

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 03.03.2010**
Judgment delivered on: 06.04.2010

+ **W.P. (C) No.11928/2009**

HARI SINGH

.....Petitioner

Through: Mr. G.D. Gupta, Senior Advocate
with Mr. R. B. Bansal, Advocate and
petitioner in person.

versus

STAFF SELECTION COMMISSION & ANR. Respondents

Through: Mr. Sachin Datta with Mr. Manikya
Khanna, Advocates.

CORAM:

HON'BLE MR. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

J U D G M E N T

VIPIN SANGHI, J.

1. The petitioner has filed this writ petition under Article 226 of the Constitution of India to seek the issuance of a writ of mandamus, thereby directing respondent no.1 i.e. the Staff Selection Commission (SSC) to recommend the name of the petitioner for appointment to one of the Central Police Organisations i.e. Central Reserve Police Force (CRPF), Indo-Tibetan Border Police (ITBP) or the Border Security Force (BSF) as per the preference exercised by him in his application submitted in response to public notice published, inter alia, in

Employment News of 18-24.08.2007 to fill up posts of Sub Inspectors in various Central Police Organisations, and for a direction that respondent no.2 i.e. the CRPF should appoint him as a Sub-Inspector.

2. The petitioner initially joined as R.II(Constable/GD) in the CRPF as an OBC category candidate at Group Centre, CRPF, Ajmer, Rajasthan on 2.8.1995 and was allotted Force No.951222106. His service as R.II (Constable/GD) was confirmed after completion of training and probation w.e.f. 11.09.1997. He joined the services of the National Security Guard (NSG) on deputation w.e.f.15.03.2004 and is presently posted in 12 SRG, NSG Training Centre, Manesar, Gurgaon, Haryana. He submits that while in service, in the year 2006 respondent no.2 applied as a departmental candidate for appointment to the post of Sub-Inspector (SI/GD). He emphasizes that he applied as a candidate belonging to the OBC category and his candidature as an OBC candidate was entertained by respondent no.2. However, it appears, he did not qualify in the said departmental examination.

3. The dispute in the present case has arisen as, even though the petitioner is undoubtedly an OBC candidate who does not fall within the creamy layer and is more meritorious than the last OBC candidate selected by SSC for the post of Sub-Inspector in the selection process in question, he has not been selected because the OBC certificate submitted by him was not in the prescribed format and he had not submitted the requisite OBC certificate. The respondents, therefore,

treated the petitioner as a general category candidate and did not select him as he did not make the cut as a general category candidate.

4. Respondent no.1 issued a public notice inviting applications for recruitment to various posts of Sub-Inspector in Central Police Organisations by holding an open competitive examination on All India basis. The said advertisement was published, inter alia, in the Employment News of 18-24.08.2007. The closing date for submission of applications was 14.09.2007. The following number of vacancies in the various Central Police Organisations reserved for the other backward classes were notified in this notice:

Sl. No.	Name of the Force	No. of Reserved seats for OBC candidates
1.	BSF	136
2.	CRPF	144
3.	CISF Male	120
	Female	12
4.	ITBP	61
5.	SSB	73

5. Under clause 4(B), a note was appended, which is relevant for our purpose, and the same reads as follows:-

“NOTE: The closing date for receipt of application will be treated as the date of reckoning for OBC status of the candidate and also, for assuming that the candidate does not fall in the creamy layer.

The candidate should furnish the relevant OBC Certificate in the format prescribed for Central Government jobs as per Annexure-VIII issued by the competent authority on or before the Closing Date stipulated in the Notice. OBC Certificate obtained otherwise than the prescribed certificate meant for Central Government jobs will not be considered for seeking relaxation/reservation whatsoever”.

6. Under clause 4(D) (ii), relaxation in age limit was admissible to departmental candidates who have rendered not less than three years continuous and regular service as on 14.09.2007. For Sub-Inspectors serving in CRPF, the upper age limit was 40 years for the general candidates; 45 years for SC/ST category candidates; and 43 years for OBCs. Clause 4(E), which deals with process of certification and format of certificates, in so far as it is relevant, reads as follows:

“4(E) : Process of Certification and Format of Certificates:

Candidates who wish to be considered against vacancies reserved/to seek age relaxation, must submit requisite certificate from the competent authority alongwith their application for the examination, otherwise, their claim for SC/ST/OBC/ExS status will not be entertained and their applications will be considered as if same are from General (UR) category candidates. The nature & format of certificate is as under:-

(i)

(ii)

(iii)

(iv) *Annexure VIII for OBC Category Candidates;*

(v) *... ..*

(vi) *... ..*”

7. Note-II also required the candidates to submit along with their applications attested certificates in support of their claims regarding, inter alia, their belonging to the “Other Backward Classes”. This clause further stated *“The candidates applying for the examination should ensure that they fulfill all the eligibility conditions for admission to the examination. Their admission at all the stages of examination for which they are admitted by the Commission (written examination and interview/personality test) will be purely **PROVISIONAL**, subject to their satisfying the prescribed eligibility conditions. If on verification at any time before or after the written examination and Interview/Personality test, it is found that they do not fulfill any of the eligibility conditions, their candidature for the examination will be cancelled by the Commission”.*

8. Clause 27 of the public notice stated that applications having the listed deficiencies or irregularities would be summarily rejected. It was also stated that the listed deficiencies or irregularities were only illustrative and not exhaustive. Entries 11 and 12 of the list, reads as follows:

“11. Without proper certificates, in respect of SC/ST/OBC candidates and Ex-servicemen/relaxation sought in age or physical standards. Certificate should be

obtained from the competent authority in the prescribed format.

12. Without Declaration by OBC candidate in the format as given in Annexure I (i.e. Application Form) by the Candidate."

9. Under instructions relating to submission of application, it was inter alia, provided in clause 10 (x), that candidates had the option to submit either self attested/self certified photocopies of various documents or to submit photocopies of various documents duly attested by a Gazetted Officer as per extant procedure along with the application form. It was provided that the original documents or certificates would be verified at the time of personal test/interview and their candidature will be subject to result of such scrutiny.

