

Ajit Kumar Vs. Union of India and Ors.

Ajit Kumar Vs. Union of India and Ors.

SooperKanoon Citation : sooperkanoon.com/52895

Court : Delhi

Decided On : Jul-01-2015

Judge : Pradeep Nandrajog

Appellant : Ajit Kumar

Respondent : Union of India and Ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Reserved on : May 20, 2015 Judgment Delivered on : July 01, 2015 + W.P.(C) 6969/2011 AJIT KUMAR Represented by: .Petitioner Ms.Rekha Palli, Sr.Advocate instructed by Ms.Punam Singh and Ms.Garima Sachdeva, Advocates versus UNION OF INDIA & ORS Represented by:Respondents Mr.Kirtiman Singh, Advocate with Mr.Waize Ali Noor and Ms.Prerna Shah Deo, Advocates CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE PRATIBHA RANI PRADEEP NANDRAJOG, J.

1. Responding to an advertisement issued by the respondents in the Employment Service Tamil Weekly dated April 21-27, 2010 inviting applications amongst others, for total 19 posts of Head Constable (Workshop) in the Water Wing of Border Security Force (BSF), petitioner who belongs to Hindu Kammalar Community which is notified as an Other Backward Class (OBC), applied for the post.

2. The post of Head Constable in BSF, is governed by the Border Security Force Water Wing C Recruitment Rules, 2005 published by notification dated June 29, 2005. Per Rule 4 of these Rules, method of recruitment, age limit, qualification etc. are to be as specified in the Schedule. For the post of Head Constable (Workshop), the following has been prescribed in the Schedule as the Educational and Other Qualification required for Direct Recruits:

(1) Matriculation from a recognised Board or equivalent; and (2) ITI Diploma Diesel Engine or Machinist or Welder or Machine Shop or Carpentry or Electrician or Fitter or Turner from recognised institution; and (3) 3. One year experience in the Trade.

(Bold by us) Petitioner possesses the requisite qualification, being a qualified Electrician holding National Trade Certificate from National Council for Vocational Training in July 2001.

4. The advertisement dated April 21-27, 2010 in para 2 thereof, provided the age limit for the candidates as between 20 to 25 years. The crucial date for determining the age limit was to be the closing date for receipt of application from the candidates i.e. 30 days from the date of publication of the advertisement. The upper age limit for the candidates belonging to SC/ST, Govt. Servants (Including serving BSF Personnel) was relaxable by 5 years and for OBC by 3 years. The Selection Procedure prescribed in para 3 was to be as under:

a) b) c) d) 5. Written Examination Documentation and physical measurement Physical efficiency test Interview and medical examination The Selection Procedure was to be held in two phases. The first phase included the written examination whereas the second phase included documentation and physical measurement, physical efficiency test and interview followed by medical examination.

6. The respondents however, by a common letter invited all the candidates for all the posts advertised for both the phases of selection.

7. Result of Written/Physical Efficiency Test/Interview for the various posts was published on November 16, 2010 wherein petitioner was declared fit for the post of Head Constable (Workshop). However, in the final result published on January 31, 2011 name of the petitioner did not appear in the list of total 11 candidates selected for appointment to the post of HC (Workshop). Petitioner claims to have made representation dated February 17, 2011 followed by representations/reminders dated March 16, 2011 and June 06, 2011. It is claimed that the respondents did not give any reply to these representations. Petitioner finally approached this Court praying for a writ of mandamus to appoint the petitioner as a Head Constable (Workshop).

8. The respondents in their reply point out that since the posts of Head Constable (Workshop) involved different Technical Trades namely Diesel Engine Mechanic, Machinist, Welder, Carpenter, Electrician, Fitter, Turner etc., a Board of Officers was constituted by the respondents to work out the requirement of different trades and for recommending trade-wise distribution of the posts. The Board asked all the Water Wing establishments to submit their trade-wise requirement of the Workshop Staff taking the requirements of different trades and the ground realities into account. The Board thus, vide its recommendation dated March 10, 2008, recommended trade-wise allocation of posts to separate Water Wing establishments. The trade-wise allocation of Workshop Staff was as under:- HC/ KMR Jammu PB Guj M&C A&M NB SB0302 19 25 06 20 03 21 Wksp authorised Distribu- Recommended 4 10 - 3 3 7 1 2 8 7 - - - - - 4 - - - 3 - 1 - - - Electrician - - - - 1 2 2 2 - 1 4 2 - - 3 2 AC Tech.-. - - - - - 3 2 - - 2 1 - - - 1 Electro- - - - - - 1 1 - - - - - 1 Carpenter - 1 - - 2 2 2 2 - 2 1 2 1 1 3 2 Welder - - - - 2 2 1 2 - - 2 2 - - 2 2 Machinist - - - - 2 1 - 2 - - - 2 - - 1 2 Turner - - - - - 1 - - - 2 - - - 1 - Fitter - - - - 2 1 1 1 - - 1 1 - - 1 1 Plumber - - - - - 2 1 - - 2 1 - - 1 1 Upholster - - - - 1 1 1 1 - - - 1 - - 1 1 Painter - - - - 1 1 3 1 - - - 1 - - - 1 - 3 - 2 19 19 25 25 - 6 20 20 3 3 21 21 Proposed Recommended 9 Proposed Recommended 8 Proposed Recommended 2 Proposed Recommended - Proposed Recommended 2 Proposed Recommended Recommended - Mechanic Proposed Proposed tion (Diesel & Petrol) Motor Mech. nics Total In view of the trade-wise vacancies, a corrigendum dated August 17, 2010 to the initial advertisement was published. In the corrigendum, the wise namely SC/ST/OBC or UR also. As per the corrigendum,

the tradewise/category wise division of the vacancies in the grade of HC (Workshop) was as under:

