

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2622/2001

New Delhi this the 25th day of September, 2002.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

Preet Pal Singh
S/o Late Shri Diwan Singh
R/o 12, Lunia Mohalla
Block-I,
Dehradun.

..... Applicant

(By Shri V.P.Sharma, Advocate)

-versus-

1. Union of India through
The Surveyor General of India
Survey of India, Hathi Barkala State
Dehradun.
2. The Secretary
U.P.S.C., Dhol Pur House
Sahajan Road
New Delhi-11.
3. The Section Officer (SW-R)
Examination hall-1st Floor
U.P.S.C., Dholpur House
Shahjahan Road
New Delhi-11.
4. The Secretary
Ministry of Personnel, Public Grievances
& Pensions
(Department of Personnel & Training)
Government of India
New Delhi.
5. Shri Bhagwan Singh Saini (Prover)
105/DLI Prenting Group
Survey of India
Near Palam Colony
Railway Phatak
Delhi Cantt.10. Respondents

(Shri Anil Singhal, proxy for Mrs.P.K.Gupta,
Advocate for the respondents)

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O R D E R

Justice V.S.Agarwal:-

Applicant (Preet Pal Singh) had filed OA No.2266/2000 and this Tribunal on 24.4.2001 had dismissed the same. The applicant preferred a Writ Petition in the Delhi High Court. On 24.7.2001, the Delhi High Court permitted the applicant to withdraw the Writ Petition and challenge the Office Memorandum dated 8.9.1993 afresh. It is in this background that the present application has been filed.

2. The relevant facts are that the Union Public Service Commission invited applications for two posts of Manager, (Map Reproduction) (Senior) in the Survey of India, Department of Science and Technology. One vacancy was reserved for the members of the Other Backward Classes (for short, "the OBC"). The applicant through proper channel applied for the said post and appeared in the interview. Instead respondent No.5 Shri Bhagwan Singh Saini had been selected.

3. The grievance of the applicant is that the Government of India vide Office Memo. of 8.9.1993 had identified the 'creamy- layer' for the purpose of exclusion categories for grant of the benefit of reservation against the posts reserved for OBCs. It is contended that the annual gross income of respondent No.5 was more than Rs.1 lakh and

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therefore, he must be taken as from the 'creamy-layer' and should not have been selected. The abovesaid Office Memorandum of the Government of India is alleged to be anomalous and illegal asserting that it only refers to the income of the parents of the candidate and not of the candidate himself. Therefore, it has been prayed that the Office Memorandum dated 8.9.1993 issued by the Government of India should be quashed. As a corollary thereto, the appointment/selection of respondent No.5 as an OBC candidate should also be declared to be improper and the applicant could well have been appointed.

4. In the reply filed, respondents 1 to 4 have contested the application. It has been pleaded that the said Office Memorandum is clear and there is no ambiguity therein. Only the sons and daughters of the persons having gross annual income of Rs.1 lakh and above are excluded from the reservation benefit. The criteria prescribed in the Office Memorandum is relevant in as much as it ensures that the OBCs who have been brought up in a family which did not have sufficient resources are given the benefit of reservation and those brought up in the family which had enough resources as given in the Schedule to the Office Memorandum of 8.9.1993 to develop the skills etc. are excluded. It is denied that there is any ambiguity or impropriety in the impugned Office Memorandum.

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5. Respondent No.5 in the separate reply filed by him referred to the fact that the application is a gross abuse of the process of law because applicant's earlier application had been dismissed by this Tribunal. It is further contended that the application is totally devoid of any merit.

6. The arguments of the learned counsel for the applicant also proceeded on what has already been mentioned above. It was urged that respondent No.5 has his own income which is more than Rs.1 lakh per annum. By no stretch of imagination, he can be taken to be a member of the OBC. On the contrary, on behalf of the respondents, it has been contended vehemently that the purpose is to exclude the children of the persons who are having income of Rs.1 lakh or more per annum because the children get education keeping in view the financial status of the parents. Those children thus cannot compete with the children of more affluent class.

7. The law started taking shape with the decision of the Supreme Court in the case of **Indra Sawhney v. Union of India and Others**, 1992 Supp (3) SCC 215. While a number of questions had been considered by the Supreme Court, one such question was about who should be taken to be members of the OBC. The Supreme Court concluded that the

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'creamy-layer' of the backward classes should be excluded and should not be given the said benefit. In this regard, it was held:-

"Let us illustrate the point. A member of backward class, say a member of carpenter caste, goes to Middle East and works there as a carpenter. If you take his annual income in rupees, it would be fairly high from the Indian standard. Is he to be excluded from the Backward Class? Are his children in India to be deprived of the benefit of Article 16(4)? Situation may, however, be different, if he rises so high economically as to become- say a factory owner himself. In such a situation, his social status also rises. He himself would be in a position to provide employment to others. In such a case, his income is merely a measure of his social status. Even otherwise there are several practical difficulties too in imposing an income ceiling."