10. The petitioner applied in response to the said public notice. The petitioner has stated that his parent department, namely CRPF, after verifying the service record of the petitioner issued a service certificate acknowledging the petitioner as a departmental OBC candidate. The said service certificate was also annexed with the application form submitted by the petitioner to claim age relaxation. We may, however, note that the date of birth of the petitioner being 20.12.1973, he did not require relaxation of age on account of his being an OBC candidate as the petitioner was well below the age of 40 years, which was the upper age limit for the general category departmental candidates.

11. The petitioner submits that in his application, he gave preference for appointment to the post of Sub-Inspector in CRPF, CISF, SSB, ITBP and BSF. He also submitted a copy of the OBC certificate dated 09.06.1994/16.06.1994 issued by the Tehsildar, Tehsil Bayana, which certified that the petitioner belongs to the "Bangara" caste which comes under the category of backward classes as per State Government of Rajasthan Notification No.11 (125) (R) & B/S.F./46631 dated 27.08.1993. This certificate also certified that the petitioner does not belong to the creamy layer. This was the same certificate which the petitioner claims to have submitted and accepted at the time of his appointment as an OBC candidate in the CRPF on the post of R.II (Constable)/G.D.).

12. The petitioner was issued the admission certificate for the examination in question, wherein it was clearly stated that the petitioner was placed under the OBC category. The petitioner appeared in the written examination held on 16.12.2007, wherein he was declared successful. Vide a communication dated 31.05.2008, the SSC informed the petitioner that he had "provisionally" qualified in the said examination and that he had been "provisionally" found eligible for being called for the PET and medical test. He was required to appear for the PET on 15.07.2008 and for the medical test on 16.07.2008 respectively at 23 Bn ITBP, Dehradun, Uttarakhand.

13. In the communication dated 31.05.2008, in paragraph 7 (iv), the respondent SSC stated that OBC category candidates must submit

their OBC certificate in the prescribed proforma for Central Government offices as per Annexure VIII of the notice of examination issued by the competent authority on or before 14.09.2007, failing which the candidate would be treated as unreserved category candidate subject to fulfillment of other eligibility conditions.

14. The petitioner submits that he accordingly appeared for the PET and medical test on the aforesaid dates and cleared the same. The petitioner submits that at that stage he was coerced into giving an undertaking to the effect that since he had not furnished the OBC certificate in the prescribed proforma, he would not claim OBC status and that he may be considered as a general category candidate.

15. The petitioner submits that he had already applied to the competent authority for issuance of the requisite OBC certificate in the prescribed proforma contained in Annexure VIII some time in August, 2008. The said application was made by the petitioner to the Tehsildar who had issued the earlier OBC Certificate. However, the said certificate was not made available to the petitioner till as late as 04.06.2009.

16. In the meantime, the respondent SSC issued a communication dated 04.05.2009 to the petitioner informing him that on the basis of the results of the PET/medical test and written examination, the petitioner had been found provisionally eligible for being called for interview. By this communication he was called for interview on

25.05.2009. In paragraph 2(vi) of this communication the respondents once again stated that OBC category candidates must submit their OBC certificate in the prescribed proforma for Central Government offices as per Annexure VIII of the notice of examination issued by the competent authority on or before 14.09.2007, failing which the candidate would be treated as an unreserved category candidate subject to fulfillment of other eligibility conditions.

17. The respondents, it appears, also published their results and called the candidates for interview, by publishing the same in the "Employment News" published for the period 16-22 May, 2009. The petitioner submits that in the list of candidates who were declared as qualified for appearance in interview, the name of the petitioner was mentioned at serial no.148 and the respondents had shown his category as category-6, which undisputedly is the category number assigned to OBC candidates.

18. The petitioner submits that upon seeing the aforesaid result as published in the Employment News of 16-22 May, 2009, wherein the petitioner was shown as belonging to the OBC category, he was led to believe that the respondents had accepted his status as an OBC category candidate on the basis of the OBC category certificate already submitted by him along with his application form. He submits that when he appeared for interview on 25.05.2009, the respondents did not even ask him to produce his OBC certificate in the prescribed proforma and this conduct of the respondents further led him to

believe that so far as his candidature is concerned, the same had been accepted by the respondents as one falling under the OBC category not covered by the creamy layer.

19. As aforesaid, the requisite OBC certificate in the prescribed proforma (as contained in Annexure VIII to the public notice aforesaid) was made available to the petitioner on 04.06.2009. The petitioner submits that even though the said certificate became available on the said date, he did not consider it necessary to submit the newly obtained OBC certificate in the prescribed proforma to the respondent SSC, as he continued to reel under the bonafide impression that the respondents had accepted the certificate earlier submitted by him and were treating him as a candidate belonging to the OBC category not falling in the creamy layer. He submits that the final results of the selection process had not been declared by the respondents by the time the fresh OBC certificate had been made available, and if he had not been carrying the bonafide impression that his candidature as an OBC category candidate had been accepted, he would have submitted the fresh certificate without any delay. The petitioner submits that when the final results were declared by the respondents on 20.07.2009 and he did not find his name against the selected candidates under the OBC category, even though he had secured 226 marks and OBC candidates with 201, 155 and 203 marks had been selected for appointment to the post of Sub Inspectors in CRPF, ITBP and BSF respectively, he realized that his candidature had been considered as a general category candidate and not as an OBC category candidate.

20. In this background, the petitioner has filed the present writ petition for the reliefs as stated herein above. The respondents have filed their counter affidavit and the reason for non-selection of the petitioner as an OBC category candidate is stated to be his failure to submit the requisite OBC category certificate in the proforma prescribed under Annexure VIII. It is stated that the petitioner had been treated as a general category candidate for which the petitioner had also furnished an undertaking on 15.07.2008. The respondents state that the last selected general category candidate had secured higher marks than the petitioner and, consequently, the petitioner has not been selected in the selection process in question.

