - 14th November, 2014 under the Other Backward Classes (OBC) category. He contends that all requisite documents were submitted by him. He appeared for written test and interview. Prior to the interview, the petitioner was directed to produce all his original certificates, including his OBC certificate, for verification, which he did. His name, however, did not figure in the list of selected candidates, which was issued on 21st April, 2015.

5. In response to a query, under the Right to Information Act, 2005, the petitioner was informed, by the CWC, that, despite his having stood first in the merit list for appointment, his candidature was not considered, as the OBC certificate, dated 7th March, 2014, furnished by him, was not found to be in order, not having been issued by the officer authorized to issue such certificates. The W.P.(C) 4764/2017 Page 2 of 15 communication, dated 5th August, 2015, from Respondent No.2 to the petitioner, informing him of the said fact, read thus : CENTRAL WAREHOUSING CORPORATION (A GOVT. OF INDIA UNDERTAKING) Dated :

05. 08.2015 - Information under RTI Act, 2005. Shri Dinesh Kumar S/o Shri Sumer Singh, VPO - Nahar, Tehsil - Kosli, Dist - Rewari - 123303 No.CWC/II-RTI Act/PR-2396/15-16 To, Subject: Sir, Please refer to your RTI application dated 21.07.2015 on the subject cited above. In this connection, it is to inform that Shri Dinesh Kumar bearing roll No.721021070 was first in the merit list of the MT (Tech.). His candidature was not considered by the committee who has drawn the panel since his certificate was not found in order as the Caste Certificate has been issued by the Nayab Tehsildar who is not authorized officer to issue such certificate which was required as per advertisement. Yours faithfully (A.K. Sharma) General Manager (Pers)/ Central Public Information Officer 6. Respondent No.2 seeks to defend its decision to reject the OBC certificate, produced by the petitioner, on the basis of an Office Memorandum, dated 15th November, 1993, issued by the Department of Personnel & Training (Do PT). The said OM relied, in turn, on an earlier OM, dated 22nd October, 1993, which stipulated the authorities from whom certificate was to be procured for verification of Caste and Communities, which included Revenue Officer not below the rank of W.P.(C) 4764/2017 Page 3 of 15 Tehsildar.

7. It may be noted, in this regard, that the advertisement, inviting applications, for the post of Management Trainee (Technical), as issued by Respondent No.2, and in response to which the petitioner had applied, did not stipulate, anywhere, that the OBC certificate was required to be signed by an officer not below the rank of Tehsildar. In fact, General Condition No.2 to the advertisement, read thus : GENERAL CONDITIONS xxx xxx xxx 1.

2. Self attested Photostat copies of documents in proof of Age; Qualifications (including all mark sheets clearly indicating the division of passing & specialization in case of MBA), Caste, Experience certificate Certificate mentioning area of experience etc. should be attached with the printout of Application Form having auto generated Application Number. Application/copy of the Registration Slip Original certificates will, however, be scrutinized/verified at interview. Applications not supported with documents proof for age, qualification, caste, division of passing, specialization certificate, Experience Certificate mentioning area of experience as required for each post will be liable to be rejected. time of the

(Emphasis supplied) 8. On the aforesaid stand of the respondent being made known to him, the petitioner appealed, to the Chairman of the CWC on 17th August, 2015. It was pointed out, by the petitioner, in the appeal, that he had produced the OBC certificate at the time of giving his W.P.(C) 4764/2017 Page 4 of 15 interview and that, despite verification of the certificate having taken place at that stage, he was never informed that the certificate was not in order. He further drew attention, in the said appeal, to a Circular issued by the Chief Secretary of the Government of Haryana, dated 30th January, 2004, which clearly ordained that henceforth Circle Revenue Officer (Tehsildar/Naib Tehsildar-cum-Executive Magistrate) concerned will be authorized to issue Resident as well as Caste Certificate (SC/BC/OBC) after getting the verification done.

9. He also relied, in the said appeal, on OM No.36033/9/95 - Estt. (SCT) dated 10th May, 1995, issued by the Do PT, which required that, even where verification, as to whether the caste certificate produced by the candidate had been fraudulently obtained or not, was required to be undertaken, provisional appointment had to be granted to the candidate, subject to such verification.

