

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This the 04th Day of October 2018)

Hon'ble Mr. Gokul Chandra Pati. Member (A)
Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Original Application No.330/00844 of 2016
(U/S 19, Administrative Tribunal Act, 1985)

Ramanand Yadav S/o Kalpnath Yadav R/o Village and Post Karkhiyaon,
Tehsil-Pindra, District Varanasi.

..... Applicant

By Advocate:- Shri Anil Kumar Singh

Versus

1. Union of India through Ministry of Railways, through its Secretary, New Delhi.
2. Director, Establishment (Railway Recruitment Board), Railway Board, New Delhi.
3. Railway Recruitment Board, Gorakhpur through its Chairman.
4. Public Information Officer, Railway Recruitment Board, Gorakhpur.

..... Respondents

By Advocate: Shri P. Mathur

O R D E R

Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member (Judicial)

1. The present Original Application has been filed by the applicant seeking following reliefs-

"(i) To issue an order, rule or direction for quashing and setting aside the impugned order/letter dated 25.4.2016 passed by respondent No.4 by which the candidature of applicant was rejected under OBC category.

(ii) To issue an order, rule or direction directing the respondents No.3 to consider the candidature of the applicant under OBC category for which he is fully eligible and declared successful in above Railway Board Examination in pursuance of above advertisement.

(iii) To issue an order rule or direction, which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case to which the applicant may be found entitled under law.

(iv) To award the cost of the original applications may also be awarded in favour of the applicant".

2. Case of applicant Ramanand Yadav belonging to OBC category is that respondent No. 3 issued advertisement No. 4 of 2012 for posts in Category 6 for the Technical Grade IIIrd (Electronic/Electrical). Applicant applied and was declared passed in the examination and obtained 38.33 marks against cut off marks of 36.67 but was declined selection by the respondents on the ground of self declaration was not annexed along with the application form and that the OBC certificate is not in proper format, which is an unreasonable ground for rejection because self declaration can be obtained at any stage and that the OBC certificate is in the format as approved by the Government of India and issued by the competent authority and any condition/format in the advertisement which does not confirm to the rules and regulation of the Government of India is null and void and the respondent-department is bound to follow the rules laid down by the government of India and cannot be allowed to operate beyond the law of the land.

3. Respondents No. 3 and 4 in their counter reply have averred that as per the advertisement, applicant was bound to submit OBC caste certificate and a self declaration stating that he does not belong to the creamy layer of OBC and para No.6.5 of the advertisement clearly states that non-enclosure of the self-

declaration will mean that the candidate will be taken as Unreserved (UR) candidate. The applicant did not file the self declaration and the OBC certificate was not in the format prescribed in the advertisement, as such, he was put in the UR category.

4. Respondents have further averred in their counter reply that:

"6 That it will not be out of place to mention that it is only in pursuance of the application so submitted that the applicant Roll No. 19124034003989 was allotted to the applicant. In this roll digit 4 is meant for OBC candidate. The applicant was allotted the said roll No. on the basis of his OBC certificate attached with the application form. At this juncture, it will be relevant to point out that at the time of allotment of Roll number, papers are not minutely examined and the community status as supplied by the candidate in his application form is accepted at its face value. It is only at the time of document verification that minute and through examination of papers is made to determine the actual eligibility of the candidate. At this stage, it was found that the applicant had not enclosed his self declaration for OBC with the application form and accordingly he did not tick the column 11 of the information sheet of the application form. This fact can further be appreciated from perusal of the self declaration form and verification/check note form. The check note was prepared at the time of document verification and the applicant also is one of the signatories of the check Note. This clearly reveals that the applicant has not attached the self declaration form for claiming status of OBC as stipulated in the Centralized Employment Notice. Therefore, in terms of the provision as contained in para 6.5 of the notification the candidate was to be considered as a UR and not as an OBC candidate.

7. That from the submissions made above, it is thus evidently clear that in view of the specific covenant as detailed in the notification itself, he can be considered as UR candidate only. For staking claim as OBC candidate declaration regarding non-creamy layer is absolutely essential. The applicant failed to fulfil this condition. There is no discretion given to any authority in the system to go against or ignore the terms and conditions of the notification.

