

68

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 3066/2004

New Delhi this the 13th day of April, 2005

Hon'ble Mrs. Meera Chhibber, Member (J)

Sh. Pankaj,
S/o Sh. Sukhbir Singh.
R/o House No. D-541, Sarojini Nagar,
New Delhi.

.... Applicant.

(By Advocate Ms. Jasvinder Kaur)

Versus

Ministry of Defence though
Officer Commanding,
HQ Western Air Command (Unit),
Air Force,
Subroto Park,
New Delhi-10.

... Respondent.

(By Advocate Mr. S.N. Sharma)

ORDER

By this OA, applicant has challenged the order dated 15.12.2004 whereby his services have been terminated by giving him one month's notice.

2. It is submitted by applicant that respondents issued an advertisement for one post of LDC reserved for OBC in November, 2003 (page 10). Applicant gave his application along with certificate of OBC and after he was selected, he was given offer of appointment letter dated 12.12.2003 (page 12). This was only subject to production of certificate of medical fitness. After about one year applicant's services were terminated by giving him one month's notice, on the ground that applicant belonged to JAT community, which is not included in the central list of OBC. Therefore, he was ineligible for the post as it was reserved for OBC and only candidates who were OBC as per central list would be eligible for such appointment.

3. Counsel for the applicant submitted that since in the advertisement it was not made clear that only OBCs of central list would be eligible, therefore, department could not have put this condition later on. Moreover, he had already submitted the certificate dated 3.11.2003 which clearly stated that

8

applicant belongs to JAT community which is recognized as backward class under Govt. of NCT of Delhi notified vide Notification dated 20.1.1995 (page 11) which was duly verified by them. Therefore, his services could not have been terminated after one year as, in the meantime, he has now become overage and would not be able to get employment under Govt. of Delhi as well. She further submitted that it is not a termination simplicitor but attaches stigma. Moreover, his services could not have been terminated without giving him an opportunity of being heard. She thus prayed that the termination order may be quashed and set aside. Applicant has relied on the judgement of Hon'ble Supreme Court in the case of T.N.Kosa Vs. State of J&K, reported in AIR 1979 SC.

4. Respondents have opposed this OA. They have explained that since in the certificate there was no restriction with regard to status of OBC, an error had occurred but applicant cannot be allowed to take benefit of department's mistake. They have explained that on verification, after the appointment of the candidate against reserved vacancy of LDC under OBC category, it revealed that the certificate issued by the SDM for JAT community as OBC is for recruitment to various jobs in the State Govt. of Delhi only. Therefore, applicant could not have been continued on the post, as it will deny right of getting appointment to a genuine OBC candidate under the Central Govt. list i.e. 'Mandal List'. They have thus submitted that since applicant was not eligible to be appointed against reserved post for OBC, his services have been rightly terminated by giving him one month's notice. They have submitted that it is a well known fact that all states and U.Ts of the Union of India have categorized various Castes/Sub Castes in the OBC lists exclusively for state Govt jobs; while the Central Govt. has prepared their own list which is popularly known as 'Mandal List'. It is only the Castes/Sub Castes included in the 'Mandal List' which are eligible for reservation for employment under Central Govt. Even otherwise applicant got his OBC certificate only on 03 November, 2003 when he was nearly 27 years of age and two days after the advertisement was issued which creates further doubt, the matter, therefore,



requires to be further probed. Central Govt. has compiled the Union list based on the recommendations of Mandal Commission wherein JAT Community is not included as OBC for the purpose of reservation in Central Govt. jobs. They have thus prayed that OA may be dismissed.

5. I have heard both the counsel and perused the pleadings as well. From the perusal of Annexure R-1 i.e. letter dated 21.4.2004 written by SDM, it is seen that when a query was raised by respondents to verify the OBC certificate issued by the SDM (V.V) in favour of applicant, he clarified the position that JAT community was included in the list of OBC for Delhi only in Notification dated 31.5.2000 and the OBC certificate issued to JAT community in Delhi makes the candidate eligible for state service only i.e. for recruitment in Delhi Govt. only. This makes it clear, beyond any doubt, that the certificate, on the basis of which applicant was appointed, made him eligible for state service only i.e. Delhi Govt. and was not valid for Central Govt. Now admittedly Air Force comes under the Central Govt., so naturally applicant was not eligible to be appointed as LDC because the post was reserved for OBC for giving appointment in Air Force, by giving reservation of OBC, only such of the persons could have been considered, whose community was included in the central list popularly known as Mandal List.

6. Perusal of averment made by applicant in para 4.3 itself shows that applicant belonged to JAT community which is declared OBC category under the state list of Delhi only. Therefore, it is not even the case of applicant that he is OBC as per central list. In these circumstances, there can only be one conclusion that applicant could not have been appointed as LDC in Air Force as it was reserved for OBC from Central List. Simply because respondents gave appointment to applicant by mistake, it does not give any enforceable right to the applicant to continue on the same post.

