

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

**O.A. No.297/2018
With MA No.3061/2018**

**Reserved On:24.08.2018
Pronounced on:05.09.2018**

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. A.K. Bishnoi, Member (A)**

Sunil Kumar Yadav,
Staff Nurse,
Aged about 37 years
S/o Shri Rohitash Yadav,
R/o H.No.O-52A, Krishan Vihar,
Near MCD Primary School,
New Delhi. ...Applicant

(By Advocate: Shri M.K. Bhardwaj)

Versus

1. Govt. of NCT of Delhi,
Through its Chief Secretary,
New Secretariat,
I.P. Estate, New Delhi.
2. The Principal Secretary (Health),
Health & Family Welfare Department,
9th Level, New Secretariat, I.P. Estate, New Delhi.
3. The Medical Superintendent,
SGM Hospital,
Govt. of NCT of Delhi,
S- Block, Mangol Puri, New Delhi. ...Respondents

(By Advocate: Sh. Amit Anand)

ORDER

By Hon'ble Mr. V. Ajay Kumar, Member (A)

The applicant, a Staff Nurse, filed the OA seeking quashing of the impugned Annexure A-1 termination order dated 19.01.2018.

2. Brief facts, as narrated in the OA, are that the applicant belongs to OBC category and migrated from the State of Rajasthan and applied for appointment to the post of Staff Nurse (Male) in response to an advertisement issued in the year 2009 against post code No.004/09. Along with his application, the applicant submitted all the relevant documents including his OBC certificate dated 02.04.2008. The applicant appeared in the written test held on 30.5.2010 in OBC category and was declared successful and was issued appointment letter dated 16.12.2011 and was kept on probation for a period of 2 years. Accordingly, the applicant joined in service on 16.12.2011. In spite of completion of probation period by the applicant without any blemish, when the respondents have not declared his probation, he made representations. However, in the meantime, the OBC certificate of the applicant was cancelled. The respondents after knowing about the cancellation of the OBC certificate of the applicant, issued show cause notice dated 28.08.2014 for termination of the services of the applicant. The applicant challenged the said show cause notice by filing OA No. 3154/2013. However, the said OA was dismissed as withdrawn on 15.04.2015 with liberty to file a fresh application. Another OA No.4186/2017 also filed questioning the very same show cause notice dated 28.08.2014 was dismissed as premature on 29.11.2017 (Annexure A-12) as no adverse order was issued against the applicant on the said date. Thereafter, after considering the

reply submitted by the applicant to the said show cause notice, the respondents issued the impugned Annexure A-1 termination order dated 19.01.2018. Hence, the OA.

3. Heard Shri M.K. Bhardwaj, learned counsel for the applicant and Shri Amit Anand, learned counsel for the respondents and perused the pleadings on record.

4. Admittedly, the applicant secured employment under the respondents as Staff Nurse (Male) in OBC category, by submitting his OBC certificate dated 02.04.2008. Further, admittedly, the said OBC certificate dated 02.04.2008 issued in respect of the applicant was cancelled by the Tehsildar/Executive Magistrate (Seelampur, Delhi), vide order dated 03.05.2012 and he was asked to surrender the original certificate within 15 days.

5. Issuance of caste certificate to any individual depending on the caste to which he belongs to, is part of the functions of the concerned Tehsildar/Executive Magistrate. Similarly, the confirmation/verification or cancellation of any caste certificate is also part of the functions of the concerned Tehsildar/Executive Magistrate. The respondent-employer of the applicant has no say in the said field. As long as an employee is possessing a valid caste certificate in his favour, the employer should treat him that he belongs to the said caste and extend the benefits attached thereto. Once the said caste certificate is cancelled, the respondent-

employer has to take appropriate consequential action as they have no say in the matter of validity of a caste certificate.

6. In the instant case, as the applicant produced an OBC certificate and secured sufficient marks in the category of OBC, he was offered with an appointment as Staff Nurse (Male), but on verification, even before the applicant's probation was declared, when the respondents came to know that the OBC certificate issued to the applicant was cancelled by the competent Tehsildar/Executive Magistrate, after following the principles of natural justice, i.e., after issuing show cause notice and after considering the reply thereto submitted by the applicant, the respondents issued the impugned termination order.

7. Once the OBC certificate issued to the applicant was cancelled way back in the year 2012, and even after the respondents issued a show cause notice seeking his explanation, the applicant failed to question the order dated 03.05.2012 whereunder the OBC certificate was cancelled, before any competent authority/revenue authority. On 24.01.2018, while issuing notices to the respondents, this Tribunal believing the submission made by the learned counsel for the applicant that on a representation made by the applicant to the concerned revenue authorities, the cancellation of the OBC certificate of the applicant was under reconsideration,

suspended the termination order and as a result the applicant is continuing in service till date.

8. In spite of number of opportunities given to the applicant to produce any proof to show that he filed any appeal challenging the order dated 03.05.2012 of the Tehsildar/Executive Magistrate (Seelampur, Delhi), under which his OBC certificate was cancelled, he failed to produce any such proof. His submission that subsequent to the order dated 03.05.2012, the revenue authorities on 29.04.2013 have confirmed that his OBC certificate is genuine, has no legs to stand as the subsequent order dated 08.08.2013 issued by the Tehsildar/Executive Magistrate (Seelampur, Delhi), confirms the cancellation of the OBC certificate of the applicant and directed to surrender the said cancelled OBC certificate dated 02.04.2008, failing which action as per provisions of law will be taken against him. In any event, as long as the applicant's OBC certificate was not restored by a competent revenue authority or the cancellation order dated 03.05.2012 was stayed or suspended by any competent authority/court, he cannot continue in the employment obtained under the reserved category meant for OBC candidates. The contention of the applicant that the respondents cannot terminate his services without conducting a regular departmental enquiry is also untenable as his probation was admittedly not declared so far and the respondents can as well

discharge a probationer by way of termination simpliciter, once the basis of appointment of the applicant, i.e., his OBC Caste Certificate itself was cancelled.

9. In the circumstances and for the aforesaid reasons, the OA is dismissed and the interim order dated 24.01.2018 is vacated and the MA No.3061/2018 is disposed of. No costs.

(A.K. BISHNOI)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

RKS