

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

O.A. No.1193 of 2016

Orders reserved on : 26.02.2019

Orders pronounced on : 05.03.2019

**Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)**

Neeraj Kumar aged 25 years,
Son of Shri Surender Singh,
Candidate of Combined Graduate Level Examination, 2015 in
Group C,
Resident of : Village & Post – Palri,
Tehsil – Charkhi Dadri,
Distt. Bhiwani (Haryana) 127310

.....Applicant
(By Advocate : Shri H.P. Chakravorti)

VERSUS

Staff Selection Commission thro'
The Registrar General,
Northern Regional Office,
Department of Personnel & Training,
Block NO.12, C.G.O. Complex,
Lodhi Road, New Delhi-110054.

.....Respondent
(By Advocate : Shri Gyanendra Singh)

O R D E R

Ms. Nita Chowdhury, Member (A):

Heard learned counsel for the parties.

2. By filing this OA, the applicant is seeking the following reliefs:-

“8.1 entertain the present OA granting relaxation from the rigidity of provisions of sections 20 & 21 (1) & (2) under Section 21 (3) of AT Act, 1985 and thus allowing the OA, quash the remarks given in impugned Order no.Nil dated 10.03.2016 (Ann.A-1); and consequently

8.2 direct the respondents to accept the OBC caste certificate dated 16.06.2015 along-with OBC Certificate dated 11.03.2016 and release the appointment of the petitioner as per merit of OBC candidates in Combined Graduate Level Examination, 2015; and

8.3 to grant any other or further appropriate relief as deemed just and proper by this Hon'ble Tribunal in the facts and circumstances of the case besides cost of the present litigation.”

3. Brief relevant facts of the case are that in pursuance of notification of vacancies advertised in the Employment News dated 2.5.2015 for Combined Graduate Level Examination, 2015, the applicant applied for the same and he was allotted Roll No.2201156729. After having qualified the Tier-I (Written Test), he was called for interview/documents verification on 10.3.2016 vide letter dated 18.2.2016 and at the time of interview, the applicant did not submit OBC caste certificate dated 16.6.2015 but his candidature has been rejected by saying that OBC certificate issued is invalid, i.e., not the prescribed format and rejected the applicant's candidature under OBC quota and the said to be treated as un-reserved candidate without giving any opportunity in this respect.

3.1 The applicant stated that immediately he rushed to State Authority on 11.3.2016 and got the OBC caste certificate dated 11.3.2016. Thereafter the applicant submitted his application to the respondent requesting for entertaining his OBC certificates. But the same was not responded to by the respondents.

3.2 Being aggrieved by the aforesaid action of the respondents, the applicant has left with no option except to approach this Tribunal for redressal of his grievances.

4. Pursuant to notice issue to the respondents, they filed their reply in which they stated that applicant, an OBC candidate of Combined Graduate Level Examination 2015 bearing Roll No.2201156729, upon qualifying the Tier-I and Tier-II Examination, was called to appear in interview on 10.3.2016. However, on the date of interview, i.e., 10.3.2016, during verification of document, the applicant submitted OBC certificate dated 16.6.2015 which was not in accordance with the provisions of notice of aforesaid examination, as the said certificate does not have any mention of GOI Resolution No. vide which his caste has been included in Central List of OBC. Hence, the same was not accepted for claim of reservation & age relaxation under OBC category as per the provisions of notice of the said examination. As such he was treated as UR category candidate and accordingly his candidature was changed from OBC to UR and in UR category, he could not get selected as per final result declared on 29.6.2016 as he scored lower i.e. 449.75 than the last selected candidate, i.e., 519.25 for post Code-J and 523.75 for post code-M in UR category. Lastly they prayed that the instant OA deserves to be dismissed by this Tribunal.

5. During the course of hearing, learned counsel for the applicant placed reliance on the DOP&T OM dated 8.10.2015 which reads as under:-

“OFFICE MEMORANDUM

Subject: Reiteration of the instructions on verification of claims of candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes for purpose of appointment to posts/services.

The undersigned is directed to say that as per extant instructions where a candidate belonging to a Scheduled Caste (SC), Scheduled Tribe (ST) and Other Backward Classes (OBC) is unable to produce a certificate from any of the prescribed authorities, he/she may be appointed provisionally on the basis of whatever *prima-facie* proof he/she is able to produce in support of his/her claim subject to his/her furnishing the prescribed certificate within a reasonable time. Instructions have been issued vide DoPT's letter No.36022/1/2007-Estt.(Res.) dated 20.3.2007 to the Chief Secretaries of all States/UTs for streamlining the system of verification of caste certificates so that unscrupulous non-SC/ST/OBC persons are prevented from securing jobs meant for SCs/STs/OBCs by producing false certificates. Timely and effective verification of caste status is necessary so that the benefit of reservation and other scheme of concessions etc. go only to the rightful claimants.

