

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

OA 333/98

Wednesday, this the 29th day of November, 2000.

CORAM

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN  
HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Dr.S.Abdul Azeez  
S/o M.Subair Kunju  
'Venchambi'  
Chekkakonam P.O.  
(Via) Karakulam  
Thiruvananthapuram - 695 564.

Applicant

By advocate Mr.D.Sreekumar

Versus

1. Union Public Service Commission  
represented by its Secretary  
Dholpur House, Shajahan Road  
New Delhi - 110 011.
2. The Railway Board represented  
by its Secretary  
New Delhi.
3. Union of India represented by  
its Secretary  
Ministry of Railways  
Central Secretariat  
New Delhi

Respondents

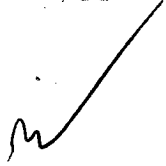
By advocate Mr.Govind K.Bharathan,SCGSC for R1  
Mrs.Sumathi Dandapani for R2&3.

The application having been heard on 29th November, 2000, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

Applicant, a medical doctor, applied for selection and appointment to the post of Assistant Divisional Medical Officer in the Railways pursuant to a notification dated 22nd October, 1994 issued by the Union Public Service Commission. By the notification, vacancies were reserved in respect of other backward communities too. Applicant who belongs to Muslim (Islam) claimed reservation. Being successful in the written examination as also in the interview, the applicant was selected for appointment as Divisional Medical Officer by order



dated 20.6.96 (Annexure A-8) treating him to be a member of OBC (Other Backward Classes) and he was asked to produce the original OBC certificate in prescribed form to prove his community status. Applicant produced Annexure A-5 certificate dated 18.10.95 issued by the District Magistrate/Deputy Commissioner, Nedumangad, certifying that Abdul Azeez, the applicant belongs to the Muslim - Islam Community which is recognized as a backward class under the Government of India, Ministry of Welfare Resolution No. 12011/68/93 BCC(C) dated 10th September, 1993 published in the Gazette of India Extraordinary Part I Section dated 13th September, 1993. The Union Public Service Commission (UPSC for short) called upon the applicant by letter dated 23.8.96 to produce a clear OBC certificate in the proper format within 20 days stating that the OBC certificate earlier furnished by the applicant was not acceptable as the caste indicated therein was not included in the Central List of OBC from Kerala. Applicant thereafter produced Annexure A-11 certificate from the Tahasildar, Nedumangad dated 6.9.96 which reads as follows:

"This is to certify that Shri S. Abdul Azeez, 'Venchambi', Chekkakonam P.O. (Via) Karakulam, son of Shri Subair Kunju of Village Aruvikkara in District Thiruvananthapuram of the State Kerala belongs to the 39A.Other Muslims (excluding (i) Bohra (ii) Cutchi Memon (iii) Navayat (iv) Turukkan (v) Dhakhni Muslim) Community which is recognized as a Backward Class under Government of India, Ministry of Welfare Resolution No.12011/96/94-BCC dated 9.3.96.

Shri S. Abdul Azeez and his family ordinarily resides in Village Aruvikkara of District of the Thiruvananthapuram, State of Kerala. This is also to certify that he does not belong to the persons/sections (creamy layer) mentioned in column 3 of the Schedule to the Government of India, Department of Personnel & Training OM No.36012/22/93-Estt.(SCT) dated 8.9.93.

Sd/-  
Tahasildar, Nedumangad"


On receipt Annexure A11 certificate, UPSC informed the applicant the the OBC certificate (Annexure A11) produced by him could not be accepted as the same was issued to the

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applicant only on 6.9.96 while the result of the selection was declared on 5.1.96 and required the applicant to clarify the position as also to submit a proper OBC certificate in support of his claim for the benefit of the member of OBC. Applicant made a detailed representation (Annexure A-13). On consideration of his representation, the first respondent informed the applicant that his claim for OBC status for appointment was not tenable for the 1995 Examination as the community was included in the Central List of OBCs only as per the Resolution dated 9.3.96. Aggrieved by this, applicant has filed this application seeking to set aside Annexure A14, for a declaration that he is entitled to be appointed as Assistant Divisional Medical Officer in the Railways and a direction to the respondents to extend to him all the benefit of reservation of OBC for appointment to the post of Assistant Divisional Medical Officer in the Railways pursuant to the Combined Medical Services Examination, 1995.