10. The aforementioned appeal, dated 17th August, 2015, of the petitioner, was rejected by the Deputy General Manger (Pers) in the CWC, vide communication dated 14th September, 2015, which reads as under: Sh. Dinesh Kumar S/o Sh. Sumer Singh VPO - Nahar, Tehsil - Kasli Distt.- Rewari, Haryana Pin No.123303 Sub : Recruitment of Management Trainee (Tech) - reg. Sir, W.P.(C) 4764/2017 Page 5 of 15 Please refer to your letter dated 17.08.2015 requesting to consider your appeal and issue appointment letter for the post of Management Trainee (Tech). been examined and it is observed that : In this connection, it is inform you that the matter has 1. You have enclosed copy of Caste Certificate issued by Naib Tehsildar instead of Tehsildar. As per DOPT letter No.36012/22193-Estt. (SCT) dated 15.11.1993, the officer authorized to issue Caste Certificate should not be below the rank of Tehsildar.

2. The letter dated 30.01.2004 issued by Chief Secretary, Govt. of Haryana enclosed by you, states that Naib Tehsildar - cum- Executive Magistrate have been authorized to issue the Caste Certificate. In the Certificate submitted by you

the stamp is of Naib Tehsildar only not of Naib Tehsildar - cum- Executive Magistrate. In view of above, it is not possible to consider your request. Yours faithfully, (S. Narayan) Dy. General Manager (Pers) 11. As the above order of rejection was founded on the premise that, while the letter dated 30th January, 2004, of the Chief Secretary, Government of Haryana required the caste certificate to be issued by the Naib Tehsildar-cum-Executive Magistrate, whereas the certificate produced by the petitioner was stamped by the Naib Tehsildar, and not by the Naib Tehsildar-cum-Executive Magistrate, the petitioner re- approached the office of the Tehsildar and obtained a fresh OBC certificate dated 5th October, 2015, under the stamp/signature of Naib Tehsildar-cum-Executive Magistrate. W.P.(C) 4764/2017 Page 6 of 15 12. On 5th November, 2015, the Chief Secretary of the State of Haryana also addressed a communication to the CWC, requesting the CWC to treat the caste certificate produced by the petitioner as being valid for appointment to the post of Management Trainee (Technical).

13. Despite the above, the CWC again wrote on 6th May, 2016, to the petitioner, informing him that the matter had already been examined and the decision thereon communicated to the petitioner vide the earlier communications dated 14th September, 2015 and 11th April, 2016.

14. It is in these circumstances that the petitioner has approached this Court by means of the present writ petition.

15. I have heard learned counsel for the petitioner and respondents at considerable length.

16. Mr. Rahul Sharma, learned counsel for the petitioner, draws attention to the fact that, as per the instructions issued by the Government of Haryana, the Naib Tehsildar-cum-Executive Magistrate was competent to issue the OBC certificate of the petitioner and that, therefore, there was no justification, whatsoever, for the CWC to reject the certificate, dated 7th March, 2014, produced by him. He further draws attention to the averment, on oath, contained in para 11 of the counter affidavit filed by the Respondent No.2, to the effect that the OBC certificate, dated 7th March, 2014, W.P.(C) 4764/2017 Page 7 of 15 issued by the Naib Tehsildar, had, in fact, been submitted by the petitioner along with his application form. He

submits that, in these circumstances, the respondent ought, at the very least, to have verified the matter at that stage, and informed the petitioner that the certificate was not in order. Mr. Rahul Sharma would further submit, without prejudice, that, on being apprised of the objection of CWC - which, he would insist, was entirely without foundation - he obtained a fresh certificate, with the seal, stamp and signature of the Naib Tehsildar- cum-Executive Magistrate. This certificate, however, failed to pass muster with the respondents, resulting, as Mr. Sharma would emphasise, on his client, who stood first in the merit list for appointment, being denied appointment on wholly frivolous grounds.

17. Learned counsel for the respondent, in response, relies on the OM dated 15th January, 1993 (supra) issued by the Do PT which, he submits, bound his client. The said OM clearly required the Caste Certificate to be issued by an officer not below the rank of Tehsildar. Ergo, he would submit, a certificate issued by the Naib Tehsildar, could not be accepted as proof of OBC status. He also submits that there is a discrepancy between the certificate which has been filed by the petitioner with the petition, as having been produced by him at the time of appearing for the interview and the actual certificate, which was so produced, inasmuch as the certificate filed with the writ petition contains the signatures both of the Naib Tehsildar as well as the Naib Tehsildar-cum-Executive Magistrate (incidentally the same person) whereas the certificate, which was filed at the time of appearing in the interview, contained only the signature and stamp of W.P.(C) 4764/2017 Page 8 of 15 Naib Tehsildar.

