

Central Administrative Tribunal
Principal Bench

OA No.2058/2004

New Delhi this the 20th day of February, 2007.

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Mrs. Neena Ranjan, Member (A)

Somvir Singh (Roll No.415505),
Recruit Constable (Ex.) in Delhi Police,
S/o Shri Umed Singh,
R/o D-56/57, Extension-II,
Nangloi, Delhi-41.

-Applicant

(By Advocate Shri Anil Singhal)

-Versus-

1. Govt. of NCT of Delhi,
through Commissioner of Police,
Police Head Quarters,
I.P. Estate, New Delhi.
2. Dy. Commissioner of Police,
2nd Bn. DAP, New Police Lines,
Kingsway Camp, Delhi.

-Respondents

(By Advocate Ms. Simran, proxy for Ms. Rashmi Chopra, Advocate)

1. To be referred to the Reporters or not? *yes*
2. To be circulated to other Benches of the Tribunal or not? *yes*

S. Raju
(Shanker Raju)
Member (J)

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O R D E R

Mr. Shanker Raju, Member (J):

By virtue of this OA applicant, a candidate for the post of Constable (Executive) in Delhi Police, has assailed a show cause notice dated 12.4.2004, proposing to cancel his candidature and also an order passed by respondents on 28.5.2004, canceling the candidature of applicant for the post of Constable with immediate effect.

2. Applicant, who is a permanent resident of Rohtak, Haryana where jat community is yet to be notified as OBC, had been residing in Delhi since 1990. By virtue of his stay in Delhi for a particular period on application for issue of an OBC certificate



applicant was issued an OBC certificate at the address House No.254, Jat Chowk, Nangloi, Delhi on 8.5.2001 by the competent authority. Applicant had applied for the post of Constable (Executive) and filled up the application form, where he mentioned his address as House No.254, Jat Chowk, Nangloi, Delhi. On qualifying in the examination applicant was provisionally selected and was required to fill the attestation form on 17.12.2002, where last five years' residence proof had been sought for which was mentioned by applicant as 254, Jat Chowk, Nangloi, Delhi as permanent address and C-73, Extension-1, Nangloi as present address. However, respondents have further called up applicant to further attestation form on 19.9.2003 as to some confusion in the permanent and present address. Applicant mentioned his addresses till date in the attestation form.

3. A show cause notice issued to applicant alleges on scrutiny of his attestation form that he did not disclose his permanent address of Rohtak (Haryana) and address of House No.303, Jat Chowk, Nangloi, Delhi in his attestation form filled up on 17.12.2002 and in the attestation form on 19.9.2003 the place of birth was mentioned at Rohtak. Accordingly, it is alleged that being a resident of Delhi since 1990 at different places applicant who belongs to jat caste being a permanent resident of Haryana, which is not included in the common list of OBC issued by the Central Government of India, applicant has allegedly to get undue benefit by adopting deceitful means by concealment a proposal to cancel his candidature was made. This has been represented to by applicant.

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4. By an order passed on 28.5.2004 it was held that applicant had concealed the fact at the initial stage of filling up attestation form, which shows his malafide intention. Accordingly, his candidature for the post of Constable (Executive) in Delhi Police was cancelled, gives rise to the present OA.

5. Shri Anil Singhal, learned counsel appearing for applicant, contended that the impugned order is illegal on the ground that the competent authority having issued OBC certificate, unless it is cancelled and examined by the Caste Scrutiny Committee it holds the field, as such on a valid OBC certificate, as applicant had been residing in Delhi since 1990, his candidature cannot be cancelled.

6. Learned counsel would also contend that in the attestation form filled on 17.12.2002 when only five years' residence details have been called for, inadvertently he had not mentioned his permanent address of Rohtak, the subsequent attestation form when disclosed the same there is no intention to conceal and this could not be a deceitful means to gain entry in Delhi Police.

7. Shri Anil Singhal, has relied upon the decision of the High Court of Delhi in ***Sandeep Kumar v. Commissioenr of Police & Ors.***, 2006 VII AD (Delhi) 423, to contend that unintentional omission of a fact would not amount to willful concealment and as in the second attestation form the requisite information has been disclosed would not entail cancellation of candidature in the light of the decision of the Apex Court in ***Commissioner of Police v. Dhaval Singh***, JT 1998 (9) SC 429.

