CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

1) O.A. NO. 420/1996
2) O.A. NO. 416/1996
3) O.A. NO. 433/1996
4) O.A. NO. 297/1996
5) O.A. NO.1928/1996
6) O.A. NO.1934/1996

This the 2nd day of April, 1997.

HON'BLE DR. JOSE P. VERGHESE, VICE CHAIRMAN (J)

HON'BLE SHRI S. P. BISWAS, MEMBER (A)

1) O.A. No. 420/1996

Arun Kumar Mishra,
Practicing Advocate,
R/O B-153, East of Kailash,
New Delhi-110065. ... Applicant

(By Shri H. B. Mishra, Advocate)

-versus-

1. Government of National Capital
Territory of Delhi through
Chief Secretary,
5, Shamnath Marg,
Delhi-110054.

2. Union Public Service Commission
through its Secretary,
Dholpur House,
Shahjahan Road,
New Delhi-110011.

3. Director of Prosecution,
Government of National Capital
Territory of Delhi,
Tis Hazari, Delhi. ... Respondents

(By Shri Jog Singh, Advocate)

2) O.A. No. 416/1996

Naresh Kumar Verma S/O Ram Kumar Verma,
R/O House No. 302, Gautam Nagar,
New Delhi-110049. ... Applicant

(Applicant in person)

-versus-

1. Government of National Capital
Territory of Delhi through
Chief Secretary,
5, Shamnath Marg,
Delhi-110054

2. Union Public Service Commission
through its Secretary,
Dholpur House,
Shahjahan Road,
New Delhi-110011.

3. The Directorate for the Welfare
of SC/ST/OBC,
Govt. of NCT of Delhi,
154-155 Old Secretariat Building,
Delhi-110054 through
its Secretary.

4. The National Commissioner for
SC, ST & OBC,
Lok Nayak Bhawan,
Khan Market,
New Delhi. ... Respondents

(By Shri M. M. Sudan and Shri Vijay Pandita,
Advocates)

3) O.A. No. 433/1996

Ms. Kiran Bala D/O Ram Lal,
R/O 197, Parmanand Colony,
Delhi-110009. ... Applicant

(By Shri R. K. Sharma, Advocate)

-versus-

1. Government of National Capital
Territory of Delhi through
Chief Secretary,
5, Shamnath Marg,
Delhi-110054.

2. Union Public Service Commission
through its Secretary,
Dholpur House,
Shahjahan Road,
New Delhi-110011. ... Respondents

(By Shri M. M. Sudan and Shri Surat Singh,
Advocates)

4) O.A. No. 297/1996

1. Manoj Kohli S/O A. D. Kohli,
R/O A-29, Phase-I,
Ashok Vihar, Delhi.

2. Suresh Chand S/O Harish Chand,
R/O D-29, Mata Wali Gali,
Johari Puri,
Delhi-110094.

3. Virender Singh S/O Ghure Lal,
R/O 9/35-34, Gali No.1,
Gyan Mohalla, Dharampura,
Gandhi Nagar,
Delhi-110031.

4. Mrs. Neelam Narang W/O Sudhir Narang,
R/O 10, Defence Enclave,
Vikas Marg,
Delhi.

5. Davender Rana S/O H. P. Rana,
Vill. & P.O. Sahibabad, Dairy,
Daulatpur, Delhi-110042.

6. Brij Pal Singh S/O Lahari Singh,
R/O Vill. & P.O. Ronda,
Distt. Bulandshahar (UP)
Presently : 119 Himversha Apartments,
103, IP Extension, Patparganj,
Delhi.

