

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

Date of hearing & Order: January 21, 2015.

+ **W.P.(C) 608/2015**

AJAY KUMAR

.... Petitioner

Through: Mr. R. K. Saini, Mr. Avadh
Kaushik & Mr. Lokesh Sharma,
Advocates

versus

STAFF SELECTION COMMISSION,
THROUGH ITS REGIONAL DIRECTOR
(NORTH REGION)

..... Respondent

Through: Mr. Bhagwan Swarup Shukla,
CGSC with Ms. Smriti Sharma,
Advocate

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

KAILASH GAMBHIR, J. (ORAL)

CM APPL No. 1052/2015 (Exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 608/2015 & CM No. 1053/2015 (Stay)

1. This is a Writ Petition by the petitioner calling in question the tenability of the order dated 30.09.2014 whereby the learned Central Administrative Tribunal, Principle Bench, New Delhi (*hereinafter referred to as the 'CAT'*) dismissed the Original Application (*in short* W.P. (C) 608/2015

‘OA’) filed by him.

2. In brief, the facts of the case are that the petitioner belongs to the OBC category. He had applied for the post of Multi Tasking (Non-Technical) Staff (‘MTS’ in short) in Pay band- I (Rs. 5200- 20200/-) + Grade Pay Rs. 1800/-, a General Central Service Group ‘C’ Non-Gazetted, Non-Ministerial post in various Central Government Ministries/ Departments/ Offices, in different States and Union Territories 2011, pursuant to the recruitment notice published in the Employment News dated 04.12.2010. The petitioner submitted his application under the OBC category, the last date for submitting of which was 31.12.2010. He belonged to the “*Saini*” community, which is recognized as a backward class duly notified by the Government of the India as well as the Govt. of NCT of Delhi. The petitioner took the written examination as an OBC candidate on 27.02.2011. In the meantime, the petitioner was suggested by his cousin to obtain a fresh OBC certificate prescribed in the recruitment notice, which the petitioner applied for and got issued on 11.03.2011. The petitioner was declared successful in the written exam and the Ministry of Defence was named as his user Department. However, he was kept in the reserve list at rank no. 241. Subsequently,

the result of the reserve list was declared viz. 04.11.2011, in which the petitioner was declared recruited. The respondent vide its letter dated 15.11.2011 asked him to submit his original documents and appear before the authorities of the respondent on 01.12.2011 for this purpose. He appeared before the respondent authorities on the said date along with all his original documents including the two OBC certificates issued to him on 06.02.2008 and 11.03.2011. These documents were perused by the respondent authorities and photocopies of the same were kept on record and he was asked to wait for his joining letter. However, the petitioner to his utmost shock and dismay, received a memorandum dated 10.02.2012 from the office of the respondent authorities informing him that his recruitment to the post of MTS has been annulled since he did not submit the requisite OBC certificate as per the recruitment notice. Aggrieved by this the petitioner filed an O.A before the learned CAT, which was however, dismissed by the learned tribunal on the ground that the petitioner could not procure the OBC certificate in the prescribed format vide its judgment/ order dated 30.09.2014.

3. The grievance raised by the petitioner is that he is admittedly an Other Backward Classes (*in short* 'OBC') candidate and had submitted

his application under the same category and alongwith the application, he had annexed the OBC certificate dated 06.02.2008, but his candidature was cancelled vide Memorandum bearing No.10/10/2010-ND-II dated 10.02.2012 on 15.02.2012 on the ground that he did not submit the proper OBC certificate as per the notice for examination.

4. Mr. R.K. Saini, the learned counsel for the petitioner submits that the result of the said written examination was declared by the respondent on 23.08.2011 in which the petitioner was declared successful and his name was shown against the Ministry of Defence. However, his name was kept in the reserve list at rank No.241. The learned counsel also submits that the Staff Selection Commission (*in short 'SSC'*) declared the result of the reserve list on 04.11.2011 wherein the name of the petitioner was included and he was called upon to appear before the concerned authorities on 01.12.2011 alongwith his original documents for verification. Consequently, he appeared before the authorities on the said date alongwith his original documents which included the OBC certificate dated 06.02.2008, copy of which was furnished by him alongwith his application, and another OBC certificate dated 11.03.2011 which was issued to him by the competent authority certifying that the

said caste of the petitioner was duly notified by the Government of India. The learned counsel further submits that after submission of the said documents, the petitioner was under the *bona fide* impression that he would receive an appointment letter, but, he was astonished and surprised to see that his candidature was annulled vide Memorandum bearing No.10/10/2010-ND-II dated 10.02.2012 on the ground that he did not submit the proper OBC certificate as per the notice of examination alongwith his application form. The contention raised by the learned counsel for the petitioner was that the learned CAT has failed to appreciate the fact that the status of the petitioner as an OBC candidate has never been in dispute as his caste 'Saini' was duly notified by the Government of the India as well as the Government of NCT of Delhi.

