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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.124/2002

Monday, this the 5th day of August, 2002

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (Admn.)

Kapil Dev Singh s/o Dr. Gopal Chand
r/o 138-C/BG-6, Paschim Vihar
New Delhi-63

..Applicant

(By Advocate: Shri Sewa Ram)

Versus

1. The Union Public Service Commission
through its Secretary
Dholpur House, Shahjahan Road
New Delhi-1
2. Union of India
through Secretary, Department of Personnel
Lok Nayak Bhawan,
Khan Market, New Delhi-3.

..Respondents

O R D E R (ORAL)

Shri S.A.T. Rizvi:

Briefly stated the facts of this case relevant for
a proper adjudication of the OA are as follows:

2. Applicant, who appeared at the UPSC Civil Services
(Preliminary) Examination of 1999, has been placed at
Sl.No.168 in the list of successful candidates in order of
merit. Based on the aforesaid position, he has been
allotted Civil Accounts Service. While considering the
applicant's case for allocation of service, the
respondents have not considered his claim as a SC
candidate merely because he had failed to disclose his
caste status in the application form filled by him at the
stage of the Preliminary Examination. The Preliminary
Examination itself was held in May, 1999. Even before the
said Examination was held, the applicant had disclosed his

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caste status in a letter to the UPSC dated 26.3.1999 requesting the Commission to consider his candidature for the Preliminary Examination as a SC community candidate. To the said letter, there was no response. After qualifying in the aforesaid Preliminary Examination, the applicant applied as usual for appearing at the Main (written) Examination, this time disclosing his caste status in the application form for the Main Examination. The aforesaid request was, however, declined by the Commission on 15.10.1999. Consequently, the applicant appeared at the Main Examination in December, 1999 as a general candidate and later, after qualifying in the said Examination, in the viva-voce test also as a general candidate. He has been placed in the merit list at Sl.No.168 as stated qua a general candidate.

3. Meanwhile, after considering the applicant's request dated 26.3.1999 for changing his caste status, the Commission issued a show notice to him on 2.11.1999 (A-3). The aforesaid show cause notice was replied to by the applicant on 23.11.1999 (A-5). The aforesaid representation dated 23.11.1999 was considered by the Commission and a decision (A-6) was conveyed that the applicant would continue to be treated as a general category candidate. Simultaneously, by the same letter, the applicant was warned to be more careful in future while putting forward his claim regarding his community status in the applications for the Commission's examinations/ selections. Shortly thereafter, the

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applicant made a representation in the matter again on 15.3.2000 which too has been turned down by the Commission vide their letter of 8.6.2000 (A-9).

4. Even before the UPSC had responded as on 8.6.2000 (A-9), the applicant had filed a petition before the National Commission for Scheduled Castes & Scheduled Tribes (hereinafter called National Commission) on 5.6.2000. The application remained under consideration in the National Commission until a detailed reply was sent by the UPSC to the Secretary, National Commission on 14.6.2001. Thereupon, the National Commission called for the applicant's comments on the aforesaid reply dated 14.6.2001. Comments were furnished accordingly on 15.9.2001, whereafter the National Commission appears to have lost further interest in the matter. In the event, the direction issued by the National Commission on 24.4.2001 (page 37-A of the paper book) that in case the applicant was found to be a SC community candidate he should be given the benefit of reservation has not been complied with.

5. The learned counsel appearing on behalf of the respondents has placed before us certain facts to show the conduct of the applicant in the matter of disclosure of his caste status. According to him, the applicant had appeared in the 1997 UPSC Civil Services Examination as a general category candidate, but had failed to qualify. He appeared at the subsequent 1998 Examination by disclosing his caste status as a SC community candidate. However, this time again, he did not succeed. In relation to the earlier Examination of 1997, the applicant had filed his

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claim for being treated as a SC community candidate only at the stage of viva-voce test. That request of his was rejected, whereupon he had come up before this Tribunal in OA-1086/99 which was dismissed on the ground that the disclosure of caste status had come belatedly.

