

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA NO.2679/2016

Order reserved on 13.10.2017
Order pronounced on 30.10.2017

HON'BLE MR. RAJ VIR SHARMA, MEMBER (J)
HON'BLE MS. PRAVEEN MAHAJAN, MEMBER (A)

Ms. Pratima, aged about 24 years,
D/o Shri Vijay Singh,
R/o H.No.271, Sector-4,
Rewari (Haryana).

...Applicant

(By advocate: Mr. Yogesh Sharma)

VERSUS

1. Union of India
through the Secretary,
Ministry of Personnel & Training,
Govt. of India, North Block,
New Delhi.

2. The Chairman,
Staff Selection Commission,
CGO Complex, Lodhi Road,
New Delhi.

3. Regional Director(NR),
Staff Selection Commission,
CGO Complex, Lodhi Road,
New Delhi.

...Respondents

(By advocate: Mr. Piyush Gaur)

:ORDER:

HON'BLE MS. PRAVEEN MAHAJAN, MEMBER (A):

The OA has been filed by the applicant seeking the following reliefs:-

" (i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned result (Web-site Copy) (Annex.A/1) only in respect of the applicant, by which the respondents treated the applicant as unreserved candidate and

consequently, pass an order directing the respondents to treat the applicant as a OBC candidate and accordingly revised the final result of the applicant by granting proper posting to the applicant in Income Tax and Excise Department with all the consequential benefits.

(ii) That the Hon'ble Tribunal may graciously be pleased to pass an order declaring to the effect that not treating the OBC certificate of the applicant as a valid certificate and not accepting the same is totally illegal, arbitrary and against the law and consequently, treat the applicant as a OBC candidates for the purpose of Combined Graduate Level Examination, 2015 with all the consequential benefits including proper posting with all benefits.

(iii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant along with the costs of litigation."

2. Briefly stated, facts of the case are that the applicant appeared for Combined Graduate Level Examination, 2015 under OBC category and qualified the same. She was shortlisted and called for verification of documents on 02.03.2016. At the point of verification of the documents, the concerned authority declared the OBC certificate of the applicant as not valid as the same was issued by Naib Teshildar. They then directed the applicant either to give an undertaking to treat her as 'unreserved' candidate, or her candidature would be rejected due to non production of documents. The applicant submits that she was left with no option but to give her consent to be treated as UR candidate. It is stated that when on 02.03.2016 the OBC certificate was not accepted, the applicant immediately approached the Teshildar who counter signed the said certificate on 02.03.2016 and on 03.03.2016, she requested the respondents to accept the same but her request was turned down. Against this action of the

respondents, the applicant submitted a detailed representation dated 21.03.2016 requesting the respondents to cancel the undertaking given by her and treat her as an OBC candidate to which no reply has been given till date. After declaration of the final result, the respondents have allotted her the post of Auditor under C&AG, treating her as UR candidate. She states that as per merit under OBC category, she is entitled to be allotted the post of Inspector in one of the Revenue Departments.

3. Per contra, the respondents in their counter submit that the applicant Pratima was called to appear in Interview on 02.03.2016 where, at the time of documents verification, she produced OBC certificate, which was not in accordance with the provisions of notice of aforesaid examination. The respondents state that as per Notice of Examination dated 02.05.2015 duly amended through Corrigendum dated 26.05.2015 (Annexure R/3) published by the Respondent, OBC certificate issued by the Competent Authority between the period of 12.06.2012 to 09.12.2015 in prescribed format only was acceptable for claim of Reservation & Age relaxation under OBC category.

4. Further, the certificate dated 24.02.2016 submitted on the day of Interview by Ms. Pratima was not in order as the said certificate does not have any mention of GOI Resolution No. vide which her caste has been included in Central List of OBC.

5. Since the OBC certificate dated 24.02.2016 submitted by the applicant was not valid as per Notice of Exam, her category was changed from OBC to UR.

6. Heard both the learned counsels and perused the record carefully.

7. Learned counsel for the applicant, Shri Yogesh Sharma submitted that the applicant was a candidate for Group 'C' posts in the examination conducted by Staff Selection Commission (SSC) in the year 2015. She had applied for the same under OBC category and successfully cleared all the stages of the examination. She submitted an OBC certificate duly issued by the competent authority(Naib Tehsildar) which, however, was not accepted by the respondents and she was treated as UR candidate. Later on, when the applicant produced another certificate issued on the same day, by the Tehsildar, it was not accepted by the respondents being after the cut of date. The respondents then considered her candidature on merit, treating her as a general candidate. She has been allotted the post in the office under C&AG whereas, as per her merit in the OBC category, she should be given the post of Inspector of Income Tax or Excise Department. Relying upon a judgment of Principal Bench in OA No.1309/2014 dated 09.05.2017, the learned counsel stated that the ratio of the aforesaid judgment is squarely applicable in the present case. He prayed that in view of various judgments cited

therein, the in-justice meted out to the applicant needs intervention of the Tribunal.

8. The learned counsel for the respondents reiterated arguments already advanced in the counter filed by the respondents.

