

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

## O.A.NO.4681 OF 2015

New Delhi, this the 7<sup>th</sup> day of September, 2016

**CORAM:**

**HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER  
AND**

## HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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(By Advocate: Mr. Vatsal Kumar)

vs.

(By Advocate: Mr. Hanu Bhaskar)

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## ORDER

**Per Raj Vir Sharma, Member(J):**

The applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

o) Issue appropriate directions to the respondents for quashing/setting aside the rejection letter (ANNEXURE P-1) by which the application of the applicant was rejected for being overage:

- b) Issue appropriate directions to the Respondents to accept the OBC certificate submitted by the applicant and call her for interview;
- c) Issue any direction(s) in favour of the Applicant and against the Respondents which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case;
- d) Award the costs of the proceeding;
- e) Pass such other and further orders which this Hon'ble Court deems fit and proper be also passed in the facts and circumstances of the case.ö

2. Opposing the O.A., the respondents have filed a counter reply.

3. We have perused the pleadings, and have heard Mr. Vatsal Kumar, the learned counsel appearing for the applicant, and Mr. Hanu Bhaskar, the learned counsel appearing for the respondent.

4. Respondent-Staff Selection Commission (SSC) issued a notice for recruitment of Sub-Inspectors in Delhi Police, CAPFs and Assistant Sub Inspector in CISF. The notice was published in the Employment News dated 28.3.2015 (Annexure P/2). The closing date for submission of applications was 28.4.2015 which was subsequently extended to 2.5.2015.

4.1 As per Clause 4(A) of the notice of recruitment, the age limit was 20 -25 years as on 1.1.2015, and age relaxation permissible beyond the upper age limit for OBC candidates was 3 years as on the date of reckoning, i.e., 1.1.2015.

4.2 Clause 4(C) of the notice of recruitment (Annexure P/2) reads thus:

**Ø4(C).PROCESS OF CERTIFICATION AND FORMAT OF CERTIFICATES:**

Candidates who wish to be considered against vacancies reserved or seek age relaxation must submit requisite certificate from the competent authority issued on or before the prescribed date, in the prescribed format whenever such certificates are sought by concerned Regional/Sub Regional Offices. Otherwise, their claim for SC/ST/OBC/ExS/Departmental candidates (Delhi Police) status will not be entertained and their candidature/applications will be considered under General (UR) category. The formats of the certificate are annexed. Certificates in any other format will not be accepted. **The Commission has decided to accept OBC certificate in the prescribed format issued after the closing date but within a period of 180 days from the closing date for receipt of application”.**

**NOTE:** Candidates are warned that they will be permanently debarred from the examination conducted by the Commission in case they fraudulently claim SC/ST/OBC/ExS/Departmental candidates (Delhi Police) status.

4.3 Subsequent to the publication of the above notice in the Employment News, the respondent-SSC issued and uploaded on their website an Addendum thereto, which is reproduced below:

ØF.No.3/2/2015-P&P-II  
 Government of India  
 Staff Selection Commission  
Addendum  
 RECRUITMENT OF SUB INSPECTORs IN DELHI  
 POLICE, CAPFs AND ASIs IN CISF EXAMINATION,  
 2015.

F.No.3/2/2015-P&P-II: Candidates may refer to the notice of Sis in Delhi Police, CAPFs and ASIs in CISF Examination, 2015, published in the Employment News dated 28.03.2015 and note that the following para has been added in Para 4(C ) before the “NOTE” mentioned therein of the Notification:-

**“The Commission will also accept the OBC certificate in the prescribed format (containing non-**

**creamy layer status) issued on or before the closing date of receipt of application (i.e. 02.05.2015) upto a date which is 3 years before the closing date, i.e. 03.05.2012.”**

5. In response to the aforesaid notice (Annexure P/2), the applicant applied and offered her candidature as an OBC candidate for selection and recruitment. As on 1.1.2015, she was aged more than 25 years; her date of birth being 7.10.1989. Claiming to be an OBC candidate, she sought age relaxation up to 3 years in terms of Clause 4(A) of the notice of recruitment. On the basis of the admission certificate issued by the respondent-SSC, she appeared in the written examination (Papers I and II). Having secured qualifying marks in Paper I of the written examination, she was called to appear for Physical Endurance Test (PET)/Physical Standard Test (PST) and medical test. The applicant having qualified in PET/PST, her Paper II of the written examination was evaluated. On 19.11.2015 the respondent-SSC published the results of Paper II of the written examination. Thereafter, the respondent-SSC, vide letter dated 26.11.2015, informed the applicant that on the basis of her qualifying in PET & Medical Examination and the result of written examination, she was found to be provisionally eligible to be called for interview. Accordingly, she was requested to present herself for the interview purely on provisional basis on 9.12.2015. Paragraph 1(b)(iv) of the letter dated 26.11.2015, *ibid*, reads thus:

oYou should possess the OBC certificate in the format prescribed for Govt. of India post as per the notice. Certificates in any other format will not be accepted. The Commission has decided to accept OBC certificate in the prescribed format issued after the closing date (28.4.2015) but within a period of