6. The learned counsel appearing for the respondents has drawn our attention to the rule position in respect of disclosure of caste status. The relevant rule, which provides as under, clearly indicates that no change in the community status already indicated by a candidate in his application for the Preliminary Examination will ordinarily be allowed:-

"No change in the community status indicated by a candidate in his/her application for the Civil Services (Prel.) Examination will ordinarily be allowed by the Commission."
(emphasis supplied)

The learned counsel has also drawn our attention to the provision made in paragraph 11 of the instructions for the Civil Services (Main) Examination which lays down that the information given by a candidate in the application form for the Preliminary Examination will be cross-checked with the information subsequently given in the application form for the Main Examination and in the event of a serious discrepancy being discovered, the candidate was liable to be refused admission to the Main Examination. Thereafter, he has drawn our attention to the declaration made by a candidate in respect of entries/statements made in the application form. The relevant declaration, which has been reproduced in the reply filed on behalf of the respondents, provides that in the event of any information

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supplied being found to be false or incorrect, action could be taken against the candidate under Rule 14 of the Rules notified on 12.12.1998. He has thereafter read out the provision made in the aforesaid Rule 14.

7. According to the learned counsel, it is admitted that the applicant had filled up his application form for the Preliminary Examination of 1999 incorrectly by not disclosing his caste status. The result of such a failure on his part, according to him, in keeping with the aforesaid rules, could mean rejection of the applicant's claim for being treated as a SC community candidate for the purpose of the Main Examination and, thereafter, at the stage of viva-voce test also. Thus, the basic contention raised by him is that by applying the aforesaid rules, the UPSC has correctly rejected the applicant's claim vide their letter of 6.3.2000.

8. The learned counsel appearing on behalf of the applicant submits that the applicant's failure to disclose his caste certificate in 1997 Examination was not deliberate inasmuch as the caste status certificate became available to him only in March, 1998. Consequently, after first seeking modification in caste status at the time of viva-voce test of 1997 Examination, the applicant has correctly shown his status as a SC community candidate in the applications filed by him in respect of the 1998 Examination. Insofar as the 1999 Examination is concerned, the applicant has, in his request letter of 26.3.1999 (A-1), submitted that the mistake in regard to caste status in the Preliminary Examination application form took place as the form itself was filed in great

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hurry. In the OA also, the applicant goes on to say that he did not mention his caste status correctly on account of a genuine mistake. The learned counsel appearing on his behalf submits that since the applicant in any case stood to gain by disclosing his status as a SC community candidate, there could not be any motive in not disclosing the same correctly. The explanation given by the applicant in this regard must, therefore, be accepted.

9. The learned counsel appearing on behalf of the applicant also places reliance on the judgement of the Hon'ble Supreme Court in Union Public Service Commission Vs. A. Cletus & Ors. delivered on 9.8.2001 and reported in JT 2001 (10) SC 9 to contend that disclosure of caste status at the stage of Preliminary Examination is in any event not material and, therefore, the applicant ought not to be penalized for having failed to disclose his caste status in the application form filled by him at the time of Preliminary Examination. According to the Supreme Court "The interpretation placed before the tribunal appears to us to be perfectly in order inasmuch as the screening test done through a preliminary examination is applicable to all the candidates irrespective of the group to which they belong. There is no need to categorise the candidates as to whether they belong to different reserved categories or not and thereafter, find out the group to which they belong before they qualify in the preliminary examination". In this view of the matter, according to the learned counsel, there is a case for condoning the mistake committed by the applicant in not disclosing his caste certificate at the stage of Preliminary Examination.