7. Counsel for applicant has relied on the judgment given in OA 1414/2004 apart from contending that a candidate from any part of the country can apply for a Central Govt. job. The contention of applicant's counsel has to be rejected in view of law laid down by Hon'ble Supreme Court in the case of



'Action Committee' on issue of caste certificate to S/C and S/T in the State of Maharashtra & Ors. reported in 1994 (5) SCC 244 wherein it was held that the castes or tribes have to be specified in relation to a given state or union territory. Considerations for specifying a particular caste or tribe for inclusion in the list of SC/ST/OBC in a given state would depend on the nature and extent of disadvantages and social hardships suffered by that caste/tribe/class in that state which may be totally non est in another state to which persons belonging thereto may migrate. Therefore, merely because a given caste is specified in State 'A' as a S/C does not necessarily mean that if there be another caste bearing the same nomenclature in another State 'B'. The person belonging to the State 'A' would be entitled to the rights, privileges and benefits admissible to a member of the S/C in the State 'B' for the purposes of the Constitution.

8. While dealing with Articles 341 and 342 of the Constitution, Hon'ble Supreme Court held in clear terms that a person belonging to SC/ST in relation to his original State of which he is permanent or ordinarily resident could not be deemed to be so in relation to any other state on his migration to that state for the purpose of employment education etc. — stand taken to that effect by Govt. of India in its communication dated 22.3.1997 and subsequent communications was affirmed by Hon'ble Supreme Court. The same principle would apply to OBCs also when they want to seek employment on the basis of their belonging to OBC category.

9. In this background though any person from any part of country can apply for central govt. jobs but when a person seeks appointment by seeking reservation given to a class, it has to be in accordance with the rules on the subject. Since Govt. has decided that for Central Govt. jobs, reservation can be granted to only those castes of OBC which are included in the Mandal list. Therefore, applicant, who was in the OBC list of Govt. of Delhi only, could not have been considered for appointment in Central Govt. job especially when on verification the SDM V.V. who had initially issued the certificate to the applicant himself clarified in writing that JAT community to which applicant belonged was eligible for state service only i.e. for recruitment in Delhi Govt. only.



10. Even though this clarificatory letter issued by SDM was annexed by the respondents with their counter affidavit but no effort was made by the applicant to contradict this position or to even state otherwise, therefore, it is an admitted position that applicant was not eligible for appointment as LDC in Air Force as it was reserved for OBC. In these circumstances if the relief as prayed for is given to the applicant, it would amount to depriving another deserving candidate belonging to OBC as per Mandal List of his right to appointment. This would also amount to playing fraud with the Constitution. In the case of R. Vishwanath Pillay, Hon'ble Supreme Court held that an appointment de hors the rules is null and void in the eyes of law and a person not entitled to a post holds it as a usurper. In view of the above settled position, in my considered opinion the relief as prayed for by the applicant cannot be given to him.

11. Applicant's contention that he has become over age now also cannot advance his case because he had got the OBC certificate issued only on 3.11.2003 when he was already nearing 27 years of age and that too was wrong which is evident from the SDM letter clarifying the position that it is meant for state service only. It is clear that Government of India had notified on 15.11.1993 two model forms of Certificates to be furnished by the OBC candidates seeking benefit of reservations. Form prescribed in Annexure 'A' thereto was required to be produced by candidates belonging to OBCs applying for appointment to posts under the Government of India and which certificate was to be verified from the prescribed authorities indicated therein.

12. In view of the above position, the contention of applicant's counsel that respondents could not have verified the correctness of certificate has to be rejected. Moreover, we have to see that protection of reservation to an OBC candidate is to be given properly and not in breach of rules as that is a larger interest as compared to an individual's interest. Therefore, termination notice cannot be quashed on this ground. Applicant was fully aware that he is not included in the central list yet he took a chance. On verification, since respondents realized their mistake, they have rightly terminated his services by giving him one month's notice.



13. Since the facts were already verified and no other view was possible, no purpose would have been served by giving him show cause notice. Therefore in these circumstances applicant cannot claim that principles of natural justice have been violated because even in O.A, applicant has not been able to controvert the legal position that he was not eligible for Govt. job on the basis of OBC certificate issued for Govt. of Delhi only.

14. As far as judgment given in OA No. 1414/2004 is concerned, that was decided in view of policy decision taken by Govt. of NCT of Delhi itself, therefore, it cannot advance the case of applicant as that case was related to recruitment in Delhi Police only.

15. In view of the above discussion, OA is found to be devoid of any merit. The same is accordingly dismissed. No order as to costs.


13/4/05
(Mrs. Meera Chhibber)
Member (J)

'SRD'