9. On perusing the judgment produced by the learned counsel for the applicant, we find that the Apex Court in the case of **Ram Kumar Gijroya Vs. DSSSB & Anr.** (Civil Appeal No.1691/2016 arising out of SLP(C) No.27550/2012 dated 24.02.2016 has held that a liberal approach was necessary in deciding cases of public employment of reserved category candidates and had accordingly dismissed the judgment of the Division Bench of Hon'ble High Court of Delhi.

10. The Hon'ble High Court of Delhi in Writ Petition (C) No.11928/2009 (**Hari Singh Vs. SSC & Anr.**) dated 06.04.2010 has held that:

"47. The prescription in the public notice in question that the closing date for receipt of application would be treated as the date of reckoning of OBC status of the candidate and also for ascertaining that the candidate does not fall in the creamy layer, in our view, is a prescription evolved for the benefit of the candidates belonging to OBC category and not for the purpose of ousting them from the benefit of reservation. What the NOTE under Clause 4(B) (set out in para 5 above) provides is that, if a candidate is certified as being an OBC category candidate not falling within the creamy layer prior to the close of the date of submission of applications (i.e. 14.09.2007 in this case) then the candidate would be treated as an OBC candidate not falling in the creamy layer for the purpose of the examination in question, and the issue that the candidate may have come into the creamy layer subsequently, i.e. after the date of closing, would not be relevant or gone into to deny the benefit of reservation to such a candidate.

48. The prescription in the NOTE appended to Clause 4(B) does not get whittled down merely by acceptance of an OBC certificate issued on a later date. A candidate who is certified as belonging to an OBC and as not belonging to the creamy layer on a later date than the one fixed by the public advertisement cannot be assumed to be as falling under the creamy layer on any date prior to the date of issuance of the certificate. There would be no basis for such an assumption. The possibility of such an eventuality is highly remote. In fact, the greater probability is that a candidate who may have been certified as an OBC candidate falling outside the creamy layer, may actually get covered by the creamy layer on a later date."

This they had held after observing as follows:-

"45. We are conscious of the fact that if the basic frame work of the terms and conditions and/or the relevant rules requires the submission of the OBC certificate, by a candidate applying in that category, along with the application itself, it can lead to an unworkable and impracticable situation if no time limit whatsoever is fixed for submission of such certificates by the candidates. It would become extremely difficult for the examining body to compile and declare the results if a deadline/cut off date is not fixed for the purpose of entertaining such certificates."

11. Further, in the case of **Amit Pal Vs. UOI & Ors**, Writ Petition (C) No.5743/2014 decided on 11.02.2015 the Hon'ble High Court of Delhi has held that what was important was the substance and not the form. Para-9 of the aforesaid judgment reads as follows:-

"9. In my opinion, the arguments urged on behalf of the respondents are very shallow and deserve rejection by this Court inasmuch as what is important is the substance and not the form. It cannot be said that there is a mandate with respect to complying of the form, and in law, once a certificate complies with the necessary requirements of law which is that the petitioner must be a person of OBC status not falling in the creamy layer, then, the form of the certificate is immaterial because I fail to understand what is achieved by being unnecessarily insistent on a particular language although all the substantial requirements of the form Annexure-VIII of the petitioner are satisfied of the petitioner being an OBC candidate not belonging to the creamy layer status and the certificate in this regard is issued on or before 1.8.2012. After all it is not disputed that an OBC certificate can be issued not only by the central government but also by the Government of NCT of Delhi noting that admittedly the petitioner resides in Delhi and he took the examination conducted on behalf of respondent no.2 at a centre in New Delhi. There is therefore nothing unusual for an OBC certificate having been obtained by the petitioner from a competent authority under the Government of NCT of Delhi and once the certificate is otherwise

issued by a competent authority which could have issued the certificate (and which in this case is the Government of NCT of Delhi) then I fail to understand as to how it can be argued on behalf of the respondent no.2 that petitioner has failed to comply with the requirements of the selection process. Also, and finally, it needs to be noted that the form in Annexure- VIII is not a mandate in terms of a statutory provision, and which is another reason for this Court to hold that the substance has to be seen and not the form because after all the employment and thus the livelihood of a person is at stake. The action of the respondents being thus arbitrary and violative of [Article 14](#) of the Constitution of India is struck down."

12. The Hon'ble High Court in the case of **Manjusha Banchhore Vs. SSC & Anr.** in Writ Petition(C) No.7304/2010 decided on 06.05.2013, has observed that late **submission of OBC certificate is not same as acquiring eligibility after the prescribed date.**

13. After going through the facts of the case and various citations mentioned above, we are of the opinion that late submission of caste certificate would not be sufficient ground for rejection of the candidature of the applicant under 'reserved' category. The Apex Court has ruled that provision for reservation has been made to bring about equality in society so that the persons who have been oppressed for centuries may get an opportunity to improve their lot. Provision of reservation has been made to give them the benefit rather than oust them from selection. Thus, a liberal approach in such matters was necessary. Since the applicant produced the valid certificate before the last stage of selection process, it should have been

accepted and the allocation made according to her merit in the OBC category.

14. We accordingly allow this OA and direct the respondents to process the candidature of the applicant as an OBC candidate. She shall be given seniority commensurate with her position in the merit list and offered the department according to her merit. The entire exercise should be completed within a period of three months from the date of receipt of a certified copy of this order. No costs.

(Praveen Mahajan)
Member (A)

(Raj Vir Sharma)
Member (J)

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