



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

O A No. 453 OF 2014 **Biswas Shaha Nawaz Haque,**
son of Abdus Sattar Biswas, aged about 31 years, residing at
vill.- Malichagarh, P. O. Chanduriya, PS Chakdaha, Dist: Nadia, PIN
741248, West Bengal.

O A No. 454 OF 2014 **Tanmay Shil,**
son of Harilal Shil, aged about 21 years, residing at Vill.- Purba
Satberia, P.O.Nagarukhra, P.S.-Haringhata, District-Nadia, Pin
No.741257, West Bengal.

O A No. 455 OF 2014 **Lakshmi Mondal,**
Daughter of Sahadat Ali Mondal, aged about 31 years, residing at
Village - Rabindra Palli, P.O. Brahmapur, P. S. Bansdrani, Dist.-
Kolkata, PIN CODE 700096, West Bengal.

O A No. 456 OF 2014 **Arabinda Mondal,**
son of Madhusudan Mondal, aged about 23 years, residing at
village- Chandan Dighi, P. O. Moyna, P. S. Gazol, District-Malda,
PIN - 732124, West Bengal.

O A No. 457 OF 2014 **Anjan Sikdar,**
son of Asit Sikdar, aged about 28 years, residing at village-
Srikrishnapur, P. O. - Bhagirathislipasram, P. S. Chakdaha, Dist. -
Nadia, PIN 741224, West Bengal.

..... Applicant

Versus

1. Union of India, Through the General Manager,
Eastern Railway, Kolkata-700001.
2. The Chairman, Railway Recruitment Cell, 56, C. R.
Avenue, Kolkata-700012.
3. The Assistant Personnel Officer, Recruitment, Railway
Recruitment Cell, 56, C. R. Avenue, Kolkata-700012.

..... Respondents

For the applicant : Mr. A. Chakraborty, Counsel
: Mr. P. Bhowmick, Counsel

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For the respondents : Mr. P. K. Roy, Counsel
Mr. A. K. Guha, Counsel

Heard on : 08.02.2018

Order on : 11.4.2018

ORDER

Ms. Bidisha Banerje, Judicial Member

1. Since incidental issues have been raised identical facts have been pleaded, cause of action is identical and reliefs claimed are identical, the OAs are taken up for analogous hearing with the consent of the parties.
2. For the sake brevity OA 454 of 2014 is delineated from the rest, and dealt with hereunder.
3. In OA No.454 of 2014 the applicant has sought for the following reliefs :
 - 1) An order do issue directing the respondent to grant appointment to the applicant to the post of Group-D in Eastern Railway as he was provisionally empanelled and other provisionally empanelled were granted appointment.
4. The admitted facts that could be culled out from the pleadings of the parties O A No. 454 of 2014 are as under:
The applicant Tanmay Shil had responded to an Employment Notification No.0110, issued by the RRC on 25.2.11 to fill up various categories of posts in Eastern Railway, Metro Railway and CLW. The applicant claimed himself as an UR (general category) candidate, as evident from the application form annexed to the Reply filed by the Respondents.

His application was processed. Admit cards were issued and the applicant came out successful in written test. He was sent for physical efficiency test where he declared himself as an OBC with supporting certificate, that he obtained after the cut of date for submission of application form.

His case was further processed and he was declared as provisionally selected under UR category.

Later on when it was detected at the stage of bio data verification for appointment that he had applied as UR but later on deposited his OBC certificate and therefore as on the date of making application he was not certified as an OBC, his candidature was cancelled. Nevertheless, he qualified under UR standards.

5. The Ld. Counsel for the applicant strenuously urged that even if such certificate was supplied later on, the authorities were bound to accept it in view of the law laid down in (RAM KUMAR GUROYA VS. DELHI SUBORDINATE SERVICES SELECTION BOARD AND ANOTHER), reported in (2016) 1 Supreme Court Cases (L & S) 742 and (2016) 4 Supreme Court Cases 754 extracts whereof run as under :

"2. The important question of law to be decided in these appeals is whether a candidate who appears in an examination under the OBC category and submits the certificate after the last date mentioned in the advertisement is eligible for selection to the post under the OBC category or not?

