

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 986/1998

199th

T.A.No.

DATE OF DECISION 29-8-2000

Mohammad Ali

....Petitioner:

Sh.Nasir Ahmed Khan

....Advocate for the
Petitioner(s)

VERSUS

Commissioner of Police andRespondent:
Ors.

Shri Harvir Singh

....Advocate for the
Respondents.

CORAM:

The Hon'ble Smt.Lakshmi Swaminathan, Member (J)

The Hon'ble Shri S.A.T. Rizvi, Member (A)

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? NO.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 986/98

New Delhi this the 29th day of August, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri S.A.T. Rizvi, Member(A).

Mohammad Ali,
S/o Umar Mohammad,
Village Bukharaka,
PO - Nagina,
Distt. Gurgaon (Haryana).

... Applicant.

(By Advocate Shri Nasir Ahmed Khan)

Versus

1. Commissioner of Police,
Police Headquarters,
New Delhi-110002.

2. Deputy Commissioner of Police,
III Bn. DAP,
Delhi.

... Respondents.

(By Advocate Shri Harvir Singh)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has filed this application stating that although he was fully eligible for recruitment as a Constable (Executive) in Delhi Police, under the special recruitment for OBCs which was conducted by them in 1995, they have refused to do so which, according to him, is violative of the provisions of Articles 14 and 16 of the Constitution.

2. The brief facts of the case are that in 1995 special recruitment was held at Gurgaon (Haryana) to fill up the vacancies of Constables(Executive) in Delhi Police with reservation for SCs, STs, OBCs and Ex-servicemen in accordance with the Rules. The applicant was also a

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candidate in this special recruitment in the category of OBC. According to the respondents, on declaration of the final results of the selection, the applicant was selected provisionally under the category of OBC as he had enclosed his caste certificate with his application form. Later, the respondents have stated that after thorough scrutiny by the concerned authority in terms of the directions issued by the letter dated 19.4.1996, they found that the applicant had been selected wrongly against the reserved post of OBC. They have stated that as the applicant had failed to produce the requisite caste certificate of OBC in the prescribed form, the applicant was not given the offer of appointment to join the Department and his candidature was cancelled by letter dated 31.10.1996. However, they have submitted that on the recommendations of the National Commission for Backward Classes, the Meo Caste in Haryana State to which caste the applicant belongs, has been included in the Central List of OBCs by the Govt. of India, Ministry of Welfare ¹³ vide Resolution dated 6.12.1996. According to them, the Resolution is to take effect from the date of issue of the Resolution and, therefore, the applicant was not entitled to get the benefit as a person belonging to the Meo Community/OBC.

3. The applicant has submitted that the fact is that he belongs to the Meo Community and this caste has been included as OBC in the list of Backward Classes in terms of the Notification issued by the State of Haryana dated 7.6.1995 (Annexure 'F'). He had submitted the 'Backward Class Certificate' dated 11.7.1995 to the

respondents which had been issued by the Sub-Divisional Magistrate, Ferozepur, Jhirka (Gurgaon) in terms of the Notification dated 7.6.1995, in which it has been stated that he belongs to the Meo Community which is recognised as a 'Backward Class' by the Haryana Government. In the circumstances, the applicant has contended that the respondents have not acted reasonably but have acted in a sheer obstinate manner while rejecting his candidature. He has also relied on the judgement of the Tribunal dated 24.10.1997 in OA 2410/96 along with the connected cases, (Annexure 'G'). He has submitted that similarly situated persons like him, including Ahmed Khan, applicant in OA 2410/96 have already been recruited. The respondents have, however, stated that the applicants in O.A. 2410/96 had joined the Department in 1995, whereas the list of OBCs was issued by the Central Government later and received by them only in April, 1996, and their services were terminated but they had succeeded in obtaining the stay order from the Tribunal. With regard to the applicant in OA 2216/96, the respondents have stated that no applicant had been allowed to join the Department.