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10. The learned counsel for the applicant further relies on the decision rendered by this Tribunal on 17.9.1991 in Bodh Raj Sabharwal Versus Union of India & Others, reported in (1992) 19 ATC 827. In that case, the applicant had been appointed as a general category candidate. That was done on the basis of his own declaration as a higher caste candidate. Subsequently, the applicant in the aforesaid OA claimed the benefit of reservation. The claim was first made in 1973 which was finally accepted by the respondents in 1988 but the benefit was granted only from 29.5.1982, which is the date on which the applicant had produced the caste certificate. The Tribunal held that the applicant was entitled to the benefit of his caste status from 1973 itself when the applicant first made the claim. The learned counsel appearing on behalf of the applicant contends that if the benefit of caste status can be extended in the manner ordered by the Tribunal in the aforesaid case, the applicant should as well be considered for the extension of the same benefit. In the present case, the applicant has declared himself to be a general category candidate in the application form filled by him at the Preliminary Examination stage by mistake and has, just a little thereafter and even before appearing in the Preliminary Examination, disclosed his caste status correctly. Thus, the present case, according to him, stands on a much sounder basis than the case of Bodh Raj Sabharwal Versus Union of India & Others (supra).

11. The learned counsel appearing for the applicant has further argued that rules relied upon by the respondents themselves provide that in certain situations

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a request made for changing the community status can be considered. According to him, the rule in question, which has been reproduced in para 6 above, provides that a change in the community status will not ordinarily be allowed. The use of the word "ordinarily", according to the learned counsel, indicates that, in genuine circumstances, an exception can be made and thus it should be possible to consider requests made for a change in the community status. The applicant's case, according to him, is genuine as he undoubtedly stood to gain by disclosing his status correctly and in any event, no oblique motive can be attributed to him for suppressing the information in question in the application form for the Preliminary Examination.

12. We have carefully considered the rival contentions raised on behalf of the parties and find that there is substance and merit in the various pleas advanced on behalf of the applicant. The applicant, who appears to be a sufficiently meritorious person, has found place in the general category of successful candidates at Sl.No.168. As a general category candidate, he has been allotted the Civil Accounts Service. His claim is that if he had been considered as a SC community candidate, he would have been allotted the IAS or the IPS. The IAS *and* the IPS are prestigious services and, therefore, there is nothing wrong, in our judgement, if the applicant wants to be considered for being appointed in the IAS or the IPS. We have noticed that the applicant could not have an oblique motive in suppressing the fact about his caste certificate. The sum and substance of the judgement rendered by the Supreme Court in the case of Union Public

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Service Commission Vs. A. Cletus & Ors. (supra), the judgement rendered by this Tribunal in Bodh Raj Sabharwal Versus Union of India & Others (supra) and the rule position brought to our notice by the learned counsel for the applicant is that, in certain situations of a genuine kind, a change in the community status ought to be permitted and, that being the case, in the aforesaid facts and circumstances of the case at hand, the respondents should have acted more positively and constructively in the matter rather than strictly in accordance with the rule position. Moreover, since the rule itself permitted allowing change in caste status in circumstances other than ordinary, the applicant's request should have been acceded to. After all the policy of reservation has been made only in order to accord appropriate status and position to the SC/ST candidates in deserving circumstances such as those which have prevailed in the present case. Viewed thus, the applicant deserves to be considered for allotment, on the basis of SC status, to IAS or the IPS or any other higher service in accordance with the applicable rules.

13. For all the reasons brought out in the preceding paragraphs, we allow the present OA and quash and set aside the UPSC's letters dated 15.10.1999, 2.11.1999, 6.3.2000 and 8.6.2000. Accordingly, the applicant will be considered for allotment of IAS, IPS or any other higher service depending on his merit among the SC candidates in respect of the UPSC Civil Services Examination, 1999. This the respondents will do within a period of three months from the date of receipt of a copy of this order.


It is clarified that, on any of the aforesaid services




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being allotted in favour of the applicant, he will also be entitled to seniority and all consequential benefits arising in respect of the service allotted to him. The consequential benefits to be allowed, it is further clarified, would not include payment of arrears of pay and allowances and will primarily relate only to matters of seniority.

14. There shall be no order as to costs.


(S.A.T. Rizvi)
Member (A)


(Ashok Agarwal)
Chairman

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