

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.1888/2011

Order reserved on 3rd October 2016

Order pronounced on 25th October 2016

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

Baljeet Singh s/o late Mr. Bachan Singh
r/o H.No.1411/A Saini Street
Najafgarh, New Delhi – 43

..Applicant

(Mr. Ajesh Luthra, Advocate)

Versus

1. Govt. of NCT of Delhi
Through the Chief Secretary
5th Floor, Delhi Sachivalaya, New Delhi
2. State Council for Education Research & Training
(GNCT of Delhi)
Through its Director
Varun Marg, Defence Colony
New Delhi – 24
3. Mr. Jagbir Singh s/o not known
Presently working as Sr. Lecturer
District Resource Unit
DIET North/East, J & K Dilshad Garden, Delhi
4. Mr. K N Shashtri s/o not known
Presently working as Lecturer
Deptt. of Ele Education & Non Formal Education
5. Ms. Seema Yadav d/o not known
Presently working as Lecturer
Deptt. of Ele Education & Non Formal Education
6. Mr. Arun Kumar, Lecturer

KIIT College of Education
KTIT Campus, Sohna Road
Near Bhondsi, Gurgaon, Haryana

And

Mr. Arun Kumar
s/o not known
r/o H.No.1025
Maruti Kunj, Bhondsi,
Gurgaon, Haryana

..Respondents

(Mr. N.K. Singh, Advocate for Mrs. Avnish Ahlawat, Advocate for respondent Nos. 1 & 2, Mr. K.P. Gupta, Advocate for respondent No.3, Mr. Naresh Kaushik, Advocate for respondent No.5, None for respondent Nos. 4 and 6)

ORDER

Mr. K.N. Shrivastava:

The applicant has filed the instant O.A. under Section 19 of the Administrative Tribunals Act, 1985, praying for the following main reliefs:

“(a) Quash and set aside the selection respondents 1 and 2 of respondent Nos.3 to 7 and consequent appointments also be kindly set aside and

(b) direct the respondents No.1 to 2 to consider the applicant for the post in question and consequently offer him appointment to the said posts with all consequential benefits.”

2. Brief facts of the case are as under:

2.1 The State Council for Educational Research and Training (SCERT), i.e., respondent no.2 brought out an advertisement No.1/2010 (Annexure A-4) inviting applications from the eligible candidates for filling up of certain posts in SCERT as well as District Institute for Educational and Trainings (DIETs) which

come under it. The said advertisement also indicated that there are two vacancies of Senior Lecturer, Department of Elementary Education and Non-Formal Education (EE&NFE) in SCERT – one is for Unreserved (UR) category and the other one is reserved for OBC category and there are four posts of Senior Lecturer, District Resource Unit (DRU) in DIETs, three for UR and one for OBC. The selection was to be done by way of interview. The applicant belongs to OBC of Delhi (Saini Caste); a certificate for which has been issued to him by the Deputy Commissioner of Delhi on 14.08.2005 (Annexure A-3). He applied for the posts of Senior Lecturer, (EE & NFE) in SCERT as well as for the post of the Senior Lecturer (DRU) in DIETs. He was not selected. Against the post of the Senior Lecturer (EE&NFE) in OBC category in SCERT, respondent no.5 was selected and respondent no.6 was placed at serial no.2 (in waiting). Likewise, for the post of Senior Lecturer (DRU) in the DIETs meant for OBC category, respondent no.3 was selected and respondent no.4 was placed at serial no.2 (in waiting) vide Annexure A-1 minutes of the Selection Committee dated 22/23 July, 2010. The grievance of the applicant is that all the private respondents (R-3, R-4, R-5 and R-6) do not belong to OBC of Delhi and that they are OBCs of other States whereas the applicant belongs to the OBC of Delhi and as such he ought to have been considered for the posts reserved for OBC.