180 days from the closing date for receipt of application. The Commission will also accept the OBC certificate in the prescribed format (containing non creamy layer status) issued on or before the closing date of receipt of application (i.e. 28.4.2015) up to a date which is 3 years before the closing date, i.e., 28.4.2015. OBC certificates issued by National Capital Territory of Delhi (GNCTD) for candidates for OBCs listed by NCT but not included in Central List of OBCs will be accepted for post of Sub Inspector in Delhi Police only for reservation and age relaxation purposes. (Emphasis supplied)

5.1 Accordingly, the applicant reported to the respondent-SSC on 9.12.2015. Prior to the interview, her documents were verified by the officers of the respondent-SSC. After verification of her documents, she was not called for interview, but was served with an order (Annexure P-1) stating that category of her candidature was changed from OBC to UR (Unreserved) as the OBC certificate produced by her was not as per notice, and that her candidature was rejected as she was overage under General category.

6. In the above context, the applicant contends that she was not aware of the addendum to the recruitment notice, which was issued by the respondent-SSC, stating that it would also accept the OBC certificate in the prescribed format (containing non-creamy layer status) issued on or before the closing date of receipt of application (i.e. 02.05.2015) up to a date which is 3 years before the closing date, i.e. 03.05.2012. The OBC Certificate produced by her before the respondent-SSC on 9.12.2015 was a valid OBC Certificate. When the said OBC Certificate was not accepted by the respondent-SSC, she approached the concerned Tehsildar in the matter. The concerned Tehsildar gave an endorsement on the said OBC certificate to the effect that the OBC Certificate was issued by its office on 1.10.2008. When

the OBC Certificate along with the aforesaid endorsement made by the concerned Tehsildar was again not accepted by the respondent-SSC, she approached the concerned Sub Divisional Magistrate. The concerned Sub Divisional Magistrate also addressed a letter dated 14.12.2015 to her, stating that the OBC Certificate issued to her by the Tehsildar, Sonipat, was again verified by the Tehsildar on 10.12.2015, and that as per official records, she is in the OBC (Non-Creamy Layer) category. The applicant also pleaded that her request to the Tehsildar to issue an OBC Certificate of a date between 29.4.2012 and 28.4.2015 as per the interview letter dated 26.11.2015 was not acceded to by the Tehsildar on the ground of OBC certificate earlier issued to her on 1.10.2008 being valid and still in existence. Thus, the applicant submits that in the aforesaid circumstances, the respondent-SSC acted arbitrarily and illegally in treating her as UR candidate and rejecting her candidature on the ground that she was overage as on the cut-off date.

7. Mr. Vatsal Kumar, the learned counsel appearing for the applicant, submitted that in order to be considered for the post reserved for OBC category, the requirement is that the person should belong to that category. The purpose of OBC certificate is to enable the authorities to believe the assertion of the applicant that she belongs to OBC category. The OBC Certificate dated 1.10.2008, the endorsement of the Tehsildar, and the letter of the Sub Divisional Magistrate produced by the applicant before the respondent-SSC clearly go to show that she is an OBC candidate. Therefore,

the respondent-SSC ought not to have treated her as UR candidate and rejected her candidature. In support of his submission, Mr. Vatsal Kumar invited our attention to the following observation made by the Hon'ble Delhi High Court in **Hari Singh Vs. Staff Selection Commission and Anr.**, 2010(6) SLR 543:

ð28. The Court went on to examine the matter from another standpoint. It was observed that the vacancies had been reserved for, inter alia, SC category /candidate. In order to be considered for the post reserved for SC category, the requirement is that the person should belong to that category. If a person is Scheduled Caste, he is so by birth and not by acquisition of that category because of any other event happening at a later stage. A certificate issued by a competent authority to the effect that a candidate belongs to the SC category is only an affirmation of a fact which is already in existence. The purpose of such certificate is to enable the authorities to believe the assertion of the candidate that he belongs to SC category an act thereon by giving benefit to such SC candidate. The court held that it could not be said that the petitioners did not belong to the SC category prior to 30.06.1998 or that they acquired the status of belonging to the scheduled castes only on the date of issuance of the certificate. Consequently, the court held that the requirement that the caste certificate should be dated prior to 30.06.1998 would be clearly arbitrary, as it had no rationale objective sought to be achieved.

