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

Vikram Pratap Singh Vs. Union of India (Uoi) and ors.

Vikram Pratap Singh Vs. Union of India (Uoi) and ors.

SooperKanoon Citation : sooperkanoon.com/54721

Court : Central Administrative Tribunal CAT Allahabad

Decided On : Jan-03-2006

Reported in : (2006)(3)SLJ392CAT

Judge : T a D.R., K Rajan

Appellant : Vikram Pratap Singh

Respondent : Union of India (Uoi) and ors.

Judgement :

1. The facts of the case lie in a very narrow compass. The applicant was one of the aspirants to the post of Store keeper in the respondents' organization and he was declared successful as a general candidate and his merit position in the general candidate was 12. He was accordingly informed.

2. Strange enough (according to the applicant) he was not offered any appointment, though others selected were appointed. The applicant moved this Tribunal in OA No. 912 of 2004, which was disposed of by order dated 27th August, 2004, with a direction to the respondents to dispose of the representation of the applicant.

3. In compliance with the said order of the Tribunal the respondents have passed the impugned order, which is reproduced below: 1. This has reference to your representation dated 14.12.2004 addressed to Brig A.K. Jyoti, ACC (Records), Secunderabad endorsing thereof a copy of the undersigned amongst others.

2. Your above mentioned representation was replied to vide this depot letter of even No. dated 12.1.2005 sent by registered post which must have already been received by you. However, a detailed reply to the representation is once against furnished here below in compliance with the order dated 10.1.2005 of the Hon'ble Central Administrative Tribunal, Allahabad in OA No. 11 of 2005 filed by you in the same matter: (a) A Board of Officers constituted to conduct the recruitment-exercise for appointment to storekeepers in this depot held the written test and interview of the candidates. On the basis of the marks secured by the candidates the Board forwarded to the QIC AOC (Records), Secunderabad, being the Appointing Authority, for approval and issued of offers of appointment.

(b) While disposing of an OA bearing No. 912/2004 the Hon'ble Central Administrative Tribunal, Allahabad in its order dated 27.8.2004 made an observation having the implication that in stead of separate merit lists for SC, OBC and general category a combined merit list of all the candidates participating in direct recruitment tests ought to have been prepared so that candidates within the age of 25 belonging to SC and OBC community and securing higher marks could be fitted against the unreserved vacancies without exhausting the reserved vacancies meant for their respective categories as per rules.

(c) It is because of the above observation made by the Hon'ble CAT, Allahabad. The Appointing Authority that is OIC, AOC (Records), Secunderabad ordered for review of selected list of candidates with a view of giving effect to the said observation land the extant rules. The Army Headquarters instructions confirming the said rule position were also received by this depot in October, 2004.

(d) A review Board of Officers constituted to under take the review-exercise observed that one SC and one OBC candidate who were less than 25 years of age as on the crucial date for age (13.10.2003) secured higher marks than the last two candidates of the select list of general category and accordingly the SC candidate and the OBC candidate were placed against the unreserved vacancies.

As a result, the two last candidates in the select list of general category were brought down to the waiting list/reserve panel of that category.

(e) Thus, your name appearing at Sri. No. 12 (last) of the earlier select list of general candidates was put in the waiting list/reserve panel.

3. In this connection you may please refer to this depot letter No. 120051/131/ Estt (NI) dated 23.6.2004 in which your selection was stated to be provisional. Hence, cancellation of your selection for the purpose of giving effect to the rules on reservation and complying with an observation made by the Court/ Tribunal should not be held as unjust and improper.

4. Further, it is regretted to inform you that all the candidates placed in the final select list of general candidates have already reported for duty and thereby leaving no chance for the authority to consider candidates in waiting list/ reserve panel.

4. Being aggrieved by the above mentioned order of the respondents, the applicant has filed this O.A.5. Respondents have contested the O.A. The applicant filed necessary rejoinder, to which a supplementary counter has also been filed by the respondents.

6. Arguments were heard and pleadings perused. The applicant has relied upon the following decisions:M.R. Balaji and Ors. v. The State of Mysore and Ors.

.Arati Ray Choudhary, v. Union of India and Ors.

.Hari Ram Yadav v. State of U.P. and Ors.

