

Deepak Kumar Vs. Union of India and ors

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Court : Delhi

Decided On : Dec-21-2012

Judge : Pradeep Nandrajog

Appellant : Deepak Kumar

Respondent : Union of India and ors

Judgement :

\$~13 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: December 21, 2012 + W.P.(C) 7052/2012 DEEPAK KUMAR Petitioner Represented by : Mr.Rajeev Kumar, Advocate. versus UNION OF INDIA & ORS Respondents Represented by : Mr.Saqib, Advocate with Mr.Pawan Kumar, Deputy Commandant, ITBP. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MR. JUSTICE MANMOHAN SINGH PRADEEP NANDRAJOG, J.

Review Pet. 724/2012 1. Disposing of the writ petition on November 7, 2012, as informed by the counsel for the respondents, we had noted that while applying as an OBC candidate the petitioner failed to furnish a certificate to establish he belonging to a notified Other Backward Class; and since lakhs of persons applied for the posts in question the respondents had processed the application forms using computer programme and it was not possible to carry out specific scrutiny of each and every application received. So holding we had held against the petitioner who had obtained more marks than the last empanelled OBC candidate, but being treated as a candidate in the unreserved category, could not make it in the merit

list inasmuch as in the said category the cut off average was much higher.

2. Seeking review, the petitioner informs us that he applied online and thus their being a mismatch in his application and not submitting the OBC certificate would not arise. The petitioner highlights that he produced the said certificate much later.

3. Now, as regards SC/ST candidates, qua OBC candidates there is a concept of a creamy layer. This means that persons belonging to an Other Backward Cast would be eligible for government post not on the strength of being an OBC but additionally not being within the creamy layer. This means that stale OBC certificate would not be reflective of the current economic status of a member of an Other Backward Cast. To wit : A member of Other Backward Cast may not be well off and hence not within the creamy layer in the year 2009, but may have earned good income in previous three years to come within the creamy layer and thus such persons would require to be excluded from the benefit of OBC reserved benefit.

4. The record produce by the respondents would reveal that the petitioner had relied upon a certificate certifying him to be an Other Backward Cast which was issued on September 14, 2007. The notice inviting application to the post of Constable (GD) in ITBP is dated February 5, 2011. Vide Serial No.2 of the notice the applicants were informed that supporting documents would be produced by only those candidates who clear the selection process and qualify for medical examination. Vide instruction No.4 (C) it was informed that candidates claiming OBC status should note that certificate of creamy layer status should have been obtained within three years preceding the closing date i.e. March 4, 2011.

5. The petitioner is raising some dispute by urging that before he was medically examined on November 18, 2011 he had obtained a certificate on November 15, 2011 and he had produced the said certificate with the Department. It would not be possible for us to decide the issue with respect to said certificate inasmuch as the respondents have produced the record which would evidenced that on November 18, 2011 before he was medically examined gave a written consent recording therein that since the OBC certificate dated September 14, 2007, produced by him was not valid, he be treated as a General Category candidate; and this would

require us to hold that on November 18, 2011 the petitioner had not produced the OBC certificate dated November 15, 2011, which he claims is available with him.

6. That apart, the cut off date as per advertisement is March 4, 2011; and it could well be argued that on said account the certificate obtained by the petitioner on November 15, 2011 has to be ignored.

7. Correcting the factual incorrectness in our order dated November 7, 2012 we dispose of Review Pet.724/2012 maintaining the dismissal of the writ petition.

8. No costs. (PRADEEP NANDRAJOG) JUDGE (MANMOHAN SINGH) JUDGE
DECEMBER 21 2012 skb

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