

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. 216/2004

With

O.A. 1611/2004

New Delhi this the 2nd day of March, 2007

**Hon'ble Mr. Justice M. Ramachandran, Vice Chairman (J)
Hon'ble Mr. L.K. Joshi, Vice-Chairman (A)**

Rajesh Kumar Sah and Anr. ... Applicants.

(By Advocate Shri S.P. Sinha)

Versus

Union of India & Ors. ... Respondents.

(By Advocate Shri K.R. Sachdeva)

1. To be referred to the Reporters or not? Yes
2. To be circulated to other Benches of the Tribunal or not? No.

**(M. RAMACHANDRAN)
VICE CHAIRMAN (J)**

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**HON'BLE MR. JUSTICE M. RAMACHANDRAN, VICE CHAIRMAN (J).
HON'BLE MR. L.K. JOSHI, VICE CHAIRMAN (A).**

O.A. 216/2004

Rajesh Kumar Sah,
S/o Sri Surya Narayan Sah,
R/o Suraj Market, Chatti Road,
Begusarai-851101.
(Bihar)

... Applicant.

(By Advocate Shri S.P. Sinha)

Versus

1. Union of India through Secretary,
Ministry of Personnel, Public Grievances
And Pensions,
Department of Personnel & Training,
North Block, New Delhi-110001.
2. Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi-110001.

... Respondents.

(By Advocate Shri K.R. Sachdeva)

O.A. 1611/2004

Arun Kumar Chourasia,
S/o Shri I.P. Chourasia,
Near Punjab National Bank,
Vill & PO Belaganj,
Distt. Gaya,
Pin-804403 (Bihar).

... Applicant.

(By Advocate Shri S.P. Sinha)

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Versus

1. Union of India through Secretary, Ministry of Personnel, North Block, New Delhi-110001.
2. The Department of Personnel and Training, through the Director, Department of Personnel and Training, North Block, New Delhi.
3. Union Public Service Commission, through the Secretary, Dholpur House, Shahjahan Road, New Delhi-110001. ... Respondents.

(By Advocate Shri K.R. Sachdeva)

O R D E R

Hon'ble Mr. Justice M. Ramachandran, Vice Chairman (J)

These two applications were heard together, as the issues agitated were identical in material respects and as suggested by the parties. We may refer particularly to the facts as have been agitated in O.A. 216/2004 for convenience.

2. The applicant here had participated in the Civil Service Examination held during the year 2001. He belongs to Other Backward Classes (OBC) category. There is no detailed counter affidavit touching the merit of the contentions as have been raised in the application. It may, therefore, be safe to go on the assumption that the factual details given in the application are not disputed.

3. He had secured a place in the merit list published in the Employment News of May, 2002, a copy of which is annexed

as Annexure 'B'. It is pointed out that 417 candidates were recommended for appointment, out of which 234 persons belonged to the General Category, 97 to the OBC category, 47 to the Scheduled Caste and 39 to the Scheduled Tribe category. His position was 371. It is his case that 97 seats alone were reserved for the OBC category candidates whereas it should have been 113 seats going by the ratio of the reservation. It is also contended that OBC candidates, who were required to be given posting on the basis of their higher position in the merit list, inexplicably have been grouped as requiring relaxation, and this exercise was totally impermissible, since it robbed the OBC candidates who were entitled to relaxed standard of their dues. The net result, according to the applicant, was that he was denied appointment, and this has given rise to this application wherein he has prayed for appropriate order to be passed for directing the first respondent Union of India to allot him to a suitable service as per the rank he had obtained and for quashing proceedings whereby his application for reviewing the matter had been rejected.

4. At this point, we may refer to Annexure 'A' the impugned order dated 6/13.5.2003. The Government thereby had informed the applicant about their stand vis-à-vis his claims and had told him that his case was not acceptable and, in fact, at least 10 persons above him in the merit list (between 332 and 370) had not been conferred with

appointment, for want of vacancies to accommodate them. The principal submission centered round justifiably on Annexure 'A'. Therefore, the veracity of the contentions raised by the respondents on the basis of stand disclosed on this document alone, need be examined. In fact, our task on such enquiry has been considerably lessened in view of the authoritative pronouncement of the Hon'ble Supreme Court on the subject. Also from the order sheets, we find that the applications were adjourned at one point sine die from 17.10.2005 as there was consensus about the position that the issue was pending before the Hon'ble Supreme Court and any decision will be premature. Therefore, it would have been appropriate that such judgments were awaited.