7. Brindabad S/O Maheshwari Prasad,
R/O Ambedkar Nagar,
Sutarkhana, City Banda,
Distt. Banda (UP),
Presently : 3-A/134 (HIG),
Rachna, Vaishali Colony,
Ghaziabad (UP). ... Applicants

(By Shri K. C. Mittal, Advocate)

-versus-

1. Government of National Capital
Territory of Delhi through
Chief Secretary,
5, Shamnath Marg,
Delhi-110054.

2. Union Public Service Commission
through its Secretary,
Dholpur House,
Shahjahan Road,
New Delhi-110011. ... Respondents

(By Shri M. M. Sudan and Shri Vijay Pandita,
Advocates)

5) O.A. No. 1928/1996

Naresh Kumar Verma S/O Ram Kumar Verma,
R/O House No. 302, Gautam Nagar,
New Delhi-110049. ... Applicant

(Applicant in Person)

-versus-

Union Public Service Commission
through its Secretary,
Dholpur House,
Shahjahan Road,
New Delhi-110011.

... Respondent

(By Shri M. M. Sudan, Advocate)

6) O.A. No. 1934/1996

1. Santosh Kumar Raghuvanshi
S/O Basant Singh.

2. Vipin Sandhuja
S/O A. N. Sandhuja.

3. Sanjiv Goel S/O G. D. Goel.

4. Mukesh Kumar Ahuja
S/O R. K. Ahuja.

5. Ms. Sushma Badhwar
W/O Rajiv Badhwar.

6. Kaleem Ahmam
S/O Late Faizul Hasan.

7. Aslam Khan
S/O A. S. Khan.

8. Ram Kumar Verma
S/O Late Shyam Prakash.

9. Vakil Ahmad
S/O Idda Khan.

10. Atiq Ahmad
S/O Saleemuddin.

11. Aqeel Ahmad
S/O Allah Diya.

(All applicants C/O
Directorate of Prosecution,
Tis Hazari Courts,
Delhi)

... Applicants

(By Mrs. Meera Chhibber, Advocate)

-versus-

1. Government of National Capital
Territory of Delhi through
Chief Secretary,
5, Shamnath Marg,
Delhi-110054.

2. Union Public Service Commission
through its Secretary,
Dholpur House,
Shahjahan Road,
New Delhi-110011.

... Respondents

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(By Shri M. M. Sudan and Shri Vijay Pandita, Advocates)

O R D E R

Dr. Jose P. Verghese,

These applications arise out of the effort of the respondents to recruit Assistant Public Prosecutors, whose recruitment has been unduly delayed. As early on 12.10.1994, the Government of National Capital Territory of Delhi wrote to the Union Public Service Commission (UPSC) for appointment of Assistant Public Prosecutors on regular basis, and finally the concerned advertisement for filling up these posts came to be published on 13.5.1995 vide advertisement No. 9 of 1995. Serial number 24 of the said consolidated advertisement refers to 49 Prosecutors in the Directorate of Prosecution, Government of NCT of Delhi. Out of these 49 posts, 8 were reserved for Scheduled Caste, 4 reserved for Scheduled Tribe and 14 for Other Backward Castes. The essential qualifications prescribed were (1) degree in law of a recognised university or equivalent and (2) three years' experience at the Bar or equivalent experience in any legal department or organisation of standing. The desirable qualifications prescribed were experience as Public Prosecutors/Government Advocate. The duties prescribed were to conduct cases in the court of Metropolitan Magistrates on behalf of the Government of NCT of Delhi and teach law subjects at PTS Jharoda Kalan, Delhi Police.

Since the regular intake of Public Prosecutors were getting delayed, the Government of NCT of Delhi decided to recruit originally Assistant Public Prsoecutors/Prosecutors in the Directorate of Prosecution on purely adhoc and emergent basis for a maximum period of six months only expecting the process of regular appointment would be finalised by then. The said advertisement appeared in the daily newspapers of 2.2.1995 and the last date of accepting the applications was 24.2.1995. The qualifications prescribed were substaitnally the same as stated above and all other things being equal, such as reservation as per the Government policy, the appointments were to take effect only as a stop-gap-arrangement.

