

\$~J-2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 12.01.2022

%

Judgment pronounced on: 25.01.2022

+ **W.P.(C)No.6932/2021 & CM No.21882/2021**

AASHIMA GOYAL

..... Petitioner

Through: Mr J. Sai Deepak, Mr Avinash Sharma,
Mr R. Abhishek and Mr Ankur Vyas,
Advs.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr Ripudaman Bhardwaj, CGSC with
Mr Kushagra Kumar, Adv. for R-1/UOI.
Mr Naresh Kaushik, Standing Counsel
for UPSC along with Mr Anand Singh
and Mr Abhishek Verma, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

[Court hearing convened via video-conferencing mechanism on account of COVID-19]

RAJIV SHAKDHER, J.:

Preface:-

1. This writ petition is directed against the order dated 14.06.2021, passed by the Central Administrative Tribunal [hereafter referred to as “the Tribunal”] in O.A.No.53/2021 [in short “OA”]
2. The petitioner had approached the Tribunal to assail the decision of respondent no.1/Department of Personnel & Training (DoPT) dated 09.09.2020, whereby her candidature for Civil Services Examination, 2019 [in short “CSE 2019”] was cancelled.
 - 2.1. According to the petitioner, she became aware of her candidature being cancelled only when she received information on 11.12.2020, in

response to her application filed under the Right to Information Act, 2005, dated 01.12.2020.

3. Shorn of unnecessary details, the petitioner's candidature, as per the respondents, stood cancelled for two reasons :

(i) First, she had failed to submit the requisite Income and Asset Certificate [in short "I&A Certificate"] before the stipulated deadline.

(ii) Second, the I&A Certificate filed by the petitioner, albeit after the deadline stipulated, disclosed that she did not meet the eligibility criteria for securing the post under the Economically Weaker Section (EWS) category.

3.1. What is not in dispute is that the petitioner, to take the benefit of reservation under the EWS category, would have had to demonstrate that her family had a gross annual income below Rs.8 lakhs and that insofar as CSE 2019 was concerned, the applicable financial year [in short 'FY'] was 2017-18 [assessment year (AY) 2018-19].

3.2. It is also not in dispute that the provisions of the Office Memorandum (OM) dated 31.01.2019 read with the OM dated 19.01.2019 applied to the petitioner.

3.3. As per the aforementioned OM, concededly, the expression 'family' includes the person seeking the benefit of the reservation, his/her parents and siblings below the age of 18 years, as also his/her spouse and children below the age of 18 years.

Background:-

4. With this preface, the following broad facts are required to be noticed.

4.1. The petitioner had sat for CSE 2019. The petitioner cleared, both the preliminary and the main examination as well as the interview. The

petitioner secured 65th rank in the merit list, and was, consequently, recommended by respondent no.2 i.e., Union Public Service Commission (UPSC) for allocation of service.

4.2. Concededly, the petitioner in the first instance, albeit, after the preliminary examination was held, erroneously submitted the I&A Certificate for F.Y. 2018-19 dated 24.06.2019.

4.3. After the result for the main examination was declared (which was published on 14.01.2020), UPSC, *via* an e-mail dated 25.02.2020, informed the petitioner that a discrepancy had been noticed in her detailed application form [in short “DAF”] concerning the I&A Certificate submitted by her. It was pointed out that the I&A Certificate issued to her was not for F.Y.2017-18; which was the relevant F.Y. for which the I&A Certificate was required to be appended to the DAF.

4.4. *Via* a communication dated 02.03.2020, UPSC wrote to the petitioner that while verifying her documents for the personality test, it was noticed that she had not produced the I&A Certificate for F.Y.2017-18. Accordingly, it was conveyed to the petitioner that her candidature for CSE 2019 was provisional; an aspect which was explained to her in person, as well by the concerned officer. The aspect involving the fact that she had submitted an undertaking to submit the requisite document in original form within 15 days of verification, failing which her candidature would stand cancelled, was also conveyed to the petitioner.

4.5. It appears that the petitioner was unable to obtain the I&A Certificate for F.Y.2017-18, within the stipulated period of 15 days, and, therefore, despite her undertaking, she shot off an e-mail dated 17.03.2020 to respondent no.1 with a copy to UPSC, whereby she contended that as per the

gazette notification issued for CSE 2019, she was required to submit the I&A Certificate for the F.Y. 2018-19.

4.6. On account of the coronavirus pandemic, the UPSC deferred the personality tests which were scheduled between 23.03.2020 to 03.04.2020, till further orders.

