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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD

Original Application No.138 of 2006

Allahabad, this the 25th day of Abnl, 2006.

Hon'ble Mr. Justice Khem Karan, Vice Chairman.

Hon'ble Mr. A.K. Singh, Member (A)

Amit Kumar Gaur,
Aged about 25 years
S/o Shri Shiv Prasad
R/o 1-A, Railway Colony, Jamuniya
Bagh, Kanpur.

....Applicant.

(By Advocate : Shri S.K. Pandey

Versus

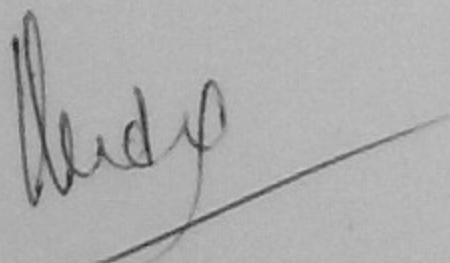
1. Union of India, Through General Manager, North Central Railway Headquarters' Office, Allahabad.
2. The General Manager, North Central Railway, Nawab Yusuf Road, Allahabad.
3. Railway Recruitment Board, through its Chairman, New Annex Building, DRM's Office Compound, Nawab Yusuf Road, Allahabad.
4. State of U.P. through District Magistrate, Kanpur Nagar, Kanpur.

....Respondents.

(By Advocate : Shri A.K. Gaur/Sri K.P. Singh)

O R D E R

O.A. No. 138 of 2006 has been filed by the applicant Amit Kumar Gaur (of the address given in the O.A.) against order/decision of Railway Recruitment Board, Allahabad



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respondent NO.3, cancelling the result of the applicant (Roll No.3127090) while declaring the names of successful candidates on 31.12.2005, who appeared in the recruitment test, held for selection to the post of Electrical Assistant (Driver), by the aforesaid authority.

2. Brief facts of the case as per the applicant are that in pursuance to Employment notice No.1/2004, category No.16, for recruitment to the post of Electrical Assistant (Driver), in daily newspapers, the applicant applied for the same in prescribed format, as an O.B.C candidate, as he fulfilled all eligibility conditions for the post. Alongwith his application, he enclosed all necessary documents such as High School certificate, Intermediate Certificate, an ITI certificate as well as Caste certificate issued by the Competent Authority i.e. Tehsildar, he also made a specific mention of this fact in his application form that he belonged to "Kahar" Caste which falls under the OBC category under both, the Central and State lists. The caste certificate, in question, was issued by the Competent Authority after full verification of facts.

3. On the basis of the aforesaid testimonials submitted alongwith the application, the respondents issued an admit card bearing Roll NO.3127690 Control No.1638381 for appearing in the written examination for selection to the abovementioned post which was scheduled to be held on

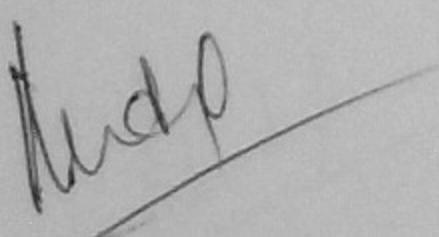
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5.6.2005. The applicant was declared successful in the written examination and was accordingly called to appear for the Psycho test, scheduled to be held on 4.10.2005. The applicant successfully cleared the said test also and thereafter was called to appear for medical test which also included vision test, on 27.12.2005 and 28.12.2005. He also successfully cleared the medical tests in question on the aforesaid dates.

5. The final results of the aforesaid examinations were declared on 31.12.2005 but to the applicant's utter surprise, his candidature for selection to the aforesaid post had been cancelled by respondent NO.3 on the ground that the caste certificate submitted by him was not valid and hence he was to be treated as a general category candidate and that he was unsuccessful in the aforesaid examination as a general category candidate.

6. The applicant, coming to know of the facts, immediately applied for a fresh. Caste certificate in the prescribed proforma and immediately filed the same with the respondents. But the respondents refused to consider the same. He even made a written representation to that effect vide his letter dated 30.1.2006 but since the respondents failed to consider even his written representation, the applicant had no other option except to file the O.A. in question, before this Tribunal. The O.A. is based on the following grounds:-



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"(i) The applicant belongs to Kahar Caste -which is categorized as O.B.C. in both Central as well as State lists.

(ii) The applicant is eligible for selection to the above post and has also passed the written, psycho, medical and vision tests.

(iii) He had not obtained any forged caste certificate. The caste certificate was issued by the District Authorities after full verification of facts.

(iv) Since certificate, in question, was issued by the District Authorities, Competent to issue the same, if all it was not in proper format, he should not be made to pay for the fault of District Administration.

