

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

O.A. No.769 of 2019

Orders reserved on : 07.03.2019

Orders pronounced on : 12.03.2019

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

Tarun Tomar
Aged about 25 years
D/o Ravinder Singh,
R/o H.No.K-2/1, Police Station,
Model Town, North West Delhi,
Delhi-110009.

....Applicant

(By Advocate : Ms.Swati for Shri A.F. FAizi)

VERSUS

1. Union of India through
Secretary,
Staff Selection Commission,
Northern Region,
Block No.12, 5th Floor,
CGO Complex, Lodhi Road,
New Delhi-110003.
2. Deputy Commissioner of Police,
Recruitment Cell, New Police Line,
Kingsway Camp,
New Delhi-110009.

.....Respondents

ORDER

Ms. Nita Chowdhury, Member (A):

Heard learned counsel for the applicant at the admission stage itself.

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

- “a) Directing the respondents to place the relevant records pertaining to the present OA before their lordships for the proper adjudication in the matter.
- b) Allow the Applicant to file the OBC certificate and direct the Respondents to consider her appointment to the post of Constable (Female) in the Delhi Police in the OBC category; date of submission of the OBC certificate i.e. 10.09.2017 in a particular format as against the available OBC vacancies.
- c) And thereafter issue a direction to offer the applicant appointment to the post of Constable (Female) in Delhi Police in the OBC category with all the consequential benefits; and
- d) As a result amend the Office Memorandum No.F. No.20/1/2016-C1/1 dated 09.02.2018 issued by the Respondent No.1 (ANNEXURE A-1) as per the mandate of Articles 14 and 21 of the Constitution and as per the principles of natural justice and include the name of the applicant in the OBC category in the result list.
- e) To issue any other relief, appropriate order or directions as this Hon’ble Tribunal deems fit in the facts and circumstances of the case, in the interest of justice and equity.”

3. This is the second round of litigation, earlier applicant filed OA No.2627/2018, which was dismissed as withdrawn with liberty to the applicant vide Order dated 4.1.2019.

4. It is as admitted fact the applicant, who claims herself of OBC category, had applied for the post of Constable (Executive) Female in Delhi Police in pursuant to public notice issued by the respondents on 10.9.2016 as a General category candidate and she also appeared in the examinations held for the said post as a general category

candidate. The respondents have declared the result on 9.2.2018. Thereafter she approached the respondents to consider her candidature as an OBC candidate for the said post on 10.2.2018. Applicant herself stated in the OA that she has obtained OBC certificate only on 28.3.2018, i.e., much after participation and declaration of the result of the said examination.

5. The main contention of the applicant is that despite securing 65 marks, which was higher than the marks secured by the last selected OBC candidate, who had obtained only 62 marks, the applicant was denied appointment under OBC category, merely on the basis of non-enclosure of the OBC certificate along with the application form which could not be filed at the time of filing application as the document was not available at that time. This very contention of the learned counsel for the applicant is not acceptable in view of the admitted position that applicant had applied as general category candidate and also appeared in the examination as general category and further her result was also declared as a general category candidate and it is only after declaration of result, the applicant chose to approach the respondents for change of her category.

6. We have also raised a query to the learned counsel that the only point for consideration in this case itself is whether

the applicant, who had originally applied as a General Category, is entitled to change her category into OBC even after appearing and declaration of the result. Counsel for the applicant was not able to give any plausible explanation or reasons in support of the claim of the applicant. It is pertinent to mention that similar issue had already been settled by the Hon'ble Supreme Court in the case of **Union of India and others vs. Dalbir Singh & another** in Civil Appeal No.3409/2009 vide judgment dated 9.5.2009, the relevant portion of the said judgment reads as under:-

“10...In our opinion, having opted to consider his case only under OBC category, he cannot thereafter claim that his case requires to be considered in the general merit, only because, he has scored better percentage of marks than the last selected candidate in the general merit. In our considered view, the Administrative Tribunal having found that the appellants were justified in not considering the respondent's case for appointment under OBC category, ought not to have directed the appellants to consider his claim under general category.”

7. Since the Hon'ble Supreme Court in the aforesaid case has categorically held that a candidate having opted to consider his/her case under a particular category, he/she cannot thereafter claim that his/her case requires to be considered in other category merit, only because he/she scored better percentage of marks than the last selected candidate in other category. Hence, in view of the Hon'ble Supreme Court judgment above, we do not find any *prima*

facie case is made out by the applicant for issuance of notice to the respondents. Therefore, we dismiss this OA being devoid of merit at the admission stage itself. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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