4.7. Given this position, on 02.08.2020, the petitioner, *via* yet another e-mail, called upon the respondents to consider the I&A Certificate of F.Y.2018-19, as due to the coronavirus outbreak, she was unable to obtain the I&A Certificate for F.Y.2017-18.

5. The record shows that UPSC had taken out a general notice on 06.08.2020, requiring candidates who had been provisionally recommended by UPSC to submit requisite documents urgently, to enable the inclusion of their names, for service allocation.

5.1. On 13.08.2020, respondent no.1 wrote to the petitioner, and thereby highlighted the fact that she has to submit the I&A Certificate for F.Y.2017-18, latest by 20.08.2020.

5.2. Since the petitioner was unable to secure the I&A Certificate for F.Y.2017-18 by 20.08.2020, on the very same date, she wrote to respondent no.1 that she would require further time to cure the deficiency. The petitioner, accordingly, sought an extension of time, by at least one month. In response to this communication, respondent no.1, *via* letter dated 27.08.2020, wrote to the petitioner that she should submit her I&A Certificate concerning F.Y.2017-18, without fail, on or before 31.08.2020.

5.3. The petitioner, on 31.08.2020, reiterated the stand taken by her in her earlier communication, which was, that respondent no.1 should consider the I&A Certificate already submitted by her for F.Y.2018-19.

5.4. The record shows that the petitioner, ultimately, submitted the I&A Certificate for F.Y.2017-18 on 24.09.2020.

5.5. Thereafter, the petitioner entered into correspondence with respondent no.1 concerning the purported failure on the part of respondent no.1 to allocate appropriate service to her. In this context, reference is made to correspondence dated 09.10.2020 and 04.11.2020.

5.6. According to the petitioner, she met the Additional Secretary (AIS) even in-person on 06.11.2020, who assured her that the matter would be looked into.

5.7. Since the petitioner did not get any reply to her entreaties, she adopted the RTI route on 01.12.2020. As per the petitioner, as noticed hereinabove, it is only when a response was received to her RTI application on 11.12.2020, she obtained information that her candidature had been cancelled on 09.09.2020.

5.8. Consequently, the petitioner approached the Tribunal and instituted an action in and around 08.01.2021.

6. The original application filed by the petitioner was numbered as O.A. No.53/2021.

6.1. The petitioner averred that, even before she approached the Tribunal, four service allocation lists had been released qua CSE 2019, and while the matter was pending in the Tribunal, the fifth and sixth service allocation lists were released, whereby service was allocated to the candidates in the reserved list i.e., those who were not declared as successful candidates in CSE 2019 final result (which was declared on 04.08.2020).

6.2. The Tribunal, as noticed right at the outset, *vide* order dated 14.06.2021, dismissed the petitioner's O.A.

6.3. It is in this backdrop that the instant writ petition has been filed.

7. Arguments on behalf of the petitioner were advanced by Mr J. Sai Deepak, while arguments on behalf of respondent no.1 were addressed by Mr Ripudaman Bhardwaj. The UPSC was represented by Mr Naresh Kaushik.

Submissions on behalf of the petitioner:-

8. Mr J. Sai Deepak has, broadly, made the following submissions:

(i) Although the petitioner had submitted the I&A Certificate for the correct financial year i.e., F.Y.2017-18 after the extended deadline i.e., 31.08.2020, the petitioner's case ought to have been considered favourably, as relaxation had been given in the case of several other candidates.

(ii) The purpose of the I&A Certificate was to determine the economic status of the candidate in a particular period, and, therefore, the mere fact that the submission of the certificate for the concerned period was late, should not come in the way of the petitioner's I&A Certificate being considered, despite the delay.

(iii) The petitioner is a person who does not possess economic wherewithal; something which is evident if one were to take into account the fact that she had secured a merit-cum-means scholarship between 24.07.2012 and 30.06.2016 while she was undertaking her studies in the Indian Institute of Technology, Delhi. The merit-cum-means scholarship was given to candidates whose annual family income was below Rs.4.5 lakhs.

(iv) The petitioner's father had initially filed his income-tax return (ITR) for F.Y.2017-18 (A.Y.2018-19), wherein he had shown his total gross

income as Rs.3,81,972, which was revised on 21.09.2020 and consequently, his income was pegged at Rs.1,04,863. Therefore, if the revised income of the petitioner's father along with that of the petitioner is taken into account, which was disclosed for the same period i.e., F.Y.2017-18 (A.Y.2018-19) as Rs.5,75,185, the petitioner meets the family income eligibility criteria stipulated in OM dated 31.01.2019.

