

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.910/96

New Delhi this the 19<sup>th</sup> day of May, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman  
Hon'ble Mrs. Shanta Shastry, Member (Admnv)

Aseem Kumar Bharti

...Applicant

(By Advocate Shri N.S. Verma)

-Versus-


U.P.S.C. & Others

...Respondents

(By Advocate Shri P.H. Ramchandani)

1. To be referred to the Reporters or not? YES ✓

2. To be circulated to other Benches of the Tribunal? No

  
(V. Rajagopala Reddy)  
Vice-Chairman (J)

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Aseem Kumar Bharti,  
S/o Sh. P.N. Bharti,  
R/o 193-B, Pocket-I,  
Mayur Vihar Phase-I,  
Delhi-110 091.

...Applicant

(By Advocate Shri N.S. Verma)

-Versus-

1. The Union Public Service Commission,  
Dholpur House,  
Shahjahan Road,  
New Delhi-1.
2. The Government of India,  
Ministry of Personnel, Public Grievances  
and Pensions, Deptt. of Personnel & Training,  
New Delhi through the Secretary.
3. Ministry of Welfare,  
Backward Classes Cell (BCC),  
Shastri Bhawan, New Delhi  
through the Secretary.
4. The Govt. of NCT of Delhi,  
through the Deputy Commissioner (CCS-II),  
Delhi.
5. The National Commission for other  
Backward Classes, New Delhi  
through the Chairman

...Respondents

(By Advocate Shri P.H. Ramchandani)

O R D E R

By Reddy, J.-

The applicant challenges the letter sent by the Union Public Service Commission (UPSC) dated 17.04.1996, intimating that the certificate produced by him that he belongs to Other Backward Classes (OBC) was not acceptable and to produce the community certificate <sup>from</sup> to the competent authority of the District Siwan (Bihar). The facts leading to the impugned order are as under :

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2. The father of the applicant is a practising lawyer in Delhi since 1972. The parents of the applicant were born <sup>in Bihar</sup> belonging to 'Goswami' caste. 35

2.1 An advertisement was issued by the UPSC inviting applications for recruitment to the IAS, and allied Group 'A' and Group 'B' Services in the Government of India, in 1995. The applicant applied in response to the advertisement. The applicant claims that he belongs to OBC as he is of the caste 'Goswami', which is shown at serial No.25 in the State list of the Government of National Capital Territory of Delhi (NCT Delhi) (Annexure A-1). He was allotted a roll number and was issued an admission certificate and accordingly he took the Civil Services (Preliminary) Examination in 1995 and was declared successful. The interview test was to be held on 15.5.96. The applicant received an intimation dated 12.4.96, intimating the date of interview and requesting the applicant to produce fresh OBC certificate from the State of Bihar ~~from~~ where his father originally belongs and that the OBC certificate issued by the Deputy Commissioner, Delhi was not acceptable. The applicant later on received another letter dated nil (Annexure A-6) stating that the OBC certificate (Annexure A-2) was not acceptable, as the applicant's community does not figure in the common list of the OBC of the State of Bihar to which his father originally belongs and that it was not in the prescribed form. Lastly, the applicant received letter dated 17.4.96 (Annexure A-10) requiring the applicant to submit fresh OBC certificate from the competent authority of Siwan (Bihar) within seven days, failing which his candidature would be cancelled. This order is under challenge in this OA.

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3. The learned counsel for the applicant Sh. N.S. Verma submits that as the applicant's parents came from Bihar to Delhi long back with the intention of permanently settling down in Delhi and have been residing in Delhi for the last over 30 years and in the State list as well as central list of OBCs <sup>of the N.C.T. of Delhi</sup> his caste "Goswami" was enumerated as one of the OBC communities and the applicant being the ordinary resident of Delhi along with his parents, the applicant acquired the OBC status in Delhi. It is further contended that the action of the respondents amounted to violation of Articles 14, and 16 of the Constitution, as he has been discriminated only on the basis of the place of birth.

4. The learned counsel for the respondents Shri P.H. Ramchandani submits that the Civil Services Examinations are held strictly in accordance with the rules framed by the Government of India, the father of the applicant originally belongs to the State of Bihar and as his caste "Goswami" was not recognised as OBC in Bihar, he should be treated as falling in the general category only. He further states that the OBC claim of the applicant has to be considered only on the basis of the candidate's parents State to which they initially belonged before their migration to Delhi. The classification of the caste in the State to which his parents migrated, has no relevance to consider his OBC claim.