5. The learned counsel also submits that the petitioner had produced and submitted an OBC certificate dated 06.02.2008 alongwith his application form and the said certificate was issued in favour of the petitioner within the three years' period as per the laid down requirement in the notice dated 04.12.2010 and the sole slip-up of the petitioner was that he ought to have filed an OBC certificate issued by the competent authority certifying that the said caste of the petitioner was also duly

recognized as a backward class by the Government of India and the same does not form a part of the creamy layer. The learned counsel thus submits that the learned CAT has adopted a hyper technical approach in denying relief to the petitioner who indisputably belonged to the OBC category. The counsel further submits that the petitioner was a meritorious candidate with dreams aplenty and had successfully cleared the written examination and was offered an appointment based on his merit. The learned counsel also submits that the learned CAT has also not appreciated the fact that the petitioner had even submitted an OBC certificate issued by the competent authority certifying the said caste of the petitioner 'Saini' as a backward class, at the stage of scrutiny of the documents well before the selection process was over. The learned counsel also submits that since under the notice a provision has been made for the scrutiny of the documents at which stage deficiency, if any, on the part of the candidate in the submission of documents already submitted by him can be duly rectified and once at that stage the requisite certificate was submitted by the petitioner, the same was enough to have satisfied the respondent to allow the candidature of the petitioner. The learned counsel also submits that it is not the case of the respondent that

at the stage of scrutiny of the documents, the petitioner had failed to submit the documents in the requisite format or the same was submitted by him after the selection process was over. The learned counsel for the petitioner placed reliance on the recent judgments of the Division Bench of this Court in the case of ***Bal Kishan Yadav v. Union of India in W.P. (C) No. 5643/2013, decided on 20.11.2014*** and in the case of ***Ms. Babita Kadian v. Union of India and Ors. In W.P (C) No. 8366/2014, decided on 16.12.2014.***

6. Opposing the present writ petition, Mr. Bhagwan Swarup Shukla, the learned Central Government Standing Counsel submits that in the notice issued by the SSC, it was clearly laid down that the candidates who wish to be considered against the reserved vacancies or seek age relaxation must submit the requisite certificates from the competent authority issued on or before the prescribed date, in the prescribed format as and when they are sought by the concerned Regional/ Sub- Regional Offices. Otherwise, the claim of such candidates will not be entertained and their candidature/ applications will be considered in the General (UR) category. The learned counsel thus submits that the petitioner was well aware of the fact that he was to submit the requisite OBC certificate from

the competent authority issued on or before the prescribed date, in the prescribed format and the said certificate from the competent authority was submitted much after the closing date of the application. The learned counsel further submits that any candidate who does not fulfil the laid down terms and conditions of the notice, their candidature will be rejected and that is precisely what happened in the case of the petitioner.

7. We have heard the learned counsel for the parties and given our thoughtful consideration to the arguments advanced by them.

8. We feel agonised to know that the petitioner's candidature was negated by the SSC on the sole ground that he did not submit a particular OBC certificate as per the demand of the recruitment notice alongwith his application form despite his having successfully qualified the written examination and his being called upon to appear before the concerned authorities for verification of documents.

9. Unquestionably, candidates who seek appointment to a particular post, pursuant to any advertisement, need to scrupulously go through the instructions laid down, but where there is an inconsequential lapse on part of the candidate and the same is rectified duly, then ordinarily, one should not be denied appointment on this sole ground. In the present case, there

was an insignificant lapse on the petitioner's part, wherein he did not submit the proper OBC certificate issued by the Government of India, this lapse he duly rectified, at the time he was called upon to submit his original documents to the competent authorities i.e. on 01.12.2011. All the documents were perused by the authorities of the Respondent and photocopies of the same were kept on record. However, the petitioner was alarmed to receive a Memorandum dated 10.02.2012 on 15.02.2012 from the Respondent's office informing him that his recruitment to the post of MTS has been cancelled on the ground that he did not submit the proper OBC certificate as per the notice of examination.

10. The petitioner had proved himself meritorious enough, hope gleamed in his eyes, he had dreams aplenty and having qualified his examination, he had an earnest belief that his candidature will be selected for the said post. Given the serious dearth of jobs in our country, it is very rare that a candidate lands a plum job offer. It is for the recruiting bodies like the SSC to ensure that the deserving candidates are not denied appointment based on some insignificant or unconvincing ground or by adopting a hyper technical approach. We are nowhere suggesting that these recruiting bodies should not abide by the laid down recruitment

norms, but where there is an iota of chance and scope to take a liberal view, like in the present case, where it is not disputed that the petitioner was an OBC candidate, such a rigid approach should have been avoided.

11. It is a settled legal position that a candidate becomes eligible under the OBC category, the day the caste he/she belongs to is notified by the appropriate authority as a backward class (**Ref: DSSSB and Anr. v. Ms. Anu Devi & Anr. , W.P.(C) 13870/2009, decided on 17.02.2010**) the relevant para of which is as follows:

“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 Rekhwati (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.”

12. The OBC certificate is just an evidence of a fact that had always existed, as was noticed in the case of ***Hari Singh v. Staff Selection Commission, 170 (2010) DLT 262 and Ms. Anu Devi (supra)***. In the present case, the petitioner belonged to the “Saini” community which is recognised as a backward class under the Central Government as well as the Government of NCT of Delhi.

13. In the above circumstances, while allowing the present writ petition, we set aside the order dated 30.09.2014 of the learned CAT, Principal Bench, New Delhi in O.A No. 592 of 2012 and also quash the Memorandum dated 10.02.2012. During the course of hearing of the present matter, the learned counsel for the respondent apprised the Court that presently no vacancy exists for the post of MTS in various Central

Government Ministries/ Departments/ Offices, in different States and Union Territories concerning the said examination of 2011 and therefore the petitioner cannot be given an appointment to the said post in the OBC category so far as the examination of 2011 is concerned.

14. In the light of the aforesaid development we direct the respondents to appoint the petitioner against the vacancy of MTS in OBC category against an existing vacancy of the current year and intimate him directly about the outcome, within four weeks. We also direct that the petitioner shall be given notional seniority alongwith his batchmates and his pay shall also be fixed notionally. However, the petitioner shall be entitled to pay and allowance only from the date he actually joins as a MTS in Central Government Ministries/Departments/ Offices, in a different State or Union Territory, as per rules.

15. In view of the aforesaid discussion the present writ petition and all the pending applications are disposed off.

KAILASH GAMBHIR, J

I.S.MEHTA, J

JANUARY 21, 2015

v