8. That the applicant had admittedly secured 38.33% marks and the cut off for selection of General candidate is 43% and as such the applicant has no legal enforceable right to claim any appointment ignoring the recruitment rules which has a statutory force. A Photostat copy of the verification report/check note dated 17.12.2013 is being filed herewith and marked as Annexure CA-4 to the present counter reply.

26. That none of the grounds taken in para No. 5(1) to 5 (8) of the Original Application, are tenable. All actions taken by the answering respondents are in conformity with the terms of the notification. Admittedly, at the time of allotment of Roll Number, papers are not minutely examined and the community status as supplied by the candidate in his application form is accepted at its face value. It is only at the time of document verification of papers is made to determine the actual eligibility of the candidate for the purpose of empanelment. At this stage, it was found that the applicant had not enclosed his self declaration for OBC with the application form and accordingly he did not tick the column 11 of the information sheet of the application form and thus he was rightly treated as an unreserved candidate in terms of the notification. There are many such candidates who have been treated as UR if self- declaration for OBC was found unattached. Any exception made in one case will vitiate the entire selection process. The system of selection by RRB will then collapse. It is also incorrect to say that his

candidature was cancelled. The fact is that his candidature was not cancelled. He was only treated as UR".

5. We have heard and considered the arguments of the Learned Counsels for the parties and gone through the material on record.
6. Learned Counsel for applicant placed on record, copy of Order dated 18.9.2017 in O.A. Rekha Kumari v/s Union of India wherein Railway Recruitment Board is a party-respondent decided by the Tribunal, Allahabad Bench and submitted that the entire controversy in the present case is covered by the Order and application is to be allowed.
7. We have perused the Order referred by the learned counsel for applicant. We find that the said Order covers the facts of the present case on all fours. The order is a reply to every contention raised by the respondents and unexceptionally overrules the stand taken by them. The present O.A. is to be allowed for the very same reasons discernible from the Order in Rekha Kumari case (supra).
8. We may add a few words. The Caste certificate attached by the applicant is in conformity with the format issued by the Government, as per, the following letter:

"NCBC, Annual Report-2014-15

No. 36036/2/2013- Estt.(Res.)

Government of India

Ministry of Personnel, Public Grievances & Pensions

Department of Personnel & Training

North Block, New Delhi

Dated: 30' May, 2014

To,

The Chief Secretaries of all the State Governments/Union Territories

Subject: Revision of format for OBC Caste Certificate

The Government of India had issued instructions on 8th September, 1993 vide DoPT O.M. No. 36012/22/93-Estt.(SCT) providing for reservation to Other Backward Classes in the services and posts under the Government of India. The format of the Caste Certificate was prescribed vide Annexure A of the O.M. No. 36012/22/93-Estt.(SCT) dated 15th November 1993. In the said format, the then Ministry of Welfare's Resolution No. 1201 1/68/93-BCC(C) dated 10th September 1993 was mentioned, which contained the list of castes and communities treated as OBCs till that time. Since then, a large number of castes and communities have been added to the Central List of OBCs through various resolutions of the Ministry of Social Justice and Empowerment. The details of the resolutions subsequent to the Resolution dated 10th September 1993 do not find mention in the existing format. The said format also prescribes that the certificate issuing authority should certify that the candidate does not belong to the persons/sections (Creamy Layer) mentioned in Column 3 of the Schedule to the aforesaid O.M. dated 8.9.1993.

2. Representations have been received in this Department wherein candidates belonging to OBC Communities have reportedly faced difficulty in getting the benefits of reservation. This is because of the fact that in the caste certificate issued by the concerned district authorities, although the name of the caste/community is mentioned in the certificate, the specific resolution by which the said caste/community has been included in the Central List of OBCs is not indicated.

