

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1414/2004
with
Original Application No.161/2004

New Delhi, this the 22nd day of September, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K. Naik, Member (A)

O.A.NO.1414/2004:

Rakesh Rana
(Roll No.1216505)
s/o Sh. Raj Pal Rana
r/o H.No.345
Vill.: Shahbad Dault Pur
P.O.: Samaj Pur, Delhi-42. Applicant

(By Advocate: Sh. Anil Singhal)

Versus

1. Union of India
Through its Secretary
Ministry of Home Affairs
North Block
New Delhi.
2. Lt. Governor of Delhi
Raj Niwas, Delhi.
3. Govt. of NCT of Delhi
Through its Chief Secretary
Delhi Secretariat
IP Estate, New Delhi.
4. Commissioner of Police
Police Head Quarter
IP Estate, New Delhi.
5. State Selection Commission
Through its Chairman
C.G.O.Complex, Lodhi Road
New Delhi – 110 003. Respondents

(By Advocate: Sh. S.M.Arif and Sh. Ajesh Luthra)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1414/2004
with
Original Application No.161/2004

New Delhi, this the 2nd day of September, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K. Naik, Member (A)

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(Roll No.1216505)
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Through its Chairman
C.G.O.Complex, Lodhi Road
New Delhi – 110 003. Respondents

(By Advocate: Sh. S.M.Arif and Sh. Ajesh Luthra)

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O.A.NO.161/2004:

1. Rajvir Singh
(Roll No.1226268)
s/o Sh. Chander Bhan
Constable in Delhi Police
(PIS No.28884082)
r/o 616, Krishi Apartment, D Block
Vikas Puri, New Delhi-18.
2. Mukesh Rana
(Roll No.1226267)
s/o Sh. Charan Singh
Constable in Delhi Police
(PIS No.28930257)
R/o H.No.12
V&PO Siras Pur, Delhi-42. Applicants

(By Advocate: Sh. Anil Singhal)

Versus

1. Commissioner of Police
Police Head Quarter
IP Estate, New Delhi.
2. Govt. of NCT of Delhi
Through its Chief Secretary
Delhi Secretariat
IP Estate, New Delhi.
3. State Selection Commission
Through its Chairman
C.G.O.Complex, Lodhi Road
New Delhi – 110 003. Respondents

(By Advocate: Sh. S.M.Arif and Sh. Ajesh Luthra)

ORDER

By Mr. Justice V.S.Aggarwal:

By this common order, we propose to dispose of the two Original Applications No.1414/2004 and No.161/2004. Since the question involved in both the Original Applications is identical, therefore, for the sake of convenience, we are taking the facts from OA 1414/2004 (Rakesh Rana v. Union of India & Others).



2. The Short question that comes up for consideration is whether a candidate of Jat community from Delhi can be considered as Other Backward Class (OBC) for recruitment in Delhi Police for the post of Sub-Inspector.

3. The following facts would precipitate the question in controversy. The applicant had applied for the post of Sub-Inspector in Delhi Police, in response to an advertisement for Combined Graduate Level (Preliminary) Examination, 2003. He mentioned himself as an OBC candidate. After qualifying both the preliminary examination and the main examination as an OBC category candidate, he was informed that he was not being considered as OBC because he belongs to Jat Community, which is considered as OBC in the Delhi List of OBCs and but are not covered under the central list of OBCs. Applicant contends that for the purpose of recruitment to the Delhi Police, the Central List as well as Delhi list of OBCs notified by the Government National Capital Territory of Delhi is followed. Both the lists are acceptable and therefore, the applicant has a right to be considered as OBC candidate.

4. Needless to state that in the reply filed, the application has been contested. Separate replies have been filed by Respondent No.2 to 4 and another by Respondent No.5.

5. So far as Respondent No.5 is concerned, the matter had been referred to the Ministry of Social Justice and Empowerment. It informed the Respondent No.5 that Jat community has not been included in the Central List of OBCs for Government of NCT of Delhi and therefore, they are not entitled to get 27% reservation. A decision had been taken which goes to the following effect:

“That the Delhi Police is a metropolitan force meant to subserve the policing requirement of the National Capital. Recruitments to the Rank have therefore, always been held quite appropriately on an All India basis so as to preserve and promote its cosmopolitan character. That practice should continue. In regard to reservation of posts for OBCs, we should follow the Central List for all the States and also recognize the Delhi List of OBCs notified by the Government of NCT of Delhi. Accordingly, OBC

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Certificate based on the Central List and the Delhi List should be accepted.””