18. In any event, he submits, the certificate produced by the petitioner could not be accepted as proof of OBC status, not being in conformity with OM dated 15th November, 1993, of the Do PT. Insofar as the subsequent OBC certificate dated 15th October, 2015 was concerned, he would submit that, by the time it was produced, all vacancies notified in the advertisement, whereagainst the petitioner had applied, stood filled, and no benefit thereof could possible accrue to the petitioner. Analysis and Findings 19. One feature of this case - which one encounters in several matters - is the reliance, placed by the Department, on specifications contained in instructions issued by the Do PT, regarding the specifications contained in instructions issued by the Do PT and other such

government. departments, with respect to particulars and specifications of certificates to be produced by candidates applying for a post, without including the said particulars in the advertisement inviting applications. I see no reason why such a submission should be countenanced at all. A young aspirant aspiring for a career at the threshold of his professional life has, God knows, enough on his mind, without requiring him to acquire an encyclopaedic knowledge of all executive institutions, issued by all government departments before filling up a form. The law has travelled far since the days of Mayor Hans George (State of Maharashtra v. Mayor Hans George, AIR W.P.(C) 4764/2017 Page 9 of 15 1965 SC722. Ignorantia juris non excusat is now recognised as requiring pragmatic, rather than pedantic, adherence, and it is both unjust as well as inequitable to expect, far less require, the applicant filling up the application form to be conversant with all instructions issued by the Do PT. So long as the form, as filled, and the accompanying documents, as filed, conform to the requirements explicitly set out in the advertisement inviting applications, there is no justification, whatsoever, for the application to be rejected, merely because the certificate submitted with the application does not strictly conform to the specifications contained in some executive instructions of the Do PT, to which the advertisement makes no reference and which must, for the applicant concerned, have necessarily come as the proverbial bolt from the blue.

20. The application form, in the present case, required candidates, applying as OBC, to produce valid OBC certificates. It is nobodys case that the OBC certificate, dated 7th March, 2014, was not genuine. The matter had, in fact and in law, to rest there. It was totally unjustified, on the part of the respondent, to make the petitioner run from pillar to post, just in order to get his caste certificate to conform to the OM dated 15th November, 1993 of the Do PT, and, when the petitioner had managed to obtain such an exacting certificate, to show him the door, saying that all vacancies stood filled. The matter might have been different, had the advertisement referred to the requirement of the certificate having to be issued by a functionary of the level of Tehsildar or above. That, however, it did not.

21. In my opinion, this is a case in which the respondent has W.P.(C) 4764/2017 Page 10 of 15 adopted an entirely unreasonable, not to say perverse, stand,

thereby denying a valuable job opportunity to a meritorious candidate, who stood first in the merit list. The petitioner was first told that the certificate had to be issued by an officer not below the rank of Tehsildar. When he produced a certificate issued by the Naib Tehsildar, he was told that the Do PT OM required the certificate to be issued by the Naib Tehsildar-cum-Executive Magistrate, not the Naib Tehsildar. When he produced the certificate with the stamp & signature of the Naib Tehsildar-cum-Executive Magistrate, he was told that all vacancies stood filled. And all this, for the candidate who topped the merit list ! I am constrained to observe that such an attitude is least 22. expected of a public sector undertaking such as Respondent No.2.

23. It is clear, from the reading of the advertisement inviting applications, that there was no stipulation, therein, that the Caste Certificate had necessarily to be issued by the officer of the rank of Tehsildar or above. What was required by the advertisement was that a valid Caste Certificate had to be produced by the candidate. There can be no manner of doubt - irrespective of what the respondent may contend - that the certificate dated 7th March, 2014, produced by the petitioner, was a valid Caste Certificate. I am not inclined to take serious note of the submission, of the respondent, regarding the alleged discrepancy between the certificate dated 7th March, 2014, as filed with the writ petition as Annexure P-13, and the certificate which, according to learned counsel for the respondent, was actually submitted at the time of appearing for the interview, for the simple W.P.(C) 4764/2017 Page 11 of 15 reason that, as Mr. Rahul Sharma correctly points out, Respondent No.2 itself has come on affidavit to state that the certificate dated 7th March, 2014, annexed by the petitioner with his writ petition, was submitted by him at the time of appearing for the interview. Mr. Anil Dabas, learned counsel for the respondent, submits that the affidavit is somewhat unhappily worded. I am not inclined to accept such a submission at this stage. There was no justification whatsoever for the respondent, having been apprised of the circular issued by the Chief Secretary, Government of Haryana, to have refused to accept the certificate, dated 7th March, 2014, which was signed by the Naib Tehsildar.