2. In this regard, attention is invited to the instructions contained in the following Office Memoranda/Orders issued by this Department from time to time. A copy each of the Office Memoranda is enclosed:-

- (i) OM No. 36019/7/75-Estt. (SCT) dated 31.10.1975
- (ii) OM No. 36011/16/80 — Estt. (SCT) dated 27.02.1981
- (iii) OM No. 36011/3/2005-Estt. (Res.) dated 09.09.2005 (iv) OM No. 36012/6/88-Estt.(SCT) dated 24.4.1990

3. Instances have been brought to the notice of this Department that despite the aforesaid instructions, the appointments of the candidates belonging to SC/ST/OBC communities are with-held/delayed due to pending caste certificates verification.

4. It is, therefore, reiterated that in the situation where a candidate belonging to a Scheduled Caste, Scheduled Tribe and Other Backward Classes is unable to produce a certificate from any of the prescribed authorities, he/she may be appointed provisionally on the basis of whatever *prima-facie* proof he/she is able to produce in support of his/her claim subject to his/her furnishing the prescribed certificate within a reasonable time and if there is genuine difficulty in his/her obtaining a certificate, the appointing authority should itself verify his/her claim through the District Magistrate concerned.

5. All Ministries/ Departments are requested to bring the contents of this O.M. to the notice of all concerned.”

Counsel for the applicant further placed reliance on the judgment of the Hon’ble Supreme Court in the case of ***Ram Kumar Gijroya vs. Delhi Subordinate Services Selection Board & Anr.*** in Civil Appeal No.1691 of 2016 decided on 24.2.2016, in support of the claim of the applicant. The relevant portions of the said judgment read as under:-

“13. After hearing both the parties at length and perusing the impugned judgment and order passed by the Division Bench of the High Court, we are of the view that the Division Bench erred in setting aside the judgment and order passed by the learned single Judge. We record our reasons hereunder.

14. The Division Bench of the High Court erred in not considering the decision rendered in the case of ***Pushpa*** (*supra*). In that case, the learned single Judge of the High Court had rightly held that the petitioners therein were entitled to submit the O.B.C. certificate before the provisional selection list was published to claim the benefit of the reservation of O.B.C. category. The

learned single judge correctly examined the entire situation not in a pedantic manner but in the backdrop of the object of reservations made to the reserved categories, and keeping in view the law laid down by a Constitution Bench of this Court in the case of **Indra Sawhney v. Union of India**, 1992 (Supp) 3 SCC 217 as well as **Valsamma Paul v. Cochin University & Ors.**, (1996) 3 SCC 545. The learned single Judge in the case of **Pushpa (supra)** also considered another judgment of Delhi High Court, in the case of **Tej Pal Singh** (supra), wherein the Delhi High Court had already taken the view that the candidature of those candidates who belonged to the S.C. and S.T. categories could not be rejected simply on account of the late submission of caste certificate.

The relevant paragraph from the judgment of this Court in the case of **Indra Sawhney** (supra) has been extracted in the case of **Pushpa** (supra) along with the speech delivered by Dr. Ambedkar in the constituent assembly and reads thus :-

"9.....

xxx

xxx

xxx

251. Referring to the concept of equality of opportunity in public employment, as embodied in Article 10 of the draft Constitution, which finally emerged as Article 16 of the Constitution, and the conflicting claims of various communities for representation in public administration, Dr Ambedkar emphatically declared that reservation should be confined to 'a minority of seats', lest the very concept of equality should be destroyed. In view of its great importance, the full text of his speech delivered in the Constituent Assembly on the point is appended to this judgment. But I shall now read a few passages from it. Dr Ambedkar stated:

"... firstly, that there shall be equality of opportunity, secondly, that there shall be reservations in favour of certain communities which have not so far had a 'proper look-in' so to say into the administration Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest

extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity Therefore the seats to be reserved, if the reservation is to be consistent with sub-clause (1) of Article 10, must be confined to a minority of seats. It is then only that the first principle could find its place in the Constitution and effective in operation ... we have to safeguard two things, namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State,". Constituent Assembly Debates, Vol. 7, pp. 701-702 (1948-49).

These words embody the raison d'etre of reservation and its limitations. Reservation is one of the measures adopted by the Constitution to remedy the continuing evil effects of prior inequities stemming from discriminatory practices against various classes of people which have resulted in their social, educational and economic backwardness. Reservation is meant to be addressed to the present social, educational and economic backwardness caused by purposeful societal discrimination. To attack the continuing ill effects and perpetuation of such injustice, the Constitution permits and empowers the State to adopt corrective devices even when they have discriminatory and exclusionary effects. Any such measure, in so far as one group is preferred to the exclusion of another, must necessarily be narrowly tailored to the achievement of the fundamental constitutional goal."