6. It is pointed that the Department of Personnel & Training has not issued any guidelines or circular to the said Respondent and, therefore, the applicant cannot be taken to be an OBC candidate.

7. So far as Respondents No.2 to 4 are concerned, in their separate reply they have given the facts. Direct recruitment to the post of Sub-Inspector is made under Rule 7 of Delhi Police (Appointment & Recruitment) Rules, 1980. In the year 2002, Staff Selection Commission was requested to make recruitment for 118 vacancies of the post of Sub-Inspector (Executive) in Delhi Police by conducting a Combined Graduate Level Examination. In the month of December, 2003, Staff Selection Commission provisionally qualified 1604 open candidates and 18 departmental candidates. Shri Rakesh Rana (the applicant) did qualify and was called for Physical Measurement and Endurance Test. The Boards nominated by the Commissioner of Police, Delhi conducted the aforesaid tests in accordance with the terms and conditions of notice of Examination/Advertisement. The applicant was declared qualified. Later on, he appeared before the interview Board on 29.4.2004. He could not make the grade in the list of candidates selected provisionally for the post of Sub-Inspector (Executive) in the year 2000, a notification dated 31.5.2000 was issued by the Govt. of National Capital Territory of Delhi that on the recommendation of the 'Commission for OBCs', the Lt. Governor, Delhi has included the Jat Community in the State List of OBCs. But the Jat community does not find a place in the Central List of OBCs. During the recruitment held in the year 2002, the matter was discussed at a meeting amongst the Chief Secretary, Commissioner of Police; Principle Secretary (Home); Law Secretary, etc. and it was decided that since the Delhi Police is a metropolitan force, the recruitment, therefore, has always been held on all India basis and this practice should continue. It is

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admitted that the posts other than Sub-Inspector (Executive) in the Delhi Police, a Central List for all States and Delhi List of OBCs are being followed.

8. We have heard the parties' counsel and have seen the record. The short question that really comes up for consideration is as to whether the applicant can be treated as OBC or not. Learned counsel for the applicant has highlighted the fact that a decision has already been taken to treat the Jat community of Delhi as OBC and their claim has been included in the list of the OBCs and therefore, there is no reason to exclude the applicant from such a benefit. On the contrary, the respondents' contention was that (in the Central List), the Jat community of OBCs of Delhi is not included in the Central List of OBCs, and therefore, the applicant cannot take such a benefit.

9. After careful consideration of the controversy, we are of the considered opinion that the plea of the respondents has to be rejected. We record our reasons:

9(a). On 30.11.2002, a letter was addressed to the Chief Administrative Services, Centre for a Policy Research suggesting that they should follow the Central List for all States and also recognize the Delhi List of OBCs for recruitment to the post of Constable (Executive). The said letter reads as under:

“Sir,

I am directed to state that the Delhi Police is a metropolitan force meant to subserve the policing requirement of the National Capital. Recruitments to the ranks have therefore always been held quite approximately on an all India basis so as to preserve and promote its cosmopolitan character. In regard to reservation of posts for OBCs, we should follow the Central List for all States (copy enclosed) and also recognize the Delhi List of OBCs notified by the Govt. of NCT of Delhi (copy enclosed). Accordingly, OBC certificates based on the Central List and the Delhi List should be accepted. You may proceed further in the matter accordingly.”

9(b). It was followed by another letter of Additional Secretary (Home), Govt. of NCT of Delhi, Home (Police-I) Establishment Department written to Sh.

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Harender Singh dated 8.4.2003 with respect to the recruitment to Delhi Police which indicated that the Delhi List of OBCs is being followed for recruitment to the Delhi Police. The letter reads:

“Sir

This is with reference to your application dated 13.03.2003 under rule 3 under Right to Information Act requesting for information regarding reservation to the OBC (JAAT) Community for recruitment to the Delhi Police.

This is to inform you that the recruitment to the ranks in Delhi Police are held on an all India basis so as to preserve and promote its cosmopolitan character. With regard to reservation of posts for OBC, the central list and the Delhi list of OBCs notified by the Govt. of NCT of Delhi is followed. Accordingly OBC certificate based on the central list and the Delhi list are accepted.