5. By way of additional materials, the judgment of the Hon'ble Supreme Court, has been produced, as a document, which is the decision reported in 2006 (4) SCC 550 (Union of India and Anr. Vs. Satya Prakash and Ors.). The counsel had also adverted to one other decision, namely, Anurag Patel Vs. U.P. Public Service Commission and Ors.(2005 (9) SCC 742), which also is cited as relevant for disposing of these applications.

6. The applicant in O.A. 1611/2004 is also an OBC candidate. He had participated in 1999 Examination for selection to the Civil Services conducted by the UPSC. The final results were declared on 25.5.2000 and respondent had published the list of 411 successful candidates. The

applicant had secured 390th rank in the merit list so published and he claimed that he received a letter, during May, 2000, which ascertained his intention for joining the foundation course. He had responded positively. But, however, to his dismay, he had come to know that in spite of his merit ranking, appointment was not being conferred on him. He had promptly taken the grievance with the Government whereupon he received a letter dated 25/29.1.2001 informing him that allocation on the basis of merit position and the reservation parameters were correctly carried out and although he was duly considered for allocation in his turn, it was found that he could not be accommodated against any post, and the application, therefore, cannot be considered positively. It is averred in the application that without any delay, he had challenged the order before the Hon'ble High Court of Delhi by way of Civil Writ Petition No. 3306/2001. But when the matter was taken up on 21.05.2004, the Court had held that it had no jurisdiction to entertain the claims. His right to move an appropriate application before the Tribunal was reserved and if the application was to be filed within six weeks, limitation would not be held against the applicant. The present application was, therefore, filed immediately and hence it could not have been rejected on the plea of being one filed out of time. Rightly the respondents had not challenged the application on the ground of delay. In this application also,

28 no counter affidavit has been filed and being one tagged on to the connected case, was kept awaiting the Supreme Court judgment on the subject.

7. In this background, we may examine Annexure 'A' in O.A.216/2004 dated 13.05.2003 as well as Annexure 'A' in OA 1611/2004 dated 29.01.2001, which is almost on the same lines. Applicant in OA 216/2004 has been advised that he had given 11 preferences, and the candidates are allocated on the basis of merit position and preferences expressed by them. In the OBC category, there were 97 vacancies in various services/posts. In accordance with the provisions of Rule 16, UPSC had recommended a list of 131 candidates belonging to OBC category for appointment. It is stated that the list of 131 candidates also included two candidates belonging to Physically Handicapped category. It is admitted that out of 131 candidates belonging to OBC, 34 candidates were recommended in the General Merit List and, therefore, the balance was only 97, which were to go to reserved slots for OBC candidates. Annexure A-1, however, thereafter runs as following :

“....However, out of these 34 candidates belonging to OBC category recommended in the General Merit List on the basis of Civil Services Examination, 2001, only (6) six candidates belonging to the OBC category were allocated to a service/post of their higher preference without the benefit of reservation and for the purpose of allocation to a service/post they were treated as general candidates and the slot to which they were allotted have not been adjusted

against the reserved vacancies in those service(s)/post(s)..."

Annexure-I appended purportedly contained the remaining 28 candidates and it is stated that although they were included in the General Merit List of UPSC, they had claimed the benefit of reservation as OBC candidates allocated to services/posts as reserved candidates in view of their requests. It is stated that this procedure was required, taking notice of the ratio of the decision of the Hon'ble Supreme Court, reported as Ritesh R. Sah Vs. Dr. Y.L. Yamul (1996 (3) SCC 253) and other cases. In other words, according to the order, six candidates included in the merit list alone could find places on their own weight. The others though in the merit list had the possibility of being superseded by OBC candidates, who had secured too lower positions. However, meritorious candidates like them were to be given a higher position and this, in fact, was in consonance with the preference shown by them. Thus, the suggestion was that this list of 28 persons, were to be considered as a group, who had sought for and obtained benefit of reservation at that point of time and, therefore, such number had to be reduced from the total candidates belonging to OBC whose names appeared in the merit list. Resultantly, only 97 more vacancies alone would have been available for purpose of accommodating OBC candidates by adopting a relaxed standard. Thus, the contention highlighted in Annexure 'A'

