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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Original Application No. 40/2005

Date of decision: 30.8.2005

Coram:

Hon'ble Mr. J K Kaushik, Judicial Member.

Hon'ble Mr. G R Patwardhan, Administrative Member.

Dinesh Soni, S/o Shri Nemi Chandji Soni, aged about 25 years by caste Soni, resident of B-16, "Pitreshwar" Shiv Shakti Nagar, Mahamandir, Jodhpur.

: Applicant.

Rep. By Mr. Manoj Bhandari : Counsel for the applicant.

VERSUS

1. Union of India through the Secretary, Department of Personnel and Training, Ministry of P, P.G.& Pensions, New Delhi.
2. The Staff Selection Commission, Northern Region through its secretary, Examination -2 Unit, Department of Personnel and Training, C.G.O. Complex, Block No. 12, Lodhi Road, New Delhi.
3. The Assistant Director, Examination (2), Staff Selection Commission, Northern Region, CGO Complex, Block No. 12, Lodhi Road, New Delhi.

: Respondents

Rep. By Mr. Vinit Mathur,: Counsel for the respondents.

ORDER.

Per Mr. J K Kaushik, Judicial Member.

Shri Dinesh Soni has invoked the jurisdiction of this Bench of the Tribunal under Sec. 19 of the Administrative Tribunals Act, 1985, wherein the following reliefs have been sought:

"(i) by an appropriate order or direction, the impugned order dated 24.08.2004 (Annex. A/1) be declared illegal and be quashed and the respondents be directed to consider the case of the application as per his merit in the General category with all consequential benefits.

(ii) by an appropriate order or direction, the respondents be directed to grant appointment to the applicant on the post of Divisional Accountant/Auditor/ Junior Accountant/ UDC as per his merit irrespective of the caste with all consequential benefits."

2. With the consent of the learned counsel for both the parties, the

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case was taken up for final hearing at the stage of admission keeping in view the urgency in the matter as well as the controversy involved is being at a very narrow compass. We, accordingly heard the arguments advanced at the Bar and carefully perused the pleadings and records of this case.

3. Skipping up the superfluities, the material facts necessitating the filing of this O.A as borne out from the pleadings of the parties are that the applicant belongs to Other Backward Class category (for brevity OBC). A notification came to be issued for conducting the combined Graduate Level examination for the year 2003 for recruiting candidates for the post of Divisional Accountants/Auditors/Junior Accountants/UDCs in August 2003. The applicant applied for the same. He was declared successful in the preliminary examination. Thereafter he appeared in the main examination in September 2003. Thereafter, he received a communication dated 17.03.2004 from respondent No. 3 that he has not submitted the OBC certificate in the appropriate form as prescribed by the Central Government. The applicant immediately sent the requisite certificate to the concerned authority on 31.03.2004. Thereafter, he was declared as successful vide the results published in the Employment News dated 8-14 May 2004. The name of the applicant has been included the list of persons selected and he has been shown as passed in the category of OBC and he was posted to Bihar.

4. The further facts of the case are that the applicant has received another communication informing him that the OBC certificate submitted by him does not certify that he does not

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belong to creamy layer of OBC category. He sent a reply apprising that there has been increase in his father's income on the date of submission of the OBC certificate and therefore his candidature should be considered for appointment against general category in case his case did not fall under OBC category. He received yet another communication dated 24.04.2004, whereby his candidature was ordered to be rejected on the ground that his request for change of category cannot be entertained at that stage. The applicant personally contacted the concerned authority and he was assured that his case would be considered against general category for which necessary information shall be sent to him. Thereafter, he submitted numerous representations to the respondents. But his case has not been considered. The Original application has been filed on numerous grounds which are intermixed with the facts in para 4.11 to 4.14 and para 5 and its sub paras. It has been, inter alia, mentioned that the case of the applicant was to be considered against the post of Divisional Accountants/ Auditors/ Junior Accountants UDCs in the descending order as per his own merit.

5. As regards the variances in facts, the defence of the respondents as set out in the reply shows that the final result of the combined Main (Graduate Level) Examination 2003 (Scheme -B) has been declared and the request for any change of category cannot be entertained at this stage. The action of the respondents was well within the policy and procedure in vogue. The result of the main examination was published in the Employment News dated 8-14 May 2004 by the Staff Selection



Commission. OBC certificate was called for from the applicant since the earlier certificate was not as per the proforma prescribed by the Government and the certificate subsequently submitted did not contain any information that he did not belong to creamy layer of OBC. The applicant had not asked the Staff Selection Commission for change of category from OBC to General at any stage before the results were published. The applicant has only subsequently asked for change of category. The grounds raised in the O.A has generally be denied and it has been prayed that the interim order may be vacated.

