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Central Administrative Tribunal
Principal Bench
New Delhi

OA No.2596/96

New Delhi this the **3rd** day of January, 1997.

HON'BLE DR. JOSE P. VERGHESE, VICE-CHAIRMAN(J)
HON'BLE MR. S.P. BISWAS, MEMBER (A)

S. Mohd. Daleep,
S/o Sh. Shamshuddin,
R/o Qtr. No.8,
Nemom Police Qtr.,
Village Nemom Pur, P.O.
Thiruvantha Puram-695020,
KERALA.

...Applicant

(By Advocate Shri Rajnish Bhatnagar)

-Versus-

1. Union of India,
through Lt. Governor of Delhi,
through Commissioner of Police,
New Delhi-110002.
2. Principal,
P.T.S. Jharoda,
Sh. N.S. Rana,
Addl. C.P.,
Delhi Police,
Delhi.
3. Deputy Commissioner of Police,
Prov. & Lines, Delhi.

...Respondents

(By Advocate Shri Arun Bhardwaj)

ORDER
(Hon'ble Dr. Jose P. Vergheese).

The applicant in this case was recruited as a Constable in pursuance to the policy decision taken by respondent No.1 after accepting the recommendations of Justice G.D. Khosla Committee as well as Sh. S.D. Srivastava Committee's report. On the basis of the said reports, a policy decision was taken to recruit Constables from outside Delhi to fill up vacancies of Constables numbering about 800 to 900, arising almost every year. The applicant was accordingly selected and called to join on 30.11.95 vide the offer of appointment dated 9.11.95 as

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Constable (Executive) in the pay scale of Rs.950-1400. He was selected under the Other Backward Classes (OBC) category and the relevant certificate for that purpose was also produced. After character verification and antecedents of the applicant were completed and the training started without any break, the applicant passed the indoor and outdoor tests and written examination, including law test. After passing the necessary tests the applicant was assigned duties in the normal course since 20.9.96.

2. On 11.11.96, applicant was served with an order of termination under the proviso to sub rule (1) of Rule 5 of C.C.S. (Temporary Service) Rules, 1965, issued by the Deputy Commissioner of Police. Aggrieved by the said order, applicant approached this Tribunal and stay of operation of the said impugned order was granted and the said stay order is still subsisting.

3. Since it is a short matter and stay was operating against the respondents, the case was taken on Regular Board for final hearing. The applicant has challenged the termination order of 11.11.96 on the ground that power under Rule 5 of C.C.S. (Temporary Service) Rules, 1965 has been exercised arbitrarily without giving him any notice and on an assumed ground of disqualification that the applicant does not belong to the OBC category.

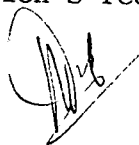
4. The learned counsel appearing on behalf of the respondents Shri Arun Bhardwaj submitted that the certificate submitted by the applicant was not a valid certificate, as the certificate shows that the applicant belongs to 'Islam/Muslim' community and the said community is not in the recognised list of OBCs published for the purpose.



5. The learned counsel appearing on behalf of the applicant Sh. Rajnish Bhatnagar submitted that even though the term 'Muslim' or 'Islam' was not appearing as one of the items of the OBC list for the State of Kerala published in the State List of 15.3.78 in pursuance of clause 4 of Article 16 of the Constitution of India, by a subsequent gazette notification dated 5.4.94 it was clarified that the term 'Mappila' and 'Muslim' occurring in the schedule to G.O. (Ms) No.141/78/GAD dated 15.3.78 are synonymous so far as Kerala State is concerned. The said gazette notification dated 5.4.94 issued vide S.R.O. No.412/94, is reproduced herebelow:

"S.R.O. No.412/94. In pursuance of clause (4) of Article 16 of the Constitution of India the Government of Kerala hereby clarify that the terms 'Mappila' and 'Muslim' occurring in the schedule to G.O.(Ms) No.14/78/GAD dated the 15th March 1978 and published as S.R.O. No.302/78 in Part I, Section iv of the Kerala Gazette No.15 dated the 11th April, 1978 are synonymous so far as Kerala State is concerned."

It was the common case of both the parties that a common list of OBCs was being issued from time to time after picking up the common castes/communities, both in the list of report of Mandal Commission and that of the concerned State Government. The common list of OBCs in respect of the State of Kerala was notified by the Ministry of Welfare Resolution No.12011/96/94BCC dated 9.3.96 published in the gazette of India (Extraordinary) on the same date. The National Commission for Backward Classes recommended to the Government of India these common lists pertaining to the States, including the State of Kerala, for acceptance, and the Commission's recommendations were



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accepted and all the inclusions were to take effect from the date of Resolution, namely 9.3.96.

6. The contention on behalf of the respondents was that the clarificatory notification dated 5.2.94 to the State list of OBCs cannot be said to be applicable to the common list finally accepted by the Central Government by their Resolution dated 9.3.96. We are unable to accept this contention. The clarificatory notification was already in existence with respect to the entries of the State list before it was adopted and incorporated in the common list by the Central Government. Whatever they have accepted from the State list should have been accepted along with the clarificatory notification. Since the only exercise in the central list, at the instance of the Backward Classes Commission did was to take up all the communities/castes which are common in the list of the report of the Mandal Commission as well as Backward Classes list of the State Government. In the circumstances, the contention of the respondents that the term 'Mappila' cannot be said to have been incorporated in the central list along with the clarificatory notification has no leg to stand.

7. In the circumstances the admitted ground on which the impugned order of termination was passed being not tenable, it is found to be a fit case to allow and quash the order as it is issued on wrong assumption.

8. Even though no reason is stated on the face of the termination order, the allegation of the applicant was that the said order was issued on an assumption that the applicant's name did not appear in the list of OBCs published by the Central Government. This ground was admittedly the basis of the impugned termination order and as such the ground being wholly untenable, an order of reinstatement is bound to follow. In the circumstances

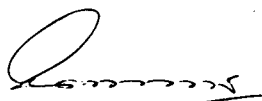
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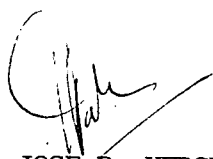
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the following directions are issued:

- i) The impugned order of termination dated 11.11.96 is quashed and the applicant is directed to be reinstated with all consequential benefits.
- ii) Since the operation of the impugned order was stayed and the duration of the applicant outside employment was less than two months, he is entitled to back wages and continuity of service.
- iii) A direction is also issued that the applicant will continue in service as if no order of termination has been passed.

9. Parties to bear their own costs.


(S.P. BISWAS)
Member (A)


(DR. JOSE P. VERGHESE)
Vice-Chairman (J)

'Sanju'