(v) The validity of caste certificate on the ground of its being in proper proforma or otherwise was certainly not in dispute either at the stage of processing of application, or at the other stages of his appearance at Written examination/Psycho/Medical tests etc. Hence it should not have formed the basis for cancellation of his results. Since the validity of document, in question, has not been questioned at any point of time, it obviously cannot be questioned at this belated stage on the basis that it was not in prescribed proforma.

(vi) The applicant prays for the following relief(s) :-

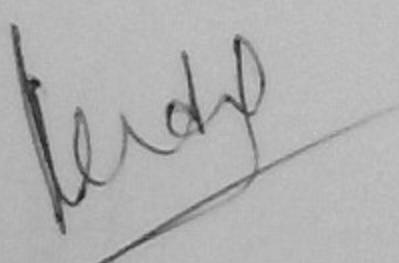
- (i) To issue a writ/direction in the nature of certiorari quashing the cancellation of result of the petitioner on the ground that the caste certificate submitted by the applicant was invalid as the same was not in proper proforma.
- (ii) To issue suitable direction to respondents directing them to consider inclusion of the name of the applicant's name in the final panel of selection to the above mentioned post.
- (iii) To grant any other relief to the applicant which this Hon'ble Tribunal deems fit in view of the facts and circumstances of this case.
- (iv) And last of all, to award the cost of this petition.

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7. Respondents, on the other hand, have opposed the O.A. on the following grounds.

- (i) It was clearly mentioned in instruction No.2.4 of the aforesaid advertisement, that candidates belonging to SC/ST/OBC should clearly state the same in the application and should also attach caste certificate in the prescribed proforma from Competent Authority as proof of the same, failing which they will be treated as belonging to unreserved category. As per para 2.5 of the aforesaid advertisement, it was also clearly stipulated that "OBC certificate submitted on the proforma of the State Government shall not be accepted". This was purposefully done with a view to ensure benefit only to those OBCs who do not belong to creamy layer.
- (ii) Even in the absence of a caste certificate, the applicant was eligible to appear at the aforesaid examination as a general candidate and hence he was issued admit card bearing Roll No.3127690, Control No.1638381 for the post of Assistant Driver (Electrical) category 16 of Employment Notice No. 1/2004 for which the written examinations was held on 5.6.2005.
- (iii) As the applicant was declared successful in the written examination, he was called for Psycho test/Medical/vision tests, which are integral part of selection process.
- (iv) Since the applicant failed to adhere to instruction No.2.5 of Employment notice No.1/2004, in as much as he submitted the Caste

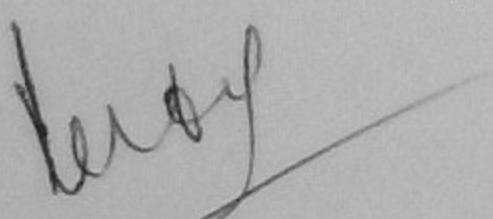


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certificate in the proforma of the State Government and not in the prescribed proforma designed by the Department of Personnel and Training, Public Grievances and Pension of the Government of India, as stipulated in instruction No.2.5, his candidature as an OBC candidate was cancelled. The decision taken by the respondent NO.3 i.e. Railway Recruitment Board, Allahabad is, therefore, correct in law. It was clearly mentioned in instructions No. 2.5 of the aforementioned advertisement/public notice that OBC certificate submitted in the proforma of the State Government shall not be accepted.

8. In their supplementary counter affidavit dated 29.3.2006 the respondents as per para 8, have stated that "Admit Card was issued treating the applicant as OBC candidate as per his declaration given on the application form regarding his community". At the time of psycho aptitude test, Medical/Vision tests etc. the same date, used earlier, was taken into consideration for issue of admit cards to the applicant. They have also stated that in view of non-receipt of Police verification reports, the candidates who have been declared successful at the aforesaid examination have not so far been sent for training.

9. Applicant, in his rejoinder, has again submitted that he applied for selection to the post only as an OBC and not as a general candidate and hence was entitled for consideration only as an OBC candidate. He also cited the



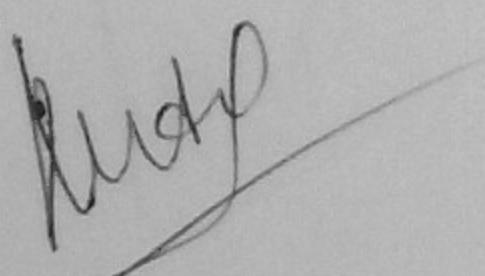
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case of one Umesh Kumar Verma wherein the Railway Recruitment Board, J & K, on scrutiny of the application of Sri Verma had directed him to produce such certificates in original and in prescribed proforma before appearing in the written tests held on 10.3.2006. No such opportunity was, however, provided to him by the Railway Recruitment Board, Allahabad, however, has been issued to him. Consequently the constitutional guarantees for grant of special benefits in matters of employment to him as an OBC candidate have been denied to him. In the interest of equity and fair play, the same opportunity should have been allowed to him by the Railway Recruitment Board, Allahabad.