Pursuant to the said advertisement, quite a large number of persons were appointed by the Chief Secretary, Government of National Capital Territory of Delhi in the scale of Rs.2000-3200 on purely adhoc and emergent basis. These appointments were mostly made towards the end of November, 1995 and it was clearly indicated in the appointment letters that these appointments were on adhoc basis for a contract period of six months or till such appointment of candidates is made on regular basis through the UPSC, whichever was earlier. It was also pointed out to the candidates that the appointment would not confer any right on the candidates to claim seniority, continuance in service or aprointment on a regular basis.

In the meantime, the UPSC conducted interviews on the basis of advertisement dated 13.5.1995 from 12.2.1996 to 1.3.1996 and finally on 24.7.1996, the UPSC sponsored the names of 26 candidates for appointment on regular basis. It is not clear from the averments nor from the list of the recommended candidates available in the paperbook of O.A. No.420/1996 whether these 26 candidates recommended included the reserved candidates or not.

Respondents on 22.5.1996 brought out an amendment to the recruitment rules and the said amendment was issued under the proviso to Article 309 of the Constitution of India read with Government of India, Ministry of Home Affairs notification dated 13.7.1959 and with prior consultations with the UPSC. By this amendment the respondents increased the number of posts to 106 from the existing 49 and it is stated that since there were large number of candidates who had applied in response to the earlier advertisement dated 13.5.1995, the UPSC were to recommend more candidates if found eligible and available against the extended number of posts as well.

All the Original Applications which are now being heard together for final disposal, are arising out of the facts stated above.

O.A. No. 297/1996 has been filed at the instance of seven applicants who were in fact appointed on adhoc basis in pursuance of the advertisement of February, 1995 pending appointment of

regular incumbents through the UPSC, and the applicants herein are seeking regularisation of their posts on the basis that a large number of posts were available and have been further added and made available subsequently, and as such, since their recruitment were after a proper selection from the market and were appointed being found eligible as they were all fulfilling the qualifications prescribed, nothing more remains for the respondents than to consider their candidature for regularisation against the available vacancies. The applicants therein had applied to UPSC in pursuance of the abovesaid notification dated 13.5.1995 but the UPSC turned down their applications and they were not considered against the 49 regular vacancies as all of them were not called for the interview because the UPSC resorted to shortlisting of candidates. It was stated on behalf of the respondent UPSC that for the 49 posts advertised there were a total of 796 applications out of which 491 applicationw were from among the general candidates for the 24 unreserved posts. Since the number of applicants were not that high, the method of screening was not resorted to, but the number was high enough to resort to shortlisting with objective criteria. The contention of the learned counsel for the respondents was that these applicants did not fulfil the criteria laiddown for shortlisting the candidates and they were not called for test and interview. The submission of the learned counsel for the applicants is that apart from their claim for regularisation, alternatively they may be permitted to

be considered as a special class by the UPSC and consider their candidature against the available vacancies.

O.A. No. 420/1996 was filed on behalf of Shri A. K. Mishra who was also complaining against his exclusion by shortlisting at the instance of the UPSC. He has also challenged the reserveation of 25 posts out of total 49 and also made submission that in the absence of a notification under Article 242 of the Constitution of India, no post can be reserved in favour of STs in Delhi.

O.A. No. 416/1996 has been filed on behalf of a candidate from the OBC community, who was also a victim of shortlisting and on the basis of his adhoc service, claims the same relief as claimed in O.A. No. 297/1996. In O.A. No. 433/1996, the reliefs claimed are the same and the applicant is also similarly placed as that of O.A. No. 297/1996 and O.A. No. 416/1996.

O.A. No. 1934/1996 has been filed on behalf of Santosh Kumar Raghuvanshi and ten others, all of them belonging to the category of OBC and their candidature has been rejected on the basis that their prior Government service and their claim as OBCs arose against the contention of the respondents that their claim has not been put up through prescribed proforma and as such age relaxation in either or both counts could not be given to the applicants. Similar is the

case in O.A. No. 1928/1996 wherein the applicant is seeking relaxation of age on the basis of his OBC certificate.