4. The applicant has also filed MA 1285/98 praying for condonation of delay. In this application, he has submitted, inter alia, that his candidature for recruitment as Constable by the respondents has not been considered because of a case pending in the Court of Civil Judge, Cama, District Bharatpur (Rajasthan) which was decided by order dated 4.1.1996 in acquitting him. He has also submitted that he had produced a 'Backward Class Certificate' dated 29.7.1996 issued by the Sub-Divisional Magistrate, Ferozepur, Jhirka (Gurgaon), indicating that he

belongs to the Meo Community which is a Backward Class/OBC. (15)

He has submitted that he had also applied for certified copy of the judgement of the Tribunal dated 24.10.1997 in OA 2410/96 which was prepared on 3.12.1997 and a copy of which was submitted by him to the respondents on 11.12.1997. He has submitted that he had again approached the respondents' officials on 15.1.1998 requesting them to take a decision on his application, followed by repeated visits. Thereafter, he has filed the present application on 10.3.1998. He has prayed that in the circumstances, the delay may be condoned as, according to him, he had been regularly and diligently pursuing his case before the respondents, who had not intimated to him any decision regarding his candidature for the post of Constable (Executive).

5. In the rejoinder filed to the reply of the respondents, he has also submitted that he was not informed about the decision taken by the respondents by letter dated 31.10.1996, as alleged. He has reiterated his stand in the application that the applicants in the aforesaid O.As have been appointed by the respondents. The applicant has contended that since admittedly the Meo caste has been included in the Central List of OBCs and the persons belonging to this Community have been given the benefits as OBCs by the Tribunal by its order dated 24.10.1997, such denial of the benefit to him is discriminatory on the part of the respondents.

6. As none has appeared for the applicant, we have perused the pleadings and heard Shri Harvir Singh, learned counsel for the respondents.

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7. The applicant had submitted a certificate issued by the Sub-Divisional Magistrate, Ferozepur dated 11.7.1995 that he belongs to the Meo community which is recognised as a 'Backward Class' by the Haryana Government by Notification dated 7.6.1995, to the respondents. This has been done in connection with the employment of the applicant as Constable (Executive) in Delhi Police in pursuance of a special recruitment drive that they had undertaken during the year 1995 to fill up the vacancies of Constables (Executive) in Delhi Police against the reserved categories of SCs, STs, OBCs and Ex-servicemen as per the Rules. The main contention of the learned counsel for the respondents is that at the relevant time, the applicant had not submitted the certificate in the prescribed form given by the Government of India. During the course of arguments, however, Shri Harvir Singh, learned counsel has submitted that later on the Government of India, Ministry of Welfare vide Resolution dated 6.12.1996 has included the Meo community in the Central List of OBCs as per the recommendations of the National Commission for Backward Classes. The applicant had relied upon the caste certificate issued by the Sub-Divisional Magistrate, Ferozepur dated 11.7.1995 that he belongs to the Meo Community which is recognised as a Backward Class under the Haryana Government Notification dated 7.6.1995. This community has later on been recognised by the Central Government vide Resolution dated 6.12.1996. In the facts and circumstances of the case, it cannot, therefore, be stated that the applicant had even tried to mislead the respondents or has committed any action which can even faintly be regarded as a misconduct.

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8. The main ground taken by the respondents ⁱⁿ their reply for cancelling the candidature of the applicant for selection to the post of Constable (Executive) under the OBC category is that he had been selected wrongly against the reserved post of OBC, as the Central Government Resolution itself has been passed ^{only 18.} later on 6.12.1996. The reliance placed by the respondents on DOP&T O.M. dated 10.5.1995 that they can verify the caste certificate at any time if the claim turns out to be false is not under dispute in the facts and circumstances of the case. It is also relevant to note that the applicant had been provisionally selected under the category of OBC after giving him the benefit of selection in that quota, based on the caste certificate issued to him by the Sub-Divisional Magistrate dated 11.7.1995. We also find force in the applicant's contention that the judgement of the Tribunal in OA 2410/96, with connected cases, decided on 24.10.1997, would apply to the facts in the present case, which has been issued in similar circumstances.