Both the learned counsel for the parties have reiterated the facts and grounds mentioned in their respective pleadings. The learned counsel for the applicant has strived hard to persuade us that before the declaration of the result the request for change of category was sent to the competent authority and therefore it is incumbent on the part of respondents to consider his case against the general category posts ignoring the OBC certificate if the same was not acceptable to them. But it has not been found expedient for them to reconcile the matter and candidature of the applicant has been turned down under the wrong pretext of change of category. He has also submitted that the applicant has fundamental right for consideration against general category post. But his case has not been so considered and therefore there has been violation of Art. 14 and 16 of the Constitution of India. He has also submitted that there were number of posts for general category and his case ought to have been considered as per the general merit. But the applicant's case has not been so considered.



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7. Per contra, the learned counsel for the respondents strongly opposed the contention put forward on behalf of the applicant. It has been submitted that ^{he} submitted his application as a OBC candidate and he applied specifically against the OBC category posts. He should thank to himself for having chosen to apply against OBC category posts. The certificate submitted by him does not indicate that he does not belong to the creamy layer and that is the reason he could not be considered as belonging to OBC category and therefore his case has not been considered. Since he had applied specifically to OBC category and did not satisfy the requirement thereof, he cannot be permitted to avail the benefits in other category.

8. We have considered the rival submissions put forth on behalf of both the parties. As far as the factual aspect of the matter is concerned there is no material dispute. The only short question to be examined by us is as to whether if a person has applied for reserved category posts, and if his is found to be not belonging to that category, whether his case could be considered against unreserved posts, i.e. by considering him as belonging to general category. We took judicial notice of one of the judgements of the Apex Court in the case of M.C.D. VS. Veena and others [AIR 2001 SC 2749], wherein their Lordships of the Supreme Court were dealing with the controversy of OBCs of State other than Delhi for appointing in Delhi against OBC category posts. The Apex Court has held that OBCs of State other than Delhi cannot be treated as OBCs in Delhi and cannot be extended benefits related thereto in Delhi

and in the circumstances they can be considered in general category as if they do not belong to OBC category. We find that the ratio of the same covers on all fours the controversy involved in the instant case and the issue does not remain res-integra. We would do well by extracting paras 8, 9 & 10 of the above said judgement so as to make this order as self contained and exhaustive. The said paragraphs reads as under:

8. However, one aspect has to be borne in mind that that is the respondent-candidates had made applications as if they belong to OBCs on the basis of the certificates issued by the State from which they migrated to the National Capital Territory of Delhi but if the certificates issued in their original States of which they are permanent or ordinary residents were not good, the applications should have been treated as if they had been made in the general category and cases of the respondent-candidates ought to have been considered in general category. Therefore, to the extent, the applicants have attained necessary merit in the general list, they deserve to be appointed.

9. The learned counsel for the appellants, however, pleaded that the respondent-candidates having applied for the posts as if they belong to OBC groups their applications could not be treated as falling under general category. We fail to appreciate this contention. The particulars furnished by the respondent-candidates clearly give in detail their general qualifications and eligibility. The only additional aspect stated by them in their respective applications or in certificates supported thereto is that they belong to OBC categories. Hence, their cases ought to have been considered in the general category as if they do not belong to OBC categories in the circumstances arising in this case.

10. We, therefore, in allowing appeals, direct that the cases of the respondent-candidates shall be treated as if they do not belong to OBC groups but to fall under the general category and their cases shall be examined and they shall be appointed in the appropriate posts of primary and nursery teachers if they have attained the necessary merit in the select list. This exercise shall be done within a period of three months from today. It is brought to our notice that there are several vacancies still available with the appellants in this category of posts and no difficulty would arise in the matter of appointing the respondent-candidates to those posts. However, if any difficulty arises, it shall be the duty of the appellants to create appropriate posts and appoint the respondent-candidates to such vacancies falling under general category.

9. In the instant case, this Bench of the Tribunal was pleased to pass an interim order on 07.02.2005 and the relevant portion reads as under:

..... Keeping in view of the entire facts and circumstances, we direct that any appointment made in pursuance with the result at Annex. A/6 shall be subject to the result of this OA and the factum of filing of this O.A shall be annotated to each communication made thereof

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Therefore, no further complication are likely to arise for the respondents as a result of the order we propose to pass in this case.

10. The Upshot of the aforesaid discussion is that the O.A merits acceptance and the same stands allowed. The impugned order dated 24.08.2004 (Annex. A/1) is hereby quashed. The respondents are directed to treat the applicant as if he does not belong to OBC category and he belongs to general category and his case shall be considered for appointment on the appropriate post as per his merit. This exercise shall be done within a period of three months from the date of receipt of a copy of this order. No costs.

(G.R. Patwardhan)
Administrative Member.

JK Kaushik
(J K Kaushik)
Judicial Member.

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Part II and III destroyed
in my presence on 12/11/14
under the supervision of
section officer (J) as per
order dated 18/12/13

~~Caption Officer (Record)~~