5. We have given careful consideration to the pleadings as well as the material papers filed in the case and the arguments advanced by the learned counsel on either

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side. The facts in this case are not controverted. To summarise, the parents of the applicant originally belong to the State of Bihar and they are of Goswami caste. They had migrated to Delhi over 30 years ago and settled down permanently in Delhi, making it their permanent place of abode. The applicant, though born in Bihar and educated there, came over to Delhi along with his parents. It is not in dispute that the OBC caste is enumerated in two lists. One State list and the other Central list in respect of each State. Goswami is not found in either of these lists in Bihar. But Goswami caste is recognised in both the lists maintained in the NCT of Delhi as OBC.

6. The short question that is in controversy in the instant case is whether the applicant who is shown as OBC in the list published by Government of NCT of Delhi, could claim the status of OBC in NCT Delhi as he resides in Delhi along with his parents since a long time. The undisputed facts which are material in this case are :

- (1) The father of the applicant originally belongs to Bihar.
- (2) The applicant was born and educated in Bihar.
- (3) The father of the applicant migrated to Delhi more than 30 years ago with the intention to permanently settling down in NCT, Delhi and he is now practising in Delhi.
- (4) The applicant has been residing in NCT, Delhi and he completed his education in NCT, Delhi.
- (5) They belong to 'Goswami' caste which is not recognised in Bihar (in any of the

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lists) as OBC.

(6) It is recognised as OBC in the list published by Government of NCT, Delhi as well as Central lists published in Govt. of NCT Delhi and the question that the applicant is an ordinary resident of NCT, Delhi is also not seriously disputed by the respondents or by the learned counsel for the respondents.

7. The learned counsel for the respondents' contention is that the rules and instructions issued by the UPSC for the competitive examination for IAS etc. for 1995 are strictly to be followed and that as the application was not in accordance with the rules and instructions it was rightly rejected. Before proceeding further, it is necessary to peruse the instructions issued along with the application form. In the Brochure containing Information to the candidates, it is stated at paragraph 4 (i) that the candidates seeking admission for the examination must apply on the prescribed form of the application. Paragraph 17 and para 17(b) with Note 2 are important for our purpose and the relevant portions are reproduced hereunder:-

"17. A candidate who claims to belong to one of the Scheduled Castes/Scheduled Tribes or the Other Backward Classes (OBCs) should submit in support of his claim an attested/certified copy of a certificate in the form given below from the District Officer or the Sub-Divisional Officer or any other Officer as indicated below of the district in which his parents (or surviving parent) ordinarily reside, who has been designated by the State Government concerned as competent to issue such a certificate. If both the parents are dead, the officer signing the certificate should be of the district in which the candidate

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himself ordinarily resides otherwise than for the purpose of his own education."

"17(b) The form of certificate to be produced by Other Backward Classes candidates applying for appointment to posts under the Government of India.

This is to certify that  
Shri/Shrimati/Kumari\*\_\_\_\_son/daughter\*  
of\_\_\_\_of\_\_\_\_village/town\*  
\_\_\_\_District/Division\*\_\_\_\_of  
the State/Union Territory\_\_\_\_belongs  
to the\_\_\_\_community which is  
recognised as a backward class under:

.....  
.....  
.....

Shri/Shrimati/Kumari\*\_\_\_\_and/or\*  
his/her\* family ordinarily reside(s)  
in\_\_\_\_village/town\*\_\_\_\_of  
District/Division\_\_\_\_of\_\_\_\_the  
\_\_\_\_State/Union\_\_\_\_Territory  
of\_\_\_\_. This is also to certify  
that he/she does not belong to the  
persons/sections\* (Creamy Layer)  
mentioned in column 3 of the Schedule  
to the Government of India, Department  
of Personnel & Training O.M.  
No.36012/22/93-Estt. (SCT) dated  
8-9-1993.

Signature\_\_\_\_\_  
\*\*Designation\_\_\_\_\_  
(with seal of office)

Place:\_\_\_\_\_  
Date:\_\_\_\_\_

\*Please delete the words which are not applicable.

Note: The term "ordinarily reside(s)" used here will have the same meaning as in Section 20 of the Representation of the People Act, 1950.

\*\*List of authorities empowered to issue other Backward Classes certificates will be the same as those empowered to issue Scheduled Castes/Scheduled Tribe certificate.

@ Strike out whichever is not applicable."

NOTE 1: .....

NOTE 2: The OBC claim of a candidate will be determined in relation to the State (or part of the State) to which his father originally belongs. A candidate who has migrated from one State (or part of the State) to another should, therefore, produce an OBC certificate which should have been

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issued to him based on his father's OBC certificate from the State to which he (father) originally belongs"

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8. Para 17 provides for the procedure to submit the caste certificate. It states that a candidate who claims to belong to one of the Scheduled Castes/Scheduled Tribes or the Other Backward Classes should submit copy of a certificate from the concerned officer of the District in which his parents "ordinarily reside". Sub paragraph (b) gives the prescribed form of the certificate to be produced by the OBC candidates and the authority by whom it should be issued. Note 2 of sub paragraph (b) is heavily relied upon by the learned counsel for the respondents. It says that the OBC claim would be determined in relation to the State to which the father of the candidate originally belongs. It adds that a candidate who has migrated from one State to another should produce an OBC certificate issued on the basis of his father's OBC certificate from the State to which he originally belongs.