In support of his claim the applicant has relied on the judgment of the Hon'ble Supreme Court in the case of **Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College**, [(1990) 3 SCC 130], in which it has been held that a member of reserved class for one State cannot be treated as such in another State/UT. The applicant further states that the Hon'ble Apex Court in the case of **Subhash Chandra v. Delhi Subordinate Services Selection Board** [(2009) 15 SCC 458] has held that a person recognized as belonging to reserved class in one State is not entitled to be treated as such in another UT or State even on migration.

2.2 The applicant has, therefore, prayed for cancellation of the selections done and so also for the cancellation of the appointments given to private respondents Nos.3&5.

3. Pursuant to the notices issued, the respondent No.2, 3 & 5 entered appearance and filed their reply. The other respondents did not do so. The applicant thereafter filed his rejoinder. With the completion of the pleadings, the case was taken up for hearing the arguments of the parties. The learned counsel for the parties were heard on 28.09.2016, 29.09.2016 and 03.10.2016.

4. Shri Ajesh Luthra, learned counsel for the applicant submitted that the applicant was issued Annexure A-5

interview letter dated 29.06.2010 by virtue of which he appeared before the Staff Selection Board on 23.07.2010. No results were declared and the selected candidates were informed telephonically on 1st and 2nd August, 2010. He said that the entire selection process was done in a very secretive manner and after some time the applicant came to know from a journalist Shri Sanjeev Nair that the candidates selected against the OBC posts, do not belong to Delhi and that they are outsiders. Shri Nair had obtained the said information under Right to Information Act, 2005. Elaborating further, Shri Luthra submitted that selected candidates, namely, Shri Jagbir Singh (R-3) and Ms. Seema Yadav (R-5) have obtained OBC certificates from Ghaziabad (UP) and Barabanki (UP) respectively and as such they are OBC of that State. He further submitted that respondent no.4 and respondent no.6 who have been kept in the waiting list also do not belong to the OBC of Delhi. He said that in the judgment of the Hon'ble High Court of Delhi in the case of **Deepak Kumar & Others v. District and Sessions Judge, Delhi and Others**, [Writ Petition (C) No.5390/2010, CM No.20815/2010 with which several other Writ Petitions and CMs were clubbed together, order dated 12.09.2012], it has been clearly held that in case of OBCs, the consideration which weighs with the Executive Government in issuing the notification are different than those in the case of

Scheduled Caste (SC) and Scheduled Tribes (ST). The degree of backwardness in the case of OBC is of different kind than in the case of SC and ST. In support of his argument that OBCs of one State/UT cannot claim benefit of reservation in another State/UT, the learned counsel placed reliance on the case of **M.C.D. v. Veena & Others**, [(2001) SCc (L&S) 992].

4.1 Shri Luthra further argued that SCERT is a fully funded entity of Government of National Capital Territory of Delhi (GNCTD) and as such the reservation criteria applicable to the appointments under GNCTD are to apply to SCERT as well.

4.2 Concluding his arguments, the learned counsel submitted that posts reserved for OBCs in Annexure A-4 notification of respondent no.2 can only be filled up by candidates belonging to the OBC of Delhi and that respondent no.2 has erred in selecting outsiders against the said posts and as such selections should be declared null and void and the prayers made in the OA may be allowed.

5. Per contra, Shri N.K. Singh, learned counsel for the respondent no.2 submitted that the Annexure A-4 notification was published on all India basis and that it was not just confined to Delhi. In this connection, he drew our attention to Annexure R-1 to state that the said

advertisement was published in Times of India (all editions), Hindustan Times (all editions), Nav Bharat Times (Delhi & Mumbai editions) and Bharat Bhavna (Delhi editions). Shri Singh also drew our attention to the recruitment rules for the posts prescribed by respondent no.2 vide Annexure R-2. He said that the applicant had appeared for the interview but not selected as he could not cross the benchmark. Denying the allegation of the applicant that result of the selection was not published, Shri Singh stated that on the contrary result was placed on the notice board of respondent no.2 on 29.07.2010 and was also displayed on the website of respondent no.2 on the same day.

