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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

O.A No.130 of 2010

Tuesday this the 17th day of July, 2012

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***HON'BLE MR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MR. B.K. SINHA, ADMINISTRATIVE MEMBER***

Hemant Kumar son of Shri Prem Ram Patel,
Aged about 24 years, resident of 173,
Kumharon ka Bas, Bhagat Ki Kothi,
Jodhpur. ...Applicant

(By Advocates Mr.P.P.Choudhary, Amit Dave, Mahendra Vishnoi, Pukh Raj)

Vs.

1. Union of India through the Secretary
Ministry of Human Resources & Development,
New Delhi.
2. Regional Director, Staff Selection Commission(NR)
Government of India, Block No.12, CGO Complex,
Lodhi Road, New Delhi.

.....Respondents

(By Advocate Mr. Vinit Mathur, ASGI through Adv. Mr.M.S Godara)

O R D E R

Per: Dr.KBS. Rajan,Judicial Member

The question for consideration in this case is whether the applicant who belongs to OBC, should not have been treated as a general candidate on account of the fact that his OBC certificate issued by the competent authority is not dated prior to the last date for submission of the application

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2. Brief facts: The applicant was aspirant for the post of Jr Engineer in the respondents' organisation. Annexure A-1 notification was issued giving full procedure for application for this post. One of the conditions stipulated is that candidates claiming the benefit of reservation under OBC category not covered under the creamy layer must ensure that they furnish the OBC certificate duly signed by the competent authority before or on the closing date in the FORMAT prescribed by the Commission in the note as Annexure A-VII . Any deviation of the OBC certificate from the present prescribed format will not be accepted by the Commission and will lead such applications to be treated as the general (unreserved) category. Representations from candidates for reconsideration of their category at subsequent stages of the recruitment will not be entertained. The Commission will however have the discretionary power to reduce/waive any of the provisions in exceptional and deserving cases.

3. The applicant has annexed a certificate of his caste (OBC) issued by the State Government and the same does not exactly match with the format prescribed by the Central Government. As such, though the respondents have provisionally accepted the application, at a particular stage, have asked the applicant to produce the certificate from the competent authority in the prescribed format and the said certificate should have been issued on a date anterior to the last date of notification. The applicant did obtain a certificate, but the same is dated 23-02-2010, much after the last date for submitting the application. Of course, the very certificate does contain an endorsement of another certificate issued, apart from the one issued

by the State Government, by the Central Government on 15-04-2009.

The applicant was, however, not considered for OBC category and had been treated as a general category candidate and as he could not come in merit under the said general category, he was not selected.

The applicant has come up with this OA seeking the following reliefs:-

(1) The action of the respondents in not considering the case of the applicant for under the OBC category for recruitment and selection on the post of Junior Engineer with all consequential benefits as if the same were never denied to him.

(2) The respondents may be directed to consider the case of the applicants under OBC category and provide him appointment if he is otherwise fit.

(3) Any other direction or order which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case, in the interest of justice, may also kindly be passed in favour of the applicant.

4. Respondents have contested the OA. They have brought out a material fact, not reflected in the OA, that the applicant did give in writing stating as under:-

"I applied and qualified written part of examination in OBC category but I could not furnish the OBC certificate in the prescribed pro forma for Central government offices issued by the competent authority on or before 30 - 01 - 2009.

Thus, I may be treated as unreserved candidate and I will not claim for OBC status."

The respondents have therefore, contended that as the applicant has suppressed the material information and as he has also failed to submit the requisite certificate within the prescribed time, on account of which he could not be considered for OBC category, the original application filed by him is liable to be dismissed.

5. Counsel for the applicant pleaded that it is not the case that the applicant for the first time obtained the OBC certificate. He did attach a certificate from the competent authority as prescribed by the State government. The fact that he belongs to OBC is not disputed by the respondents but all that they claim is that the certificate should have been in the format prescribed and should have been of a date anterior to the last date prescribed for filing the application. The Counsel further referred to the discretionary power vested with the respondents and submitted that the case of the applicant being genuine, a judicious decision by the respondents would do justice to the applicant.

6. Counsel for the respondents submitted that the applicant had not come with clean hands. He has deliberately suppressed material information relating to the undertaking he had given to treat his case as one of general category and that he would not claim for OBC status. For the suppression of material fact itself the application is liable to

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be dismissed. Even otherwise the application has to be dismissed as that could be many individuals facing such situation and an exception cannot be shown to the applicant.

7. Arguments were heard and documents perused. Admittedly any public appointment has to be made with the requirements of equality clause enshrined in the Constitution of India under Article 14. The Apex Court in the case of Bedanga Talukdar vs Saifudaullah Khan (2011) 12 SCC 85 has interalia held as under:-

29. *We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant statutory rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.*

30. *A perusal of the advertisement in this case will clearly show that there was no power of relaxation. In our opinion, the High Court committed an error in directing that the condition with regard to the submission of the disability certificate either along with the application form or before appearing in the preliminary examination could be relaxed in the case of Respondent 1. Such a course would not be permissible as it would violate the mandate of Articles 14 and 16 of the Constitution of India.*

8. In the above case it was disability certificate that was found wanting, while in the instant case it is the OBC certificate. True, in the instant case, there is a clear discretionary power reflected in the

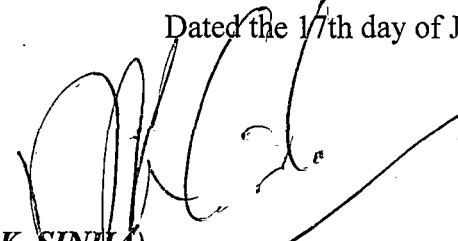
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notification, but if the respondents, after due consideration are not inclined to relax the condition, the Tribunal cannot direct them to use the discretion in favour of the applicant. Further, the counsel for the respondent is not wrong when he has brought out the fact relating to the undertaking given by the applicant. The applicant indeed ought to have reflected the same in his OA. Non-furnishing of the said material information does go against the applicant.

9. In view of the above, the OA is dismissed. Though the counsel for the respondents has vehemently argued that this case deserves to be dismissed with deterrent cost, the sober presentation of the case by the counsel for the applicant dissuades us from levying cost.

Dated the 17th day of July, 2012


(B K SINHA)
ADMINISTRATIVE MEMBER


(Dr. KBS RAJAN)
JUDICIAL MEMBER

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