9. The applicant attached the OBC certificate issued by the SDM, Shahadra <sup>Delhi</sup> certifying that the applicant belongs to the community of Goswami which was recognised as OBC under the Government of NCT of Delhi. The copy of the said certificate dated 23.8.95 is Annexure A-2. The learned counsel for the applicant contends that this certificate is in conformity with paragraph 17, as it was stated therein that the caste certificate of OBC should be <sup>certified</sup> ~~submitted~~ by an officer of the District in which his parents "ordinarily reside". NCT, Delhi being the place of ordinary residence of the applicant, it follows that the certificate was issued in accordance with para 17, by the proper officer. So far so good. But the learned counsel for the respondents,

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 contends that the certificate is not in accordance with the other relevant provisions viz. 17 (b) and note 2, which are the only provisions dealing with the submission of the OBC certificate. Paragraph 17 (b) deals with the method of production of OBC certificate. Note 2, was inserted, to clarify, on what basis the OBC certificate should be issued and how the OBC status will have to be determined. In case migration from one state to another it states that the OBC status will have to be determined only in relation to the State to which the applicant's father originally belongs. The OBC certificate should be issued on the basis of the OBC status of his father in the State he originally belongs and not on the basis of his father's community in the State he had migrated to.

10. But the thrust of the argument of the learned counsel for the applicant is that the applicant may have been a migrant to Delhi once upon a time. Now they are ordinary residents at NCT, Delhi, his father has been practising in NCT, Delhi since 1972 making Delhi as his permanent place of residence and hence he was no longer to be characterised as a migrant to NCT, Delhi. Being an ordinary resident of Delhi he has submitted the OBC certificate only from the designated officer in NCT, Delhi on the basis of his father's status in NCT, Delhi, as per para 17 and that the note to 17(b) has no application to him. Hence, he contends that the certificate submitted by him is valid. Learned counsel places strong reliance on the judgment of the Supreme Court in Union of India & Others v. Duddh Nath Prasad, 2000 (2) SCC 20. We find sufficient force in his contention. As stated in the foregoing paragraphs, it is not in dispute that the applicant's father was an

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ordinary resident of Delhi and also that as per paragraph 17 of the instructions he has produced the OBC certificate from an officer at NCT, Delhi that he belongs to "Goswami" caste which is recognised as a backward class in the NCT of Delhi. Once his father was treated as an ordinary resident in NCT, Delhi, it would appear a contradiction in term to hold again that his father remains a migrant. In our view, if a person, though he has ~~been~~ migrated to this place prior to over several long years, <sup>if</sup> he decided to make the place as his place of abode hereafter, takes up to a profession or business or any other permanent avocation, thus continuously residing here, he becomes, an ordinary resident of this place. The applicants' father, is now a well established lawyer, built his ~~pacca~~ house, educated his son and was living here at the time his son applied for this post. He became part and parcel of this place for all purposes. The word "migrate" as per "The Concise Oxford Dictionary (Ninth Edition-1998) means "move from one place of abode to another" and as per "Black Law Dictionary (Fifth Edition) "migration" means "movement from one place to another....." Hence once he is treated as the ordinary resident he ceases to be a migrant, as he has no intention to move from here and to go back to Bihar or to <sup>back</sup> any other greener pastures. In the instant case, it is not controverted that the applicant's father came over to Delhi from Bihar 30 years ago and made Delhi as his home. Hence, the application of Note-2 to the applicant is not appropriate, that would apply to people who have not made NCT, Delhi as their permanent place of abode. Otherwise, it would lead to hostile discrimination. We find, in the capital, several people

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having settled down, for over years, for one reason or other. We also find people who have come here from other States during partition of India. Do we treat them as still migrants? Once, they have given up their Parent state, and have been living for several years here, they will cease to be migrants. The question is, therefore, a question of fact, in each case. In an identical situation the Supreme Court in the case cited supra held that a candidate, who has migrated over 30 years (exactly as here), to West Bengal from Bihar becomes the ordinary resident of West Bengal and as such the Nuniya caste to which he belongs having been recognised as an SC community in West Bengal the candidate in that case should be treated as belonging to the OBC community, though he was <sup>not</sup> an OBC in Bihar. In that case the respondents therein ~~who~~ had been selected as a member of the Indian Administrative and Allied Services in the UPSC examination held in 1966 and was appointed as such. The Government of India, <sup>the</sup> appellant in the case, raised an objection that he was erroneously treated as an OBC. The Patna Bench of the Tribunal, by a majority view, held that the respondent was rightly treated as an OBC candidate. When the matter was carried to the Supreme Court, their Lordships, after considering the meaning of the expression "ordinary resident" in Section 20 of the Representation of the People Act observed as under:

"17. Considering the facts this case in the light of the statutory provisions contained in Section 20 of the Representation of the People Act, 1950 as also the provision contained in paragraph 5 of the "Instructions" since the parents of the respondent were admittedly, residing in District Howrah for more than 30 years, they

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would be treated to be ordinarily residing in that District and the mere fact that they held some property in a village in District Siwan in the State of Bihar would not affect their status....."

"26. We have already explained the meanings of the words "ordinarily resident" and have found that notwithstanding that the warrants or the respondent lived at one time in a village in District Siwan in the State of Bihar and that they owned some property also there, they had shifted to the State of West Bengal long ago and had been living there since then. For all intents and purposes, therefore, they be treated to be "ordinarily residing in the State of West Bengal, the President, in exercise of his powers under Article 341 (1) read with Article 366 (24) had already declared "Nuniya" Caste as a Scheduled Caste and, therefore, the respondent was, rightly treated to be a Scheduled Caste candidate and was rightly appointed against a Reserved vacancy, after being declared successful at the examination held by the UPSC for the Indian Administrative & Allied Services in 1966."

11. It appears that the instant case falls squarely within the ratio of the above judgement of the Supreme Court. Their Lordships in the above case had to consider whether the respondent therein, who has migrated from Bihar to West Bengal 30 years ago, comes within the meaning of the term 'ordinary resident' contained in paragraph 5 of the instructions. In the note appended to paragraph 5 it was stated that the term 'ordinary resident' will have the same meaning as in Section 20 of the Representation of the People Act. Their Lordships, therefore, considered Section 20 of the Representation of the People Act, where the expression 'ordinary resident' has been defined and held that the respondent's father should be treated as ordinary resident in the District Howrah in West Bengal and that the holding of some property in Siwan

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District in Bihar will not affect his status. The Supreme Court was, therefore, of the view that in spite of a person having migrated from one State to another some time ago, once he was shown to be an ordinary resident within the meaning of Section 20 of the Representation of People Act, 1950 the status in the place where he was an ordinary resident should be the guiding factor for the purpose of deciding his community. In the above case, no doubt the examination in question was of 1966 and the question was whether the respondent should be considered as a SC candidate, was under discussion whereas in the instant case the examination in question was of 1995 and that the OBC status of the applicant is in question. But paragraph 17 to the instructions given to the applicant, it does not make any difference between the two communities, as it deals with the certificate to be produced in order to show whether a candidate belongs to SC or any other community. The learned counsel for the respondents further vehemently contends that the rules governing classification of the community with regard to the respondents in the Supreme Court's case are the administrative instructions or the circular dated 2.5.75 whereas in the instant case, the instructions issued subsequently on 23.3.77 are applicable and hence the above decision has no application to the facts of the case. But the learned counsel has not brought to our notice the 1975 instructions nor has he brought out difference between the 1975 instructions and the 1977 circular. Hence, it is not possible for us to hold that the judgement of the Supreme Court has no application to the facts of the present case.

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12. The next contention of the learned counsel for the respondents is that the Note appended to paragraph 17 (b) of the instructions was not provided in the instruction that were applicable to the case of the respondents in the judgement of the Supreme Court. Since, we have taken the view that the applicant could not be treated as a migrant in view of the fact that he has been treated as an ordinary resident in NCT of Delhi and that the Note has no application to him and as we have proceeded on the footing that the only instruction that was applicable to the applicant being paragraph 17, the question whether the Note was part of the instructions in the case of the respondent in the above judgement of the Supreme Court has no significance. In the circumstances the above judgement of the Supreme Court has application on all fours to the present case and following the ratio of the judgement of the Supreme Court we will have to allow this OA.

13. The O.A. is accordingly allowed. The impugned order dated 17.4.96 is quashed. The respondents are directed to accept the OBC certificate dated 8.4.96 submitted by the applicant and grant the OBC status to him. He is entitled to all the consequential benefits. The respondents are directed to hold the personality test (interview) of the applicant within a period of one month from the date of receipt of a copy of this order and to declare his final result. We do not, however, order costs.

*Shanta Shastri*  
(Smt. Shanta Shastri)  
Member (Admnv)

*V. Rajagopala Reddy*  
(V. Rajagopala Reddy)  
Vice-Chairman (J)

"San."