21. Mr. G.D. Gupta, learned senior counsel for the petitioner has submitted that even the respondents do not deny the status of the petitioner as belonging to the OBC category outside the creamy layer. He submits that the petitioner had submitted his earlier OBC category certificate issued by the very same authority who had issued the subsequent certificate dated 04.06.2009. The earlier certificate had certified that the petitioner belongs to the "Bangara" caste which comes under the category of backward classes as per the State Government of Rajasthan Notification and that the petitioner did not come within the creamy layer. He submits that the conduct of the respondents in treating the petitioner, who had applied under the OBC category as a general category candidate, only because the petitioner did not have the requisite OBC certificate by 14.09.2007 (the closing

date for submission of the application form) is illegal and contrary to various pronouncements of the courts. He submits that it is sufficient compliance of the requirement if a candidate submits the OBC category certificate prior to the declaration of the results. However, in the present case, the petitioner though possessed of the requisite OBC category certificate before the date of declaration of the final results, was prevented from submitting the same prior to the declaration of the result on account of the misleading conduct of the respondents, which led the petitioner to believe that there was no need for him to submit any fresh certificate as the respondents had categorized the petitioner as an OBC category candidate on the basis of the OBC Certificate already submitted by him in their publication in the Employment News of 16-22 May, 2009, and had not even demanded the same when the petitioner appeared for interview on 25.05.2009.

22. In support of his submissions, Mr. Gupta has placed his reliance upon the decision of this court in ***Tej Pal Singh & Anr. v. Govt. of NCT of Delhi & Anr., 120 (2005) DLT 117***; the decision of the Division Bench of this court arising out, inter alia, of the aforesaid decision in ***LPA No.304/2000, Delhi Subordinate Services Selection Board & Anr. v. Tej Pal Singh & Others***, decided on 15.12.2000; the decision of the Division Bench of this court in ***Delhi Subordinate Services Selection Board v. Ms. Anu Devi & Anr., WPC No.13870/2009*** and various other writ petitions decided on 17.02.2010. He relies on another Division Bench judgment of this court in ***Govt. of NCT of Delhi & Anr. v. Poonam Chauhan, WPC W.P.(C) No.11928/2009***

No.548/2008 decided on 09.07.2008; and the decision of learned Single Judge of this court in **Abhishek Saini v. University of Delhi & Anr., WPC No.10257/2009** decided on 13.08.2009. We propose to discuss the aforesaid discussions a little later in this judgment.

23. The respondents have opposed the writ petition stating that at the time of the petitioners PET/medical test, it was observed that the OBC certificate submitted by the petitioner along with his application form was not in the prescribed proforma. Therefore, his candidature was considered as a general category candidate after the petitioner submitted an undertaking on 15.07.2008 to the effect that although he had applied and qualified in the written part of the examination in OBC category, but as he had not furnished the OBC category certificate in the prescribed proforma, he may be treated as an unreserved, i.e. general category candidate. The respondents further state that under the unreserved category, the petitioner failed to make it to the final select list. The respondents further state that as per paragraph 4(D)(ii) of the public notice, it was incumbent on the petitioner to ensure that he submits a valid OBC certificate in the prescribed proforma of a date before the cut-off date, namely 14.09.2007 which was the last date for submission of the application form.

24. We now proceed to examine the judgment of a learned Single Judge of this Court in **Tej Pal Singh** (supra) in detail. As noticed above, this decision has been affirmed by the Division Bench of this Court and the Special Leave Petition to challenge that decision has also

been rejected by the Supreme Court. This court in ***Tej Pal Singh*** (supra) was dealing with a case where the petitioners belonged to the SC category. The caste certificates submitted by the petitioners were not considered by the respondents for selection to the posts of teachers in the Municipal Corporation of Delhi/NDMC on the ground that their certificates were submitted after 30.06.1998 which was the last date specified for the purpose. According to the petitioners, they had submitted the requisite certificates, including their caste certificates, and after perusing the same and being satisfied therewith, the respondent board had called the petitioners for verification between 06.10.1998 and 22.10.1998. The petitioners had further submitted that they had attended the office of the respondent board for verification and checking of the original documents. However, subsequently the petitioners learnt that their candidature was not considered on the ground that the caste certificates were dated post 30.06.1998 and only those candidates whose certificates were dated prior to 30.06.1998, were considered. It was argued that this action of the respondents was arbitrary and illegal and that the date of the certificate is immaterial, as what is relevant is the fact that the petitioners belonged to the SC category and this fact does not change whether the certificate is issued prior to 30.06.1998 or after 30.06.1998. The submission of the petitioner was that though they had submitted their caste certificates along with their applications, however, those certificates were not issued by the competent authority under the Govt. of NCT of Delhi. However, before the date for

verification of the certificates arrived, they had applied for and obtained the requisite caste certificates issued by the competent authority. The petitioners submitted that as per the guidelines issued on reservations and concessions for SC and ST candidates, the petitioners were entitled to submit such certificates even after the cut off date. It was also argued that the cut off date fixed in the advertisement was fixed for the purpose of educational qualification, professional experience and age limit and did not apply to production of SC certificate issued by the competent authority. On the other hand, the submission of the respondent was that the application form had to be submitted duly complete in all respects by 30.06.1998. The application was required to be accompanied with copies of documents showing the educational qualification, professional expertise, age limit along with SC/ST/OBC certificate, if any, issued by the competent authority. Since the last date for submission of the applications including copy of SC/ST/OBC certificate was 30.06.1998, it follows that the certificate which was to be submitted had to be of a date prior to 30.06.1998. It was argued that the cut off date of 30.06.1998 adopted by the respondent board for administrative purposes had been made applicable uniformly and therefore, the same was not in violation of Article 14 of the Constitution of India.

25. The Court by a considered judgment accepted the petitioner's contentions. The court observed that it was an undisputed fact that the petitioners belong to the SC category. The petitioners had submitted their applications in the prescribed form by 30.06.1998

along with all requisite documents including SC certificate. However, the SC certificates had been issued by other State Governments and not by Government of NCT of Delhi. The petitioners had been able to obtain SC certificates issued by Govt. of NCT of Delhi after 30.06.1998 and submitted the same as and when they had received the certificates. The certificates had been submitted before the petitioners were called for verification of their documents by the respondent board.