9. From the reply filed by the respondents, it is not clear as to when the final result of the selection done in pursuance of the special recruitment held at Gurgaon to fill up the vacancies against the reserved vacancies, was completed. They have stated that after scrutiny of the documents, as they found that the Meo caste to which the applicant belongs had not been included in the list of OBCs issued by the Ministry of Welfare and he has also failed to produce the OBC certificate in the prescribed proforma, his candidature was cancelled by letter dated 31.10.1996. The applicant has, however, categorically stated in the

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rejoinder that he has not received any such communication and has also submitted that he became eligible at least when the caste to which he belongs got included in the Central List of OBCs by the Government of India¹⁸. He has further submitted that he is ready and willing to produce the required caste certificate in the proforma prescribed for this purpose if the same is provided to him by the respondents. The respondents have not annexed either the cancellation letter dated 31.10.1996 or given the mode or effective date of communication of this order to the applicant in their reply. The respondents in their reply have stated that the applicant has filed the O.A. after a period of one and a half years from the date of their order dated 31.10.1996 and he has also not submitted any representation to the competent authority. Taking into account the facts and circumstances of the case, we are unable to agree with the respondents that the applicant has not given any reasons for the delay for which he has filed a Miscellaneous Application. We find that the respondents have not filed a separate reply to the Miscellaneous Application praying for condonation of delay in which the applicant has also submitted that he had submitted a representation along with the copy of the judgement/order in OA 2410/96 with connected cases to the respondents on 11.12.1997. Therefore, taking into account the totality of the facts and circumstances of the case, and particularly having regard to the facts mentioned above, including the fact that Govt. of India itself has taken a decision to include the Meo Community as a Backward Class, we are of the view that the application for condonation of delay should be allowed and accordingly in the interests of justice MA 1285/98 is allowed.

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10. As mentioned above, the applicant has stated ¹⁹ in the rejoinder filed on 25.1.1999 that he is ready and willing to produce the required certificate in the prescribed proforma regarding the fact that he belongs to the Meo community which is declared by the Govt. of India as one among the other Backward Classes. Although none had appeared for the applicant during the hearing, we presume that the applicant is still interested in being considered for appointment to the post of Constable (Executive) based on the fact that he belongs to the Meo community, which has been declared as an OBC community. As there is not even a whisper of any allegation of fraud or any other similar misconduct on the part of the applicant, we see no reason why this O.A. should not be allowed. There is also no doubt that as per the caste certificate issued to the applicant under the State Government of Haryana Notification, he belongs to the Meo caste which is a backward class and this has also been so declared by the Govt. of India Notification of 6.12.1996. Under the provisions of law laid down in the Constitution of India, persons belonging to the reserved category, like the applicant, are entitled to be given the benefit of reservation for recruitment ^{to posts.} Accordingly, we consider that in the present case, the action of the respondents in cancelling his candidature, after his provisional selection to the post of Constable (Executive) in Delhi Police as an OBC, is not reasonable and is in violation of the provisions of Articles 14 and 16 of the Constitution. Further, since the benefit of belonging to an OBC caste has been extended to other similarly situated persons, there is no reason why

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this benefit should not be extended to the applicant also.

11. For the reasons given above, the O.A. succeeds and is allowed with the following directions:

(i) The letter dated 31.10.1996 issued by the respondents cancelling the applicant's candidature for the post of Constable (Executive) in Delhi Police is quashed and set aside;

(ii) In view of what has been stated above, in case the applicant is interested in getting the offer of appointment to the post of Constable (Executive) to which he had already been provisionally selected, he shall make a self contained representation to the respondents within one month from the date of receipt of a copy of this order, giving also a Caste Certificate showing that he belongs to the reserved category of OBC, and if necessary in the prescribed proforma, which shall be supplied to him by the respondents, if he so requests;

(iii) Thereafter, the respondents shall consider the case of the applicant for appointment to the post of Constable (Executive) against any existing or future reserved vacancy of OBC arising immediately, in accordance with the relevant law and instructions. In the circumstances of the case, the applicant shall not, however, be entitled to the benefits of seniority and pay during the period he was not in service.

Parties to bear their own costs.

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

(Smt. Lakshmi Swaminathan)
Member(J)