

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00171/2014

Reserved on : 30.07.2019

Jodhpur, this the 21st August, 2019

CORAM

**Hon'ble Smt Hina P. Shah, Judicial Member
Hon'ble Ms Archana Nigam, Administrative Member**

Yogendra Singh S/o Shri Gitam Singh aged about 31 years, R/o Quarter No. Type IV/25, CAZRI Campus Jodhpur. Ex T-3 (Lab Tech.) from the office of CAZRI's RRS Leh under respondent No. 2.

.....Applicant

By Advocate : Mr S.K. Malik.

Versus

1. The Indian Council of Agricultural Research through its Secretary, Krishi Bhawan, New Delhi.
2. The Director, Central Arid Zone Research Institute, CAZRI, Jodhpur.

.....Respondent

By Advocate : Mr A.K. Chhangani.

ORDER

Per Smt. Hina P. Shah

The present Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking following relief(s) :

- (i) By an appropriate writ order or direction impugned order dated 11.03.14 at Annex. A/1 be declared illegal and be quashed and set aside as if it was never issued against the applicant.
- (ii) By an order or direction respondents may be directed to reinstate the applicant in service w.e.f. the date of termination and make payment of arrears of pay and allowances alongwith interest @ 18% per annum with all consequential benefits, till the date of payment.

- (iii) Exemplary cost be imposed on the respondents for causing undue harassment to the applicant.
- (iv) Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice.

2. Brief facts necessary to adjudicate the present matter are that in pursuance of advertisement dated 18.05.2013 (Annex. A/2) of respondent-department (CAZRI), applicant possessing requisite qualification for the post of T-3 (Lab. Tech.) applied and got finally selected after written examination, interview etc. for the post reserved for OBC category candidate. Consequently, he was issued offer of appointment against the post of T-3 (Lab. Tech.) vide letter dated 12/14.11.2013 (Annex. A/7) and in pursuance of the same, applicant joined his duties on the post of T-3 (Lab Tech) w.e.f. 17.12.2013 vide office order dated 03.01.2014 (Annex. A/11) issued by the respondents. Thereafter, vide office memorandum dated 06.02.2014 (Annex A/12), a notice was served to the applicant to explain as to why his services should not be terminated with immediate effect on the ground that as per provisions given in Department of Personnel and Training's OM No. 36033/5/2004-Estt. (SCT), dated 14th October, 2004, applicant is not eligible for claiming the benefit applicable to a member of OBC community whereas he secured his appointment to the post of T-3 (Lab Technician) (Laboratory Group) at CAZRIs RRS, Leh (Reserved for OBC {non-creamy layer}) by producing in-appropriate OBC community certificate vide certificate No.

150131300438 dated 22.01.2013 (Annex. A/8) issued by the Uttar Pradesh Administration. Said notice was replied by the applicant on 14.02.2014 (Annex. A/13) explaining therein, that OBC certificate earlier submitted by him is applicable in U.P. State and after receipt of the memo dated 06.02.2014 (Annex. A/12), he obtained certificate dated 10.02.2014 issued by the Govt. of Uttar Pradesh to be used for appointment on the posts under Govt. of India. He further explained that his father Shri Gitam Singh was initially appointed in class III Non Gazetted by Memo dated 03.10.75. Para 7 of DoPT OM dated 14.10.2004 answers that if father is directly recruited class III/ Group 'C' or Class IV/ Group 'D' employee and gets into Class I/Group 'A' at the age of 40 or earlier, his sons and daughters shall not be treated to be falling in creamy layers. Respondents also took up the matter of OBC certificate issued to the applicant vide letter dated 15.02.2014 to Tehsildar Etmadpur (Agra) who in turn vide letter dated 01.03.2014 (Annex. A/14) asked the applicant to submit the documents before him in support of his claim for OBC certificate issued to him by his office. Thereafter, applicant submitted documents of his father's initial appointment in ICAR vide letter dated 04.03.2014 (Annex. A/15). The applicant in the present OA annexed various documents relating to service tenure of his father from Annexure A/16 to Annexure A/28 respectively which includes appointment order, promotion orders, transfer order etc.