Thereafter, the Supreme Court went on to further illustrate:-

"For example, if a member of a designated backward class becomes a member of IAS or IPS or any other All India Service, his status in society (social status) rises; he is no longer socially disadvantaged. His children get full opportunity to realise their potential. They are in no way handicapped in the race of life. His salary is also such that he is above want. It is but logical that in such a situation, his children are not given the benefit of reservation. For by giving them the benefit of reservation, other disadvantaged members of that backward class may be deprived of that benefit. It is then argued for the respondents that 'one swallow doesn't make the summer', and that merely because a few members of a caste or class become socially advanced, the class/caste as such does not cease to be backward. It is pointed out that clause (4) of Article 16 aims at group backwardness and not individual backwardness. While we agree that clause (4) aims at group backwardness, we feel that exclusion of such socially advanced members will make the 'class' a

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truly backward class and would more appropriately serve the purpose and object of clause (4). (This discussion is confined to Other Backward Classes only and has no relevance in the case of Scheduled Tribes and Scheduled Castes)."

The Supreme Court was also by and large considering as to whether the reservation should be given to the wards of affluent class or not. It was directed that a decision should be taken administratively to specify the basis of exclusion- whether on the basis of income, extent of holding or otherwise- of 'creamy-layer'. On such specification, persons falling within the net of exclusionary rule shall cease to be the members of the OBC for the purpose of Article 16(4) of the Constitution. A direction was further issued that the Memoranda dated 13.8.1990 and 25.9.1991 have to be implemented subject only to such specification and exclusion of socially advanced persons from the backward classes.

8. It is in pursuance of the said directions that the impugned Office Memorandum dated 8.9.1993 had been issued. It mentions in the Schedule as to who is to be excluded from the benefit of reservation contemplated. Different Class I officers of All India Central and State Services, Class II officers of the Central and State Services, employees of Public Sector Undertakings, persons holding Constitutional posts, officers of the Armed Forces, Professional Class and those engaged in Trade and Industry and the persons engaged in trade business and industry were

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excluded. In all cases where persons were employed in the Government service, the exclusion clause pertained to sons and daughters of those persons. In other words, income had to be taken of the parents and not of the candidates.

9. At this stage, we deem it necessary to refer to the decision of the Supreme Court in the case of **Siddarth Saini v. State of Haryana & Ors.**, JT 2000 (Suppl.2) SC 201. In pursuance of the decision in the case of **Indra Sawhney (supra)**, the Haryana Government had issued instructions and clarifications. It was clarified that income from salary is not required to be taken into account for the purpose of income/wealth tax. While calculating income or wealth tax of Government employees of Backward Classes, the Punjab and Haryana High Court had held that the said persons should not to be taken to be Backward class persons. The Supreme Court set aside the order of the said High Court and concluded that the petitioner was entitled to the grant of OBC certificate because no other facts concerning his entitlement were in dispute. In other words, one has to go strictly by the letter and spirit of the concerned Office Memorandum.

10. We need not delve further into the aforesaid submissions but refer to the decision of

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the Supreme Court in the case of **Ashoka Kumar Thakur v. State of Bihar and Ors.**, JT 1995 (6) S.C.390. In the cited case, the Supreme Court held that the criteria for identifying 'creamy-layer' laid down by the States of Bihar and Uttar Pradesh was wholly arbitrary and against the decision rendered in the case of Indra Sawhney (supra). In other words, the concerned test has to be reasonable. It should not be unconscionable and has to in conformity with the the decision rendered by the Supreme Court in the case of Indra Sawhney (supra).

11. Reverting back to the facts of the present case, it is obvious that the exclusion class applies to the income of the parents and not of the wards. It is well known that in day to day working, comprehensive instructions may never be possible to be drawn. There would always be certain instructions regarding which either clarification would be required or they were not contemplated. That particular fact like the present instance has not been contemplated. Therefore, the Office Memorandum of 8.9.1993 necessarily does not become arbitrary to prompt us to quash the same. Such an eventuality has not been considered in the impugned Office Memorandum dated 8.9.1993 and the same would remain valid. Therefore, we find no reason to quash the same.

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12. However, we deem it necessary to mention that the Union of India may take into consideration the facts of the present case and may like to add further instructions regarding exclusion if deemed fit of such persons to the category of OBC. At this stage, we need not go further into the instructions that may be issued with prospective effect. As the position stands today, the candidature of respondent No.5 cannot, therefore, be set aside.

13. For these reasons, the application being without merit must fail and is dismissed. No costs.

V.K.Majotra

(V.K.Majotra)
Member (A)

V.S.Aggarwal

(V.S.Aggarwal)
Chairman

/sns/