5.1 The learned counsel for the respondent no.2 further argued that **Subhash Chandra's** case (supra) is not relevant to the instant case as the recruitment in the instant case was to be done pursuant to the Annexure A-4 notification published nationwide and applications were invited from all over the country. He said that SCERT is an autonomous body registered under the Societies Registration Act and the criteria fixed by it for the conduct of its affairs including the selection of academic staff cannot be questioned.

6. Shri K.P. Gupta, learned counsel for respondent no.3 stated that SCERT is not a State as held by the Hon'ble

Supreme Court in the case of **Lt. Governor of Delhi and others v. V.K. Sodhi and others**, [2007 (10) SCALE 41].

6.1 Shri Gupta further submitted that Rule 67 of the Rules and Regulations of SCERT, which defines the terms and tenure of service of academic staff, states as under:

“The terms and tenure of service of academic staff at the council shall remain the same as available for the academic staff of the National Council of Educational Research and Training (NCERT).”

6.2 He said that Rule 67 makes it absolutely clear that the terms and tenure of service of the academic staff of SCERT are the same as that of NCERT and hence the reservation criteria followed by NCERT in the matter of selection of its academic staff are also followed by SCERT. Accordingly, Annexure A-4 notification for the selection of the academic staff for SCERT had been published on all India basis. It is also submitted that besides respondent no.3 and respondent no.5, many other academic staff belonging to OBC of States other than the Union Territory of Delhi have been working in SCERT for long – their appointments had never been questioned.

7. Shri Naresh Kaushik, learned counsel for respondent no.5 submitted that the averments made in para-4.7 of the OA that the respondents did not declare the result or

published the result of the selection and the selected candidates were informed telephonically on 1st and 2nd August, 2010 is nothing but a falsehood. The result of the selection was notified on the notice board of the SCERT as well as published on its website on 29.07.2010. He further questioned the averment made in para-4.14 of the OA that the posts advertised in Annexure A-4 notification are posts under GNCTD. He termed this averment as simply *ipse dixit*, just a guess work not substantiated by any legal document. He then questioned the ground 5 (E) of the OA wherein it is stated that “a member of reserve class of one state is not entitled for such reservation benefits in other State/U.T. even though the community he belongs has a same/identical nomenclature in other State/U.T.” He said that for such an averment, the applicant ought to have sought a declaration to that effect and as such the OA is not well structured either.

7.1 The averments made in para-4.9 of the OA would give an impression as though the OA is in the nature of a Public Interest Litigation (PIL) and is being used as a tool of harassment against the selectees, and as such it tantamounts to abuse of the process of law; Shri Kaushik contended.

7.2 The learned counsel further argued that the applicant had applied for the selection with open eyes and without questioning the contents of the Annexure A-4 notification relating to the posts reserved for the reserved categories. A plain reading of the notification would indicate that the reserved posts indicated therein are not to be filled from amongst reserved categories candidates of Delhi alone. It gives a clear picture that the reserved categories candidates from all over India, including Delhi, could apply for these posts. He said that after having participated in the selection process and having failed in that, the applicant has filed this OA, which is not maintainable on this ground itself.

7.3 Shri Kaushik further stated that no doubt the SCERT vide its notification No.F.5(4)/SCERT/ADMN.9337-59, dated 07.12.1999 had modified Rule-67 of its Rules and Regulations to the effect that the terms and tenure of service of academic and other staff of SCERT would be as that of staff of Directorate of Education, GNCTD but the said amendment was undone in the year 2008 by the Governing Body in its 16th Meeting held on 19.08.2008 and accordingly Annexure R-3/2 notification dated 13.10.2008 was brought out, which clearly states that the terms and tenure of service of academic staff at the Council (SCERT)

shall remain the same as available for academic staff of NCERT. The other important points made by Shri Kaushik during the course of his arguments were as under:

- i) The applicant did not appear for the post of Senior Lecturer, (EE&NFE), SCERT for which respondent no.5 has been selected.
- ii) NCERT reservation policy is applicable to SCERT in terms of Rule 67 of the Rules and Regulations of SCERT.
- iii) 'Yadav' caste is in OBC list of both GNCTD and Government of India (GOI) and as such can be considered for appointments both under GNCTD and GOI.
- iv) Even GNCTD vide its letter No. F.2(30/2010-11/DR/Sectt.Br./Edn./52-54 dated 17.01.2014 addressed to UPSC in the matter of recruitment of 254 vacant posts of Principals for its Directorate of Education had informed UPSC that candidates belonging to reserved categories viz. SC/ST/OBC of States other than Delhi who are in the Central list are to be considered for this recruitment.
- v) Respondent no.5 is in service of SCERT for over six years (since August, 2010) and as such her appointment cannot be questioned on the principles of equity and

fairness in view of the fact that respondent no.5 has not secured the appointment by misrepresenting the facts.

vi) Adoption of Central OBC list for Union Territory of Delhi will not be violative of any policy, hence the judgment of Hon'ble High Court of Delhi in the case of **Deepak Kumar** (supra) would not come in the way.

8. Replying to the arguments of the learned counsel for the respondents, Shri Ajesh Luthra, learned counsel for the applicant stated that it is not correct to say that the applicant did not appear for interview for all the posts. He submitted that the Annexure A-5 interview letter issued to him was common to all the posts and the applicant in fact had appeared for interview for the post of Senior Lecturer (EE&NFE) in SCERT as well as for the post of Senior Lecturer (DRU) in DIETs. He further submitted that simply by advertising the notification on all India basis does not mean that the posts reserved for Delhi OBCs can be filled up by OBCs of other States.

8.1 Regarding the contention of the respondents that selection result was placed on the notice board of respondent no.2 as well as on its website, Shri Luthra sought documentary evidence to that effect. He further stated that the statement of respondents that the applicant

did not cross the bench mark due to which he was not considered for selection is completely vague.

8.2 Regarding the judgment of the Hon'ble Supreme Court in the case of **V.K. Sodhi** (supra) holding that SCERT is not a State, Shri Luthra said that if that is the case, how come SCERT has been brought under the jurisdiction of this Hon'ble Tribunal. Regarding the UPSC order dated 13.06.2013 and GNCTD letter to UPSC dated 17.01.2014., Shri Luthra stated that the selections involved in the instant case were done in the year 2010 whereas the UPSC order is of the year 2013 and the letter of GNCTD to UPSC is of the year 2014. He said that in the light of the judgment of the Hon'ble Supreme Court in the case of **Veena** (supra) and that of Hon'ble High Court of Delhi in the case of **Deepak Kumar** (supra) it is abundantly clear that OBCs of other States/UTs cannot claim reservation benefits in the matter of appointments in UT of Delhi. Shri Luthra further submitted that Rule 67 of the Rules and Regulations of SCERT relates to terms and tenure of service of the academic staff post their selection; it does not encompass the criteria adopted for selection including those relating to reservation. He also drew our attention to an internal noting of Secretary, SCERT on the file dated 08.07.2010 wherein the Secretary has stated that the OBCs

of Delhi only are to be considered for the posts reserved for OBCs in Annexure A-4 notification.

9. We have considered the arguments put-forth by the learned counsel for the parties and have also perused the pleadings and the documents annexed thereto as well as the judgments of the superior courts cited by the learned counsel for the parties. The following two issues emerge for our consideration:

A) Whether the reservation benefits meant for OBCs in the matter of employment in SCERT are to be restricted to the OBCs of Union Territory of Delhi or they are also available to the OBCs included in the Central list?

B) Whether the principles of equity and fairness would apply to the employment secured by respondent no.3 and respondent no.5 in SCERT in view of the fact that such employments have been secured by them without any misrepresentation?