3. Keeping in view such problems faced by the candidates, this issue was examined in consultation with the National Commission for Backward Classes and it has been decided to revise the existing format of OBC Caste Certificate. A copy of the revised format is enclosed (Annexure). All the certificate issuing authorities are requested to invariably

mention the details of the Resolution (Number and Date) by which the caste/community of the candidate has been included in the Central List of OBCs and also to ensure that he/she does not belong to the persons/sections (Creamy Layer) mentioned in Column 3 of the Schedule to the aforesaid O.M. dated 8.9.1993 as amended from time to time.

4. I am to request that the revised format of the Certificate may please be brought to the notice of authorities under the State Governments/Union Territories who are empowered to issue the Caste Certificate.

Yours faithfully

Under Secretary to the Government of India

Phone- 01 1-230921 10

Copy to:

1. All Ministries1 Departments of the Government of India 2. Department of Financial Services, Jeevan Deep Building, Parliament Street, New Delhi-110001 3. Department of Public Enterprises, Block No.14, CGO Complex, New Delhi- 1 10003 4. Railway Board, Ministry of Railways, Rail Bhavan, New Delhi 5. Union Public Service Commission/ Supreme Court of India/Election Commission of India/ Lok Sabha Secretariat/ Rajya Sabha Secretariat/ Cabinet Secretariat/ Central Vigilance Commission/ President's Secretariat/ Prime Minister's Office1 Planning Commission 6. Staff Selection Commission, CGO Complex. Lodhi Road, New Delhi 7. Ministry of Social Justice and Empowerment, Shastri Bhawan, New Delhi 8. National Commission for SCs/National Commission for STs, Lok Nayak Bhawan, New Delhi 9. National Commission for Backward Classes, Trikoot-I, Bhikaji Cama Place, R.K. Puram, New Delhi(w.r.t. their letter No.NCBCI713212012-RW dated 16.5.2013) 10. Office of the Comptroller and Auditor General of India, 10 Bahadur Shah Jafar Marg, New Delhi - 110 002 11. Information and Facilitation Center. DoPT, North Block, New Delhi. 12. Director, ISTM, Old JNU Campus, Olof Palme Marg,

New Delhi 110067 , 13. The NIC, DoPT with a request to upload it at the website of this Department in OMS & Orders Estt.(Reservation) SC/ST/OBC and also under 'What's New'

Format of OBC Certificate FORM OF CERTIFICATE TO BE PRODUCED BY OTHER BACKWARD CLASSES (NCL) This is to certify that Shri/Smt./Kumari _____ son/daughter of _____ of _____ village/town _____

in _____ District/Division

in the _____ State/Union Territory _____ belongs to the _____ community which is recognised as a backward class under the Government of India, Ministry of Social Justice and Empowerment's Resolution No. _____ dated _____. *.

Shri/Smt./Kumari _____ and /or his/her family ordinarily reside(s) in the _____ District/Division of the _____ State/Union Territory.

This is also to certify that he/she 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 O.M. No. 36012/22/93 – Estt.(SCT) dated 8.9.1993 **. District Magistrate, Deputy Commissioner etc.

Dated:

Seal

_____ * The authority issuing the certificate may have to mention the details of Resolution of Government of India, in which the caste of the candidate is mentioned as OBC. ** As amended from time to time. Note:- The term "Ordinarily" used here will have the same meaning as in Section 20 of the Representation of the People Act, 1950.

9. The learned Counsel for applicant vociferously argued that the OBC certificate format submitted is, as per, the various notifications/O.M. issued by the Government of India and applicable to Government Department including the Railway Recruitment Board. Apparently, the department is not tune with the ground realities existing in our Country. It is difficult and one has to literally drag heels to get such certificates from the Governmental agencies issuing such certificates. Now that the applicant got a official certificate showing his OBC category and the same said certificate also mentions that the applicant does not belong to the creamy layer, the respondents would like him to go through the same rigour of getting the certificate as per their format.
10. Learned counsel for applicant placing reliance on ***Ashish Kumar v/s State of Uttar Pradesh, (2018) 1 SCC (L&S) 464 and Raminder Singh v/s State of Punjab, (2018) 1 SCC (L&S) 523*** submitted that where there is variance in statutory rules and advertisement, rules would take precedence. And that anything prescribed in the advertisement which is dehors the Rules is bad in law and therefore the OBC certificate given in the advertisement is at variance with the certificate format as prescribed by Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training.
11. The contention of applicant regarding the OBC certificate has force. Further it is seen from the letter dated 25.04.2016 (Annexure A-1) of the respondents, the reason stated for treating the applicant as a candidate of unreserved category is due to non-submission of self declaration and similar grounds indicated in the counter reply. There is no averment in the pleadings of the respondents that the OBC certificate furnished by the applicant was defective.