10. The applicant as well as respondents were also heard through their respective counsels on 29.3.2006. Both sides reiterated their submissions as mentioned above.

11. We have given our thoughtful consideration to the submissions made by the learned counsels Sri S.K. Pandey, on behalf of the applicant, and Sri A.K. Gaur, on behalf of the respondents.

12. We find that there is no dispute on the point that the applicant fulfils all necessary conditions of eligibility for the post of Electrical Assistant (Driver). There is also no dispute about the correctness of the High School and Intermediate certificate as well as the ITI certificate, enclosed by the applicant alongwith the



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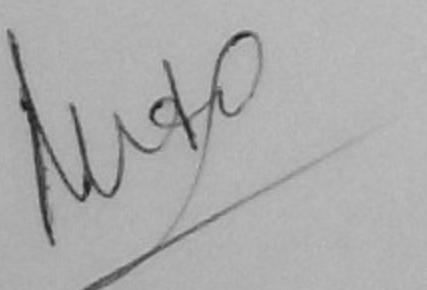
application form in support of his candidature. It is also on record, that the applicant was declared successful in the written examination conducted by respondent NO.3, and that he also successfully cleared the psycho test on 4.10.2005 and medical/vision test on 27.12.2005 and 28.12.2005.

13. The only argument advanced by the respondents for cancellation of the results, as per averments made by them in para 4 of their counter affidavit dated 21.3.2006 as well as para 5 of their supplementary counter reply dated 29.3.2006 is that the caste certificate, enclosed by the applicant, was in the proforma of State Government and not as per prescribed proforma circulated by Department of Personnel and Training, Government of India [as per their office memorandum No.36012/22/93/Estt. (SCT) dated 8.9.1993]. They have also cited the relevant extract of para 2.5 of the aforesaid notification/advertisement in support of their stand which is as under:

"The OBC certificate submitted on the proforma of State Government shall not be acceptable".

Respondents, as per para 4 of their counter affidavit dated 21.3.2006 have recorded the following reasons for not accepting the Caste Certificate furnished by the applicant which was in the proforma of the State Government.

"The basic principle to enforce this certificate is to give benefit to OBC candidates who do not belong to Creamy layer and who are covered under various



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resolutions passed by the Government of India for securing jobs under the Government of India".

They have reiterated the same averment as per para 5, of their supplementary counter affidavit dated 29.3.2006.

14. From the averment made by the respondents it becomes crystal clear that the main reason for the rejection of the caste certificate in question is that, the same is as per the proforma designed by the State Government and not in the format prescribed by the Department of Personnel and Training, Government of India vide their memorandum No.36012/22/93 Estt. (SCT) dated 8.9.93.

15. It is not the case of the respondents that the caste certificate in question was fake or forged. That the applicant belonged to an OBC community commonly known as 'KAHAR' is also not in dispute. This community is categorized as OBC both in the Central as well as State lists is also not an issue in this case. There is a Constitutional guarantee provided to members belonging to 'other backward classes, under Article 16(4) of the Constitution of India which reads as under:-

"Nothing in this article shall prevent the State from making any provision for reservation of appointments or posts in favour of any backward class of Citizens which, in the opinion of the State, is not adequately represented in the services under the State".

16. The benefit of reservation has been extended to socially and economically backward classes by the State in

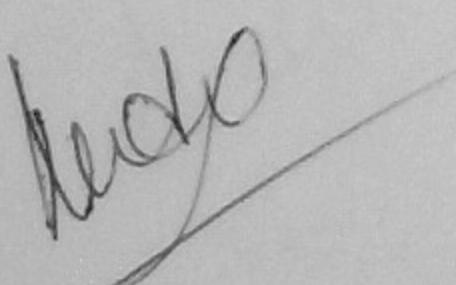
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order to fulfill this Constitutional mandate given to the State under Article 16 (4) of the Constitution as aforesaid.