The grievance of the applicant is that despite his possessing valid OBC certificate and replying to the show cause notice of the respondents that in view of para 7 of DoPT OM dated 14.10.2004 that if father is directly recruited class III/ Group 'C' or Class IV/ Group 'D' employee and gets into Class I/Group 'A' at the age of 40 or earlier, his sons and daughters shall not be treated to be falling in creamy layers. Therefore, his services have been illegally terminated by the respondents vide impugned order dated 11.03.2014 (Annex. A/1) contrary to law in an arbitrary, illegal manner in violation of Articles 14 and 16 of the Constitution of India. Hence, the applicant has filed present OA for redressal of his grievances.

3. The respondents vide reply dated 21.05.2015 inter-alia stated that the applicant produced inappropriate OBC certificate issued by Tehsildar, Etmadpur, Agra and in the garb of this Original Application, applicant is challenging the OBC Certificate dated 10.02.2014. Therefore, this Tribunal has no jurisdiction to impliedly or expressly hold that OBC Certificate issued by the Tehsildar, Etmadpur was genuine or not. The respondents further stated that the applicant has now submitted Annex. A/13 certificate alongwith original application and while replying to the show cause notice (Annex. A/12), the applicant submitted that he had wrongly submitted earlier that the OBC Certificate issued by the State of Uttar Pradesh and now he is submitting the OBC

Certificate dated 10.02.2014 which may be made part of the application form filled up by him. The applicant had tendered apology in this regard that earlier he had submitted a wrong certificate. They further stated that the question with regard to the issuance of OBC Certificate to the applicant whether legal or otherwise is pending consideration before the competent authority, i.e. District Magistrate, Agra is not admitted for the reason that the applicant has concealed a vital fact from the attention of this Tribunal that the District Magistrate, Agra by his letter dated 23.05.2014 has disposed of the issue by holding that the answering respondents can decide the issue at their level. It has been mentioned in the letter dated 23.05.2014 that the Tehsildar, Etmadpur issued the OBC Certificate on the basis of the evidence made available to him by the applicant and thus in its concluding portion he made it clear that if the answering respondents find that father of the applicant was found to have been recruited directly on Class-I post then the Department can take action as per the circular dated 14.10.2004 and if the father of the candidate has not been recruited directly on Class-I post then his case may be decided as per Para-7 of the said circular. In view of the letter dated 23.05.2014, by necessary implication the OBC Certificate issued to the applicant by the Tehsildar, Etmadpur has been put in abeyance by the District Magistrate, Agra who has advised the answering respondents to examine

whether the father of the applicant was directly recruited on Class-I (Group A) post or was promoted to the Class-I. Therefore, the OBC Certificate issued by the Tehsildar, Etmadpur is no longer in existence on account of the doubts created by the District Magistrate, Agra who has advised the answering respondents to examine the legality of the said OBC Certificate by invoking with the test as to whether the father of the applicant was recruited as Class-I Officer directly or not. Therefore, in absence of an OBC Certificate, the correctness/legality of which is yet to be decided, the applicant cannot claim any relief. Respondents have found on examining the circular dated 14.10.2004 that the applicant falls under creamy layer, and therefore, the Tehsildar, Etmadpur could not have issued such a certificate dated 10.02.2014. The applicant has not challenged the legality of the letter dated 23.05.2014, issued by the District Magistrate, Agra and therefore, this Original Application is liable to be dismissed on this ground alone as without quashment of it no relief can be granted to the applicant. Respondents have further stated that the applicant's father was directly recruited on Class-I (Group-A) post, which fact the applicant knew well, but still he presented unknown evidence before the Tehsildar, Etmadpur, District Agra and obtained a OBC Certificae showing him non-creamy layer. Applicant has not impleaded Tehsildar, Etmadpur as a party/respondent in this Original Application as it is the office of

the Tehsildar Etmadpur only which can apprise this Hon'ble Tribunal as to what documentary evidence was filed by the applicant, who surely misled the said office and persuaded them to issue OBC Certificate of non-creamy layer. In para 7 of the advertisement dated 18.05.2013 (Annex. A/2), pursuant to which applicant had been appointed, clearly mentions that if any information furnished by the candidates is found false at any stage, his/her appointment will be cancelled. Thus, according to the advertisement the scrutiny was an ongoing exercise and not a one time exercise. Therefore, the services of the applicant have been terminated in a lawful manner after affording him an opportunity of hearing though the same was not even required to be given as per the stipulation contained in the offer of appointment given to the applicant. The applicant has not submitted any representation against the impugned order dated 11.03.2014, therefore, the Original Application is premature and liable to be dismissed.