26. The learned Single Judge extracted paragraphs 3 and 4 from Chapter II of Swamy's Compilation of Reservations and Concessions for Scheduled Castes and Scheduled Tribes. The said paragraphs read as follows:

"3. Provisional appointment subject to verification –

Even where the prescribed certificates have been produced, the appointing authorities should include a clause in the offer of appointment as follows:-

"The appointment is provisional and is subject to the caste/tribe certificates being verified through the proper channels and if the verification reveals that the claim to belong to Scheduled Caste or Scheduled Tribe, as the case may be, is false, the services will be terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of the Indian Penal Code for production of false certificates."

4. Provisional appointment when prescribed certificates not produced.

Where a candidate belonging to an S.C. or S.T. is unable to produce a certificate from any of the prescribed authorities, he may be appointed provisionally on the basis of whatever prima facie proof he is able to produce in

support of this claim, subject to his furnishing the prescribed certificate within a reasonable time. If there is genuine difficulty in his obtaining a certificate, the appointing authority should itself verify his claim through the District Magistrate concerned. Appointment of an S.C. or S.T. candidate should not be withheld/delayed pending verification of caste status."

27. After extracting the aforesaid paragraphs, the court held as follows:

"13. Thus as per the aforesaid provisions when the certificate is produced it is subject to the verification so that the authorities concerned are satisfied about the genuineness of the certificate and the fact that candidate belong to SC/ST category. **Moreover even if no certificate is produced the appointment is to be given to SC or ST candidate provisionally on the basis of whatever prima facie proof he is able to produce in support of his claim subject to furnishing the prescribed certificate within reasonable period.** Not only this it is further prescribed that if the candidate is feeling genuine difficulty in obtaining certificate, the authority should itself verify his claim through the Magistrate concerned and appointment of SC/ST candidates should not be withheld/delayed pending such verification of caste status. To my mind, these instructions which prescribe the procedure as to how and when certificate is to be or can be produced, clinch the issue in this case. It prescribes, in no uncertain terms that **a person who claims to belong to SC/ST category is not to be denied appointment merely because he has not been able to produce the certificate. On the contrary, even after the provisional appointment he is unable to produce the certificate because of genuine difficulty, obligation is cast upon the authorities to verify his claim.** In this case admittedly all the petitioners produced the certificate before 30th June, 1998 to the effect that they belong to SC category. However, these certificates were issued by other State Governments and not by Government of NCTD. Thus along with their application they submitted prima facie proof in support of their claim that they belong to SC category. Not only this they could even

produce the certificate from competent authority of government of NCTD also much before the verification of the original certificates by the Board. Thus the appointment could not have been denied to the petitioners merely because the certificate issued by the competent authority of government of NCTD are dated after 30th June, 1998." (emphasis supplied)

28. The Court went on to examine the matter from another standpoint. It was observed that the vacancies had been reserved for, inter alia, SC category/candidates. In order to be considered for the post reserved for SC category, the requirement is that the person should belong to that category. If a person is Scheduled Caste, he is so by birth and not by acquisition of that category because of any other event happening at a later stage. A certificate issued by a competent authority to the effect that a candidate belongs to the SC category is only an affirmation of a fact which is already in existence. The purpose of such a certificate is to enable the authorities to believe the assertion of the candidate that he belongs to SC category and act thereon by giving benefit to such SC candidate. The court held that it could not be said that the petitioners did not belong to the SC category prior to 30.06.1998 or that they acquired the status of belonging to the scheduled castes only on the date of issuance of the certificate. Consequently, the court held that the requirement that the caste certificate should be dated prior to 30.06.1998 would be clearly arbitrary, as it had no rationale objective sought to be achieved. The court further held as follows:

"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.

19. One can usefully draw sustenance from the following words of wisdom spoken by the Apex Court in Valsamma Paul (Mrs.) Vs. Cochin University and others, reported in AIR 1996 SC 1011:-

"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. The emphasis, therefore, is on a citizen to improve excellence and equal status and dignity of person with the advancement of human rights and constitutional philosophy of social and economic democracy in a democratic polity to all the citizens on equal footing....."

20. For this reason Government has itself come out with the aforesaid guidelines permitting the candidates to submit proof that they belong to SC category, by furnishing the certificate issued by competent authority within reasonable time even if it is not submitted at the time of making the application for the job."

29. The court also noticed the decision of the Division Bench of the Bombay High Court in the case of **Deepak v. Competent Authority for the Purpose of Admission to Engineering Course in Government Engineering College, Pune, AIR 1997 Bom 1,**

wherein it had been held that the requirement that caste verification certificate must accompany the application form should not be insisted upon, and it cannot be made a pre-condition for accepting the application forms and considering the claim of the candidates, in particular, those claiming to belong to the reserved category. The Bombay High Court had observed that the applications accompanied by the caste certificate issued by the Taluka Executive Magistrate should be held to be sufficient for considering the claim of the candidate in a particular reserved category. The admission so granted would be provisional subject to the result of the scrutiny committee. If the caste claimed is held to be not a reserved caste and/or the caste certificate is invalidated by the scrutiny committee finally, then the admission will also stand cancelled.

30. The decision of the learned Single Judge in **Tej Pal Singh** (supra) having been affirmed by the Division Bench in LPA No.304/2000 decided on 15.12.2000, and the Special Leave Petition preferred by the Government also having been dismissed *in limine* by the Supreme Court on 16.04.2001, so far as this court is concerned, the said decision has attained finality.

31. In **Anu Devi & Anr.** (supra), a Division Bench of this court was considering the question whether the respondent candidates were not entitled for selection to the post of primary teacher under the OBC category as they had not submitted their OBC certificates along with their application forms by 29.08.2007, which was the last date for

submission of the application forms, but they had submitted the OBC certificates within the time granted later on by the notices issued by the petitioner government. However, the OBC certificates had been issued on a date later than the last date for submission of the application form. The issue had been decided in favour of the Respondents by the Principal Bench of the Central Administrative Tribunal.