2. Applicant has alleged that since the Government of Kerala has issued a notification dated 5th April, 1994 clarifying that the terms "Mappila" and "Muslims" occurring in the Schedule to G.O.(MS) 141/78/GAD dated 15.3.78 and published as S.R.O. No.302/78 in Part I, Section IV of the Kerala Gazette No.15 dated 11.4.1978 are synonymous as far as the Kerala State is concerned and, therefore, there is no justification in the respondents taking the stand that the applicant who is a Muslim is not entitled to the benefit of reservation available to OBC.

3. Respondents in the reply statement have made it clear that till 1996 only "Mappilas" were included in the Central List of OBCs and 'Other Muslims' excluding (i) Bohra (ii) Cutchi Memon (iii) Navayat (iv) Turukkan and (v) Dakhni Muslim



were incorporated only as per the Resolution dated 9th March, 1996 and, therefore, the applicant is not entitled to claim the benefit for the selection made as per the notification issued in the year 1995.

4. We have perused the pleadings and materials on record and have heard Mr. D.Sreekumar, learned counsel of the applicant as also the learned counsel appearing for the respondents. Inviting our attention to Annexure A7 Notification issued by the Government of Kerala dated 5th April, 1994, Mr. Sreekumar, with considerable tenacity, argued that the State Government being the competent authority to declare a community belonging to OBC as far as the State is concerned having declared "Mappila" and "Muslims" as far as the State of Kerala is concerned as synonymous, there is no valid reason for the UPSC to contend that the applicant who is undoubtedly certified to be a Muslim is not entitled to the benefit of reservation as a member of Other Backward Classes. Though the argument in the first flash may appear to have some force, but a scrutiny of the explanatory note in Annexure A7 would make it clear that "Mappila" as also "Muslims" occur in the State List of OBCs published on 15th March, 1978, that they were one and same as far as Kerala State was concerned and that it was felt necessary to make the point clear and that was why the notification was issued. While this was the state of affairs as far as the list of OBCs published by the State Government on 15.3.78, in the Central list of OBCs, as far as the State of Kerala is concerned, only "Mappila" was included as item No.39. The entry 39A - Other Muslims excluding (i) Bohra (ii) Cutchi Memon (iii) Navayat (iv) Turukkan and (v) Dakhni Muslim - was included only in the year 1996 on acceptance of the recommendations made by the National Commission for Backward Classes by Resolution dated 9.3.96 of



the Government. Therefore, it is abundantly clear from the materials placed on record that till 39A was included in the Central list of OBCs in the year 1996, "Other Muslims" than "Mappila" were not included in the Central List of OBCs. Therefore, we are of the considered view that the decision taken by the first respondent that the applicant was not entitled to get the benefit of reservation for OBC for the recruitment made pursuant the notification of the year 1995 suffers from no infirmity.

5. In the result, finding no merit, the Original Application is dismissed leaving the parties to bear the costs.

Dated 29th November, 2000.



G. RAMAKRISHNAN  
ADMINISTRATIVE MEMBER



A.V. HARIDASAN  
VICE CHAIRMAN

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Annexures referred to in this order:

- A-14 : True copy of the letter dated 16.x.97 issued by Under Secretary, UPSC to the applicant.
- A-8 : True copy of the letter No.96/E(GR)II/4/1(285) dated 20.6.96 issued by the Secretary, Railway Board to the applicant.
- A-5 : True copy of the Community Certificate dated 18.10.95 No.B3.8663/95.
- A-11 : True copy of the Certificate dated 6.9.96 issued by the Tahsildar, Nedumangad to the applicant.
- A-13 : True copy of the representation submitted by the applicant to the Chairman, UPSC.
- A-7 : True copy of the order No.G.O.(P)No.18/94/P&ARD dated 5.4.94 issued by the Commissioner and Secretary to Govt.