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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 2266/2000

New Delhi: this the 24th day of APRIL, 2000

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J).

Preetpal Singh,
S/o Late Sh. Diwan Singh,
R/o 12, Lumia Mohalla, Block-I,
Dehradun.

.....Applicant.

(By Advocate: Shri P.P. Khurana with
Shri Yogesh Sharma)

Versus

1. Union of India
through

the Secretary,
UPSC Dholpur House,
Sahajan Road,
New Delhi-11

2. The Under Secretary,
UPSC Dholpur House,
Sahajan Road,
New Delhi-11

3. The Section Officer (SW-R),
Examination Hall-Ist Floor,
UPSC, Dholpur House,
Sahajan Road,
New Delhi-11

4. The Surveyor General of India,
Survey of India,
Rathi Barkala Estate,
Dehradun.

5. Shri Bhagwan Singh Saini (Prover),
105/DLI Printing Group,
Survey of India,
Newar Palam Colony,
Railway Phatak,
Delhi Cantt-11

.....Respondents.

(By Advocate: Smt. B. Rana for R-1 to 3.
Shri S.P. Bhatia for R-5
None for R-4)

ORDER

S. R. Adige, VC (A)

Applicant challenges the candidature of
Respondent No.5 for appointment to the post of Manager
Map Reproduction (Rs.10,000-15,200) in the Office of
Surveyor General of India, Dehradun, which is reserved for
an OBC candidate.

2. By advertisement No.14(Annexure-A/1) UPSC invited applications for 2 posts of Manager, Map Production, one of which was reserved for OBC candidate. Last date for receipt of applications was 12.8.99.

3. Admittedly applicant as well as Respondent No.5, both of whom belong to OBC category applied for the post, and both were interviewed by UPSC on 26.9.2000 as per applicant's averments.

4. Applicant's contention is that Respondent No.5 who is working as Prover in Survey of India, and whose gross annual income as per pay and other allowances is more than Rs.1 lakh, belongs to the 'creamy layer' of OBCs, and has therefore to be excluded from the benefit of reservation in terms of Category-VI of the Schedule to DP & T's OM dated 8.9.93 (Annexure-A/4) to whom the rule of exclusion would apply on the basis of Income/Wealth Test.

5. A perusal of Item VI reveals that the rule of exclusion would apply to sons and daughters of persons having gross annual income of Rs.1 lakh and above. It does not state that the rule of exclusion would apply where the OBC candidate himself has a gross annual income of Rs.1 lakh and above. Applicant does not deny that consequent upon the 5th Pay Commission's recommendations, his gross annual income on account of pay and allowances of a Govt. employee exceeds Rs.1 lakh, but in view of the express provisions in Item VI of the Schedule that only sons and daughters of persons having gross annual income of Rs.1 lakh and above would be excluded, and in the absence of any specific provision that the OBC candidate himself who had a gross annual income of Rs.1 lakh and above, would come under the rule of exclusion, we find ourselves unable to uphold applicant's challenge to the candidature of Respondent No.5 to the aforesaid

6. During the course of hearing our attention was invited to letter dated 5.12.96 from Chief Secretary, Haryana Govt. addressed to Dy. Commissioner, Hissar (copy taken on record) instructing him not to issue OBC Certificates to OBC candidates whose gross annual income was Rs.1 lakh or more, but in the absence of any specific provisions in Item VI to Schedule annexed to DP & T's OM dated 8.9.93 we find it difficult to uphold applicant's challenge to the candidature of Respondent No.5 solely on the basis of this letter dated 5.12.96.

7. Applicant has relied upon the Hon'ble Supreme Court's ruling in Ashok Kumar Thakur Vs. State of Bihar & Ors. JT 1995(6) SC 390 in support of his contentions, but in that ruling it has been observed thus

"We have carefully examined the criteria for identifying the "creamy layer" laid down by the Govt. of India in the Schedule, quoted above, and we are of the view that the same is in conformity with the law laid down by this court in "Mandal case". We have no hesitation in approving the rule of exclusion framed by the Govt. of India in para 2(c) read with the Schedule of the Office Memorandum quoted above.

Elsewhere in that same judgment they have held

"We further direct that for the academic year 1995-96 the states of Uttar Pradesh and Bihar shall follow the criteria laid down by the Govt. of India, reproduced above, in the Memorandum dated 8.9.93."

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8. In other words, the aforesaid DP & T Memo dated 8.9.93 and its schedule having been approved by the Hon'ble Supreme Court, we hold that we have to adhere to it strictly and as noticed above, while it excludes from the rule of reservation sons and daughters of persons having gross annual income of Rs.1 lakh and above, it does not exclude those persons, who themselves have gross income of Rs.1 lakh and above.

9. In this connection respondents have cited the Hon'ble Supreme Court's ruling in Siddhartha Saini Vs. State of Haryana & Ors. JT 2000(suppl.2)SC 201. The appellant in that case was a resident of Haryana and belonged to OBC category. He appeared for the Common Engineering Entrance Test, 1999-2000 for admission to various Engineering Colleges in Haryana State. He sought admission against a seat reserved for an OBC candidate. OBC certificate was denied to him by the Dy. Commissioner on the ground that his father's income, who admittedly was a Class II Officer of the State Govt. exceeded 3 lakhs for the last 3 years. The Haryana Govt. had issued a clarification order on 9.8.2000 that income from salary was not required to be taken into account for the purpose of income/wealth tax in respect of service category and while calculating income or wealth tax of Govt. employees of Backward Classes, who was not covered under Annexure 'A' description of Category Nos. I, II(a, b, c, d) and III & IV, he would become entitled for the benefit of reservation under Backward Classes Category, his salary would not be included, but his other sources of income/wealth be included for income/wealth tax.

10. In the aforesaid case, the Hon'ble Supreme Court held as follows:

"In the present case, it is the admitted case of the appellant that the only source of income of father of the appellant is his salary. It is also not disputed that father of the appellant is a Class-II Officer and that mother of the appellant is not a Class-II Officer. The amount of gross salary, received by the father of the appellant, for the purpose of grant of benefit to the OBCs is irrelevant. This being the position, which has been clarified by the Govt. of Haryana itself, by Govt. Order, dated 9.8.2000, it is obvious that the appellant should not have been refused the OBC certificate by taking the salary of father of the appellant into account. The order of the Deputy Commissioner dated 24.6.99, refusing grant of OBC certificate, is clearly erroneous. The judgment of the High Court,

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impugned before us, which upholds the order of the Deputy Commissioner is, in view of what we have said above, not sustainable.

We, therefore, allow this appeal, set aside judgment of the High Court as also order of the Deputy Commissioner, dated 24.6.99 and hold that the appellant is entitled to the grant of OBC certificate, since no other facts concerning his such entitlement are disputed."

11. In this connection, we note that by UPSC letter dated 14.3.2001 (copy taken on record) offer of applicant as Manager, Map Reproduction has been made to Respondent No.5.

12. In the light of the foregoing discussion applicant's challenge to the candidature of Respondent No.5 for appointment to the aforesaid post of Manager, Map reproduction reserved for OBC candidate fails. The OA is dismissed. No costs.

A. Velanadu
(DR. A. VEDAVALLI)
MEMBER (J)

Anilagji
(S. R. ADIGE)
VICE CHAIRMAN (A)

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