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8. *Per contra*, Shri Hanu Bhaskar, the learned counsel appearing for the respondent submitted that the OBC (Non-Creamy Layer) Certificate furnished by the applicant being dated 1.10.2008 was not found to be within the time frame of three years prior to the cut-off date, and, therefore, the applicant was treated as UR candidate. Having crossed 25 years of age as on the cut-off date, she was found overage and ineligible for selection as UR candidate. Accordingly, her candidature was rejected. Thus, there is no

infirmity in the decision taken by the respondent-SSC in the case of the applicant.

9. After having given our thoughtful consideration to the facts and circumstances of the case and the rival contentions, we have found no substance in the contentions of the applicant. As per Clause 4(C) of the recruitment notice, the applicant was required to submit OBC certificate in the prescribed format issued by the competent authority in her favour on or before the closing date of receipt of application (i.e. 02.05.2015) up to a date which is three years before the closing date, i.e., 03.05.2012. It was also stipulated in Clause 4 (C) of the recruitment notice that OBC certificate in the prescribed format issued after the closing date but within a period of 180 days from the closing date for receipt of application would be accepted by the respondent-SSC. The OBC Certificate dated 1.10.2008 produced by the applicant before the respondent-SSC on 9.12.2015 was not in conformity with Clause 4 (C) of the recruitment notice. When her OBC Certificate dated 1.10.2008 was not acceptable, the applicant could have obtained OBC Certificate from the competent authority within a period of 180 days from the closing date for receipt of applications, but she chose not to do so. In the absence of any provision in the recruitment notice enabling the respondent-SSC to accept the endorsement made by the competent authority or any letter written by any authority higher than the competent authority affirming the OBC Certificate issued in favour of a candidate, which was issued on a date falling outside the time frame stipulated in the recruitment

notice, the applicant's request to accept the OBC Certificate dated 1.10.2008 could not have legally been acceded to by the respondent-SSC. The terms and conditions of the recruitment notice being binding on the respondent-SSC and the applicant as well, there was nothing wrong on the part of the respondent-SSC to reject the applicant's candidature because she did not produce the requisite OBC certificate in the prescribed format and was overage as UR (General) candidate. Had the respondent-SSC accepted and acted on the applicant's OBC certificate dated 1.10.2008 with the endorsement of the concerned Tehsildar and the letter of the concerned Sub Divisional Magistrate, the respondent-SSC would not only have relaxed and/or acted contrary to the terms and conditions of the recruitment notice, but also their action would have been violative of Articles 14 and 16 of the Constitution of India. There might be some other candidates, like the applicant in the present case, whose applications/candidatures might have been cancelled by the respondent-SSC. Non-grant of similar opportunity to those candidates would have been discriminatory. A process of selection and appointment to a public office should be absolutely transparent, and there should be no deviation from the terms and conditions contained in the Advertisement issued by the recruiting agency during the recruitment process and the rules applicable to the recruitment process in any manner whatsoever, for a deviation in the case of a particular candidate amounts to gross injustice to the other candidates not knowing the fact of deviation benefitting only one or a few. The procedure should be same for all the

candidates. In this regard, we would like to refer to the decision of the Hon'ble Supreme Court in **Ashok Kumar Sharma & others Vs. Chander Shekhar & another**, (1997) 4 JT (SC) 99, where it has been held that an advertisement or notification issued/published calling for applications constitutes a representation to the public, and the authority issuing it is bound by such representation and cannot act contrary to it. We would also like to refer to the decision of the Hon'ble Supreme Court in **Bedanga Talukdar Vs. Saifudaullah Khan**, (2011)12 SCC 85, where it has been held that 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. The Hon'ble Supreme Court has further held that the 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. In the light of the law laid down by the Hon'ble Supreme Court in the aforesaid two decisions, we find that the decision in **Hari Singh Vs. Staff Selection Commission & Anr.** (supra), relied on by Mr. Vatsal Kumar, is of no help to the case of the applicant.

10. **In Parminder Bhadana v. Staff Selection Commission, W.P. (C) No.2211/2012, decided on 17.4.2012; Vishesh Kumar v. Staff Selection Commission, W.P. (C) No.5580 of 2012, decided on 14.9.2012; and Anil Kumar v. Staff Selection Commission (North Region) and**

**another**, W.P. ( C ) No.1571 of 2013, decided on 11.12.2013, the Hon~~ble~~ Delhi High Court has considered the very same issue as raised in the present O.A. and decided the same against the petitioners in those cases.

