

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.2961/2016

**Reserved on:02.05.2018
Pronounced on:11.05.2018**

**Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Ms. Praveen Mahajan, Member (A)**

Mukesh Kumar Yadav
Aged 26 years
S/o Shri Virender Singh
R/o Vill & Post Office Rajokri
Near Corporation Bank
New Delhi – 38.

... Applicant

(By Advocate:Shri Yogesh Sharma)

VERSUS

1. Govt. of NCT of Delhi
Through the Chief Secretary
New Secretariat, I.P.Estate
New Delhi.
2. The Chairman
Delhi Subordinate Services Selection Board
F-18, Institutional Area
Karkardooma, Delhi – 32,

...Respondents

(By Advocate:Shri K.M.Singh)

O R D E R

Hon'ble Ms. Praveen Mahajan, Member (A):

Briefly stated, the facts of the case are that the DSSSB vide Advertisement No.03/2013 invited the application for various posts including the post of Head Constable in Transport Department of Govt. of NCT of Delhi. The candidates were required to apply online.

2. It is stated that although the applicant applied under the OBC category but due to some technical mistake the category of the applicant was mentioned as General category instead of OBC category inspite of the fact

that he was in possession of the OBC certificate dated 19.02.2013 issued prior to the cut-off date.

3. The applicant was called for written examination conducted on 28.09.2014 in which the category of the applicant was shown as unreserved. On seeing this, the applicant made a representation to the competent authority (Annexure A/3) requesting them to change the category of the applicant from unreserved to backward class. However, no reply was given except a verbal assurance that his request will be considered at the time of final result. The list of shortlisted candidates was issued by the respondents in which the name of the applicant figured in the category of unreserved candidates with 159 marks. The applicant states that he again represented on 16.06.2016 (Annexure A/6) for change of his category to OBC, but to no avail. The respondents declared the final result on 01.08.2016 in which the respondents have not selected the applicant, treating him as unreserved.

4. The applicant avers that the last selected OBC candidate secured 155.25 marks whereas the applicant got 159 marks. Despite repeated requests by the applicant, the respondents are not ready to consider his case for changing his category from unreserved to OBC. After declaration of the result on 01.08.2016, the applicant again made a representation dated 25.08.2016 for changing his category from General to OBC category. During the pendency of the main OA, the respondents passed an order dated 07.10.2016 rejecting the representation of the applicant.

5. The applicant has relied upon the decision of the Tribunal in OA No.2520/2014 (Ms. Sunita Vs. DSSSB) passed on 15.02.2016 wherein it has been held that

"12. This Tribunal disposed of a batch of OAs bearing OA No.4445/2014 (Neha Nagar V. Delhi Subordinate Services Selection

Board & Others), decided on 18.12.2015 and OA No.4583/2014 (Santosh v. Delhi Subordinate Services Selection Board & Anr.), decided on 30.10.2015 (pertaining to same notification), after considering a catena of cases where under the Courts held that the indiscretions committed by the youngsters while filling the OMR Sheets, etc. shall be condoned and that their candidatures should be considered on merits along with others. Since the present OA is also identical, we are disposing of this OA on the same lines."

The applicant has prayed for the following reliefs :-

"(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the order dated 01.08.2016 only to the extent by which the roll No. of the applicant has not been included under OBC category declaring to the effect the same is illegal, arbitrary and discriminatory and consequently pass an order directing the respondents to treat the applicant as a OBC candidate for considering him for the post of Head constable under post code of 43/13 Transport Department, GNCT of Delhi with all consequential benefits from the date of appointment of other selected candidates.

(ii) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the order dated 07.10.2016 with all the consequential benefits.

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

6. Rebutting these averments, the respondents state that the applicant had himself applied for the post code 43/13 under unreserved category on 08.10.2013. He was accordingly issued an admit card under the unreserved category and he appeared in the examination on 28.09.2014. Having taken the exam under the said category, no change can be allowed as per the policy guidelines of DSSSB.

7. The respondents submit that the contention that the computer suomoto changed the category of the applicant is not convincing. Since, in addition to the post of Head Constable (Male) the applicant had also applied for some other posts and in all those applications he showed his category as unreserved (UR).

8. The respondents have relied upon the decision of the Tribunal in OA No.4445/2014 **Neha Nagar Vs. DSSSB & Ors.** wherein it has been observed that :-

"5e. 22. We are in respectful agreement with the Division Bench judgment of Hon'ble Delhi High Court in **Aruna Meena Vs. Union of India and Anr.** (supra), and we are bound by it, as well as the Single Bench judgment of the Hon'ble Rajasthan High Court in **Manoj Kumar** (supra) and are, therefore, as a result, unable to follow the Coordinate Bench judgment in **Neha Nagar vs. DSSSB & Ors.** (supra) and other related cases. The applicants ought to have been vigilant while filling up their application forms, and when they had failed to do so, no indulgence can be granted to them on any sympathetic considerations. The Hon'ble Apex Court has also in the case of **State of Tamil Nadu & Ors. Vs. St. Joseph Teachers Training Institute and Anr., (1991) 3 SCC 87: JT 1991 (2) SC 343**, held that mere humanitarian grounds cannot form the basis for granting reliefs against the settled propositions of law, or contrary to law, and when an instruction or yardstick prescribed in the concerned advertisement has been applied uniformly in the case of all other candidates, the three applicants before us cannot claim to be provided with a more favourable consideration than others have been provided by the respondents."

9. During the course of hearing, the learned counsel for the applicant, Shri Yogesh Sharma reiterated the submissions already made in the OA. He also drew attention of the bench to the order of Delhi High Court in **Rohit Yadav Vs. Central Board of Secondary Education & Ors.** 2012(5) SLR 806 (Delhi) wherein it has been held that on account of a bonafide mistake, the petitioner cannot be penalised. The learned counsel also relied upon the judgment of the Hon'ble High Court of Judicature for Rajasthan at Jodhpur D.B. Civil Writ Petition No.692/2017 **Neetu Harsh Versus the State of Rajasthan and others** wherein a similar matter was allowed in favour of the applicant.

10. We have perused the material available on record and considered the rival contentions of both sides carefully.

11. It is not the case of the respondents that the applicant is not an OBC candidate. Nor is it disputed that he is in possession of a valid certificate to

this effect. It has been held time and again by various judicial fora that bonafide mistakes of the candidates should be condoned. The applicant would not have gained anything by posing to be a general category candidate instead of an OBC candidate. Rather he stood to lose the advantages which accrue to a genuine OBC category candidate. Therefore, to deny the petitioner his rightful claim on account of an inadvertent mistake would certainly be very unfair. The Policy for such categorisation has been put in place by Government of India, to bring people from humble background to the fore front and not to oust them from the main stream. The respondents should have taken a holistic view of the situation rather than taking a cussed stand for non rectification of a genuine mistake committed by the applicant.

12. The applicant has also mentioned in the OA that he secured 159 marks and would have been selected as an OBC candidate if the benefit was made available to him, since the last selected candidate in OBC category secured 155.25 marks. We are of the considered view that the applicant should be allowed to be placed in the OBC category to which he belongs. Accordingly, we allow the OA and quash the order dated 01.08.2016 qua the applicant. The respondents are directed to treat the applicant as OBC and consider him for the post of Head Constable under post code 43/13, if he is found otherwise eligible on all other parameters, as per law. No costs.

(Praveen Mahajan)
Member (A)

(Raj Vir Sharma)
Member (J)