****4. The necessary relevant facts required to appreciate the rival legal contentions advanced on behalf of the parties are stated in brief hereunder: the respondent Delhi Subordinate Services Selection Board (hereinafter referred to as "the DSSB") invited applications for selection to the post of Staff Nurse in the Department of Health and Family Welfare, Government of NCT of Delhi by way of publishing Advertisement No.09/2007 in the newspaper. The last date of submission of the application form in the advertisement for the said post was 21-1-2008. The appellant submitted his application form before the due date and was subsequently issued the admit card to appear in the examination. Having appeared in the examination, he was shortlisted for selection. However, his name did not appear in the final list of selected candidates. On enquiry, he was informed by the official concerned that he was not selected to the post for the reason that he had applied to submit OBC certificate issued by the appropriate authority along with application form before the last date of submission of application form.

*****6. The learned Single Judge disposed of the writ petition vide judgment and order dated 24-11-2010, placing reliance on the judgment in Pushpa wherein the controversy centred around the same advertisement/notification issued by the same respondent. The Learned Single Judge observed that the only ground for declining the applications filed by the appellants was that the OBC certificates had been issued and submitted after the cut-off date and therefore they were not eligible for appointment to the post. The Learned Single Judge

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further held that the respondent did not cite any other authority to distinguish the decision in Pushpa case from the facts of the present case. Consequently, the learned Single Judge disposed of the writ petition and directed the respondent to reconsider the application of the appellant and the other aggrieved candidates against the OBC category within a period of one month.

***7. Aggrieved, the respondent DSSB filed Letters Patent Appeal No.562 of 2011 before the Division Bench of Delhi High Court. The High Court vide its judgment and order dated 24-1-2012 held that the appellant had applied for the OBC certificate ten days before the cut-off date, which was not the same as in Pushpa Case. In Pushpa, the application for the OBC certificate had been filed much before the date of advertisement.

It was observed that the advertisement in the present case was published on 30-8-2007 and the last date of submission of the application form was 21-1-2008 and the appellant herein applied for OBC certificate only ten days prior to the cut-off date and hence, no case for grant of relief in favour of the appellant was made out. The High Court, thus, set aside the order of the learned Single Judge and allowed the letters patent appeal filed by the respondent DSSSB. Hence, the present appeal.

***16) In Pushpa, relevant paragraphs from Tej Pal Singh have also been extracted, which read thus : (Pushpa Case, SCC On Line Del para 11)

"11 '15. The matter can be looked into from another angle also. As per the advertisement dated 11-6-1999 issued by the

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Board, vacancies are reserved for various categories including SC category. Thus in order to be considered for the post reserved for SC category, the requirement is that a person should belong to SC category, the requirement is that a person should belong to SC category. If a person is SC he is so by birth and not by acquisition of this category because of any other event happening at a later stage. A certificate issued by competent authority to this effect is only an affirmation of fact which is already in existence. The purpose of such certificate is to enable the authorities to believe in the assertion of the candidate that he belongs to SC category and act thereon by giving the benefit to such candidate for his belonging to SC category. It is not that petitioners did not belong to SC category. It is not that petitioners did not belong to SC category prior to 30-6-1998 or that acquired the status of being SC only on the date of issuance of the certificate. In view of this position, necessitating upon a certificate dated prior to 30-6-1998 would be clearly arbitrary and it has no rationale objective sought to be achieved.

18. Hon'ble Court also held that the Division Bench, thus, erred in reversing the judgment and order passed by the Learned Single Bench. Hence, the impugned judgment and order passed by the Division Bench in Letters Patent Appeal No.562 of 2011 is not only erroneous but also suffers from error in law as it has failed to follow the binding precedent of the judgments of this Court in *Indra Sawhney* and *Valsamma Paul*. Therefore, the impugned judgment and order passed by the Division Bench of the High Court is liable to be set aside and accordingly set aside.

