

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00252/2018

Tuesday, this the 26th day of March, 2019

**Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member**

Syam Nath.S, aged 28 years
S/o.Syam Sunder.G
Syam Nivas, TC 3-149-1
Paruthippara, Muttada P.O
Trivandrum -695 025

..... **Applicant**

(By Advocate Mr.P.Raveendran)

V e r s u s

1. Union of India, represented by the Secretary to Government
Department of Personnel & Training, North Block,
New Delhi-110 001
2. Union Public Service Commission, Dholpur House
Shahjahan Road, South Block
Man Singh Road Area, New Delhi – 110 069
3. State of Kerala represented by the Secretary to Government
Backward Communities Development Department,
Government Secretariat, Trivandrum – 695 001
4. The Director, Directorate of Backward
Communities Development, Ayyankali Bhavan, 4th Floor
Kanaka Nagar, Vellayambalam
Trivandrum – 695 003
5. The Land Revenue Commissioner, Public Office Building
Trivandrum – 695 033
6. The District Collector, Civil Station
Kudappanakkunnu, Trivandrum – 695 043 **Respondents**

**(By Advocate – Mr.M.Rajeev,GP for R 3 to 6, Mr.Thomas Mathew
Nellimoottil for R-2 and Mr.S.Ramesh,ACGSC for R1)**

This Original Application having been heard on 18.3.2019, the
Tribunal on 26.3.2019 delivered the following:

O R D E R

Per: Mr.E.K.Bharat Bhushan, Administrative Member

Original Application No.180/00252/2018 is filed by Shri.Syam Nath.S who was a candidate in the UPSC Civil Services (Main) Examination 2016. He had secured the rank 345 and was allotted Indian Revenue Service (Customs and Central Excise Service Group 'A'). He is aggrieved by the failure on the part of respondent no.1 to allot him his choice Service which was the Indian Foreign Service (IFS) on the ground that he had not produced non-creamy layer certificate to claim the benefit of Other Backward Community reservation. He seeks the following reliefs:

- “ I. Call for the records leading up to Annexure A12 and Annexure A 23 and quash them, being bad in the eye of law.
- II. Direct the respondents 1 and 2 to allow the category change of the applicant from ‘general’ to ‘OBC’ in the light of Annexure A8 non-creamy layer certificate and Annexure A9 Performa.
- III. Direct the respondents 1 and 2 to reallocate his service as per his OBC status.
- IV. Direct the respondents 1 and 2 to allocate the applicant afresh to his choice Indian Foreign Service (IFS) as per the reallocated rank list based on his OBC status.
- V. Grant the cost of this litigation from the respondents.
- VI. Such other reliefs as may be prayed for and is just and proper in the facts and circumstances of this case. ”

2. Applicant had applied for the Civil Services (Main) Examination, 2016 and a true copy of the application is at Annexure A-1. He had applied in the General Category. Among the choice of Services, applicant gave first

.3.

preference to the Indian Foreign Service. As per Annexure A-3 dated 2.8.2017, applicant was allocated to the Indian Customs and Central Excise Service, Group 'A'.

3. Applicant maintains that at the time of Annexure A-1 application itself he had sought to avail of reservation benefits available to him. He belongs to Hindu – Ezhavathi community which is entitled for reservation under the Other Backward Classes (OBC). The Service allocation list of successful candidates is produced at Annexure A-5. The candidate getting the rank No.615, one Mr.Varun Yadav belonging to O.B.C, had been allotted Indian Foreign Service whereas the applicant was ignored for his first preference. He avers that at the time of application, he was prevented from claiming reservation benefit under the O.B.C community on account of denial of non-creamy layer certificate and consequently he was denied the benefit conferred by O.M No.36012/22/93-(SCT) dated 8.9.1993 which lays down the criteria to determine creamy layer among OBCs (Annexure A-4). Other relevant orders on the same subject are copied as Annexure A-5. The applicant maintains that he was misled and not granted non-creamy layer certificate by the 6th respondent despite his eligibility for the benefit under Annexures A-4 and A-5 orders. According to the applicant, both his parents are not Group A/Class I or Group B/Class II officers (direct recruits) to disqualify the applicant from seeking reservation under the OBC category.