30 is that the 28 candidates should have been considered as allocated to post available for reserved candidates. It is, therefore, explained that the candidates, including the applicant could not be allocated as there was non-availability of posts. It was not at all a case, it is urged, where his claims were omitted to be noted but there was sheer inability for accommodating him as no post was available.

8. As referred to earlier, though there is some difference in the figures, almost identical contentions have been raised for rejecting the claim of the applicant in OA 1611/2004. He had given as much as twenty four preferences. There also, six persons belonging to OBC category alone could be treated as general candidates and 24 candidates were allocated to service(s) as reserved candidates since they could not be deprived of legitimate claim for the reason that they were included in the General Merit List and OBC candidates below them could not have been permitted to overreach them. But this exercise amounted to a reservation, and corresponding number of OBC hands had to be dislodged.

9. The learned counsel for the applicant submits that this methodology adopted, was erroneous and although inspiration is seen to have been drawn from the ratio laid down by the Hon'ble Supreme Court in the case of Ritesh R. Shah (supra), it is only a lopsided view. The accommodation given to 28 candidates as shown in the impugned orders, who all belonged to the General Merit List was not a reservation as

coming within the purview of the relevant rules. The rules refer to application of a relaxed standard, and reliance is placed on it out of context. In fact, 28 and 24 persons referred to in the orders, were to be reckoned as persons, who had gained entry as General Merit Candidates. The internal working arrangements for complying with the requirement for accommodating more meritorious candidates at the higher levels should not have been confused with principles of reservation. By a wrong application evidently adopted, respondents have put innocent persons to prejudice. According to the applicant, this wrong method has, in fact, defeated the candidature of a large number of OBC over a period of time, of whom the applicants are only two representatives.

10. For substantiating the contention as above, counsel refers to the decision of a Division Bench of the Delhi High Court in Civil Writ Petition No. 3561 of 1999 and connected cases. The position has been explained and especially the relevant portion appearing in paragraph 13 of the judgment had been so relied on, which runs as following :

“...So far as the reserved category candidates are concerned, the recommendations of the Commission have to be considered having regard to the relaxed standard applied in their case, as is evident from sub-rule (ii) of Rule 16 aforementioned. The proviso appended to Rule 16 in no uncertain terms states that such candidates belonging to the Scheduled Castes, the Scheduled Tribes and Other Backward Classes, who had been recommended by the Commission without

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resorting to the relaxed standard, i.e., on merit, shall not be adjusted against the vacancies reserved for the respective reserved category candidates".

11. We may also presently advert to the authoritative pronouncement of the Hon'ble Supreme Court, which, in fact, had upheld the judgment referred to above. Against the finding of the Delhi High Court, Civil Appeal Nos. 5505-07 of 2003 (Union of India and Anr. Vs. Satya Prakash & Ors.) have come to be filed and the decision has been upheld. Scanning through the decisions on the subject, including Ritesh R. Sah (supra), Union of India Vs. Virpal Singh Chauhan (1995 (6) SCC 684, R.K. Sabharwal Vs. State of Punjab (1995 (2) SCC 745) as well as Indra Sawhney Vs. Union of India (1992 Supp (3) SCC 217), the Court has held that the scope and purport of Rule 16 (ii) was unambiguous that a person, who had his claim in the General Merit List, has to be recognised on his own right and merit. While appointment is given on the basis of the ratio admissible to a reserved category, he necessarily, therefore, required to be excluded. Emphasis was given to the proviso to Rule 16 (ii) of the CSE Rules, 1996 which runs as following :

"(ii) The candidates belonging to any of the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes may to the extent of the number of vacancies reserved for the Scheduled Castes and the Scheduled Tribes and the Other Backward Classes be recommended by the Commission by a relaxed standard, subject to the fitness of these candidates for selection to the services:

Provided that the candidates belonging to the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes who have been recommended by the Commission without resorting to the relaxed standard referred to in this sub-rule, shall not be adjusted against the vacancies reserved for the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes".