4. Heard both sides.

5. Mr S.K. Malik while reiterating the grounds taken in the OA, raised three main contentions. He submitted that the applicant's father Shri Gitam Singh was initially appointed in class III non-gazetted by memo dated 03.10.1975 and as per para 7 of the OM dated 14.02.2014 if father is directly recruited in Class III/Group C or Class IV/Group D employee and he gets into class I/Group A at

the age 40 or earlier, his sons and daughters shall not be treated to be falling in creamy layer. His second contention was that the applicant did not produce fake OBC Certificate in order to secure employment; the same has genuinely been issued by the competent authority which is still in existence. The District Magistrate, Agra vide his letter dated 23.05.2014 has not cancelled the same. He also raised questions regarding procedure adopted by the respondents which led to the issuance of the said letter. On legality of Annex. A/1 order, he contended that the respondents are not competent to pass any order since OBC Certificate issued to the applicant has not been cancelled by the competent authority. In support of his arguments, he relied upon judgment of CAT Hyderabad Bench passed in OA No. 1509/2003 (Venkatapathi Vs Deputy Director General, GSI, Hyderabad & Ors) decided on 26.02.2004. He finally contended that impugned termination order is passed in violation of principles of natural justice as no formal inquiry had been conducted by the respondents as per rules, therefore, the same deserves to be quashed and set aside.

6. Per Contra, Mr A.K. Chhangani, learned counsel for the respondents inter-alia contended that the applicant's father was directly recruited Group 'A' officer in the respondent-department, therefore, applicant belongs to the creamy layer. The applicant concealed the aforesaid fact from the competent

authority, i.e. issuing authority of OBC Certificate. The District Magistrate vide letter dated 23.05.2014 (Annex. R/6), empowered the respondent-institute to act on its own if they find that applicant's father was directly recruited to Group 'A' post. Thus, after giving due opportunity of hearing to the applicant by calling his explanation vide OM dated 06.02.2014 (Annex. A/12) and considering his reply as well as letter dated 23.05.2014 (Annex. R/6) passed a detailed speaking order while terminating the services of the applicant. He thus contended that impugned order dated 11.03.2014 is perfectly legal, just and proper.

7. We have considered the arguments advanced on behalf of parties and also perused the record.

8. The applicant joined the services of the respondents on the post of T-3 (Lab Tech.) reserved for OBC category (non-creamy layer) w.e.f. 17.12.2013 pursuant to the advertisement dated 18.05.2013 (Annex. A/2), after due selection process. His services were terminated vide impugned order dated 11.03.2014. The applicant in the present OA has challenged his termination order dated 11.03.2014 passed by the respondents. The impugned order has been passed by the respondents on the ground that while initiating the process for verification of OBC Certificate of the applicant, they found that as per provisions of DoPT OM No.

36033/5/2004-Estt. (SCT) dated 14.10.2004 (Annex. A/13 page 34), the applicant comes under creamy layer for the purpose of reservation to OBC category candidates under both Govt. of India as well as Govt. of Uttar Pradesh as his father Shri Gitam Singh, was directly recruited to the post of T-6 (a Group – “A” post under central Govt.) in the respondent Institute in the year 1985 and retired w.e.f. 31.01.2014 on his superannuation. Therefore, applicant is not entitled for the benefit of reservation available to OBC (non-creamy layer) category candidate. In the order impugned, respondents have further recorded that the said facts were brought to the notice of issuing authority, i.e. Tehsildar, Etmadpur-Tehsil, Agra, Uttar Pradesh to take necessary action in this matter of obtaining OBC (non-creamy layer) certificate by a member of creamy layer and communicate the current status regarding validity of above said OBC (Non-creamy layer) certificates. While concluding the order impugned respondents have categorically recorded that :

“Therefore, services of Shri Yogendra Singh, T-3 (Lab. Technical) (Laboratory Group) at CAZRI’s RRS, Leh is hereby terminated with effect from the date of issue of this order because concealment of facts on his part has laid his appointment to the above said post.”