10. We would like to deal with issue at (A) first. The learned counsel for the applicant has argued that the SCERT is an organization fully funded by GNCTD and such reservation for ST/ST/OBC as applicable to the employment under GNCTD should *mutatis mutandis* apply to SCERT. In support of this argument, Shri Luthra has

placed reliance on the judgments of the Hon'ble Supreme Court in **Subhash Chandra** (supra) and **Veena** (supra). In **Deepak Kumar** (supra), Hon'ble High Court of Delhi has discussed these two judgments of the Hon'ble Apex Court. We have gone through these judgments.

10.1 In **Subhash Chandra** (supra) the Apex Court has held that a person recognized as belonging to reserved class in one State is not entitled to be treated as such in another UT or State even on migration.

10.2 In **Veena** (supra) the Hon'ble Apex Court has observed as under:

“Castes or groups are specified in relation to a given State or Union Territory, which obviously means that such caste would include caste belonging to an OBC group in relation to that State or Union Territory for which it is specified. The matters that are to be taken into consideration for specifying a particular caste in a particular group belonging to OBCs would depend on the nature and extent of disadvantages and social hardships suffered by that caste or group in that State. However, it may not be so in another State to which a person belongs thereto goes by migration. It may also be that a caste belonging to the same nomenclature is specified in two States but the considerations on the basis of which they been specified may be totally different. So the degree of disadvantages of various elements which constitute the data for specification may also be entirely different. Thus, merely because a given caste is specified in one State as belonging to OBCs does not necessarily mean that if there be another group belonging to the same nomenclature in other State and a person belonging to that group is entitled to the rights, privileges and benefits admissible to the members of that caste. These aspects have to be borne in mind in interpreting the provisions of the Constitution with reference to application of reservation to OBCs.”

10.3 In **Deepak Kumar** (supra), the Hon'ble High Court of Delhi has analysed various judgments of the Hon'ble Apex Court on the issue including those in **Subhash Chandra** and **Veena** (supra). Summarizing, the Hon'ble High Court had said that (i) the decisions in **Marri Chandra Shekhar Rao (supra)**, **Action Committee v. Union of India**, [1994) 5 SCC 244], **State of Maharashtra v. Milind**, [(2001) (1) SCC 4] and **E.V. Chinnaiah v. State of A.P.**, [2005) 1 SCC 394] have all ruled that scheduled caste and tribe citizens moving from one State to another cannot claim reservation benefits, whether or not their caste is notified in the state where they migrate to, since the exercise of notifying scheduled castes or tribes is region (state) specific, i.e. "in relation" to the state of their origin, (ii) the considerations which apply to Scheduled Caste and Tribe citizens who migrate from state to state, apply equally in respect of those who migrate from a state to a union territory. In the case of **S. Pushpa & Ors. v. Sivachanmugavelu & Ors.**, [(2005) 3 SCC 1], it is held that if the resident of a state, whose caste is notified as Scheduled caste or scheduled tribe, moves to a Union Territory, he carries with him the right to claim that benefit, in relation to the Union Territory, even though if he moves to another state, he is denied such benefit (as a result of the rulings in **Marri** and **Action Committee**). The ruling in **Pushpa**, being specific about this aspect vis-à-vis Union

Territories, is binding; it was rendered by a Bench of three judges.

10.4 The learned counsel for the respondents on the other hand, have argued that the Hon'ble Apex Court in **V.K. Sodhi** (supra) has clearly held that SCERT is not a State within the meaning of Article 12 of the Constitution of India and as such it is free to adopt its own policy in the matter of job reservation. They have further argued that in terms of Rule 67 of the Rules and Regulations of SCERT, the terms and tenure of service of the academic staff of SCERT are the same as that of academic staff of NCERT. Their contention is that the NCERT follows the reservation policy (for SC/ST and OBC) of the Union Government and thus OBCs included in the Central list are eligible for claiming reservation benefits in SCERT. For this purpose, they specifically drew our attention to the fact that recruitment for academic staff in SCERT has always been done on all India basis and even Annexure A-4 notification has been published in all India editions of some of the leading newspapers. They have further submitted that several members of the academic staff belonging to reserved categories from other States had been recruited in the past in SCEERT and have been working over there for a long time.