The judgment and order dated 24-11-2010 passed by the Learned Single Judge in Ram Kumar Gijroya v. Govt. (NCT of Delhi) is hereby restored.

19. *The appeals are allowed. No costs. "*

6. Dispelling the claim Ld. Counsel Mr. P. K. Roy for the respondents would vociferously submit that the cited decision would not lend any support to the applicant since the applicant mischievously introduced the OBC certificate, obtained after out of date, at a later stage while at the very onset he sought for consideration as an UR. He had thus not come with clean hands and as such deserved rejection. Moreover, the decision of Pushpa (supra) in the cited decision referred to SC & ST whereas present applicant claimed benefit as an OBC.
7. Ld. Counsel Mr. P. K. Roy would further contend that the Recruitment notice did not permit furnishing of caste certificate after closing date and the authorities in accordance with the conditions stipulated in the Recruitment notice were authorised to reject application or cancel appointment at any stage. In support Ld. Counsel would invite us to paras 8.8 - 8.9 of the Notice of Annexure which is extracted verbatim herein below :

"8.8

- a) Caste certificate from competent authority for SC/ST and OBC candidates in the prescribed format have to be produced as given in Annexure I and II respectively.
- b) If the candidates wish to be considered against a specific community quota and fill the community column accordingly, their application will

be rejected unless proof of community in the prescribed format is enclosed.

c) Any subsequent representation for change of community status will not be entertained under any circumstances.

8.9 Before applying to the post, the candidates should ensure that he/she fulfils the eligibility and other criteria. RRC-ER would be free to reject any application not fulfilling the requisite criteria, at any stage of recruitment, and if erroneously appointed, such candidates shall be liable summary termination of service without notice.

They were required to declare as follows (para 10.1.2 of 18 A -1)

10.1.2. Candidates are required to copy the following para (Declaration), in his/her own handwriting, in the space provided at column No.20 in the Application Form-

"I hereby declare that all the particulars given above by me are true, complete and correct to the best of my knowledge and belief. I am aware that in the event of any information furnished by me is found false/incorrect at any stage, my candidature/service will be rejected/terminated summarily and I am also liable to criminal action. I will abide by the instructions given in the notification".

8. We heard the Ld. Counsels, considered their rival contention and perused the materials on record.

Our Findings


(i) The applicant applied as an UR candidate.

- (ii) Since the applicant declared himself as 'UR' in application form itself there was no occasion for the respondent to reject his application at the threshold. Therefore it was rightly processed under 'UR' category.
- (iii) Para 8.8 of Recruitment notice extracted supra was clear to the hilt that furnishing of caste certificate at a later stage after the closing date and change of category once declared was not possible.
- (iv) An application not supported by caste certificate was liable to be rejected summarily.
- (v) The petitioners before Hon'ble Apex Court, in the cited decision, had claimed their consideration as OBC. There is nothing on record to show that they were allowed to change their category. Therefore the cited decision lends no support to the present petitioner.
- (vi) It is trite, axiomatic and settled law that OBC's have to be declared as such whereas SC, STs are as such by birth. (Kumari Madhri Pati's case). Therefore as on the date of making application the applicants did not belong to OBC community.
- (vii) Having once obtained OBC Certificate the applicants were free to avail benefits applicable to such classes but in subsequent selection process.
- (viii) However, we noticed that the present applicant Tanmay Shil applied as UR candidate and got provisionally selected as per UR standards, as evident from the provisional empanelment order. Therefore, ought to be considered as UR candidate.


(viii) Similarly, other applicants have been provisionally empanelled as UR Candidates, which implies they qualified against UR standards.

9. In view of our findings, supra, we feel that the present applicant as well as all other in the OAs, taken up analogously, would deserve consideration as UR, if they have qualified against UR standards.

10. Accordingly, we dispose of the O.As with a direction upon the respondents to process the cases of all the applicants as UR candidates, provided they have qualified as such. No costs.



(Jaya Das Gupta)
Member (A)



(Bidisha Banerjee)
Member (J)

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