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8. Learned counsel would also rely upon the decision of the High Court of Delhi in **Sunita (Ms.) Vs. Govt. of NCT of Delhi**, 2005 V AD (Delhi) 77, wherein OBC certificate when not furnished before the cut off date the caste Ahir recognized as OBC within the NCT of Delhi and the certificate issued thereupon has been found to be valid.

9. Another reliance has been placed on a decision of the Bangalore Bench of this Tribunal in **G. Bhuvaneswari v. The Senior Divisional Personnel Officer**, 2004 (3) ATJ 403, to contend that unless Caste Scrutiny Committee's report observes the certificate as *nonest* in law, cancellation of candidature cannot be countenanced.

10. Lastly, reliance has been placed on a decision of the Division Bench of the High Court of Delhi in **Ex-Ct. Satbir v. Union of India & Others**, 2005 (4) SCT 642, to contend that the residence proof of applicant in Delhi cannot be discarded arbitrarily.

11. On the other hand, learned proxy counsel appearing for respondents has vehemently opposed the contentions and stated that applicant while filling up the attestation form intentionally had not mentioned his permanent address of Rohtak and mentioned address of C-73, Extension-1, Nangloi. However, as per the verification reports as applicant was a resident of Delhi since 1990, lived at different places, belongs to Jat community and is a permanent resident of Haryana where in the Central List of OBC Jat community has not been notified, the show cause notice issued clearly established that applicant concealed at the initial stage with



malafide intention on adoption of deceitful means the permanent address of Rohtak to gain entry in Delhi Police.

12. Learned counsel would also contend that there was no confusion in the present and permanent address of applicant. This has been done to mislead the department and as such not being a OBC as per the permanent residence, applicant has no right to be appointed in Delhi Police.

13. We have carefully considered the rival contentions of the parties and perused the material on record.

14. Concealment, fraud, misrepresentation and adoption of deceitful means have one thing in common, i.e. mal intention. Concealment is an act whereby despite knowledge with an intention to cause wrongful loss to others and as a consequence thereof a wrongful action to which one is not entitled to, certain information is withheld, which results in acquiring of an advantageous position or right, the same does not vest a person with a right to be appointed to the post or to claim a vested right.

The Apex Court in ***R. Vishwanatha Pillai v. State of Kerala & Ors.***, 2004 (1) SCSLJ 298, in a case where the caste certificate produced by the appointee, which has been found by the Caste Scrutiny Committee as bogus and forged keeping in light the decision of the Apex Court in ***Kumari Madhuri Patil v. Additional Commissioner***, 1996 (1) SCC 241, the Apex Court ruled that obtaining an appointment on production of false caste certificate depriving the original claim of others, such a person who seeks equity should come with clean hands and act in a fair manner. In such view of the matter, no right is accrued to be

appointed or accorded even the pensionary benefits by virtue of continuing in service on such a bogus certificate.

15. However, the dicta would have application only when it is before hand established that the caste certificate produced is bogus and false. The Apex Court in **Lilly Kutty v. Scrutiny Committee, SC&ST**, 2005 8 SCC 283, acknowledges finding of the Committee in cancelling the certificates. If one has regard to the above, before one is disentitled for Government service or his appointment is withheld the condition precedent in law is that the Scrutiny Committee should investigate and on enquiry declare these caste certificates issued as bogus, only then there has to be a legal presumption as to the caste certificate being bogus and act of the person concerned to take undue advantage by producing bogus certificate, adopting deceitful means.

16. Sometimes intention to conceal and withhold information if we go by the literary meaning of adoption of deceitful means as per Oxford Dictionary is to act or practice of deceiving and to deceive is defined as deliberately misleading or misrepresenting the truth. There has to be an *iota* of deliberation or mal intention at the inception when adoption of deceitful means is in question. In the present case, applicant in his attestation form filled up on 17.12.2002 mentioned House No.254, Jat Chowk, Nangloi and C-73, Extension-1, Nangloi as present address. However, on further verification as applicant has been asked to give his place of residence right from birth till 1990 at Rohotak, Haryana and rest of the addresses at Delhi. This clearly shows that applicant has volunteered to furnish the correct address in his subsequent

attestation form. Merely because he has held the place of birth as Village and Post Office, Sudana, District Rohtak, Haryana and in the backdrop of the fact that being a permanent resident of Haryana, where Jat community has not been included in the common list of OBC and also in the wake of the certificate issue on account of continuous stay of applicant for the last three years in Delhi by the competent authority holding applicant as an OBC being from Jat community unless is scrutinized by the Committee and observed to be bogus and till this certificate is not cancelled by no means would obliterate its authenticity and admissibility in the appointment. Applicant by this alleged concealment of which subsequent disclosure has been made had not taken undue benefit as the certificate of OBC remained the same either at the time of filling up of the attestation form earlier or subsequently on 19.9.2003.

