

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 1498/98

New Delhi, this the 9th day of February, 1999

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

Jaipal Singh
s/o Sh. Hoshiar Singh
r/o V & PO Deroli Ahir,
Distt. Mahendergarh (Hr.) Applicant

(By Advocate: Shri Shyam Babu)

Versus

Union of India through

1. The Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Govt. of NCT of Delhi,
through its Chief Secretary,
5, Sham Nath Marg,
Delhi.
3. Commissioner of Police,
Delhi,
Police Headquarters,
I.P.Estate, New Delhi. Respondents

(By Advocate: Shri Amresh Mathur)

O R D E R

delivered by Hon'ble Shri T.N. Bhat, Member (J)

We have heard the learned counsel for the parties at length for final disposal of the OA at the admission stage itself.

2. The controversy in this O.A. lies in a narrow compass. The applicant, who hails from the Haryana State, had applied for recruitment to Delhi Police as a Constable and claimed to belong to Other Backward Classes (OBC for short) category. His application was entertained

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and he was also selected. However, the respondents have by the letter dated 31.10.1996, issued by the Deputy Commissioner of Police, 11 Bn. DAP, Delhi, as at annexure A to the OA, cancelled the candidature of the applicant solely on the ground that he did not actually belong to OBC category as the caste to which he belongs was not included in the list of OBC issued by the Central Government.

3. The applicant has come to the Tribunal with the plea that his caste viz., Ahir/Yadav, has all along been included in the list of OBC as the same is a sub caste of the Gowala community. The applicant also relies upon a notification issued by the Govt. of Haryana wherein the aforesaid community finds a place in the list of OBC.

4. The respondents have contested the claim of the applicant on the ground that when the applicant applied for the post, Ahir/Yadav community was not included in OBC under the Central Government list and that the list issued later on by which the said community was included could not relate back to or operate retrospectively from the date when the applicant was considered for appointment against the reserved post.

5. The question at issue in the instant OA has already been considered by a Bench of this Tribunal in OAs 2410/96 and a bunch of 15 other OAs and by the common judgement dated 24th October, 1997 in the aforesaid cases (S/ Shri Parmender Kumar & Ors. Vs. Commissioner of Police & Others) it has been held on identical facts that



the applicants in those OAs should be deemed to have been included among the OBC categories from the very inception even though the name of their sub caste was mentioned in the notification / circulars issued later. Relying upon the judgement of the Apex Court in Civil Appeal No. 1622 of 1996 decided on 21.5.1998 by the Hon'ble Supreme Court that the mere fact that a sub-caste or sub tribe had not been mentioned in a notification containing the list of OBC would not dis-entitle the persons belonging to that sub tribe to claim appointment against reserved quota. The Apex Court had also in Bhaiya Ram Munda vs. Anirudh Patar & Ors. (AIR 1971 SC 2523) in its judgement dated 8.8.1970 held that mere non-mentioning of "Patars" as sub-tribe of "Mundas" declared as scheduled tribe in the State of Bihar under Article 342 of the Constitution would not make people belonging to "Patars" sub-tribe ineligible for consideration against reserved category posts and that the name by which a tribe or sub-tribe is known is not decisive.

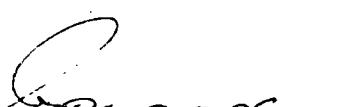
6. Allowing the aforesaid OAs the Tribunal in the aforesaid cases directed the respondents to offer appointment to those whose candidature had been cancelled on the ground already stated above and also to re-instate those whose services had been terminated on that ground. That case also related to appointment of some persons belonging to Ahir/Yadav sub-caste of the main Gowala caste. The applicant herein is also identically placed.

7. We further notice that a writ petition assailing the aforesaid judgement of the Tribunal has been filed in the Hon'ble High Court of Delhi and initially the

High Court had passed an order of stay. However, by the detailed order dated 24.9.1998 the interim stay has been vacated and it has been held in that order that in such cases the question of retrospectivity would not arise as the inclusion of the Ahir/Yadav sub-tribe in the list of OBC should be deemed to have been only a clarification and not something which has been added later. We may, however, make it clear that the Hon'ble High Court of Delhi while passing the aforesaid order of vacating the interim stay has stated in the last para of the order that the view expressed in the order is only a *prima facie* view taken for the purpose of deciding the application for continuance /vacation of the interim stay. But the fact remains that the judgement of the Tribunal has neither been set aside nor has its operation been stayed.

8. In view of the facts and circumstances discussed above this OA must also succeed. We accordingly allow this O.A., quash the impugned order dated 31.10.1996 and hereby direct the respondents to restore the applicant to the position he occupied on 31.10.1996 before cancellation of his candidature and offer to the applicant appointment in Delhi Police provided he is otherwise found fit. The respondents are granted two months' time from the date of receipt of a copy of this order to implement the above order.

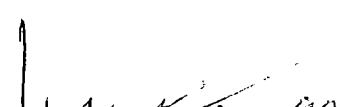
9. In the facts and circumstances of the case we make no order as to costs.



(S.P. Biswas)

Member (A)

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(T.N. Bhat)

Member (J)