24. The insistence on the certificate being stamped by the Naib Tehsildar-cum-Executive Magistrate, instead of the Naib Tehsildar is, in my view, a totally

unwarranted exercise in semantics, merely with the view to deny the petitioners candidature. It is, in my opinion, absurd to suggest that, when the authority competent to issue the certificate was the Naib Tehsildar-cum-Executive Magistrate, the certificate stamped and signed by the Naib Tehsildar was insufficient.

25. That apart, the certificate dated 7th March, 2014, was produced by the petitioner, as directed, at the time of appearing for the interview. It is an admitted position that the production of the said certificate, at the stage of interview, was for verification of the candidates caste status. If anything, the respondent ought to have verified the status of the petitioner at that stage. Had it done so, and informed the petitioner of its hypertechnical objection, that the W.P.(C) 4764/2017 Page 12 of 15 certificate was required to be stamped by the Naib Tehsildar-cum-Executive Magistrate, the petitioner could have made arrangements to obtain such stamping on the certificate at that stage. Not only did the respondent not do so, the respondent also acted in violation of the OM dated 10th May, 1995, issued by the Do PT, which required it to grant a provisional appointment to the petitioner, even assuming verification of his Caste Certificate was necessary.

26. Significantly, the said OM dated 10th May, 1995 deals with cases of possible fraud whereas, in the present case, the only objection of the CWC - Respondent No.2, at that stage, was that the certificate was signed and stamped by the Naib Tehsildar and not by the Naib Tehsildar-cum-Executive Magistrate.

27. When this objection was belatedly made known to the petitioner, the petitioner produced a fresh certificate, dated 15th October, 2015, signed and stamped by the Naib Tehsildar-cum- Executive Magistrate. By that time, however, the CWC found an entirely new way to, so to speak, non-suit the petitioner, by stating, bluntly, that all vacancies stood filled. It is extremely unfortunate that, despite the communication 28. from the Chief Secretary to the Government of Haryana, i.e., the highest executive officer in the governmental hierarchy of that State, to the Chairman of CWC, to accept the certificate of the petitioner, the respondent still did not condescend to take him on its rolls.

29. Given the entirely arbitrary and capricious manner in which the respondent has acted qua the petitioner, who was the most meritorious W.P.(C) 4764/2017 Page 13 of 15 candidate among all, who had participated in the selection, I am of the view that the bogey exhaustion of vacancies cannot be used, by the respondent, to deny appointment to the petitioner, especially when the petitioner had come to this court at an appropriate stage. In view of the above, the present writ petition succeeds and is 30. allowed. The respondent is directed to consider the candidature of the petitioner, taking into account the cumulative marks obtained by him in the written test and the interview and, if he was equal or above of any of the candidates, who were appointed as Management Trainee (Technical), consequent to the said selection, grant him appointment as Management Trainee (Technical) forthwith. In case all vacancies stand filled, and the petitioner is found 31. suitable for appointment, on the basis of the cumulative effect of his performance in the written test and interview, the respondent shall create a supernumerary post of Management Trainee (Technical) and appoint the petitioner thereagainst.

32. The entire exercise, up to the point of appointment of the petitioner, if found suitable as per the above directions, shall be carried out and completed within a period of four weeks from today.

33. Given the totally unreasonable nature of the stand adopted by the respondent, and the manner in which the petitioner, who stood first in the merit list of candidates who had appeared in the selection, had to run from pillar to post, I am of the view that the petitioner is also entitled to costs from the respondent, which are quantified by this W.P.(C) 4764/2017 Page 14 of 15 Court at 25,000/-. The costs shall be paid within a period of four weeks from today. In case the petitioner is selected and appointed, all benefits 34. consequential thereto shall enure in his favour.

35. This writ petition is disposed of in the above terms. C.HARI SHANKAR, J SEPTEMBER04 2018 mk W.P.(C) 4764/2017 Page 15 of 15

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