4. Applicant was issued with certificate, to be produced by OBC candidates only on 6.6.2017 (Annexure A-8) and thereafter he filed

4.

Performa – III form of declaration (Annexure A-9). He filed representation dated 6.6.2017 before the first and second respondents (Annexure A-10). He was refused by Annexure A-12 communication issued by respondent no.2 by which he was informed that the Commission does not entertain requests akin to Annexure A-10.

5. The applicant then moves on to his main contention. He says denial of non-creamy layer certificate is a prevalent factor in the State of Kerala. According to him there are several instances in Kerala, of eligible candidates belonging to the OBC category, being denied non-creamy layer certificate in a malafide manner which ultimately led to their chances for public employment being nullified. He draws our attention to the alleged case of one Ms. Navya K.N in whose case, delay in issuing the non-creamy layer certificate by more than one year, resulted in her loss of a job opportunity in a reputed Bank. In fact, according to the applicant Government Order dated 10.2.2017 issued by Government of Kerala at Annexure A-18 which took stock of the issue of denial of non-creamy layer certificate, is a clear indication of the prevalent malice and the Government of Kerala had even instituted training programmes for revenue officials so that they follow the standards prescribed and issue non-creamy layer certificates promptly. All these are submitted in order to bring about his point that the non-creamy layer certificate for which he had applied earlier had been inordinately delayed by the authorities and by the time it was obtained on 6.6.2017, he had lost his opportunity to make use of his OBC status.

.5.

6. Citing all these factors, applicant had approached this Tribunal in O.A 772/2017 and had obtained an order dated 21.9.2017 (Annexure A-22) directing the first respondent to decide Annexure A-10 representation within a period of one month. The impugned order at Annexure A-23 has been issued in consequence. It rejects his claim on the basis of specious grounds. It remains a fact that a candidate who performed worse than him has been allocated to IFS while the applicant who had a higher rank finds himself allotted another service. He contends that Annexure A-23 has been issued without considering the grounds raised in the representation at Annexure A-10.

7. Reply statements in respect of all respondents have been filed. In the reply statement filed on behalf of respondent no.2, it is strongly submitted that the Original Application is not maintainable as the applicant had not even applied for the OBC certificate to the issuing authority; at the time of applying for the Civil Services Examination, 2016 and this fact he himself has accepted in Annexure A-10 representation wherein he states that he had applied to the Tahsildar, Trivandrum Taluk only after the rank list had been published i.e, after 31.5.2017. In terms of Civil Services Examination Rules 2016, the applicant was required to furnish a certified copy of Caste Certificate in support of his claim of OBC, which should have been dated prior to the due date (closing date) of the application of Civil Services (Prelim) Examination 2016. The applicant never did so. He now pleads that he was misled by the Village Officer and he returned to claim his due only when the rank list was published by the UPSC. This contention is far

fetched and fictitious. The applicant has not approached this Tribunal with clean hands and is attempting to mislead it.

8. The role of the UPSC is completed when the list of successful candidates in each category was recommended to DoP&T for appointment, taking into account the vacancies determined for each category. The list is prepared by UPSC taking into consideration the prescribed percentage of reservation for OBC, SC and ST and number of vacancies in each service for these categories as determined by respective Cadre Controlling Authorities who take the reservation percentages in account by use of model rosters maintained for the purpose and the UPSC has done this well before the Annexure A-10 representation dated 6.6.2017 was sent to UPSC. As per Rule 25 of the Civil Services Examination Rules, 2016, the following is stated:

“25. The closing date fixed for the receipt of the application will be treated as the date for determining the OBC status (including that of creamy layer) of the candidates.”