11. We find considerable force in the argument of the learned counsel for the respondents on this issue. The Hon'ble Apex court in **V.K. Sodhi** (supra) on the issue as to SCERT is a State or otherwise within the meaning of Article 12 of the Constitution, has observed as under:

"11. The two elements, one, of a function of the State, namely, the coordinating of education and the other, of the Council being dependant on the funding by the State, satisfied two of the tests indicated by the decisions of this Court. But, at the same time, from that alone it could not be assumed that SCERT is a State. It has to be noted that though finance is made available by the State, in the matter of administration of that finance, the Council is supreme. The administration is also completely with the Council. There is no governmental interference or control either financially, functionally or administratively, in the working of the Council. These were the aspects taken note of in Chander Mohan Khanna (supra) to come to the conclusion that NCERT is not a State or other authority within the meaning of Article 12 of the Constitution of India. No doubt, in Chander Mohan Khanna (supra), the Bench noted that the fact that education was a State function could not make any difference. This part of the reasoning in Chander Mohan Khanna (supra) case has been specifically disapproved by the majority in Pradeep Kumar Biswas (supra). The majority noted that the objects of forming Indian Institute of Chemical Biology was with the view of entrusting it with a function that is fundamental to the governance of the country and quoted with approval the following passage in Rajasthan SEB Vs. Mohan Lal [(1967) 3 S.C.R. 377]: "The State, as defined in Article 12, is thus comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people."

14.....So considered, we find that the Government does not have deep and pervasive control over the working of SCERT. It does not have financial control in the sense that once the finances are made available to it, the administration of those finances is left to SCERT and there is no further governmental control. In this situation, we accept the submission on behalf of the appellants and hold that SCERT is not a State or other authority within the meaning of Article 12 of the Constitution of India. After all, the very formation of an independent society under the Societies Registration Act would also suggest that the intention was not to make the body a mere appendage of the State. We reverse the finding of the High Court on this aspect."

12. From the judgment of the Hon'ble Apex Court in **V.K. Sodhi** (supra), it is now settled that SCERT is not a State. Shri Luthra's contention that since SCERT has been brought under the jurisdiction of this Hon'ble Tribunal by a notification of DoP&T and as such it is a State within the meaning of Article 12 of the Constitution of India, cannot be accepted. In this regard, we would like to refer to sub-sections (2) and (3) of Section 14 of the Administrative Tribunals Act, 1985, which are extracted below:

“(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations ⁴⁰ [or societies] owned or controlled by Government, not being a local or other authority or corporation ⁴⁰ [or society] controlled or owned by a State Government: Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations ⁴⁰ [or societies].

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation [or society], all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court in relation to-

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation [or society]; and

(b) all service matters concerning a person [other than a person referred to in clause (a) or clause(b) of sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation [or society] and pertaining to the service of such person in connection with such affairs.”

12.1 From the reading of these two sub-sections it is quite clear that the Central Government can notify even local or other authorities within the territory of India which may not be under the control of Government of India or of a State Government. Hence, the notification of the Central Government bringing SCERT under the jurisdiction of this Tribunal would not alter the ruling of the Hon'ble Apex Court in **V.K. Sodhi** (supra) that SCERT is not a State. However, SCERT on its own volition decided to adopt the reservation policy of NCERT, who in turn follows the reservation policy of the Union Government. Rule 67 of the SCERT Rules and Regulations makes this position crystal clear in which it is clearly stated that terms and tenure of service of academic staff of NCERT will be the same as those applicable to such staff of NCERT. In this view of the matter, we have no doubt in our mind that the reservation policy adopted and followed by SCERT cannot be questioned. The contention of the learned counsel for the applicant that SCERT gets its funding from GNCTD and as such the reservation policy as applicable to employment under GNCTD is to apply to SCERT, cannot be accepted in view of the ruling of the Hon'ble Supreme Court in **V.K. Sodhi** (supra). Further, Shri Luthra's argument that Rule 67 applies to service conditions post-employment and not pre-employment is again not acceptable as