Since the questions involved in these cases are mostly common, we shall deal with those issues one by one.

The first issue that has to be decided is whether the respondents were justified in increasing the number of vacancies during the process of selection and will the same vitiate the equality of opportunity, a right available to the public under Article 16 of the Constitution. It is an admitted fact that in the original advertisement published on 13.5.1995 the number of posts stated to be subject to process of selection were only 49 and it was on 4.5.1995 that the number of posts were increased to 104 by way of an amendment to the recruitment rules under the proviso to Article 309 of the Constitution. Even though the respondents were within their power to increase the number of posts, they could not have added these additional number of posts during the pendency of the selection procedure that were going on only for 49 posts, we are of the view that the respondents have acted illegally by adding the additional number of posts for consideration than initially advertised, and in the circumstances, we do not however propose to quash the entire selection procedure. In the circumstances of the case, we consider it fit to limit the recommendations to the number of posts originally mentioned in the first

advertisement. That being 49 and the actual recommendations were only 26, we are not finding any fault with those selections on the basis of which those 26 candidates had been recommended for appointment.

But it is not clear whether these 26 posts recommended included the reserved candidates or not. Our direction would be that in case it includes the reserved candidates, only then the recommendation and appointment of those 26 candidates could be valid, if not, only 14 candidates from among the 24 posts available to the general candidates out of the total of 49 can be considered to be regular. Therefore, if no reserved candidates have been included in the list of 26 persons, only the first 14 candidates are to be considered as regularly appointed and in accordance with the rules. This is because this court passed an interim order not to fill up ten posts out of 24 and it may be for the reason that it should be available in the event the applicants in this case succeed in their complaints and since the total number of posts available to the general category were only 24, the respondents could not have filled up 26 posts. The total posts available for the respondents for recommendation to be made validly were only 14 after deducting 10 posts covered under the interim orders of this tribunal. The respondents are also directed to consider the remaining 12 candidates whose names have been duly recommended by the UPSC after due selection, but could not be in accordance with the rules, and as such, their appointment may be regularised against the

additional vacancies that were made available by increasing the number of posts to a total of 106. Even though we are finding that the cases of excess 12 candidates recommended and appointed by the UPSC, shall not be treated as regular originally, and their appointment shall be treated adhoc till the respondents regularise them against the additional posts made available by an amendment to the recruitment rules.

A direction will also be issued to the respondents that the vacancies reserved for the reserved candidates shall be filled up forthwith from among the candidates who had joined the process of selection and found eligible and the recommendations in this regard, if not already made, shall be made forthwith and appointments made without any delay.

The second main issue that has been put forward in these applications was that the appointments made on adhoc basis even though on the face of it, it was adhoc and on emergent basis, since the vacancies were available and the applicants have discharged their duties to the satisfaction of the respondents, nothing remains to be done but to look into their ACRs and regularise them after taking appropriate approval from the UPSC. The respondents on the other hand, submit that the appointment was purely on the basis of stop-gap-arrangement and it was also clearly stated that the said appointments will not confer any claim for regularisation, nor were there any ACRs available for consideration of regularissation, with the

approval of the UPSC, since these appointments were for a short period. The respondents also stated that on the basis of the large number of decisions by the Supreme Court, these stop-gap-arrangements cannot be a subject matter of regularisation. There is considerable force in the submission of the respondents and we are of the view that the applicants had been appointed adhoc, the period of adhoc service being so short and the appointment on adhoc basis was purely as a stop-gap-arrangement till the regular incumbents were recommended by the UPSC, for which the selection procedure was going on. The claim of these applicants for regularisation will have to be rejected outright.