(v) The income of an applicant seeking the benefit of reservation under EWS can only be ascertained by the concerned Tehsildar. Respondent no.1 erred in involving the Central Board of Direct Taxes (CBDT) to ascertain whether the petitioner fulfilled the income eligibility criteria stipulated in the OM dated 31.01.2019.

Submissions on behalf of the contesting respondent i.e., respondent no.1

9. Mr Bhardwaj, on the other hand, advanced the following submissions:

(i) Apart from the fact that the petitioner had not submitted the I&A Certificate for F.Y. 2017-18, despite extensions, by the given date i.e., 31.08.2020, her candidature could not be considered as she did not meet the income eligibility criteria stipulated in the OM dated 31.01.2019.

(ii) The instances adverted to by the petitioner where I&A Certificate was accepted after 31.08.2020 were distinguishable on facts. For this purpose, our attention was drawn to paragraphs 27 and 33 of the reply filed on behalf of respondent no.1.

(iii) As regards the other aspect, which is, that the petitioner did not meet the income eligibility criteria for getting the benefit of EWS reservation, it was submitted that because the petitioner realized that the cumulative family income for F.Y.2017-18 would be above the eligibility criteria [i.e. Rs.8

lakhs and above], the father of the petitioner, on 21.09.2020, filed a revised return. It was contended that, clearly, this was done to get around the income eligibility criteria, which is stipulated in the OM dated 31.01.2019.

(iv) Furthermore, the information placed on record by the petitioner under orders passed by this court would show that, for A.Y. 2016-17 and A.Y. 2017-18, the petitioner's father's income was shown as Rs.2,76,480 and 2,83,990 respectively. Likewise, for A.Y.2018-19 (F.Y.2017-18), in the first instance, the petitioner's father disclosed his income as Rs.3,81,972, which was deliberately scaled down to Rs.1,04,863.

(v) Besides this, what is required to be borne in mind is that for verification as to whether or not the candidates fulfilled the income eligibility criteria for reservation under the EWS category, the cadre controlling authority sought the assistance of the CBDT. This power was exercised by respondent no.1, in consonance with provisions of Rule 20 of the CSE Rules, 2019. Therefore, the argument of the petitioner that respondent no.1 had to treat the I&A certificate issued by the Tehsildar as the gospel truth, is misconceived.

(vi) Lastly, the Court would have to bear in mind the fact that the benefit of reservation under the EWS category would necessarily have to go to those who meet the criteria, and while carrying out this exercise, it will have to exclude those who try to manipulate their economic status.

Analysis and reasons:-

10. We have heard the learned counsel for the parties and perused the record.

11. As noticed above, the fact that the petitioner passed the CSE 2019 and

obtained 65th rank is not in dispute.

11.1. It is also not in dispute that the petitioner had applied under the EWS category.

11.2. Therefore, insofar as the present matter is concerned, all that one has to look at, shorn of any backstory, which cannot be verified by us and importantly cannot have any impact on the outcome of the present writ action, are the following two aspects:

(i) Whether the petitioner had submitted the I&A Certificate for the relevant period i.e., F.Y. 2017-18, before the prescribed deadline?

(ii) Whether the petitioner met the income eligibility criteria stipulated in the OM dated 31.01.2019?

12. Insofar as the first aspect is concerned, as discussed above, the petitioner, for whatever reason, was not able to meet the extended deadline fixed for submission of the correct I&A certificate for the F.Y. 2017-18 by 31.08.2020.

12.1. Admittedly, the petitioner submitted the said certificate only on 24.09.2020; by which date, the petitioner's candidature had already been cancelled on 09.09.2020.

12.2. Qua this aspect, the petitioner had referred to the relaxation granted by respondent no.1, *vis-a-vis* other candidates. Respondent no.1's explanation *vis-a-vis* those cases has been given in paragraphs 27 and 33 of their reply. For the sake of convenience, the same is extracted hereafter:

“27. In this regard, it is informed that in the final results of CSE 2019 declared on 04.08.2020, UPSC had recommended 79 EWS candidates. Out of these 79 candidates, 75 candidates submitted their I&A Certificate for FY-2017-18 before 31.08.2020. 2 candidates informed that their family income from all sources exceeds Rs 8 lakh

for FY-2017-18 and they are not able to submit the requisite certificate. One candidate viz. Ms. Nivedita Dutta intimated vide email dated 07.09.2020 that she will be able to submit the requisite I&A certificate for FY-2017-18 by 08.09.2020. Also, as per information received from CBDT her annual family income was less than Rs 8lakh for the FY-2017-18. So, her candidature was kept provisional and was cleared after the receipt of the relevant I & A Certificate for the FY 2017-18.

