

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

N E W D E L H I

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O.A. No. 107  
T.A. No.

1990.

DATE OF DECISION 17.9.1991.

<u>Shri Bodh Raj Sabharwal</u>	Petitioner
<u>In person</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India &amp; Ors.</u>	Respondents
<u>Shri K.L. Bhandula</u>	Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K.Rasgotra, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal ? No.

(Amitav Banerji)  
Chairman.

17.9.1991.

(6)

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.**

O.A. No.107/1990.

Date of decision: September 17, 1991.

Shri Bodh Raj Sabharwal      ...      Applicant.

Vs.

Union of India & Others      ...      Respondents.

CORAM:

HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.

HON'BLE MR. I.K. RASGOTRA, MEMBER (A).

For the applicant      ...      In person.

For the respondents      ...      Shri K.L.Bhandula,  
Advocate.

(Judgment of the Bench delivered by Hon'ble  
Mr. Justice Amitav Banerji, Chairman)

The matter raised in this O.A. is interesting  
and at the same time short one. The applicant has prayed  
that the respondents-Ministry of Water Resources where the  
applicant is employed, having accepted the position that  
the applicant belonged to Singhwala community which was  
recognised in the Union Territory of Delhi as Scheduled  
Caste and having issued a certificate to that effect  
erred in law in restricting its application from 25.9.1982  
instead of giving effect to the same from June, 1973 when  
the applicant prayed for the said relief.

The applicant's case is that he belongs to  
the Scheduled Caste category and was entitled to be

recognised as such and given the benefit of promotion etc. in service according to the rules and law applicable to an employee of the Scheduled Caste category. The Government had resisted the the applicant's claim although the Deputy Commissioner, Delhi had issued a certificate on 5.7.1971 recognising him to be a scheduled Caste. However, the applicant was not given his position and status as Scheduled Caste employee with the result that he had to seek his relief in June, 1973 on the basis of the above said certificate. Necessary entries were made in the service book and other relevant records in the Ministry of Irrigation and Power in June, 1973 itself. However, in February, 1975 the Central Bureau of Investigation (C.B.I.) was asked to investigate about the genuineness of the certificate filed by the applicant. In October, 1978 the C.B.I. informed that they were not able to take up the inquiry and the matter was referred to the Deputy Commissioner of Police (Vigilance), Delhi. The Police investigated the matter and reported on 25.9.1982 that the applicant did belong to Singiwala community which has been recognised as a scheduled Caste community in the Union Territory of Delhi. The Deputy Commissioner of Delhi was also requested by the Department to investigate the matter and he also gave the same finding. The Department thereafter asked the applicant to produce another certificate in the revised proforma. The applicant again applied to

the Deputy Commissioner of Delhi and obtained the same certificate, which he had obtained in 1971, but in the revised proforma. This is dated 25.9.1982. Thereafter, the matter was again sent for investigation to the Deputy Commissioner, Delhi, who by his letter dated 6.10.1986 (Annexure A-3) informed the Ministry that the certificate issued on 25.9.1982 was genuine. The matter remained pending and finally the impugned order was passed on 27.6.1988 (Annexure A-I) which reads as follows:

"No.27/45/75-Adm.

Government of India  
Ministry of Water Resources

New Delhi, the 27th June, 1988.

OFFICE ORDER

In consultation with the Ministry of Welfare, it has been decided to accept the claim of Shri B.R. Sabharwal, U.D.C. of CSCS of this Ministry of his belonging to 'Singiwala' community included in the list of Scheduled Castes in relation to the Union Territory of Delhi. He will be entitled to the benefits of reservation in service as admissible to Members of Scheduled Caste under various orders issued by the Government of India in this regard with effect from 25.9.1982, namely, the date when he produced the correct certificate No.6049 dated 25.9.1982 issued to him by the Deputy Commissioner, Delhi Administration, Delhi in this regard, to this office.

Sd/- (D.SRINIVASAN)  
DEPUTY SECRETARY TO THE GOVT. OF INDIA."

The applicant is aggrieved that he has been given benefits of reservation in service as admissible to members of Scheduled Caste with effect from 25.9.1982, the date when he produced the Certificate No.6049 dated 25.9.1982 issued by the Deputy Commissioner, Delhi Administration, Delhi.