These applicants also claim that on the basis that they have been selected after they were found to be eligible, and have been discharging their duties satisfactorily, the respondent UPSC could not have rejected their candidature for consideration against regular vacancies by shortlisting. It was certain that once the regular incumbents are recommended, these adhoc appointees will certainly be replaced and as such, their claim could be treated as a special class and not to shortlist them under whatever criteria the respondents might adopt. The respondents stated that these adhoc appointees cannot be treated as a special class even for the purpose of consideration of their candidature for selection against regular vacancies. This is because their tenure was so short and they have never competed with such large number of applicants from the market and in

the event they are permitted to be treated as a special class, the fundamental right of equality of opportunity contained in Article 16 would be denied to the public at large. We are not impressed by this submission of the respondents for the reason that what the applicants, namely these adhoc appointees, are claiming, is not that they may be outright appointed, rather what they are claiming is only that they may not be shortlisted from being considered when the UPSC considers candidates and recommends them to replace their adhoc appointments. We are in full agreement with the contention of the applicants that shortlisting by whatever criteria and excluding the applicants who were holding the posts on adhoc basis from being considered, is not in good taste. The respondents should not have excluded them from being considered. It is pertinent to mention here that the respondents had shown to the court the criteria that has been adopted for shortlisting. We are satisfied that these criteria are objective enough in the normal circumstances that it was not found sufficient enough to exclude these adhoc appointees who were already holding the posts to the satisfaction of the respondents and who are in the danger of being replaced by regular incumbents by the same selection procedure. Our considered view, therefore, is that these adhoc appointees are entitled to be considered.

The direction which we would like to issue in this regard is that in view of the fact that nine of these adhod appointees have already been interviewed on the basis of the interim orders of this court, we

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would direct the respondents to publish the result of these nine candidates interviewed and in case they were found eligible and fit, their names may be recommended against the regular vacancies now available. The remaining candidates who are holding the posts on adhoc basis on the basis of the interim orders passed by this court, shall continue to hold the posts on adhoc basis until they have been given an opportunity to be considered for regular appointment, after following the prescribed procedure under the rules by the UPSC.

The next important contentention that has been raised by one of the applicants, especially the one in O.A. No. 420/1996, was that the reservation of 25 posts out of total 49 is in excess of 50 percent quota laid down by the Hon'ble Supreme Court in the case of **Indra Sawhney vs. Union of India, 1992 Supp (3) SCC 217.** We are of the considered view that 50% of 49 is obviously 24 and half. 50% is to be calculated not by a mathametical equation but against the roster prescribed for the purpose. Since the roster prescribed in these cases always starts from a reserved candidate, the respondents have rightly reserved 25 posts out of 49 and that will not exceed 50% quota as a maximum limit prescribed by the Supreme Court in Indra Sawhney's case.

The learned counsel for the applicant in O.A. No. 420/1996 also raised another issue, namely, that there cannot be reservation for STs in Delhi inasmuch Delhi does not have any ST of its own and in the

absence of a notification under Article 242 of the Constitution of India, the reservation now set apart at the instance of respondents is illegal. In support of his case, the applicant has relied upon a number of decisions of various High Courts and the Supreme Court. **M. S. Malathi vs. The Commissioner Nagpur Division & Ors., AIR 1989 Bombay 138; Action Committee on Issue of Caste Certificate to Scheduled Caste and Scheduled Tribes in the State of Maharashtra & Anr. vs. Union of India & Anr., JT 1994 (4) SC 423.**

Even though the applicant is raising this issue in this application which may not directly arise out of this application, we are of the view that the notification issued by the Government of India on 29.12.1993 after Indra Sawhney's case, referred above, is applicable to the present case wherein the reservation for ST has also been provided in Delhi and this notification is not under challenge in any of these applications. In Office Memorandum dated 29.12.1993 issued by Government of India (Department of Personnel & Training), it is stated, "In respect of direct recruitment on All India basis otherwise than by open competition where there is a reservation of 16.2/3% for SC and 7-1/2% for ST, the existing 40-point roster has been revised into a 120-point roster as in the model format indicated at Annexure I. In respect of direct recruitment to Group 'C' and Group 'D' posts normally attracting candidates from a locality or region, the existing 100-point rosters have also been revised as in the model indicated at