9. The Hon’ble High Court of Allahabad in its order in ***Gaurav Sharma v. State of U.P***, held that an OBC candidate is not exempted from the rigours of a cut off or last date prescribed in an advertisement or recruitment notice.

10. In the counsel statement filed on behalf of respondent no.1, the same view as respondent no.2 has been taken. It is additionally stated that in the Detailed Application Form (DAF), the applicant had filled up column no.8

relating to the community as 'GENERAL'. As can be seen, he was, by his rank in the general category, eligible only to be allocated Indian Customs and Central Excise Service, Group 'A' and this had been done. The statement also quotes Rules 23 and 24 of the Civil Service Examination 2016. It reads:

“ 23. A candidate will be eligible to get the benefit of community reservation only in case the particular caste to which the candidates belong is included in the list of reserved communities issued by the Central Government. If a candidate indicates in his/her application form for Civil Services (Preliminary) Examination that he/she belongs to General Category but subsequently writes to the Commission to change his/her category to a reserved one, such request shall not be entertained by the Commission. Similar principle will be followed for physically disabled categories also.

While the above principle will be followed in general, there may be a few cases where there was a little gap (say 2-3 months) between the issuance of a Government Notification enlisting a particular community in the list of any of the reserved communities and the date of submission of the application by the candidate. In such cases the request of change of community from general to reserved may be considered by the Commission on merit. In case of a candidate unfortunately becoming physically disabled during the course of the examination, the candidate should produce valid documents to enable the Commission to take a decision in the matter on merit.

24. Candidates seeking reservation/relaxation benefits available for SC/ST/OBC/PH/Ex-Servicemen must ensure that they are entitled to such reservation/relaxation as per eligibility prescribed in the Rules/Notice. They should also be in possession of all the requisite certificates in the prescribed format in support of their claim as stipulated in the Rules/Notice for such benefits, and these certificates should be dated earlier than the due date (closing date of the application of Civil Services (Prelim) Examination, 2016. ”

11. In accordance with this Tribunal's order, the request for service allocation to the applicant under OBC non-creamy layer was considered

thoroughly and was rejected in terms of Rules 23 and 24 of the Civil Services Examination Rules, 2016.

12. On behalf of respondent nos.3-6, another reply statement has been filed disputing the contentions that there had been inordinate delay on the part of revenue authorities under the Government of Kerala in issuing the non-creamy layer certificate. It is submitted that the applicant had applied for the same on 3.6.2017 before the Village Officer, Kudappanakkunnu and the Tahsildar had issued the same on 6.6.2017 after verifying the inquiry report of the Village Officer. This had been done on the basis of the related documents produced by the applicant on 5.6.2017.

13. Heard Mr. P.Raveendran, learned counsel for the applicant, Mr.M.Rajeev, G.P, learned counsel for respondent nos.3 to 6, Mr.Thomas Mathew Nellimootttil, learned counsel for respondent no.2 and Mr.S.Ramesh,ACGSC, learned counsel for respondent no.1 and all pleadings were examined.

14. The applicant is a successful candidate in the UPSC Civil Services (Main) Examination, 2016 and had secured the rank 345 in the merit list. As per his Detailed Form of Application DFA (Annexure A-2), he had applied as a 'general' candidate and thereby was ineligible for any reservation in allocation of services. Accordingly, he was allotted Indian Customs and Central Excise Service Group 'A' which was no.4 in his list of preferences. The UPSC, respondent no.2, after declaration of final results of the

examination had forwarded the list of recommended candidates to DoP&T, Government of India for appointment along with category of each candidate. Having applied in General category, he was considered against that category. In Rule 23 and 24 of the Civil Services Examination 2016 which has been quoted in the reply statements of both respondent no.1 as well as respondent no.2, the importance of providing a community certificate to take advantage of the reservation available to the particular caste has been duly emphasised. In this case, the authorities; respondent nos.1 and 2, cannot be faulted for having treated the applicant's application under general category as he himself have filled up column no.8 (a) community relating to social status as "GENERAL".