**10.1 In Parminder Bhadana v. Staff Selection Commission**

(supra), the petitioner, a candidate allegedly belonging to the OBC category for the post of Constable (GD) in paramilitary forces (BSF/CISF/CRPF & SSB) had challenged his non-selection despite his having obtained 61 marks in the reserved category and rather showing him under the general category. The advertisement dated 5.2.2012 had categorically stipulated that the OBC certificate should not be more than three years old from the date of employment notice for the post, and that the OBC certificate had to be in the format prescribed for the Central Government jobs as per Annexure VII issued by the competent authority on or before the closing date as stipulated in the notice. The closing date, i.e., 4.3.2011 for the receipt of applications, was treated as the date of reckoning for OBC and creamy layer status of the candidate. The petitioner had admittedly produced a caste certificate which was based on application dated 9.7.2007. The respondent considered his application and came to the conclusion that he could not be considered as an OBC candidate. The Hon~~ble~~ High Court did not find fault with the respondent in not considering the applicant as an OBC candidate. The Hon~~ble~~ Court also held that treating the petitioner as a general category candidate by the respondent did not suffer from any illegality or irregularity.

10.2        **In Vishesh Kumar v. Staff Selection Commission** (supra), the petitioner applied as an OBC candidate to be appointed as a Constable in Central Para Military Force and desired his selection to be made from amongst the OBC candidates and raised a grievance of his being treated as a candidate in the unreserved category. As per the terms and conditions of the recruitment notice, the closing date, i.e., 4.3.2011 for receipt of application was treated as the date of reckoning for OBC and creamy layer status of the candidate. The petitioner submitted an OBC Certificate dated 30.6.2006, which was not issued within three years before the cut off date, i.e. 4.3.2011, as stipulated in the recruitment notice. Considering the facts and circumstances of the case, the Hon'ble High Court, in paragraphs 4 and 5 of the judgment, held thus:

ð4. Suffice would it be to state the stand of the petitioner that he was never asked to furnish a certificate which was issued within three years of the date of closing of receipt of applications is belied from the fact that paragraph 4 ( c ) of the advertisement in question, reproduced in paragraph 5 of the counter affidavit, clearly draws the attention of the candidates to the fact that they must ensure that OBC status must be reflected in a certificate issued within three years before the closing date. This fact has not been denied in the rejoinder.

5. Suffice would it be to state that as against members belonging to Scheduled Castes or Scheduled Tribes, where even a billionaire would be entitled to reservation, the legal position with respect to Backward Classes is different. Creamy layers have to be excluded and thus there being a requirement of OBC certificates being issued within three years prior to the date of receipt of applications. A person may have less wealth on a particular date and may become wealthy a few years later and thereby coming within the Creamy Layer.ö

Accordingly, the Hon'ble High Court held that the applicant has rightly not been treated as an OBC candidate and dismissed the writ petition.

**10.3 In Anil Kumar v. Staff Selection Commission (North Region) and another** (supra), the petitioner was aggrieved for rejection of his candidature in the selection process undertaken by the SSC pursuant to the advertisement dated 29<sup>th</sup> May 2010, whereby the SSC advertised 1000 vacancies in the post of ASI (Exe) in CISF. The OBC certificate produced by the petitioner was not in the requisite format. The SSC informed him that the certificate was not in terms of the notified procedure, and that he would be considered as an unreserved candidate. The petitioner also gave an undertaking that in view of his inability to furnish the OBC certificate in the prescribed proforma, his category might be treated as UR, i.e. General. The SSC had given an additional opportunity before closure of the selection process to the candidates who had overlooked submission of the requisite certificate. The petitioner took advantage of this opportunity and admittedly produced the certificate dated 2.11.2010. As the said certificate was beyond the period stipulated in the advertisement, the petitioner could only be considered as an unreserved category. Following its earlier decisions in **Vishesh Kumar v. Staff Selection Commission's case** (supra) and **Parminder Bhadana v. Staff Selection Commission's case** (supra), the Hon'ble High Court held that the challenge by the petitioner was misconceived. Accordingly, the writ petition was dismissed.

11. In the light of the above discussions, we hold that the applicant has not been able to make out a case for any of the reliefs claimed by her. The O.A., being devoid of merit, is dismissed.

**(RAJ VIR SHARMA)**  
**JUDICIAL MEMBER**

**(SHEKHAR AGARWAL)**  
**ADMINISTRATIVE MEMBER**

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