7. The Counsel for the applicant had not only heavily relied upon the latest judgment of the Hon'ble High Court (Hdri Ram Yadav supra) but also asserted that a Division Bench of the Hon'ble High Court has dismissed the appeal against the said order. However, the exact reverse is the truth. The said judgment has been stayed by the High Court while admitting the appeal. The Counsel for the applicant ought to have ascertained the exact position before making such wrong statement at the bar.

8. Whenever selection takes place in respect of general as well as reserve category, a candidate belonging to a reserved category is not precluded from competing against any post under the general category.

Subject to his fulfilling the requirements for appointment in respect of age, educational qualification etc., if he competes along with other general candidates and if he is found meritorious, his appointment is against such general category and not against the reserved category to which he belongs. In that event, others who are in the reserved category could be accommodated against the post earmarked for such reserved category. This may certainly increase the number of reserved category candidates but the same cannot be misconstrued that such increase means appointment in excess of the percentage of reservation.

The Apex Court in the following cases have clarified the issue:In R.K. Sabharwal v. State of Punjab a Constitution Bench of this Court had considered and held reservation in promotion as per the roster as valid and consistent with Articles 16(1) and 14 of the Constitution. It was also held that the promotion in accordance with the roster is valid. The reserved candidates promoted on merit should not be put in the roster points reserved for them but be treated as general candidates. Only candidates selected under the reserved quota should be appointed as per the roster point to the post earmarked for the reserved candidates.In E.A. Sathyanesan v. V.K. Agnihotri , the Apex Court has held:In R.K. Sabharwal v. State of Punjab two contentions were raised before this Court, which are : (SCC p. 749, para 2) "2.(1) The object of reservation is to provide adequate representation to the Scheduled Castes/Tribes and Backward Classes in services and as such any mechanism provided to achieve that end must have nexus to the object sought to be achieved. The precise argument is that, for working out the percentage of reservation, the promotees/appointees belonging to the Scheduled Castes and Backward Classes whether appointed against the general category posts or against the reserved posts, are to be counted. In other words if more than 14% of the Scheduled Caste candidates are appointed/promoted in a cadre on their own merit/seniority by competing with the general category candidates then the purpose of reservation in the said cadre having been achieved, the Government instructions providing reservations would become inoperative.

(2) Once the posts earmarked for the Scheduled Castes/Tribes and Backward Classes on the roster are filled the reservation is complete, Roster cannot operate any further and it should be stopped. Any post falling vacant, in a cadre thereafter,

is to be filled from the category-reserved or general-due to retirement etc.

of whose member the post fell vacant." 7. The first contention raised on behalf of the appellants therein was not accepted.Parshotam Singh v. State of Punjab wherein the appellant belonging to a reserved category was enlisted in the PCS Cadre in which there was no reservation consequent to which he was not considered for that post. The Apex Court has held, "Having perused the records including the application, we agree with the learned Counsel that the first preference of the appellant was PCS (Executive Branch) and it is also clear that his candidature was not considered for the PCS (Executive Branch) on the sole ground that his candidature could be limited only to the reserved post. This, in our view, is clearly wrong."Post Graduate Institute of Medical Education & Research v. K.L. Narasimhan , the Apex Court has held, "It is settled law that if a Dalit or Tribe candidate gets selected for admission to a course or appointment to a post on the basis of merit as general candidate, he should not be treated as reserved candidate. Only one who does get admission or appointment by virtue of relaxation of eligibility criteria should be treated as reserved candidate.

9. The above clearly goes to show that when a person belonging to a reserved category competes for a post, he is first treated as a general candidate and in case he gets the merit position as of a general candidate, he is accommodated against the same. In addition, other reserved candidates who do not come in the merit list of the general candidates could be considered for being appointed against the reserved post on the basis of merit amongst the other reserved candidates. This is what has exactly happened in the instant case. The applicant came in the merit list of general candidate but that list was without considering any reserved candidates whose merit position was even above the applicant's. As such, they were to be appointed against the general category posts and the reserved vacancies were filled up on merit from amongst the other reserved candidates. The applicant cannot question such a selection of the person who though belongs to reserved category, came within the merit list of the general candidate.

10. In view of the above, the OA fails and is, therefore, dismissed. No cost.

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