xxx

xxx

xxx

33. In respect of aforesaid four candidates, kind attention of the Hon'ble High Court is drawn on case of each of the four provisionally recommended candidates and action taken in their cases as below:

(a) Case of Ms. Polumati Saranya:

Candidate vide email dated 01.09.2020 had informed she will submit a fresh affidavit with regards to her father's name shortly. Based on the above mail she was once again requested to submit the certificates before the 07.09.2020. However, her certificate was received on 11.09.2020 and her provisional candidature was cleared.

(b) Case of Mr. Mohammed Yakub:

Candidate was intimated several times to submit the requisite OBC certificate as his candidature was also provisional. However, as he was not able to submit the requisite documents by 03.11.2020 (i.e. 3 months after the date of publication of final result) his candidature was cancelled with the approval of the Competent Authority.

The candidate was later recommended under General category in the Reserve List by UPSC; however, he was not allocated any service because of Limited Preference. A Limited Preference candidate is one who does not opt for all of the participating services for a given Civil Services Examination, for consideration during his/her Service allocation and could not be allocated to any of his/her preferred services on the basis of his merit and service preferences due to non availability of vacancies in those preferred participating services at the time of his/her Service Allocation. Rule 2 of CSE - 2019 provides that :-

"(2) In case of recommendation of candidature by UPSC for Service Allocation, the candidate shall be considered by the

Government for allocation to one of those Services for which the preference has been indicated by the candidate in the on-line Detailed Application Form-II subject to fulfilment of other conditions. No change in preferences for Services once submitted by a candidate would be permitted. In case preference for none of the Services is indicated, the candidate will not be considered for Service Allocation.”

(c) **Case of Ms. Nivedita Dutta**

Candidate vide email dated 07.09.2020 had informed that she will submit fresh EWS certificate by 09.09.2020. Also, as per information received from CBDT her annual family income was less than Rs 8 lakh for the FY-2017-18. So, her candidature was kept provisional and was cleared after the receipt of the relevant I & A Certificate for the FY 2017-18....."

12.2(a) In the case of the petitioner, the following (more elaborate) submission is made in para 33(d) of the counter-affidavit.

"(d) **Case of Ms.Aashima Goyal**

Ms Aashima Goyal vide letter dated 31.08.2020 received on mail requested for acceptance of I & A Certificate for FY- 2018-19. Besides, her annual family income was found to be more than the benchmark limit of Rs 8 lakh for the FY 2017-18 as ascertained from the documents received from CBDT. Also, she was not recommended under General Merit category whereby she could have been considered at par with unreserved candidates.

As her annual family income was found to be more than the benchmark limit for the relevant FY 2017-18, her candidature was cancelled with the approval of the competent authority before the expiry of 3 months from the date of publication of the final result as was done in the case of Mr Yakub..."

12.3 A careful perusal of the aforementioned extract would show that there was a hiccup in four cases; out of which in two cases candidates were not able to meet the family income criteria and hence

they were not considered, while in the remaining two cases i.e., in the case of Ms Polumita Saranaya and Ms Nivedita Dutta, respondent no.1 permitted submission of the I&A Certificate after the prescribed deadline. However, in these two cases, there was no issue about the concerned persons not meeting the family income eligibility criteria. In sum, all those who were finally selected had family income below Rs.8 lakhs, as provided in the OM dated 31.01.2019. Therefore, even if we were to consider the petitioner's case for relaxation, despite her undertaking that she would meet the deadline; before any relief can be granted in her favour, we would have to conclude that she met the income eligibility criteria prescribed in the OM dated 31.01.2019.

13. This brings us to the second aspect.

13.1. Importantly, what is not disputed by the petitioner is that, in the relevant period i.e., F.Y. 2017-18 (A.Y. 2018-19), she had earned an income of Rs.5,75,185.

13.2. It is also not in dispute that, in the first instance, the petitioner's father had filed his ITR for F.Y. 2017-18 (A.Y. 2018-19) on 24.07.2018. In this ITR, the petitioner's father disclosed that he had earned an income of Rs.3,81,972. Concededly, if this return of the petitioner's father is taken into account, and the ITR of the petitioner for the same period was factored in, the combined income of the family would be Rs. 9,57,157. In other words, the petitioner, undoubtedly, would not meet the income eligibility criteria, as prescribed in the aforementioned OM.

