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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

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OA No.3427/2001

New Delhi, this the 8th day of November, 2002

Hon'ble Shri M.P. Singh, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

1. Gulab Singh
F-1, roop Nagar Fire Station
Delhi-7
2. Hanuman
Village & Post Office Jahri
Dt. Sonapur, Haryana

.. Applicants

(Shri P.Chakrovarty, Advocate)

versus

1. Lt. Governor
NCT of Delhi, through its
Secretary(Home)
5, Sham Nath Marg, Delhi-54
2. Chairman, Delhi Subordinate Services
Selection Board, UTCs Building
Behind Karkardoma Court Complex
Delhi-92

.. Respondents

(Shri Vijay Pandita, Advocate)

ORDER

Shri M.P. Singh, Member(A)

By the present OA, applicants two in number seek directions to respondents to publish the merit list of candidates who qualified the written examination, driving test and diving test and to appoint them to the post of Fire Operator on the basis of the said tests.

2. Briefly stated, in response to advertisement issued by Delhi Subordinate Services Selection Board (DSSSB) on 30.4.99 for recruitment of 293 vacancies of Fire Operator, applicants applied for the same. First applicant, claiming to be belonging to SC community, has stated that he has qualified the driving test held on 31.8.2001 and diving test on 18.4.2001. Second applicant, claiming to be belonging to OBC, has stated that he has qualified the driving test on 1.9.2001 and

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diving test on 22.4.2001. In the result declared on 12.10.2001, a list of 149 successful candidates was published while result of 35 candidates was withheld for further verification of their caste and community affiliation. The grievance of the applicants is that the merit list of 760 candidates who qualified the written test, driving and diving tests was not published and no cut off marks for selection of candidates was published. They have submitted representations to the Hon'ble Chief Minister of Delhi and to the Grievance Cell, Govt. of NCT of Delhi regarding their non-selection to the post of Fire Operator but without any response. Aggrieved by this, they have filed the present OA seeking the aforesaid reliefs.

3. Respondents in their reply have contested the OA and have stated that applicants furnished SC/OBC certificates which were issued on the basis of caste certificates of UP and Haryana state respectively. Applicants are not entitled for the benefit of reservation in services/posts under the Government in view of the principle laid down by Govt. of India/Ministry of Home Affairs in their OMs dated 2.5.1975, 22.3.1977, 29.3.1982, 22.2.85 and Ministry of Welfare OM dated 8.4.1994, and also Govt. of Delhi's letter dated 10.8.2001. In addition, respondents have also referred to the following judgements of the apex in support of their contentions:

Marri Chandra Shekhar Rao Vs. Dean, Seth GS Medical College & Ors. in Writ Petition(Civil) No.989/1989 decided on 2.5.1990; Action Committee on Issue of Caste Certificate to SCs and STs in the State of Maharashtra &

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Anr. Vs. UOI & Anr. in Writ Petition (Civil) No.898/1990 decided on 18.7.1994 and MCD Vs. Veena & Ors. in Civil Appeal No.3045/1998 decided on 14.8.2001.

4. In view of the provisions mentioned above, candidature of the applicants was considered in general category. Based on the performance in the written examination and physical endurance/diving/driving tests, the score of first applicant was 174.33 and that second applicant was 172.00. The score of last general candidate selected was 184.67. Hence both the applicants were not selected. In view of the above position, there is no ground for the present OA and the same be dismissed.

5. We have heard the learned counsel for the parties and perused the records.

6. The main grounds taken by the learned counsel for the applicants during the course of the arguments are that respondents have selected only 51 candidates as Fire Operator out of declared 105 vacancies for OBC and 11 candidates against the declared 50 vacancies for SC but no reason has been given for not filling up the remaining posts and that applicants have submitted their caste certificates issued by the competent authority and such certificates could not have been ignored while filling up the declared vacancies. He has also drawn our attention to the judgement of the Delhi High Court dated 31.5.2002 in CW No.5061/2001 etc. and contended that "a person born and brought up in Delhi, though a progeny of the migrant, cannot be excluded for the benefit of reservation in service under the Govt. of NCT of Delhi.