17. In our considered view, this benefit of reservation to a candidate belonging to one of the backward classes of society, should not have been denied only on the ground, that the certificate in question was in the proforma approved by the State Government them and not in proforma devised by the Department of Personnel and Training, as aforesaid. The respondents, ought to have pointed out this fact to the applicant at the initial stage of scrutiny of the application from itself and the short coming in question could have been corrected at that stage itself as was done in the case of Umesh Kumar Verma, by the Railway Recruitment Board Jammu & Kashmir. This case has been cited by the applicant, as per para 4 of his rejoinder received in this Tribunal on 27.3.2006, and a copy of the same has also been provided to the respondents, on the same date i.e. 27.3.2006.

18. The respondents have exhaustively quoted para 206-5 of Railway Recruitment Board Manual 2000 which regulates the scrutiny of application forms received from the candidates applying for selection to notified posts. The relevant extract, which relates to this application, reads as under:-

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"Application shall be scrutinized to check eligibility for each candidate for the post applied for, by checking relevant criteria such as date of birth, educational qualification, SC/ST/OBC certificates where applicable, admissibility of age relaxation etc."

We are unable to comprehend, as to why the applicant was not immediately informed about any deficiency in respect of the caste certificate immediately after the initial scrutiny of his application form. We also notice an inherent contradiction in the averment made by the respondents as per para 5 of their counter affidavit dated 20.3.2006 and para 8 of their supplementary counter affidavit dated 29.3.2006 in the matter of issue of admit card to the applicant which authorized him to appear at the aforesaid tests.

19. In para 5 of their counter affidavit dated 21.3.2006 they have stated:

".....It is submitted that on being found otherwise eligible as a general candidate applicant was issued admit card bearing Roll No. 3127690, Control No. 1638381 for the post of Assistant Driver (Elect.) category 16 of Employment Notice NO.1/2004 for which written examination was scheduled to be held on 5.6.2005".

While in para 8 of their supplementary counter affidavit dated 29.3.2006, they state as under;

"That accordingly Admit Card was issued treating the applicant as OBC as per his declaration given on the application form regarding his community. However, during the psycho-aptitude test, the same date used earlier was taken into consideration for issue of admit cards for appearing in the psycho aptitude test".

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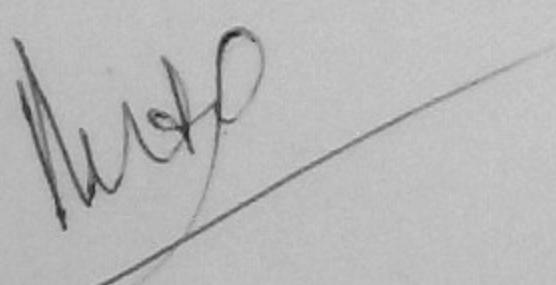
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Thus, there appears and obvious contradiction in the two averments made by the respondents. It appears that after having committed a serious mistake, they are trying to cover up their lapse by making false averments.

20. It is clear on record that after initial scrutiny of the application ~~the form~~, the respondent could not discover any deficiency in the documents and testimonials furnished by the applicant in support of his candidature. The respondents issued Admit Card to the applicant authorizing him to appear at the written test. On passing the said test, he was allowed to appear in the Psycho test scheduled on 4.10.2005. On successfully clearing the aforesaid test, he was called for medical and vision test on 27.12.2005 and 28.12.2005. He also cleared the medical and vision test successfully.

Hence, it was grossly unfair on the part of the respondents to withhold or cancel his results at the final stage.

21. Such as issue came up for consideration before the Hon'ble Supreme Court in the case of Shri Krishna Vs. Kurukshetra University [Reported in (1976) 1 SCC 311] wherein the Apex Court held that when there is ample opportunity to act and it is not acted upon then it tantamounts to acquiescence to the infirmities. To quote



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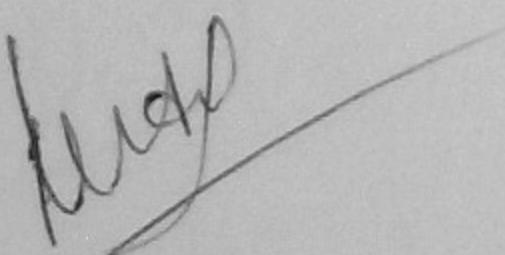
para 7 of the aforesaid judgment, which is relevant to the issue:-

"7. Equally it was the duty of the Head of the Department of Law before submitting the form to the University to see that the (application) form complied with all the requirements of law. If neither the Head of the Department nor the University authorities took care to scrutinize the admission form, then the question of appellant committing a fraud did not arise. It is well settled that where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved. It was neither a case of *suggestio falsi* or *suppresio veri*. The appellant never wrote to the University authorities that he had attended the prescribed number of lectures. There was ample time and opportunity for the University authorities to have found out the defect. In these circumstances, therefore, if the University Authorities acquiesced in the infirmities which the admission form contained and allowed the appellant to appear in part 1 examination in April 1972, then by force of University statute, University had no power to withdraw the candidature of the appellant".