The applicant contended that once he had been held to be a member of the Scheduled Caste community, he was entitled to the benefitsthereof from june,1973,when he applied for the same. As a matter of fact, he urged, that his plea that he was a member of the scheduled Caste which was determined by the Delhi Administration as far as back in 1971 and which was upheld in the subsequent report of the Deputy Commissioner, Delhi Administration. He was not making a claim for recognition from 1957 when he joined the service or in 1971 which was the date of the first order passed by the Delhi Administration recognising him as a member of the Scheduled Caste-but from june,1973 when he made the claim. The procedure followed by the Government was that they did not believe the report of the Deputy Commissioner, Delhi Administration issued on 5.7.1971 and wanted fresh investigation in the matter. All that was done. The Government wanted the certificate issued in 1971 to be presented in the revised proforma. Even that was done. Thereafter, the Government decided in 1988 that the applicant was entitled to the benefits of reservation in service with effect from 25.9.1982. The applicant urged that this could not be done. When the respondents upheld the order of the Deputy Commissioner, Delhi Administration dated 5.7.1971 and further held that the certificate issued by the Deputy Commissioner was genuine. He urged, the least that could be done was to grant him the benefits of Scheduled Caste from the date

when he applied for the same, i.e., June, 1973. Once the respondents having accepted that certificate issued by the Delhi Administration as genuine, they should have accepted it and acted thereupon.

Learned counsel for the respondents Shri K.L. Bhandula, however, argued that in the original application for service in the Government, the applicant had made a statement pointing out that he was of the 'Khatri' caste which undoubtedly is an upper caste and not a Scheduled Caste. The surname 'Sabharwal' is generally used by the members of the Khatri community. The certificate issued by the Delhi Administration dated 25.9.1982, in Devnagari language describes the name of the applicant as 'Bodh Raj Sabrawal'. There could be a difference between 'Sabrawal' and 'Sabharwal'. However, we did not go into the question whether or not the applicant belongs to the Scheduled Caste community, for that matter has been concluded by the decision of the Government of India dated 27.6.1988. The fact that the applicant belongs to the Scheduled Caste community is not now denied.

The respondents' stand is that the applicant cannot be given the benefits with effect from June, 1973 retrospectively when he made the application. If he was a Scheduled Caste candidate, he should have pointed out the error as soon as he joined the Government service. He did not indicate anything. The Government

of limitation would have cropped up as he was seeking to challenge the order dated 5.7.1971. The legal position is that he has restricted his prayer in the O.A. to a date in June, 1973 and has not asked for any earlier period. It would mean that he has not made a claim from the date of his appointment in the department but had restricted it to the date when he first moved his application, i.e., in June, 1973.

The applicant made a categorical statement that he is not seeking the relief from the date of his initial appointment in the department. But he has made the claim from 1973 and would confine himself to that only.

In view of the above, we are satisfied that there is no justifiable or good reason for not giving the relief of being a member of the Scheduled Caste community from June, 1973 and consequently, we hold that the applicant is entitled to be treated as a member of the Scheduled Caste community from June, 1973 and we further declare that he is entitled to the benefits of being a member of the Scheduled Caste community from June, 1973. The plea that he would only be entitled to the benefits of reservation in service from 25.9.1982 is rejected.

We, therefore, allow this O.A. in respect of prayer (a) that the applicant is entitled to the benefits as such employee with effect from June, 1973 and not from 25.9.1982. We are also satisfied that the applicant is entitled to all consequential benefits of promotion/salary/back wages etc. as a scheduled caste employee

was fully justified in restricting his claim from 1982 as his case was not accepted by the Government earlier than 25.9.1982. Even this order was passed on 27.6.1988.

It is significant that the Government had recognised that he belonged to a Scheduled Caste community in the year 1988 and gave effect to it from 25.9.1982. There is no adequate reason as to why the applicant is not entitled to claim the benefit of reservation from 1973 when he had represented to the Government in this matter.

In the normal course, the question of caste of a person in India is determined by the fact of his birth in a particular caste or community. If the applicant was not born in a scheduled caste family but in some other caste, he would not be entitled to the benefit of the reservation. There is no material on the record to show as to which family he was born. But the presumption will be there, once it is held that he belonged to the 'Singiwala' community included in the list of scheduled Castes in relation to the Union Territory of Delhi.

The applicant urged that there is nothing to prevent him claiming the benefit of being a member of the Scheduled Caste community from the date of his joining the service. True, the applicant could have made an application to that effect but he did not, and claimed from 1973.

Learned counsel for the respondents contended that if he claimed the benefit from June, 1973, a question

with effect from June, 1973. We order accordingly.

The parties are left to bear their own costs.

*I.K. Rasgotra*  
(I.K. RASGOTRA)  
MEMBER (A)  
17.9.1991.

*Ab*  
(AMITAV BANERJEE)  
CHAIRMAN  
17.9.1991.

SKS