15. Now we come to the 2nd part of his claim. He states that delay on the part of Government of Kerala Department concerned has resulted in denial of the benefit which he was otherwise eligible for. He quotes various government orders which have been issued by the Government of Kerala from time to time in order to facilitate and smoothen the process of issuance of non-creamy layer certificate. But we have nothing before us to conclude the applicant's request for the said certificate had been delayed by the authorities. In fact, as per his own averment made as part of Annexure A-10 representation, he states that he applied for the non-creamy layer certificate on 3.6.2017. With a certificate itself having been issued three days afterwards i.e on 6.6.2017, apparently there has been no delay whatsoever in issuing the certificate.

16. Clearly, if the applicant had any such claim, he could at least have put in the fact that he had applied for a non-creamy layer certificate in his application. He could not have been ignorant of the same. Being a candidate for a Group A service, such ignorance does not befit an aspirant for a higher post.

17. Learned counsel for the applicant submitted **2016 KHC 6164** in the case of ***Ramkumar Gijroya v. Delhi Subordinate Services Selection Board and Another*** wherein failure to submit the OBC certificate along with application form before the last date of submission had been discussed. The Apex Court emphatically declares that 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.

18. The case at hand is quite dissimilar. The applicant had not claimed any benefit being part of non-creamy layer at the time of submission of application. The Civil Services Examination involves recruitment to a large number of Group A services and is an exhaustive process. An aspirant is expected to declare the correct facts. The applicant in this case, if his claim for non-creamy layer is to be believed, gave incorrect facts. The UPSC working under sharp time lines made the allocation on the basis of facts available to the Commission. The applicant decided to apply for the non-creamy layer certificate, as facts show, well after the UPSC had finalised the process. His efforts to shift the blame for the same onto the shoulders of

State Government Departments is not convincing in view of his own assertion in Annexure A-10. The Division Bench of **Hon'ble High Court of Karnataka** in **W.P 15384/1998**, while dealing with a case where the applicant could not produce the OBC certificate had ruled thus:

“ In the matter of appointment, time and again it is said that the candidates have to comply with the specific stipulations while claiming reservation or with regard to the qualifications. Any laches on the part would definitely results in rejecting the application. In such a situation, one cannot claim as a matter of right sympathy or equity.....“

19. The applicant has sought to counted the contention made by the UPSC that any readjustment in the services is not practical as it would unsettle service allotments of several hundred candidates. Learned counsel submitted that out of all vacancies for 2016, 45 for the IFS, had not been filled up and no dislocation would be caused to any other person if he is allowed to join the IFS. We are afraid that this is not the way the primary recruiting agency in the country, a constitutional body at that, is expected to conduct its business. The UPSC after detailed assessment has provided the list to the DoP&T on the basis of the categories and the respective position of the candidates in the rank list. There is nothing to indicate that this has been done in an arbitrary or casual manner. As stated, the applicant was clearly at fault. If he was eligible for non-creamy layer placement, he ought to have unambiguously indicated the same in the application itself. Through this Original Application he is attempting to revive a claim that he did not pursue in time.

20. The Original Application is dismissed as lacking in merit. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

sv

(E.K BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

List of Annexures

Annexure A1 - True copy of application with Roll No.0532304.

Annexure A2 - True copy of rank list dated 31.5.2017

Annexure A3 - True copy of intimation No.13015/9/2017-AIS-I dated 2.8.2017

Annexure A4 - True copy of OM No.36033/5/2004-Estt.(SCT) dated 14.10.2004

Annexure A5 - True copy of Circular No.27396/F3/07/SCSTDD dated 14.6.2010 published by the 3rd respondent

Annexure A6 - True copy of certificate No.E2/4913/2017/DGW dated 3.8.2017 of the applicant's father showing his entry post