22. Almost identical issue came up for consideration before Hon'ble High Court of Judicature, Madhya Pradesh in the case of Premji Bhai Ganesh Bhai Kshtriya Vs. Vice-Chancellor, Ravishanker University Raipur [AIR 1967 MP 194] where the Division Bench of the Hon'ble High Court, observed as follows:-

"From the provisions of Ordinance Nos. 19 and 48 it is clear that the scrutiny as to the requisite attendance of the candidates, is required to be made before the admission cards are issued. Once the admission cards are issued permitting the candidates to take their examination, there is no provision in Ordinance No. 19 or Ordinance No. 48 which would enable the Vice-Chancellor to withdraw the permission. The discretion expressed in favour of the petitioner by permitting him to appear at the examination, it was not open to the Vice Chancellor to withdraw the permission subsequently and to withhold his result".

The above judgment of the Hon'ble High Court was subsequently cited and affirmed by their Lordships of the



Supreme Court while recording their decision in the case of Shri Krishnan Vs. Kurukshetra University, referred to above. The relevant extract of para 7 of the aforesaid judgment reads as under:

"We find ourselves in complete agreement with the reasons given by Madhya Pradesh High Court and the view of law taken by the learned judges".

Since in the present case, the respondents had ample opportunities to act, and to find out the infirmity relating to 'Caste Certificate' as not being in the proforma prescribed by the Department of Personnel and Training Govt. of India, but in the proforma prescribed by the State Government hence the respondent No.3, acquiesced in the infirmity which the caste certificate contained and allowed the applicant to appear at the written examinations, Psycho/Medical as well as vision tests etc. Hence it was not legally correct on their part to cancel the results of the applicant as the doctrine of Acquiescence had come into operation in view of the principles of law enunciated by the Hon'ble Supreme court as well as Hon'ble Madhya Pradesh in the given situation, as per judgments cited above. Also, the defect, though professed is purely a technical one and the applicant, otherwise seems to fulfill the requirement of being an OBC.

23. Thus we come to the conclusion that the decision of respondent NO.3, to cancel the candidature and result of the applicant in the OBC quota, is not correct in law.

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Applicant also never applied for selection to the abovementioned post as a general candidate. Hence the decision of respondent NO.3 to treat him as a general candidate and to declare his result, on that basis, is clearly arbitrary and not in accordance with law.

24. The decision, in question as also not in keeping with the broad policies and objectives laid down under Article 16 (4) of the Constitution of India. On both accounts the decision in question deserves to be quashed and set aside. We order accordingly.

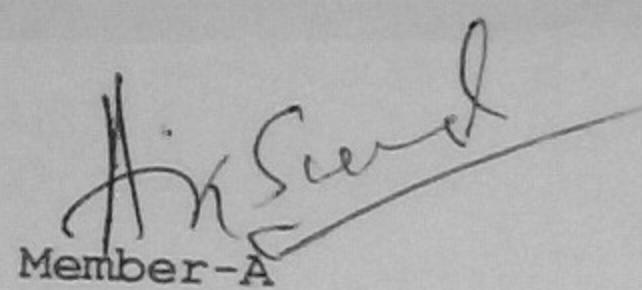
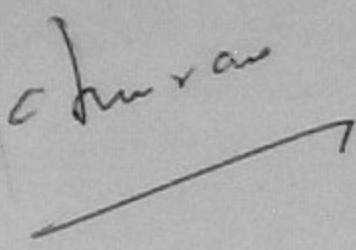
25. However, in order to ensure justice to both sides, applicant will furnish Caste Certificate duly issued by a Competent Authority, as per proforma prescribed by Deptt. Of Personnel and Training vide their office memorandum No.36012/22/93/Estt. (SCT) dated 8.9.93, to respondent NO.3 within a period of 15 days of issue of this order and the respondents shall admit it, if the same is otherwise in order and declare the results of the applicant within 10 days of receipt of the certificate in question as per his candidature in the OBC category. On the basis of the above, the O.A. succeeds. We issue the following direction to meet the ends of justice, to be complied with within a period of one month of receipt of the certificate in question. If the results are favourable, the applicant will be entitled to all consequential benefits, i.e. to say he will be included in the final panel approved by the respondents and shall

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also be sent for training etc. subject to verification of his character and antecedent by the Competent Police authorities and his seniority shall be as per merit in accordance with Rules.

25. The O.A. is accordingly allowed. The parties will bear their own costs.


Member-A
Vice-Chairman.

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