32. The Delhi Subordinate Services Selection Board & Others, petitioners before this Court, sought to distinguish the decision in **Tej Pal Singh** (supra) on the ground that **Tej Pal Singh** (supra) was a decision concerning SC and ST candidates and not candidates belonging to the OBC category. It was argued that in relation to OBC category candidates, not only the caste is relevant but the fact that the candidate does not belong to the creamy layer is also equally relevant. The fact that the candidate did not belong to the creamy layer could be ascertained only at the time of the issuance of the OBC certificate.

33. While dealing with the aforesaid submissions, the Division Bench in **Anu Devi** (supra) observed as follows:

“12. In *Jnan Ranjan Sen Gupta and Ors (Supra)* while dealing with the ambit of erection of structure on land under Calcutta Thika Tenancy Act the Supreme Court had held that it was a piece of beneficial legislation conferring certain rights upon the tenancies and in dealing with such provisions of law something which is not already there cannot be read in it, as reading such a thing which is not in the provision will lead to imposing a restriction upon the rights of the class of

tenants by judicial interpretation which is not permissible in absence of express words to that effect or necessary manifest intendment.

13. Dealing with the principle of statutory construction in American Express International Banking Corporation (Supra) the Supreme Court has held that the words occurring in statutes of liberal import such as social welfare legislation and human rights" legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. It was held that literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced and Judges ought to be more concerned with the "color", the "content" and the "context" of such statutes. Similarly, in Shyam Sunder and Ors (Supra) it was held that if it is found that there is a doubt in regard to the meaning of a provision or words used in the provisions of an enactment, it is permissible for the court to apply the rule of benevolent construction to advance the object of the Act. Ordinarily, the rule of benevolent construction has been applied while construing welfare legislations or provisions relating to the relationship between weaker and stronger contracting parties. While interpreting "accidental falling off a passenger from a train carrying passengers" it was held by the Supreme Court in Union of India Vs Prabhakaran Vijaya Kumar (supra) that adopting a restrictive meaning will deprive a large number of railway passengers from getting compensation in railway accidents. In the circumstances it was held that the expression "accidental falling of the passengers from the train carrying passengers" would include accidents when a bone fide passenger i.e. a passenger travelling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. It was held that a purposive and not literal interpretation should be given to the expression.

14. In Govt. of NCT of Delhi and anr. Vs Poonam Chauhan, 152 (2008) DLT 224 (DB) the candidature of the candidate for the post of Domestic Science teacher was cancelled on the

ground that the OBC certificate was issued by the concerned SDM after the closure of date of submission of application form. The Division Bench of this court had noticed that the candidate belonging to OBC and not falling in creamy layer was not disputed. It was also not disputed that the application form was submitted by the candidate before the closing date of receipt of application form. The authorities in this case had also not disputed that after the last date for submission of the application forms, they had directed the candidate to furnish the attested copies of the relevant document in support of claim of reservation duly attested by any appropriate authority. Refereeing to relevant office memorandum it was noticed that it did not specify that the caste certificate issued subsequent to the date of closing of receipt of application could not be considered or looked into. Considering these facts and circumstances, the order of the Central Administrative Tribunal setting aside the order of the Government of NCT cancelling the candidature of the candidate was upheld.

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19. In any case the submission of OBC certificate for reservation under the OBC category cannot be equated with acquisition of the educational qualification. A candidate becomes eligible under the OBC category, the day the caste he belongs to is notified by the appropriate authority as a backward class. Though the learned counsel for the petitioners has emphasized that whether a candidate belongs to a creamy layer or not is to be determined only on issuance of a certificate, however, taking into consideration the entirety of the facts and circumstances, in our view the

candidates not belonging to a creamy layer whose caste is notified as a backward class becomes entitled for reservation under the OBC category and submission of the requisite certificate is only a ministerial act which cannot be equated with acquisition of educational qualification to become eligible for a post. Consequently, the plea of the learned counsel for the petitioners that the respondents/candidates became eligible for selection in the OBC category on the dates the certificates were issued by the appropriate authorities, cannot be accepted. This plea in the present facts and circumstances should also be not accepted because in all the cases except in the case of Rekhawati (Supra) the candidates had applied for OBC certificate before the closing date for submission of forms which was 29th October, 2007. In the circumstances for the delay on the part of the authorities in preparing and giving the OBC certificate, it cannot be inferred or held that the candidates were not eligible for selection under the OBC category. .

20. As already considered hereinbefore, the petitioners themselves did not treat the respondents in different petitions as ineligible for selection under the OBC category as none of the notices given to the candidates stipulated that they cannot be selected under the OBC category as they had failed to furnish the requisite certificate before the closing date for submission of the application forms. Rather the notices were given by the petitioners extending the date for submission of the OBC certificate and all the candidates in different writ petitions submitted the OBC certificate before the last date notified in the notices. In the circumstances it will not be appropriate and in the interest of justice to infer that the order of the Tribunal holding that the respondents/candidates in different writ petitions are entitled for selection under the reserved category in accordance with their marks, are bad in law and are liable to be quashed."

34. In the case of **Anu Devi & Anr.** (supra), the candidates had been called upon to submit their caste certificates by a communication issued after the last date of the submission of applications and the candidates had submitted their caste certificates in pursuance thereof. That is not the exact position in the facts of the present case. The facts of this case analysed a little later in this judgment. However, there are two aspects that, according to us, are material and relevant to note. Firstly, the Division Bench laid emphasis on the aspect that reservations for the SC, ST and OBC are beneficial provisions. It was also emphasized that submission of an OBC certificate to claim reservation under that category cannot be equated with acquisition of educational qualifications. A candidate becomes eligible on the date the caste that he belongs to is notified by the appropriate authority as a backward class. Also he should not belong to the creamy layer. The eligibility does not get determined on the mere issuance of a certificate to that effect. The certificate is only the recognition and acknowledgement of the pre-existing status of the applicant. Secondly, the stipulation that the OBC certificate should be of a date prior to the last date of submission of the application form, and that the same should be submitted along with the application form was held to be not mandatory/sacrosanct.