Vacancy	Sr.	Post	Gen	OBC	SC	ST	Total
1. Diesel Engine Mechanic	06	03	01	01	11		2.
2. Machinist	01	01	Nil	Nil	02		3.
3. Welder	Nil	Nil	Nil				
4. Carpentry	03	01	01	Nil	05		5.
5. Electrician	01	Nil	Nil	Nil	01		6.
6. Fitter	Nil	Nil	Nil				
7. Turner	Nil	Nil	Nil	Nil	11	05	02
No.Total	9.						

According to the respondents this corrigendum was published prior to the selection process scheduled to be held with effect from October 15, 2010 to October 22, 2010 at the three centres namely Jalandhar, Kolkata and Bangalore.

10. Though the petitioner had cleared both the first and the second phase of examinations but in the final result of selected candidates published on the BSF website on January 13, 2011 on the basis of the vacancies available for each category in respective trades, his name was not shown as a selected candidate and for which the reason was that in the trade of Electrician only one vacancy was available to be filled by a candidate in the unreserved category. As per the respondents since the petitioner had applied for selection as an OBC candidate and had availed the benefit of age relaxation by three years he could not be considered as a candidate in the unreserved category.

11. Though the petitioner has claimed in the rejoinder that the corrigendum dated August 17, 2010 was never published and in the initial advertisement as also in the final selection list, no such trade wise/category wise bifurcation has been made, yet this claim has not been substantiated by any document. It is by now settled as observed by the Supreme Court in the decision reported as 1996 (4) SCC472 State Vs. Krishan Chand Khushal Chand Jagtiani which has since been reiterated in the decision reported as 2013 (14) SCC304 Mutha Associates & Ors. Vs. State of Maharashtra & Ors. law presumes and the courts too must also presume until contrary is established, that a public authority acts fairly and objectively consistent with public interest and in the interest of law. The presumption so available in favour of the public authority can be rebutted by a cogent and satisfactory proof, direct or circumstantial, that the action lacked bona fides or is infected with mala fides. In the present case, not even a claim of lack of bona fide or mala fide has been pleaded by the petitioner. Thus, there is nothing to rebut the presumption of fairness in the action of the respondents in publishing

corrigendum dated August 17, 2010.

12. Learned senior counsel appearing for the petitioner has contended that though the cadre of HC (Workshop) consists of various trades, but all these having been grouped as one category with same pay scale, mode of recruitment and promotional avenues, the trade-wise distribution of the entire cadre strength of 99 posts in the cadre of HC (Workshop) could in no way affect the fact that the post is HC (Workshop) wherein reservation shall be applied on the cadre as a whole and not with reference to individual trades. It was submitted that the petitioner admittedly being a candidate belonging to OBC category would be entitled to be considered for appointment against the vacancies notified for OBC category, applying reservation on the cadre as a whole : which will horizontally cut across all the trades. Petitioner in support relied upon the judgment by a Division Bench of this Court in W.P.(C) No.1546/2013 All India Institutes of Medical Sciences Vs. Dillip Kumar Samal & Anr. decided on December 17, 2013.

13. In service jurisprudence, the term cadre has a definite legal connotation. In the legal sense, the word cadre is not synonymous with service. Fundamental Rule 9(4) defines the word cadre to mean the strength of a service or part of a service sanctioned as a separate unit. There can be no difference of opinion that the expressions cadre, posts and service cannot be equated with each other and are distinct concepts, yet it is open to the government to constitute as many as cadres in a particular service as may be chosen according to its administrative convenience and expediency. The government may also group different posts in a unified cadre with the rider that unequals will not be treated as equals. Thus, distinct posts or trades in the same scale of pay having similar/identical conditions of service though not interchangeable, may be grouped together according to the administrative convenience of the government. The Supreme Court in the decision reported as 1999 (3) SCC435 State of Orissa & Ors. Vs. Kishore Chandra Samal & Ors. approved grouping of different posts in equal time scales having duties and degree of responsibilities of the same nature in one single cadre.

14. In the present case, Recruitment Rules for the post of HC (Workshop) would reveal such grouping of different trades into one single cadre of HC (Workshop).