So as to rule out any ambiguity in the matter of interpretation, effort had been taken by the Supreme Court to show the impact of the Rule by way of Paragraphs 18, 19 and 20 of the judgment, which also, we think, would be relevant to be extracted hereinbelow :

"18. By way of illustration, a reserved category candidate, recommended by the Commission, without resorting to relaxed standard (i.e. on merit) did not get his own preference "say IAS" in the merit/open category. For that, he may opt a preference from the reserved category. But simply because he opted a preference from the reserved category does not exhaust the quota of OBC category candidate selected under the relaxed standard. Such preference opted by OBC candidate who has been recommended by the Commission without resorting to the relaxed standard (i.e. on merit) shall not be adjusted against the vacancies reserved for the Scheduled Castes, Scheduled Tribes and Other Backward Classes. This is the mandate of the proviso to sub-rule (2) of Rule 16".

19. In other words, while a reserved category candidate recommended by the Commission without resorting to the relaxed standard will have the option of preference from the reserved category recommended by the Commission by resorting to relaxed standard, but while computing the quota/percentage of reservation he/she will be deemed to have been allotted seat as an open category candidate (i.e. on merit) and not as a reserved category candidate

recommended by the Commission by resorting to the relaxed standard.

20. If a candidate of the Scheduled Caste, the Scheduled Tribe and Other Backward Class, who has been recommended by the Commission without resorting to the relaxed standard could not get his/her own preference in the merit list, he/she can opt a preference from the reserved category and in such process the choice of preference of the reserved category recommended by resorting to the relaxed standard will be pushed further down but shall be allotted to any of the remaining services/posts in which there are vacancies after allocation of all the candidates who can be allocated to a service/post in accordance with their preference".

The explanation of the law as above practically makes Annexure 'A' in both the applications irrelevant and otiose.

12. The substantial reason for rejecting the claims of the applicants was the circumstance that a few of the OBC candidates, who were in the General Merit List were considered as having been appointed to reservation vacancies. This has been frowned upon by the court, as irregular and illegal. Substantially, this is the position spoken to by the judgment in Anurag Patel (supra), we note. There was no relaxation applied in their case and they were to be considered as General Merit candidates. The number of posts thereby occupied by them could not have been subtracted from the total number of reserved posts available to the OBC candidates.

13. It is evident that this alone had been done, perhaps on a wrong understanding of the legal position. We have to compel

the Government to retrace these steps, at least in respect of the applicants, since they were vigilant about their rights. Consequently, we quash Annexure 'A' in both the applications. Resultant position will be that the applicants are to be treated as persons who had been illegally overlooked in the matter of their appointment, having been selected by the Union Public Service Commission and who require to be conferred with appointment. We are aware that there may be practical difficulties to accommodate them, since they were selected, in the examinations conducted in 2001 and 1999. But that is no reason for not accommodating them. They are not stated to be persons who are medically unfit.

14. Persons, who had been selected along with them might have improved their career substantially. Therefore, applicants have to be placed at appropriate position, if possible by accepting their preferences, or in any case conferring on them residuary positions, duly taking note of principles of allotment statewise and other attendant requirements. They have to be accommodated at appropriate place in the seniority positions, as if they had come to the service, from the date on which persons below their respective ranks came to be appointed. The assignment of seniority should be with notice to affected persons. They will be deemed as having joined duty as above for all purposes, including fixation but monetary benefits will be confined and available only from the day they join duty.

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15. The applications are disposed of as above. Consequential steps for advising them for appointment are to be taken within one month from the date of receipt of copy of the order. The rest of the exercises are to be carried out with utmost expedition. We make no order as to costs.

16. Let a copy of this order be also placed in O.A.1611/2004.

L.K. Joshi

**(L.K. JOSHI)
VICE CHAIRMAN (A)**

M. Ramachandran

**(M. RAMACHANDRAN)
VICE CHAIRMAN (J)**

'SRD'