no such distinction has been made in the said Rule. As a matter of fact, all new appointments are done as per the extant Recruitment Rules (RRs) and RR's also indicate the reservation aspects. Regarding the other judgments referred to by the learned counsel for the applicant, viz., **Veena** (supra), **Deepak Kumar** (supra) and **Marri Chandra Shekhar Rao** (supra), suffice to state that after the ruling of the Hon'ble Supreme Court in **V.K. Sodhi** (supra) that SCERT is not a State within the meaning of Article 12 of the Constitution of India, these judgments will have no direct application to the instant case. As observed earlier, SCERT has chosen to adopt the same terms and tenure of service for its academic staff which are applicable to such staff in NCERT and has also chosen to adopt the reservation policy of Union of India adopted by NCERT. Thus, the OBCs notified in the Central list are entitled to claim reservation benefits in SCERT. The publication of Annexure A-4 notification in all India editions of leading newspapers, Annexure A-4 not containing any specific stipulation to the effect that only OBCs of Union Territory of Delhi are to be considered for OBC reservation benefits, order dated 13.06.2013 of UPSC and the GNCTD letter dated 17.01.2014 to UPSC would all go to corroborate it further that OBCs included in the Union list are entitled for reservation benefits in SCERT.

12.2 Shri Luthra, learned counsel for the applicant had contended that as per the noting of the Secretary, SCERT dated 08.07.2010 in the file, only the OBC certificates issued by GNCTD are to be considered. On this issue, we decided to go through the original records. We find that juniors of Secretary/SCERT had queried in the file as to “for the posts reserved for OBC category, we need to consider OBC certificate of All India or Delhi only”, the Secretary, SCERT had answered by noting ‘Delhi’. In this regard, it is pertinent to mention that Secretary, SCERT cannot overrule the policy decision taken by the SCERT Governing Body by way of Rule 67 of the SCERT Rules and Regulations. The said Rule stipules that the service conditions of SCERT academic staff would be as that of academic staff of NCERT. This obviously includes reservation related service conditions as well. Therefore, we hold that the said noting of the Secretary, SCERT is of no legal consequence. The Annexure A-4 notification also does not reflect this noting of Secretary, SCERT. However, the learned counsel for the respondent no.2 during his arguments had said that the respondent no.2 in addition to the OBCs in the Central list has also considered the OBCs of Delhi for the selection.

13. Admittedly, respondent no.5, who has secured employment under respondent no.2 vis-a-vis Annexure A-4 advertisement belongs to ‘Yadav’ caste. The said caste is

included in the OBC list of Union Government, which is followed by NCERT and by virtue of Rule 67 of the 'SCERT Rules and Regulations' by SCERT as well. Therefore, we are of the opinion that appointment of respondent no.5 in terms of the impugned Annexure A-1 Minutes of the Selection Committee was perfectly legal.

14. As regards respondent no.3, we would like to observe that respondent no.3 belongs to 'Jaat' caste, which is in the OBC list of State of UP but not in that of Union Government, Annexure A-4 notification does not specifically say that OBCs of other States/UTs not included in the OBC list of Delhi or Govt. of India cannot apply for the posts reserved for OBCs. The respondent no.3 presented his OBC caste certificate at the time of interview to SCERT which was issued to him by Govt. of UP, and the same was accepted by the SCERT. He did not conceal or manipulate any document in this regard. As such, one cannot find any fault in his selection.