Annexure A7 - True copy of certificate No.18215/SC2/2012/Leg.Sec dated 7.8.2017 of the applicant's mother showing her entry post

Annexure A8 - True copy of certificate to be produced by OBC candidates for appointment of posts under the 1st respondent no.A9/20618/17 K Dis dated 6.6.2017

Annexure A9 - True copy of Performa-III form of declaration

Annexure A10 - True copy of representation dated 6.6.2017 before the 1st and 2nd respondents

Annexure A11 - True copy of covering letter No.DO/ST/06/2017/914 dated 12.6.2017 issued from the office of the MP

Annexure A12 - True copy of reply No.CSM/R.No.0532304/2016-E.III dated 20.6.2017 issued by the 2nd respondent

Annexure A13 - True copy of DO letter No.CA1/2012 dated 16.3.2012 from the 4th respondent to the District Collector, Idukki

Annexure A13(a) - True translation of Annexure A-13

Annexure A14 - True copy of letter No.BCDD/A1/208/12(2) dated 11.6.2012 from the 4th respondent to the 5th respondent

Annexure A14(a) - True translation of Annexure A-14

Annexure A15 - True copy of representation dated 24.8.2012 filed by Ms.Navya K.N

Annexure A15(a) - True translation of Annexure A15

Annexure A16 - True copy of letter No.BCDD/881/2012 dated 27.9.2012 from the 4th respondent to the 5th respondent

Annexure A16(a) - True translation of Annexure A16

Annexure A17 - True copy of letter No.A2/BCDD/881/12 dated 11.12.2012 from the 4th respondent to the 3rd respondent

Annexure A17(a) - True translation of Annexure A17

Annexure A18 - True copy of GO (Rt) No.17/2017/BCDD dated 10.2.2017 issued by the 3rd respondent

Annexure A18(a) - True translation of Annexure A18

Annexure A19 - True copy of letter No.BCDD/B2/4646/2016(1) dated 3.4.2017 issued by the 4th respondent to all District Collectors

Annexure A19(a) - True translation of Annexure A-19

Annexure A20 - True copy of order No.BCDD-B2/4646/2016 dated 3.4.2017 of the 4th respondent and the schedule thereto

Annexure A21 - True copy of the certificate No.BCDD-A3-2083/17 dated 5.8.2017 issued by the 4th respondent to another candidate Ms.Rehna.R

Annexure A22 - True copy of order dated 21.9.2017 in O.A No.180/00772/2017

Annexure A23 - True copy of order No.222012/68/2017-Als-I dated 20.12.2017

Annexure A24 - True copy of relevant page 124 of Civil Services Examination Rules, 2016 published vide F.No.13018/3/2016-AIS(I)

Annexure A25 - True copy of relevant pages of the latest allocation list dated 4.12.2017

Annexure A26 - True copy of the approval for IFS Officer trainees of 2017 batch as TS(LTs) issued by the Ministry of External Affairs No.Q1PA-II/624/06/2017 dated 9.5.2018

Annexure A27 - True copy of the list of service wise category wise vacancies (CSE-2016) published on the website of the 1st respondent for such purposes <https://easy.nic.in/csePlus/Vacancy.SA.asp?Year> CSE=2016

Annexure M.A1 True copy of the webpage of Lal Bahudur Shastri National Academy of Administration

Annexure R2(a) - True copy of Civil Services Examination Rules 2016

Annexure R2(b) - True copy of notification bearing Examination Notice No.08/2016-CSP dated 27.4.2016

Annexure R2(c) - True copy of OBC certificate bearing No.A9/20618/17 submitted by the applicant

Annexure R1 - True copy of Detailed Application Form filed by Shri.Varun Yadav Rank No.615

Annexure RII - True copy of judgment dated 1.8.97 in State of Rajasthan v. Nitendra Kumar Bhatt

Annexure RIII - True copy of judgment by full bench of Hon'ble High Court of Allahabad, SPECIAL APPEAL No.-156 of 2017

. . .