13.3. The petitioner, however, has relied upon her father's revised return for F.Y. 2017-18 (A.Y. 2018-19), which, apparently was filed on 21.09.2020 and disclosed an income of Rs.1,04,863.

13.4. It is important to note that the petitioner had disclosed the family income along with DAF-II, which was filed after she cleared the main examination. The family income disclosed in the EWS Annexure, appended to DAF-II, was Rs.7,55,839, wherein the petitioner's father income was disclosed as Rs. 4,39,323 and that of the petitioner as Rs. 3,16,516. This form was filed by the petitioner before she sat for the personality test.

13.5. It is only when respondent no.1 inquired generally, *vis-a-vis* all candidates who had sought benefit under the EWS category, that it discovered the petitioner's family income, as indicated above, which included her income and that of her father, was beyond the family income eligibility criteria provided in the OM dated 31.01.2019.

13.6. It appears that the petitioner's father, to get over this difficulty, on 21.09.2020, filed a revised ITR for F.Y. 2017-18 (A.Y. 2018-19) scaling down his income from Rs.3,81,972 to Rs.1,04,863. A perusal of the documents filed for the previous two years [i.e., AYs 2016-17 and 2017-18] shows that there was a steady increase in the petitioner's father's income. As indicated above, in A.Y. 2016-17, he had earned an income of Rs. 2,76,480, while in A.Y. 2017-18 he had disclosed an income of Rs. 2,83,990. In consonance with this trend, initially, for A.Y. 2018-19, the petitioner's father had disclosed his income of Rs.3,81,972.

13.7 The revised ITR for A.Y. 2018-19 showed the petitioner's father's income as Rs.1,04,863; trimming the total income for A.Y. 2018-19 by nearly 73%. The scaling down was done on 21.09.2020, just before the petitioner submitted the I&A certificate for F.Y. 2017-18 (A.Y. 2018-19).

13.8. Therefore, according to us, even if we were to agree with the petitioner that the delay in filing the correct I&A certificate should not be the reason for cancelling her candidature, certainly there is a perceptible and a real doubt as to the petitioner fulfilling the family income eligibility criteria prescribed in the aforementioned OM.

14. We may also indicate here that we are not persuaded with the arguments advanced on behalf of the petitioner that respondent no.1 was to go by the certificate issued by the concerned Tehsildar and that the inputs given by the CBDT could not be considered for ascertaining as to whether or not the petitioner fulfilled the income criteria.

14.1. Respondent no.1, in our view, is entitled to seek information from credible sources before concluding, as to whether or not the concerned candidate has correctly claimed reservation under the EWS category.

14.2. In this case, information was sought from the CBDT by the cadre controlling authority. We do not find anything wrong in the approach adopted by respondent no.1; CBDT was, without doubt, a reliable source. Furthermore, even if there was no rule which backed the action of respondent no.1 in gathering such information, we would sustain it, looking at the source of the information and the duty cast on respondent no.1 to satisfy itself that the concerned candidate met the family income eligibility criteria stipulated for EWS category. It would fall within respondent no.1's implied power. However, in this regard. Respondent no.1 has adverted to Rule 20 of the CSE Rules 2019, in paragraph 24 of the reply. For the sake of convenience, the same is extracted hereafter:

"20. Success in the examination confers no right to appointment unless Government is satisfied after such enquiry as may be considered necessary that the candidate, having regard to his character and antecedents and certificates produced by him during the course of examination for the purpose of eligibility as well as claiming any kind of benefit for reservation is suitable in all respects for appointment to the Service. The decision of the Government in this regard shall be final".

14.3. A careful perusal of the aforesaid rule shows that respondent no.1, in any event, is tasked with the duty to, inter alia, satisfy itself whether the claim made for according, the benefit of reservation is tenable; which, in our opinion, invests in respondent no.1 the concomitant power to gather the necessary information.

Conclusion:-

15. Thus, for the foregoing reasons, we are not inclined to grant any relief to the petitioner. The writ petition is, accordingly, dismissed.

15.1 Consequently, the pending application shall also stand closed.

16. There shall be, however, no order as to costs.

RAJIV SHAKDHER, J

TALWANT SINGH, J

JANUARY 25, 2022

aj