The Rules, prescribe the essential qualification for the post of HC (Workshop) as (1) Matriculation from a recognised Board or equivalent; and (2) ITI Diploma Diesel Engine or Machinist or Welder or Machine shop or Carpentry or Electrician or Fitter or Turner from recognised institution; and (3) one year experience in the Trade. Thus, use of the word Trade in the qualification prescribed in the Rules, makes it clear beyond doubt that besides the qualification i.e. Matriculation from a recognised Board or equivalent which is common for appointment to the post of HC (Workshop) in any of the Trade, ITI Diploma from recognised institution and one year experience has to be in the Trade. Therefore, a candidate holding Diploma in a trade and having experience in that trade, shall not be eligible for appointment in any other trade. Thus, the language of the Rules clearly reveals that posts in different Trades have been grouped into one cadre i.e. HC (Workshop). Parties are ad-idem on the fact that the posts in different Trades in the grade of HC (Workshop) are not interchangeable and understandably, HC (Workshop) in the trade of Carpenter cannot perform the work of a HC (Workshop) in the trade of Electrician or Welder or Mechanic etc. Thus, there is no escape from the conclusion that the posts in different trades such as Mechanic, Machinist, Welder, Electrician, Machine shop, Carpentry, Fitter, Turner, Plumber, Upholster and Painter etc. are distinct and separate and have been grouped into one cadre of HC (Workshop) for the purposes convenience. These distinct posts shall not lose their individual characteristics merely because these are grouped together. Therefore, the contention on behalf of the petitioner that since the posts have been grouped as HC (Workshop) in the advertisement as also in the final result, they are to be treated as one for all purposes, is misconceived.

15. The posts in various trades in the cadre of HC (Workshop) being distinct and separate, will thus, have to be treated as separate posts. Since there is plurality of posts in different trades, reservation shall be applicable to the posts in each trade than to the cadre as a whole. Reliance placed on behalf of the petitioner on the judgment on this Court in the case of Dillip Kumar Samal (supra) authored by one of us (Pradeep Nandrajog, J.), is equally misplaced. In Dillip Kumar Samals case, the issue raised was of applicability of 3% reservation envisaged under Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955, to the post of Senior Resident in AIIMS. In that case, this

Court has held that the post of Senior Resident though has different disciplines without scope of any inter-changeability amongst the disciplines, it would not mean that for the purpose of effecting reservation under Section 33 of the Act, such different disciplines would constitute separate posts constituting separate cadres.

16. In Dillip Kumar Samals case, this Court was dealing with a case of horizontal reservation which would cut across the vertical including unreserved posts. Section 32 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955 envisages identification of the posts for the purpose of application of reservation under Section 33 thereof. It was in this context that this Court in the light of the Act being a beneficial legislation held that for the purposes of application of reservation envisaged under Section 33 on the posts identified by the appropriate government under Section 32 thereof, all the disciplines though without scope of any interchangeability amongst them, would be constituted as one group whereupon reservation of 3% to the posts so identified, shall be applicable. In the present case, however, as against in Dillip Kumar Samals case (supra), the claim is for reservation under Article 16(4) of the Constitution of India as a candidate belonging to Other Backward Category. Reservation under Article 16(4) of the Constitution, shall be applicable with reference to the total number of posts in a trade unlike the posts identified under Section 32 as was the case in the case of Dillip Kumar Samal (supra). Therefore, the law laid down in the case of Dillip Kumar Samal (supra) has no application to the facts of the present case.

17. Petitioner is a qualified Electrician holding National Trade Certificate from National Council for Vocational Training. Therefore, the application of the petitioner for the post of HC (Workshop) cannot in terms of the qualification prescribed under the Rules, be considered holding qualification for the post in any other trade than Electrician. Therefore, the application of the petitioner for the post of HC (Workshop) could be considered only for the post in the trade of Electrician. Corrigendum dated August, 17, 2010 to the initial advertisement has clarified that there existed only one vacancy in the trade of Electrician which was to be filled from amongst the candidates belonging to General (UR) category. Thus, there being no vacancy available to be filled from amongst the candidates belonging to

OBC, the candidature of the petitioner could be considered for the available vacancy only if the petitioner would qualify without availing the benefit of reservation. It has been contended that the petitioner was declared topper amongst the candidates selected in the result dated November 16, 2010 and therefore, the petitioner could not have been denied appointment. However, even this claim of the petitioner is not maintainable. It is settled that by mere selection, the petitioner would not acquire an indefeasible right to appointment unless there exists a vacancy against which the petitioner could be appointed. Petitioner in the present case, applied as a candidate belonging to OBC category having availed the benefit of reservation in terms of relaxation in the upper age limit. Thus, the petitioner cannot claim himself to be his own merit candidate as it is settled that only such SC/ST/OBC candidates who are selected on the same standards as applied to General candidates can be treated as such. Petitioner having availed benefit of upper age limit relaxation cannot be termed as own merit candidate to be adjusted against unreserved vacancies.

18. In the present case, it is not in dispute that in the trade of Electrician there existed only one vacancy to be filled from amongst the candidates belonging to General category. Applying the standards as applied to General candidates, petitioner would be over-aged and thus ineligible to be considered against the available vacancy in the trade of Electrician. Resultantly, the petitioner has failed to make out any case.

19. The writ petition is dismissed but without any order as to costs. (PRADEEP NANDRAJOG) JUDGE (PRATIBHA RANI) JUDGE JULY01 2015 mamta

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com