17. The High Court of Delhi in **Sandeep Kumar's** case (supra) while deliberating on this aspect of the matter when petitioner therein has disclosed some information in attestation form voluntarily clearly ruled on the basis of **Dhaval Singh's** case (supra) that there is no willful concealment of the fact. Moreover, in **Sunita's** case (supra) while commenting upon **M.C.D. v. Veena & Ors.**, JT 2001 (6) SCC 413, in a case the certificate issued by Government of NCT of Delhi, the following direction has been issued:

“19. The aforesaid certificate records that “Ahir” is recognized as a backward class in terms of notification bearing No.F.28(93)/91-92/SC/ST/P&S/4384 dated 20.1.95. There is further certification that the petitioner does not belong to the creamy layer. The above certificate has been issued in the prescribed

Annexure 'AA' which is required for OBC candidates applying to posts under the Government of NCT of Delhi. The Certificate is in accordance with the prescribed requirements as noted by the Supreme Court in **MCD Vs. Veena** (Supra) to confer the benefit of reservation as backward class in NCT of Delhi. The petitioner having been granted this certificate, in my view, the said certificate is binding and conclusive on the respondents. The said certificate itself assumes that the authorities have satisfied themselves as to the eligibility of the petitioner to be treated as an OBC in the NCT of Delhi for posts falling under the Government of NCT. The authorities are to issue the said certificate after due verification and satisfaction and subject to the petitioner fulfilling the conditions of eligibility as an OBC candidate, including that of being ordinarily resident. It is not the case of the respondent that the aforesaid certificate had not been issued or was fraudulently issued or has been revoked. As long as the aforesaid certificate is subsisting, valid and in force, the respondents cannot deny the consideration to the petitioner as an OBC candidate, even though the initial certificate may have been from the State from which she has migrated, or raise an objection as to the origin of the petitioner. Accordingly, this case is on a different footing from **Manju Rani Vs. DSSB & Ors.** (Supra) in view of the OBC certificate having been issued by the prescribed and Competent Authority of NCT."

18. In the light of the above, we have no hesitation to rule that in the present case we do not find any willful concealment on the part of applicant and the concealment in the attestation form subsequently has not misled in any manner the respondents or would not amount to adoption of deceitful means with malafide intention to gain entry in Delhi Police.
19. Until the OBC certificate issued to applicant by the Caste Scrutiny Committee is established to be bogus and cancelled it remains valid and has to be relied upon for its admissibility for processing the case of applicant for appointment.
20. The reasoning assigned in the impugned order cannot subscribe to law in its logic and rationale.

21. It is also pertinent to note that whatever information has been given by applicant in his attestation form led to a decision of respondents to seek further information by way of filling another attestation form by applicant and the information divulged therein has not been found to be false or any *iota* of deceitfulness in it. Accordingly, once the respondents themselves sought information from applicant and on voluntary disclosure by applicant the earlier attestation form loses all its sanctity and second attestation form would be the information furnished by him, which if does not disclose any willful, malafide or intentional withholding of information the earlier attestation form and information furnished thereon by applicant has been obliterated and condoned by the respondents themselves. They cannot pick up a loose thread and cancel the candidature of applicant, which would be arbitrary in the circumstances.

22. In the result, for the foregoing reasons, OA is allowed. Impugned orders are set aside. Respondents are directed to initiate process of appointment of applicant to the post of Constable (Executive). In such an event, he would be entitled to all consequential benefits. However, insofar as OBC certificate of applicant is concerned, on referral to Caste Scrutiny Committee and finding thereof law shall take its own course. This shall be done within a period of two months from the date of receipt of a copy of this order. No costs.

Neena Ranjan
(**Neena Ranjan**)
Member (A)

Shanker Raju
(**Shanker Raju**)
Member (J)