15. In the case of ***Pushpa*** (supra), relevant paragraphs from the case of Tej Pal Singh (supra) have also been extracted, which read thus :-

"11.....

xxx

xxx

xxx

17. The matter can be looked into from another angle also. As per the advertisement dated 11th June, 1999 issued by the 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. If a person is SC his 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 prior to 30th June, 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 30th June, 1998 would be clearly arbitrary and it has no rationale objective sought to be achieved.

18. While taking a particular view in such matters one has to keep in mind the objectives behind the post of SC and ST categories as per constitutional mandate prescribed in Articles 15(4) and 16(4) which are enabling provisions authorising the Government to make special provisions for the persons of SC and ST categories. Articles 14(4) and 16(4), therefore, intend to remove social and economic inequality to make equal opportunities available in reality. Social and economic justice is a right enshrined for protection of society. The right in social and economic justice envisaged in the Preamble and elongated in the Fundamental Rights and Directive Principles of the Constitution, in particular Arts. 14, 15, 16, 21, 38, 39 and 46 are to make the quality of the life of the poor, disadvantaged and disabled citizens of the society meaningful."

Further, in the case of ***Pushpa*** (supra), relevant portion from the judgment of ***Valsamma Paul's*** case (supra) has also been extracted, which reads as under:-

"21. The Constitution through its Preamble, Fundamental Rights and Directive Principles created a secular State based on the principle of equality and non-discrimination, striking a balance between the rights of the individuals and

the duty and commitment of the State to establish an egalitarian social order."

16. In our considered view, the decision rendered in the case of **Pushpa** (supra) is in conformity with the position of law laid down by this Court, which have been referred to supra. The Division Bench of the High Court erred in reversing the judgment and order passed by the learned single Judge, without noticing the binding precedent on the question laid down by the Constitution Benches of this Court in the cases of **Indra Sawhney** and **Valsamma Paul** (supra) wherein this Court after interpretation of Articles 14,15,16 and 39A of the Directive Principles of State Policy held that the object of providing reservation to the SC/ST and educationally and socially backward classes of the society is to remove inequality in public employment, as candidates belonging to these categories are unable to compete with the candidates belonging to the general category as a result of facing centuries of oppression and deprivation of opportunity. The constitutional concept of reservation envisaged in the Preamble of the Constitution as well as Articles 14, 15, 16 and 39A of the Directive Principles of State Policy is to achieve the concept of giving equal opportunity to all sections of the society. The Division Bench, thus, erred in reversing the judgment and order passed by the learned single Judge. Hence, the impugned judgment and order passed by the Division Bench in the 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 the cases of **Indra Sawhney** and **Valsamma Paul** (supra). 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 W.P. (C) No. 382 of 2009 is hereby restored. The appeals are allowed."

On the strength of the aforesaid DOP&T's OM and the said judgment of the Hon'ble Supreme Court, the learned counsel for the applicant submitted that action of rejection of the candidature of the applicant as not being OBC category candidate is not sustainable in the eyes of law as the

respondent had not given an opportunity to the applicant before taking such an arbitrary action against him and if there is genuine difficulty in his obtaining a certificate, the appointing authority should itself verify his claim through the District Magistrate concerned. Since the respondent had failed to take action in this matter in right prospective, the action of the respondent not treating the applicant as OBC category candidate is liable to be quashed by this Tribunal.

6. Counsel for the respondent although reiterated the stand taken by the respondent in the counter reply but has not disputed the aforesaid legal position on the issue involved in this case.

7. After hearing the parties and perusing the pleadings available on record, we fully agree with the contentions of the learned counsel for the applicant that as the respondent has not followed the aforesaid instructions contained in the said OM issued by the DOP&T as also the law laid down by the Hon'ble Supreme Court in the aforesaid case, before rejecting the candidature of the applicant with regard to claim of reservation and age relaxation under OBC category and therefore, we quash the action of the respondent declaring the applicant's OBC certificate as not valid. The matter is remitted back to the respondent to proceed in this case strictly in terms of the provisions contained in the

DOP&T's OM dated 5.10.2015 and also to keep in mind the aforesaid observations of the Hon'ble Supreme Court in the case of **Ram Kumar Gijroya** (supra). If the applicant's claim of belonging to OBC category candidate is found to be correct, the respondents are directed to consider the case of the applicant under OBC category candidate and take further action in accordance with law and rules on the subject. The said exercise shall be completed within a period of three months from the date of receipt of certified copy of this Order.

8. The present OA is disposed of in above terms. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

/ravi/