35. In **Poonam Chauhan** (supra), the respondent, an OBC candidate for the post of domestic science teacher, had applied in response to an advertisement dated 30.04.2004 issued by the Govt. of NCT of Delhi. The Delhi Subordinate Services Selection Board was the agency

conducting the selection process. The application was submitted by the respondent as an OBC category candidate on 18.05.2004. The last date for receipt of application form was 24.05.2004. The examination for the said post was held on 28.11.2004. The petitioner Govt. of NCT of Delhi called upon the respondent to furnish attested copies of the relevant documents in support of her claim for reservation and attested copies of her academic qualification, latest by 31.01.2005. While submitting attested copies of academic qualification certificates, the respondent stated that she had misplaced her OBC certificate and sought 15 days time for producing the same. The respondent submitted her OBC certificate dated 05.02.2005 issued by the SDM, Seelampur, Delhi to Delhi Subordinate Services Selection Board vide letter dated 07.02.2005. The respondent was issued an offer of appointment on 28.05.2006 by treating her as an OBC category candidate. However, the petitioner cancelled the candidature of the respondent vide letter dated 19.10.2006 on the ground that at the time of scrutiny of documents/certificates, it was found that the OBC certificate had been issued by the SDM, Seelampur on 05.02.2005, i.e. after the closing date for submission of application form which was 24.05.2004. The petitioner placed reliance on GI Department OM No.36033/4/97-Estt. (Res.) dated 25.07.2003 to justify the cancellation of the respondents' candidature. The respondent preferred an Original Application before the Central Administrative Tribunal, which allowed the same vide order dated 19.11.2007. That is how the matter came

up before the Division Bench of the High Court in the aforesaid writ petition.

36. The Division Bench rejected the petitioner's writ petition by observing as follows:

"8. We have also gone through the OM dated 25.07.2003 (supra). Clause 3 of the OM provides that appointing authority, before appointing a person seeking appointment on the basis of reservation of OBCs should verify the veracity of the community certificate submitted by the candidate and also the fact that he/she does not fall in creamy layer on the crucial date and the crucial date for this purpose may be treated as the closing date of receipt of application for the post except in cases where crucial date is fixed otherwise. The aforesaid clause nowhere specifies that caste certificate issued subsequent to the date of closing of receipt of application cannot be looked into.

9. The controversy between the parties can be examined from another angle also. As per the advertisement dated 30.04.2004, vacancies were reserved for candidates from SC/OBC category. In order to be considered for the post of "Domestic Science Teacher" reserved for OBC category, the requirement is that a person should have belonged to that category. In the present case, it is not disputed that respondent belongs to OBC category. The stand of respondent is that she received a letter dated 24.01.2005 from Deputy Secretary, DSSSB to furnish OBC certificate duly attested from Gazetted Officer/Notary Public and documents in support of educational qualifications by 31.01.2005. Respondent visited the office of Deputy Secretary with letter dated 31.01.2005 and requested 15 days

time as her original OBC certificate dated 13.03.2001 was not traceable at that time. Thereafter she applied for the OBC certificate to the Government of NCT of Delhi and on 05.02.2005 SDM, Seelampur, Delhi had furnished OBC certificate to her which was sent by her to DSSSB on 07.02.2005. She further stated that she had annexed the OBC certificate dated 13.03.2001 with application form which was issued to her before marriage by Tehsildar Baraut, District Bagpat, UP. Respondents 1 and 2 in their reply before Tribunal have referred to the OBC certificate issued by Tehsildar Baraut, District Bagpat, UP. The Tribunal has also taken note of the same in the impugned order. The Tribunal has concluded that the OBC certificate dated 13.03.2001 issued by Tehsildar Baraut, District Bagpat, UP was submitted by respondent with the application form. The petitioner has not been able to show any reason to differ from the said finding of fact. Respondent has also annexed a copy of aforesaid certificate along with O.A. filed before Tribunal. The genuineness of the same is not challenged before Tribunal or before this Court. The aforesaid caste certificate is issued much prior to last date of application. It is not the case of the Government that the respondent falls in the creamy layer.”

37. In **Poonam Chauhan** (supra) as well, the respondent had been called upon to submit her caste certificate in response to which, she had sought extension of time and thereafter submitted the caste certificate. The Court came to the conclusion that merely because OBC certificate is of a date later than last date for submission of the application form, the same cannot be overlooked. Consequently, the petitioner could not be treated as an unreserved category i.e. General

Category candidate. The situation in the present case, as the following discussion would show, is similar inasmuch, as, even the petitioner was repeatedly called upon to submit his OBC certificate in the prescribed format.

38. The facts before us demonstrate that the respondents, despite their rigid and firm stand with regard to the submission of the OBC certificate in the application form/public notice, time and again relaxed the rigour of their own prescription. We have noted hereinabove the NOTE appended after Clause 4(B) of the public notice wherein the respondents, inter alia, stated that *"OBC certificated obtained otherwise than the prescribed certificate meant for Central Government jobs will not be considered for seeking relaxation/reservation whatsoever"*. Clause 4(E) also emphasizes that candidates seeking reservation *"must submit their requisite certificate from the competent authority along with their application for the examination, otherwise, their claim for SC/ST/OBC/Ex S status will not be entertained and their applications will be considered as if same are from General (UR) category candidates"*. The nature and format of the certificate required to be submitted by OBC candidates was specifically referred to as contained in Annexure VIII. Clause 27 listed the deficiencies or irregularities which, if present, would lead to summary rejection of the applications. Entries 11 & 12, as contained in the said list, have been set out by us in paragraph 8 hereinabove, which in effect require the submission of, inter alia, the proper OBC certificates obtained from the competent authority in the prescribed proforma.