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7. On the other hand, learned counsel for respondents has submitted that the vacancies in SC/OBC category remained unfilled for want of eligible candidates from Delhi while the applicants have been considered as unreserved candidates for the reasons discussed above and also that the score of the applicants was less than the score of last unreserved selected candidates. As regards ~~the~~ the contention of the applicants that they should have been given the benefit of reservation, the counsel has drawn our attention to the instructions of Govt. of India/Delhi Govt. on the subject as also the judgements (supra) of the apex court.

8. We have gone through the instructions of MHA/Govt. of India as also the judgements (supra) of the apex court relied upon by the respondents in support of their contentions. OM dated 2.5.1975 stipulates that where a person migrates from one state to another he can claim to belong to a SC or ST only in relation to the state to which he originally belonged and not in respect of the state to which he has migrated. OM dated 22.3.1977 makes it clear that "in the case of persons born after the date of notification of the relevant Presidential Order, the place of residence for the purpose of acquiring SC or ST status, is the place of permanent abode of their parents at the time of the notification of the Presidential Order under which they claim to belong to such a caste/tribe. Again as per Ministry of Welfare OM dated 8.4.1994, "The OBC person on migration from the State/UT of his origin² in another State/UT where his caste is not in the OBC list is entitled to the concessions/benefits admissible to the OBCs from the State of his origin and Union

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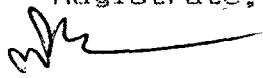
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Government and not from the State where he has migrated." The Govt. of NCT of Delhi vide its letter dated 10.8.2001 has clarified the position, in regard to applicability of reservation for SC/ST/OBC, addressed to Chairman, DSSSB, that "The Board may therefore, refer to the instructions of Govt. of India and the decisions of Hon'ble Supreme Court on the matter and take appropriate action accordingly". In this letter, the Govt. of NCT of Delhi has relied upon the instructions of MHA/Govt. of India and also the judgements of the apex court already referred to above by the respondents.

9. In so far as applicants reliance on the judgement of Delhi High Court (supra) dated 31.5.2002 is concerned, we find that the issue involved in that case was regarding the benefit of reservation to persons who are born and brought up in Delhi but are progenies of persons who had migrated to Delhi from various parts of the country. The High Court after discussing the various instructions issued by the Government of India/Govt. of NCT of Delhi and also the judgements of the apex court referred to above, has held as under:

"In view of the aforesaid, a writ of mandamus is issued to appoint such of the petitioners in the present writ petitions who are born and brought up in Delhi, the caste is notified as a reserved caste in Delhi but the certificate issued to them is on the basis of the certificate issued to their fathers who were the migrants from other States".

10. It appears from the certificate furnished by the first applicant that he was born and brought up in Delhi and was issued an SC certificate by the Sub-Divisional Magistrate, Patel Nagar, Delhi on the basis of the caste



certificate issued to his father by the ADM Ghaziabad, Uttar Pradesh who was a migrant from UP to Delhi. In his case, it is not clear as to whether his caste has been notified as SC in the Union Territory of Delhi for the purpose of reservation. In case of the second applicant, it appears that he is a migrant from Haryana claiming the benefit of reservation under OBC category. However, it is not clear whether this applicant is a progeny of a person who had migrated from Haryana to Delhi and his caste is notified as OBC in Delhi for the purpose of reservation. We are, therefore, of the considered view that the applicants are entitled for the benefit of reservation only if they fulfil the conditions laid down in the judgement of Delhi High Court (supra) dated 31.5.2002 as mentioned in Para 9 above. It is, however, for the respondents to ascertain the factual position following the ratio of the Delhi High Court judgement and act accordingly. The respondents are, therefore, directed to ascertain the factual position and grant the benefit of reservation to the applicants if admissible in terms of the judgement of Delhi High Court dated 31.5.2002 within a period of three months from the date of receipt of a copy of this order.

11. The OA is disposed of in the aforesaid terms. No costs.

S. Raju
(Shanker Raju)
Member(J)

M.P. Singh
(M.P. Singh)
Member(J)

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