12. The reasons as given in O.A. of Rekha Kumari (supra) and applicable to the facts of the present case are reproduced as under:

"12. In the light of the above mentioned judgments and the observations made by various Court at various level, we find that the case of the applicant is clearly and squarely covered by the above judgments, as in the present case also, the applicant, who applied as an OBC candidate and also enclosed her OBC certificate along with her application form and ticked the category under which she applied for the post in question, was also allotted the roll number as an OBC category candidate. However, when the result was declared by the respondents, her roll number was mentioned in the category of unreserved candidates and applicant was also called for document verification and when the applicant had appeared for document verification, it was stated by the concerned document verification authority that as she has not enclosed self-declaration form regarding non-creamy layer status at the time of submission of application form, so her candidature was treated as unreserved candidate, which self declaration certificate she submitted at the time of document verification and still respondents have treated the applicant as unreserved candidate while finally selecting the candidates for appointment to the post of Staff Nurse because as per the cut off marks, she has not come within the merit list of unreserved category candidate while it is not disputed that she has also declared successful and topped in the category of OBC candidates. Therefore, the observations of the various Courts, as quoted above, supported the case of the applicant as undoubtedly the applicant is an OBC candidate and merely not filing of self-declaration form regarding non-creamy layer status along with application form, will not disentitle her to be treated as an OBC

candidate. It is also not disputed that at the time of submission of application form, the applicant has not ticked the Box provided in the said application form, which is meant to show that document attached in proof of self declaration form of OBC candidate as per Annexure-5, although the applicant has ticked the box which is meant to show that community certificate had been enclosed with the application form. As such, it is very much clear to the respondents that she has not attached the self declaration form of OBC candidate regarding non-creamy layer status with her application form and as she has submitted the OBC category certificate, she was allotted the roll number under the category of OBC and she was allowed to appear in the examination and hence, the respondents at a later stage could not have changed the applicant's category from OBC to unreserved category. It is also not disputed that the applicant has submitted an OBC certificate, which was essential to claim her category as OBC and the respondents acted on the said certificate, allowed the applicant to appear in the said examination as an OBC category candidate. Hence, it was incumbent upon the respondents to take into consideration the self declaration form regarding non-creamy layer status document submitted by the applicant at the time of document verification though the same was not annexed with the application form submitted by the applicant. Therefore, the action of the respondents not accepting the said self declaration form regarding non-creamy layer status and treating the applicant as unreserved candidate at the time of document verification is discriminatory, arbitrary and illegal. It is also not disputed that the applicant has secured very high marks in the category of OBC candidate".

13. In view of the facts and circumstances of the case as discussed above, it is clear that the applicant was not considered as an OBC

candidate only due to non-submission of the self declaration form as stated in the counter reply. Hence the present case is squarely covered by the facts and circumstances in case of Rekha Kumari (supra) and the applicant in this OA is entitled to similar relief. Accordingly, the order dated 25.4.2016 passed by respondent No. 4 by which the candidature of applicant was rejected under O.B.C. category is set aside. We direct the respondents to consider the case of applicant as an OBC category candidate and declare his result for the post he had applied for under OBC quota vacancies and if found place in his merit position, his case for appointment shall be considered by the respondents as per Rules with all consequential benefits including seniority amongst the selected candidates but excluding the salary for back period when the applicant was not appointed. Respondents shall carry out the aforementioned exercise within a period of two months from the date of receipt of certified copy of this order. No order as to costs.

(Rakesh Sagar Jain)

Member (J)

(Gokul Chandra Pati)

Member (A)

Manish/-