39. Despite the aforesaid being the clear prescription in the application form itself, the respondents entertained the petitioner's application even though, admittedly, he had not submitted the OBC certificate in the prescribed proforma as contained in Annexure VIII along with his application form. The petitioner was, in fact, issued an admission certificate showing his category as an OBC candidate. Not only that, upon his clearing the written examination he was called for the PET and medical test on 15th and 16th July, 2008 at Dehradun, Uttarakhand. He was also granted an opportunity to submit his OBC certificate in the prescribed proforma for Central Government offices as per Annexure VIII of the notice of examination, issued by the competent authority on or before 14th September, 2007. This clearly shows that the rigours of the terms and conditions contained in the notice of examination were relaxed by the respondents themselves, firstly, by recognizing the petitioner as an OBC category candidate (as noticed in his admission certificate) and, secondly, by granting him further time to produce the OBC certificate in the prescribed proforma on 15th/16th July, 2008, when the petitioner was required to appear for PET and medical test at Dehradun, Uttarakhand. No doubt, the respondents took an undertaking from the petitioner on 15th July, 2008 to the effect that as he has not submitted the OBC certificate in the prescribed proforma contained in Annexure VIII, he may be considered as a general category candidate. But the respondents did not act upon the undertaking and continued to treat the petitioner as an OBC category candidate and continued to grant him further opportunities to

produce the OBC certificate even thereafter. This is evident from the communication dated 04th May, 2009 issued by the respondent SSC, whereby the petitioner was called for interview on 25th May, 2009. Even in this communication the petitioner was granted yet another opportunity to submit his OBC certificate in the prescribed proforma as per Annexure VIII of the notice of examination and it was stated that upon failure to do so the candidate would be treated as an unreserved category candidate subject to fulfillment of other eligible conditions. Even more importantly, in the results published in the employment news for the period 16-22 May, 2009, the name of the petitioner was mentioned at serial No.148 and his category was shown as an OBC candidate. No doubt, the reflection of the petitioner as an OBC category candidate in his admission certificate and in the result published in the Employment News of 16-22 May, 2009 was “provisional” in terms of Note-II set out hereinabove in paragraph 7, but the fact remains that the respondents did not enforce the strict terms contained in the notice of examination and even in their subsequent communications continued to grant more and more time to the candidates to submit, inter alia, the OBC certificates in the prescribed proforma for Central Government offices.

40. The aforesaid conduct of the respondents, as also the policy set out in Note II (extracted by us in para 7 hereinabove) clearly shows that the respondents did not consider the requirement of submission of the OBC certificate in the prescribed proforma along with the application form, sacrosanct. Such a certificate could be submitted

even later. This conduct of the respondents also appears to be in consonance with the decisions relied upon by the petitioner which we have already discussed hereinabove. We are, therefore, of the view that the OBC certificate in the prescribed proforma for Central Government offices could have been submitted even after the last date for submission of the application form. Since the respondents have themselves granted repeated opportunities to the candidates for submission of the OBC certificates from time to time, we are of the view that the same could have been submitted even after the date of interview and within a reasonable time before the actual declaration of the final results.

41. However, as noticed hereinabove, the petitioner as a matter of fact did not submit the OBC category certificate in the prescribed proforma for Central Government offices obtained by him on 04th June, 2009 even when he had received the same on that date. The explanation given by the petitioner that he was misled on account of the publication brought out by the respondents in the Employment News of 16-22 May, 2009, wherein he was shown as an OBC category candidate and, therefore, he did not consider it necessary to submit the freshly obtained OBC category certificate, appears to be plausible. There is no other reason why the petitioner would not have immediately submitted the said certificate, which he obtained on or about 4th June, 2009, had the petitioner not been under the *bona fide* belief that the issue with regard to his candidature as falling in the OBC category not covered by the creamy layer stood settled in his favour.

42. Pertinently, he had applied for the said certificate after his PET and medical test i.e. in August, 2008. Admittedly, even when the petitioner appeared for his interview on 25th May, 2009, he was not even asked by the respondents to produce the said certificate even though all along he had been shown as falling in the OBC category, including in the Employment News publication for the period 16-22 May, 2009. In our view, the respondents should have asked the petitioner, when he appeared for interview, to produce his OBC caste certificate, as: (i) he had applied as an OBC category candidate and submitted his earlier certificate in support of his application; (ii) he had been shown as belonging to the OBC category in the admission certificate and in the results published in the Employment News of 16-22 May, 2009, and (iii) the respondents had themselves given the opportunity to the candidates to produce the original OBC certificates at the time of interview in their communication dated 04.05.2009. Had the respondents posed the relevant queries at the time of the petitioner's interview, he would have become aware of the subsisting need to submit the OBC certificate in the prescribed proforma; he would not have been misled into believing that the OBC certificate already submitted by him had been accepted and acted upon by the respondents, and; he would have submitted the same on, or soon after 04.06.2009, when it was issued to him.

43. The reliance placed by the respondents on the undertaking given by the petitioner, in our view, is of no avail as even after taking the

said undertaking from the petitioner they continued to provide him further opportunities to submit his OBC category certificate and themselves reflected the petitioner's category as an OBC candidate in the Employment News of 16-22 May, 2009. The petitioner, at the relevant time, had no option, but to give the undertaking as desired by the respondents. In our view, a candidate who is conferred a constitutional right of reservation cannot be denied the said right on the basis of a mere undertaking particularly when the undertaking itself was not acted upon by the respondents and also in view of the fact that the time limit set for submission of such a certificate is not sacrosanct and has not been treated as such by the respondents themselves. The said undertaking has been given by the petitioner, obviously, at the respondents insistence and not of his own volition. Else his candidature would not have been considered. When the respondents have themselves relaxed the rigour of their terms and conditions and the undertaking, they cannot be permitted to blow hot and cold from time to time.

44. While considering the petitioner's explanation for non-submission of the freshly obtained OBC certificate, we cannot ignore the fact that he is not a highly educated person. He comes from a backward class and, therefore, the possibility of his not appreciating the importance of submission of the said certificate even after 04.06.2009 cannot be ruled out. After all, he had already submitted an OBC certificate issued by the same authority who had submitted the subsequent certificate dated 04.06.2009 in the prescribed format. We, therefore, accept the

explanation furnished by the petitioner that he did not submit the freshly obtained OBC certificate in the prescribed proforma contained in Annexure VIII of the notice of examination, on account of his reeling under a *bona fide* impression that his candidature as an OBC category candidate not falling within the creamy layer had been finally accepted on the basis of his earlier OBC certificate submitted by him alongwith his application form, for which the respondents were responsible. We also accept the petitioner's submission that had he not entertained the said *bona fide* belief, he would have submitted his freshly obtained OBC category certificate soon after its issuance on 04th June, 2009. Had the certificate been so submitted, the respondents would have been bound to consider the petitioner's candidature as an OBC category candidate, inasmuch as, the results were not declared till as late as on 20th July, 2009.