Annexure II." The 'nota bene' No. 3 refers to Delhi and states, "For Delhi, the rosters as prescribed for recruitment on All-India basis is to be followed." It is to be noted that in accordance with the said O.M., the roster points at 3, 17, 29, 43, 57, 69, 83, 97 and 109 are reserved for ST and as such the respondents are bound to give the benefit of the reservation under this O.M. to ST candidates. It goes without saying that the present recruitment is to Group 'C' and the respondent NCT of Delhi has been declared not as a State within the Union, rather as a Union Territory. The relevant notification in this regard has been produced by the respondents and it is available in the paperbook.

In O.A. No. 1928/1996, the applicants therein have raised the issue of not giving the benefit of relaxation of age to the OBC candidates. It is now an admitted case that the relaxation of age to the extent of three years is available to OBC candidates and at page 90 of the paperbook in O.A. No. 1928/96 a communication confirming the same is shown that the said relaxation has been duly given for the Civil Services Examination in both the years 1995 and 1996 and it is an admitted case that the respondents are bound to give age relaxation to the extent of three years to the OBC candidates. The learned counsel for the respondents submitted that even though the applicants in O.A. 1928/1996 and 1934/1996 are eligible for age relaxation both on the count that they are Government servants as well as on the ground that they are belonging to OBC communities, but the

complaint of the respondents is that the applicants have not attached the respective certificates as required under the law and as has been stated in the very advertisement. Since the question of availability of age relaxation for Government servants and OBCs is an unquestionable fact, the contention of the respondents is that the certificates annexed are not in the format prescribed. The respondents do not dispute the fact that they are either Government servants or belonging to OBC communities. In view of this fact, the applicants in these O.A.s are directed to submit the certificates in the prescribed format and submit themselves for consideration against the next available vacancies as and when the recruitment takes place. Respondents are directed to consider them against the additional number of posts now added by an amendment to recruitment rules under the proviso to Article 309, if they are not already considered.

Under the circumstances, these Original Applications are allowed to the extent mentioned in the respective paragraphs above, along with the directions given hereinabove. To recapitulate, this court is issuing the following directions :-

(1) In O.A. No. 297/1996, the applicants therein will continue on adhoc basis to hold the post till their candidature has been considered against the additional number of vacancies now made available by the respondents, unless they have been interviewed on the basis of the interim orders of this court. In the event they

have taken part in the test and interview and the result is declared and in the event that they are found fit and the result is in their favour, they may be recommended for appointment against regular vacancies and those candidates whose names have not been recommended, will have no right to regularisation on the basis of their adhoc service.

(2) The applicant in O.A. No. 420/1996 is entitled to consideration against the additional vacancies in accordance with the amended rules. In case the said applicant also has taken part in the selection procedure already undertaken and in case his candidature has been accepted by the UPSC, the UPSC is directed to declare his result and make recommendations accordingly.

(3) The applicants in O.A. 416/1996 and 433/1996 will also be entitled to same directions as given by us in O.A. No. 297/1996.

(4) The applicants in O.A> No. 1928/1996 and O.A. 1934/1996 are entitled to relaxation of age applicable to Government servants and to the OBCs, wherever applicable and they are directed to submit fresh certificates in the prescribed format and the respondents are directed to accept their candidature if found fit, but for their defective certificates for age relaxation,

and in the event they are found fit, they may be recommended and they will be entitled to all consequential benefits.

With these directions, these Original Applications are disposed of. No costs.

(S. P. Biswas)
Member(A)

(Dr. Jose P. Verghese)
Vice Chairman(J)

/as/

Attested
KLS
CO/C-II
3/4/97