9. It is an admitted position that the applicant has been issued OBC Certificate dated 22.01.2013 (Annex. A/8) and dated 10.02.2014 (Annex. A/13 page 33 of the OA) by the competent authority and the same appears to be consciously issued by the

competent authority. The contention of the respondents is that since applicant's father was direct entry Group 'A' officer in the respondent-department, therefore, he would not have been issued OBC Certificate by the competent authority. They approached the District Magistrate, Agra who after examining the records available with the Tehsildar, Etmadpur, Agra (Competent Authority) concluded that as per record available with the Tehsildar Etmadpur Agra, the applicant's father was first appointed on Grade III post and thereafter in the same department he was appointed as Grade I or Group A officer. Since the applicant's father was appointed by the respondents themselves, therefore, the issue whether his father was directly recruited to Grade III or Grade I employee is to be decided by the department itself in terms of para 7 of DoPT OM dated 14.10.2004. If the fact of applicant's father being appointed as direct recruit Grade I officer is found to be true by the department then department can proceed further on its own. On the basis of said letter dated 23.05.2014, the respondents have terminated the services of the applicant vide order dated 11.03.2014. It is clear that fact of Shri Gitam Singh (father of the applicant), appointed as direct entry Grade I officer in the respondent-department or firstly appointed as Class III employee in the respondent-department, is a disputed fact so far as it relates to issuance of OBC Certificate by the competent authority to the applicant is

concerned. The applicant in the present OA annexed documents from Annex. A/16 to Annex. A/29 in support of his claim and respondents disputed the same. The District Magistrate, Agra categorically recorded in his findings that it is beyond doubt that applicant's father was first appointed on Class III post in the respondent Institute and thereafter, on Class I post. The competent authority for examining these facts for issuance of OBC Certificate or cancellation of the same in terms of OM dated 14.10.2004, is the issuing authority and this Tribunal has no jurisdiction to examine the same. Therefore, we are in agreement with the contention of the respondents (para 2 at page 75 of the reply) that this Tribunal does not have jurisdiction to impliedly or expressly hold that the OBC Certificate issued by the Tehsildar, Etmadpur was genuine or not. In these circumstances, it is the matter for competent authority, i.e. Tehsildar, Etmadpur, Agra to decide the same as per law. But, it is an admitted position as on date that competent authority did not pass any order either cancelling or revoking the OBC certificates issued to the applicant at the instance of respondents. Hence, respondents, in absence of cancellation of OBC certificate by the competent authority, cannot on their own hold that applicant falls within creamy layer and that he has submitted an inappropriate OBC Community Certificate.

10. Apart from above, the applicant is before us challenging the legality of his termination order dated 11.03.2014. The respondents terminated the services of the applicant on the sole ground of 'concealment of facts'. We find that neither OBC Certificate of the applicant has been cancelled by the competent authority nor District Magistrate, Agra in his letter dated 23.05.2014 held that the applicant concealed the fact. Rather, in reply to show cause notice dated 06.02.2014 (Annex. A/12), the applicant disputed the fact that his father was initially appointed as Grade I officer in the respondent Institute yet respondents without initiating any formal inquiry as per law and seeking cancellation of OBC Certificate issued by the competent authority, passed the impugned order dated 11.03.2014 in an arbitrary manner. It is not the case of the respondents that applicant has given false information while applying for the post pursuant to Annex. A/2 advertisement. He submitted OBC Certificate issued by the competent authority and issuance of the same by the competent authority is also not in dispute. The respondents have assigned the reason of termination of services of the applicant in the order impugned as 'concealment of facts' but it appears that no relevant facts were concealed by the applicant from the respondent institute necessary in the context. Hence, in absence of cancellation of OBC Certificate of the applicant by the competent authority as well as in absence of any formal inquiry,

the impugned termination order dated 11.03.2014 passed by the respondents is per se illegal, arbitrary and in violation of principles of natural justice. We are also fortified in our views by judgment of CAT Hyderabad Bench in OA No. 1509/2003 dated 26.02.2004 cited by counsel for the applicant wherein it is held that unless the caste certificate is cancelled by the competent authority, initiation of disciplinary proceedings is not justified and charge memo was quashed. Rather, in the present case, respondents did not institute any formal disciplinary inquiry under the relevant rules and simply after giving show cause notice, which was contested by the applicant by way of reply, terminated the services of the applicant by order impugned.

11. In view of discussions hereinabove made, order impugned dated 11.03.2014 is held to be illegal, arbitrary and in violation of principles of natural justice and the same is quashed and set aside. Accordingly, respondents are directed to reinstate the applicant forthwith with all consequential benefits. Thereafter, respondents can proceed as per law.

12. In terms of above directions, OA is allowed with no order as to costs.

**[Archana Nigam]
Administrative Member**

**[Hina P. Shah]
Judicial Member**

Ss/-