45. We are conscious of the fact that if the basic frame work of the terms and conditions and/or the relevant rules requires the submission of the OBC certificate, by a candidate applying in that category, along with the application itself, it can lead to an unworkable and impracticable situation if no time limit whatsoever is fixed for submission of such certificates by the candidates. It would become extremely difficult for the examining body to compile and declare the results if a deadline/cut off date is not fixed for the purpose of entertaining such certificates.

46. Considering the fact that in the facts of the present case, the examination process itself had been initiated in September, 2007, and the process of interviews continued till May, 2009, we would assume that the compilation of the results would have taken place about two weeks before their actual publication on 20th July, 2009. Had the petitioner submitted the OBC category certificate in the prescribed proforma by even the 6th of July, 2009, in our view, the respondents could not have ignored the same and they were bound, “provisionally” to consider the candidature of the petitioner as an OBC category candidate on the basis of the said certificate subject, of course, to verification of the certificate and other documents submitted by the petitioner.

47. The prescription in the public notice in question that the closing date for receipt of application would be treated as the date of reckoning of OBC status of the candidate and also for ascertaining that the candidate does not fall in the creamy layer, in our view, is a prescription evolved for the benefit of the candidates belonging to OBC category and not for the purpose of ousting them from the benefit of reservation. What the NOTE under Clause 4(B) (set out in para 5 above) provides is that, if a candidate is certified as being an OBC category candidate not falling within the creamy layer prior to the close of the date of submission of applications (i.e. 14.09.2007 in this case) then the candidate would be treated as an OBC candidate not falling in the creamy layer for the purpose of the examination in question, and the issue that the candidate may have come into the

creamy layer subsequently, i.e. after the date of closing, would not be relevant or gone into to deny the benefit of reservation to such a candidate.

48. The prescription in the NOTE appended to Clause 4(B) does not get whittled down merely by acceptance of an OBC certificate issued on a later date. A candidate who is certified as belonging to an OBC and as not belonging to the creamy layer on a later date than the one fixed by the public advertisement cannot be assumed to be as falling under the creamy layer on any date prior to the date of issuance of the certificate. There would be no basis for such an assumption. The possibility of such an eventuality is highly remote. In fact, the greater probability is that a candidate who may have been certified as an OBC candidate falling outside the creamy layer, may actually get covered by the creamy layer on a later date.

49. In any event, we are not suggesting that the respondents are precluded from examining the issue of eligibility of any candidate to claim the benefit of reservation. But, they cannot reject the candidature of such a candidate as a reserved category candidate and are bound to consider the candidature of the candidate concerned “provisionally” and, subject to the final determination, to even appoint the person concerned if found otherwise eligible and meritorious. Similar submissions have already been rejected by this Court in **Anu Devi** (supra) and in **Poonam Chauhan** (supra).

50. In response to the reliance placed by the petitioner on the decision of this court in **Tej Pal Singh** (supra), Mr. Sachin Dutta, learned counsel for the respondent has urged that the paragraphs 3 and 4 from Chapter II of Swamy's Compilation on Reservations and Concessions for Scheduled Caste and Scheduled Tribe as set out in para 26 above), would not be applicable in the facts of the present case, as those provisions are applicable only to the SC and ST candidates and not to candidates falling under the OBC category. He, therefore, submits that the respondents were not obliged to grant provisional selection to the petitioner in terms of the aforesaid provisions.

51. Though it is true that the express provision contained in paragraphs 3 and 4, as extracted above from Chapter II of Swamy's Compilation on Reservations and Concessions for Scheduled Caste and Scheduled Tribe, may not *per se* be applicable to OBC category candidates, there is no rationale for not extending the same to the OBC category candidates as well. Historically, reservations for the SC and ST candidates have been in existence for a much longer period, whereas reservations for the Other Backward Classes have been introduced only after the framing of the Mandal Commission Report. Therefore, government rules and instructions which were framed for SC and ST category candidates, prior to the coming into force of the law granting reservation to OBC category candidates, could possibly not have provided for similar treatment to the cases of Other Backward Classes. It is for this reason that paragraphs 3 and 4, as aforesaid,

does not deal with candidates belonging to the OBC category. Otherwise, there appears to be no rationale or justification for limiting the benefit of the said Government instructions to the SC and ST candidates, and not extending the same to the OBC category candidates as well. As a matter of fact, the Note II extracted in para 7 above embodies the same approach as is found in paras 3 and 4 of Chapter II of Swamy's compilation above referred to. However, we make it clear that we are not holding that paras 3 & 4 of the said Swamy's Compilation would *per se* apply to cases of OBC candidates as well. That would be a policy decision for the Competent Authority to take. We would, however observe that the logical and rational step for the Competent Authority to take would be to extend the application of the procedure devised in the said paragraphs to the OBC category candidates as well.

52. The decision in **Tej Pal Singh** (supra) is nevertheless relevant for our purpose as the reliance placed on paragraphs 3 and 4 from Swamy's Compilation, as aforesaid, was only one of the reasons for the view taken by the Court. In our view, the reasoning adopted by the Court, as discussed by us in paragraphs 28 and 29 hereinabove, is applicable in the present case as well.

53. For the aforesaid reasons, we allow the writ petition and direct that the petitioner be appointed against an existing vacancy, and if no such vacancy presently exists, against the vacancy of Sub-Inspector next arising in a Central Police Organisation, keeping in view his

preferences and merit in the examination process already undertaken by him. To determine his entitlement for the particular CPO, his merit position in the selection process taken by him shall be taken into consideration. The petitioner shall be given notional seniority along with his batchmates and his pay shall also be fixed notionally. However, he shall be entitled to be paid the allowances only from the date he actually joins the CPO. We may note here that the petitioner is already gainfully employed with the CRPF.

54. With these directions, the petition stand stands disposed of leaving the parties to bear their respective costs.

(VIPIN SANGHI)
JUDGE

(GITA MITTAL)
JUDGE

APRIL 06, 2010
sr/rsk