Sd/-
 (Rajiv Kale)
 Addl. Secretary (Home)”

9 (c). The meeting took place between the Chief Secretary and the Commissioner of Police. The decision is incorporated in the letter dated 29.11.2002 of Principle Secretary, Home Department, Govt. of NCT of Delhi addressed to the Commissioner of Police. The same reads:

“This is in continuation of my DO No.PS/PSH/2002/564 dated 8th October, 2002 and in reply to letter no.28135/SIP-PHQ, dated 22/10/2002 from Joint Commissioner of Police (Headquarters) on the OBC reservation to be made in the course of recruitments to certain Group 'C' & 'D' posts in the Delhi Police. This matter was discussed at a meeting with Chief Secretary, Commissioner of Police, Principal Secretary (Home), Law Secretary and Secretary SC/ST held on 25th November, 2002 by the Hon'ble Lt. Governor. In this connection, I am directed to communicate the decision taken on the matter which is as follows. The Delhi Police is a metropolitan force meant to subserve the policing recruitment of the National Capital. Recruitments to the ranks have therefore always been held quite appropriately on an all India basis so as to preserve and promote its cosmopolitan character. That practice should continue. In regard to reservation of posts for OBCs we should follow the Central List for all States and also recognize the Delhi List of OBCs notified by the Govt. of NCT of Delhi. Accordingly, OBC certificates based on the Central List and the Delhi List

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should be accepted. You may proceed further in the matter accordingly."

9(d). This clearly shows that decision had already been taken to give the benefit of the Delhi List of OBCs for recruitment to Delhi Police. This fact becomes still more important because as already referred to above, on behalf of the Commissioner of Police, it is admitted in Paragraph 5.1 of the counter reply that recruitment for all posts other than Sub-Inspector (Executive) in Delhi Police, the Central List for all States and Delhi List of OBCs notified by the Govt. of NCT of Delhi are being followed. We fail to understand as to why it is not being followed in the case of Sub-Inspector (Executive). No separate notification in this regard has been issued as to why for the post of Sub-Inspector (Executive), the same is being excluded. There is no reason to discriminate.

9(e). List of OBCs have been drawn to uplift the certain benefits to Other Backward Classes and give them reservation. There is no logical reason even being given as to why the same is being denied for Recruitment to Delhi Police on the post of Sub-Inspector. The decision to exclude them is without basis and must be taken to be discriminatory.

10. Otherwise also, the matter has been clinched by the latest communication which was not disputed by either party dated 18.8.2004 from the Ministry of Home Affairs, Govt. of India addressed to the Secretary, Staff Selection Commission. It refers to Recruitment to Group 'C' and 'D' posts in Delhi Police. It clearly admits that List notified by the NCT of Delhi and also of the Central Government would be taken into consideration. The letter reads:

"Sub: Reservation for appointment of OBCs to Group 'C'
and 'D' posts in Delhi Police.



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I am directed to refer to the correspondence resting with SSC's letter No.F.1/19/2000-P&P-I dated the 2nd May, 2003 on the subject mentioned above and to say that the matter regarding reservation for appointment of OBCs to Group 'C' and Group 'D' posts in Delhi Police has been examined in this Ministry in consultation with DoP&T, Delhi Police and the Govt. of NCT of Delhi and it has been decided that the Central List of OBCs for all States and Union Territories, notified by the Ministry of Social Justice & Empowerment, as also the Delhi List of OBCs, notified by the Govt. of NCT of Delhi shall be followed for reservation for appointment of OBCs to Group 'C' and Group 'D' posts in Delhi Police. You are requested to kindly take further necessary action accordingly."

11. Learned counsel for the respondents stated that they have yet to seek instructions if these could be retrospective or prospective. We have no hesitation in rejecting the said contention. We know from the decision of the Supreme Court in the case of S.S.Grewal v. State of Punjab, 1993 SCC (L&S) 1098 that explanation or clarificatory letters have to be read as part of the main scheme and would be having retrospective operation. The findings of the Supreme Court in this regard are:

"9. From a perusal of the letter dated April 8, 1980, we find that it gives clarifications on certain doubts that had been created by some Departments in the matter of implementation of the instructions contained in the earlier letter dated May 5, 1975. Since the said letter dated April 8, 1980 is only clarificatory in nature, there is no question of its having an operation independent of the instructions contained in the letter dated May 5, 1975 and the clarifications contained in the letter dated April 8, 1980 have to be read as a part of the instructions contained in the earlier letter dated May 5, 1975."

12. In the present case also, the letter dated 18.8.2004 is clarificatory in pursuance of the letter of 2.5.2003. It clearly shows therefore that it has to have retrospective effect.

13. Cumulative effect of these factors would therefore show that the applicant had to be given the benefit of the OBC category.

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14. Resultantly, we allow the present applications and direct

- a) the applicants should be treated as OBC candidates for recruitment to the post of Sub-Inspector (Executive) and
- b) the claim of the applicants should be considered on its merits and thereafter necessary benefits should be accorded to them, if any.

(S.K.Naik)
Member (A)

(V.S.Aggarwal)
Chairman

/NSN/