15. On the second issue of equity and fairness, the learned counsel for the respondents have relied on four important judgments of the Hon'ble Apex Court, which are:

i) **Ashok Kumar Yadav & Ors. v. State of Haryana & Ors.**, [(1985) 4 SCC 417], **held:**

"...we do not think we would be justified in the exercise of our discretion in setting aside the selections made by the Haryana Public Service Commission after the lapse of almost two years."

ii) **Dr. Duryodhan Sahu & Ors. v. Jitendra Mishra & Ors.**

[(1998) 7 SCC 273], **held:**

"23. Even the Tribunal has found that the petitioner had acquired sufficient practical experience by assisting the Head of the Department of Surgical Gastroenterology in the said college for a long period of six years and had several publications to his credit. The Tribunal overlooked that the said experience acquired by the petitioner was recognised to be sufficient to satisfy the requisite qualification of two years special training by the Director of Medical Education and Training when a reference was made to him by the Orissa Public Service Commission. It was only after getting the matter clarified, the Service Commission called the petitioner for viva voce. Once the concerned authorities are satisfied with the eligibility qualifications of the person concerned it is not for the Court or the Tribunal to embark upon an investigation of its own to ascertain the qualifications of the said person."

iii) **Vikas Pratap Singh v. State of Chhattisgarh & Ors.,**

[(2013) 14 SCC & Ors., **held:**

"23. This Court in Gujarat State Deputy Executive Engineers' Association v. State of Gujarat and Ors., 1994 Supp (2) SCC 591 although recorded a finding that appointments given under the 'wait list' were not in accordance with law but refused to set aside such appointments in view of length of service (five years and more).

24. In Buddhi Nath Chaudhary and Ors. v. Akhil Kumar and Ors., (2001) 2 SCR 18, even though the appointments were held to be improper, this Court did not disturb the appointments on the ground that the incumbents had worked for several years and had gained experience and observed:

"We have extended equitable considerations to such selected candidates who have worked on the posts for a long period."

(See: M.S. Mudhol (Dr.) and Anr. v. S.D. Halegkar and Ors., (1993) II LLJ 1159 SC and Tridip Kumar Dingal and Ors. v. State of West Bengal and Ors., (2009) 1 SCC 768)

25. Admittedly, in the instant case the error committed by the respondent-Board in the matter of evaluation of the answer scripts could not be attributed to the appellants as they have

neither been found to have committed any fraud or misrepresentation in being appointed qua the first merit list nor has the preparation of the erroneous model answer key or the specious result contributed to them. Had the contrary been the case, it would have justified their ouster upon re-evaluation and deprived them of any sympathy from this Court irrespective of their length of service.”

iv) **Rajesh Kumar Ors. v. State of Bihar & Ors.**, [(2013) 4 SCC 690] **held:**

“18.....There is no mention of any fraud or malpractice against the appellants who have served the State for nearly seven years now. In the circumstances, while inter-se merit position may be relevant for the appellants, the ouster of the latter need not be an inevitable and inexorable consequence of such a re-evaluation. The re-evaluation process may additionally benefit those who have lost the hope of an appointment on the basis of a wrong key applied for evaluating the answer scripts. Such of those candidates as may be ultimately found to be entitled to issue of appointment letters on the basis of their merit shall benefit by such re- evaluation and shall pick up their appointments on that basis according to their inter se position on the merit list.”

16. Applying the principles laid down by the Hon’ble Apex Court in the aforementioned judgments, and taking into consideration the fact that respondent no.3 and respondent no.5 are in the employment of SCERT (respondent no.2) for over six years, which they had secured without any misrepresentation, we are of the view that both these respondents deserve the consideration of equity and fairness. We have already held in para-13 of this order that the appointment of respondent no.5 is absolutely legal and in the case of respondent no.3 we have observed in para-14 that his appointment cannot be faulted. Furthermore, applying the principles of equity and fairness, we are of the

opinion that the employment of both respondent no.3 and respondent no.5 under respondent no.2 must not be disturbed in view of the ruling of the Hon'ble Apex Court in the aforementioned judgments.

17. In the conspectus of the discussions in the pre-paragraphs, we are of the view that the OA deserves to be dismissed, as it is found to be not having substance. Accordingly, the OA is dismissed.

18. No order as to costs.

19. The original records submitted by the respondents no.1 and 2 is directed to be returned to them under proper receipt.

(K.N. Shrivastava)
Member (A)

(V. Ajay Kumar)
Member (J)

‘San.’