

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

*Judgment reserved on October 1, 2015*  
*Judgment delivered on October 29, 2015*

+ **W.P.(C) 7093/2015**

PAWAN KUMAR SEN

..... Petitioner

Through: Mr.Shanker Raju, Adv. with  
Mr.Nilansh Gaur, Adv.

versus

CENTRAL WAREHOUSING CORPORATION

..... Respondent

Through: Mr.K.K.Tyagi, Adv. with  
Mr.Anoop Kumar, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE V.KAMESWAR RAO**

**V.KAMESWAR RAO, J.**

1. The issue, which arises for consideration of this Court is, whether the respondent is justified in terminating the services of the petitioner as Senior Assistant Manager (Accounts) on the ground that the caste certificate submitted by him, was from Tonk where he was not ordinarily residing and it was not applicable to Central jobs.

2. It is the submission of Mr. Shanker Raju, that the petitioner belongs to 'Nai' caste, which is an OBC in the State of Rajasthan and has been incorporated in the Central List vide notification dated October 19, 1994. The father of the petitioner, who was serving in the State Government, was

transferred from district Bundi to District Tonk. The petitioner applied and secured a certificate of Backward Class dated June 10, 2009 while in Tonk. On December 15, 2009, the father of the petitioner was transferred from Tonk to Jaipur. In July, 2010 the respondent corporation notified posts of Management Trainee (Accounts). The petitioner also applied against the said notification. The applications were to be filled online and the self attested copy of the caste certificate was to be attached with the print out of the application form having auto generated. He would state, the said notification did not prescribe, for availing reservation as OBC, one has to be submit a certificate of OBC meant for Central Posts.

3. The petitioner sat in the written test held on August 22, 2010 which he qualified. That while living in Jaipur, the petitioner on the strength of the certificate dated June 10, 2009, applied for an OBC certificate. According to him, the Tehsildar, Jaipur in the light of notification of the Welfare Ministry, Government of India, issued an OBC certificate to the petitioner on October 12, 2010. It is his case, that on the strength of the certificate dated October 12, 2010, the Tehsildar also issued an OBC certificate of non-creamy layer in terms of the DoP&T order dated September 8, 1993 on October 13, 2010. According to Mr. Raju the petitioner before interview, consulted the respondent and brought to its notice, OBC certificate dated October 13, 2010. He was advised that the

certificate should be submitted by him at the time of joining of post. Pursuant to the process of interview, the petitioner having been found successful was offered appointment as Management Trainee (Accounts) vide memorandum dated June 7, 2011. The appointment was provisional subject to verification of caste certificate by the proper authority.

4. Mr. Raju states that the petitioner joined as Management Trainee (Accounts) on October 17, 2011 and submitted the certificate dated October 13, 2010. On successful completion of training, he was appointed on regular basis as Senior Assistant Manager (Accounts) on probation of one year. It is his case, that there was no stipulation as to the verification of caste certificate at the time of appointment as Senior Assistant Manager. In other words, the verification of caste certificate was relevant while the petitioner was appointed as Management Trainee (Accounts) and since he had already completed the training successfully and ceased to be Management Trainee (Accounts), the certificate dated October 13, 2010 submitted to the respondent being found authentic and in proper format, the respondent appointed the petitioner to the post of Senior Assistant Manager (Accounts). It is also his submission that while petitioner was working as Senior Assistant Manager (Accounts), awaiting the completion of probation on December 9, 2013 he was shocked to receive a memo dated October 29, 2013, whereby his explanation was sought for initiating

appropriate action in terms of appointment letter with reference to the fact that the caste certificate dated June 10, 2009 submitted by him has not been submitted in original and that the certificate was not in the format prescribed for Central Government Service.

5. Mr. Raju would submit, a reply to the show cause notice was given on November 19, 2013 contending that he had already submitted the OBC certificate in due format meant for Central Post much before his joining the post and the fact that he has already certified as an OBC not falling in the creamy layer, which has not been proved false, his services could not have been dispensed with. It was pursuant to the reply, the impugned order referred to above has been passed. He would also submit that the respondents had for the first time notified the format of the caste certificate along with the call letter for interview, between August and October 2010. He has submitted in the Court a copy of the call letter for interview which is taken on record. According to him, the petitioner having come to know the format of the caste certificate between August and October 2010 and immediately thereafter the petitioner having applied for the same and got it on October 13, 2010, the respondents could not have on a technical ground that the certificate being of a date later to July 12, 2010 terminate the services of the petitioner. He by conceding that the earlier certificate dated June 10, 2009 was relevant for appointment to the State Government,

would contend that the certificate dated October 13, 2010 could not have been rejected as there was no dispute that the petitioner belongs to 'Nai' caste which is an OBC both under the State list and the Central list. The issuance of the caste certificate is a declaration of the petitioner belongs to 'Nai' caste which is an OBC caste. That apart, the certificate of non-creamy layer being valid for three years, the certificate being dated October 13, 2010 is within the validity period of three years and could not have been overlooked. He would also state, that even the UPSC had issued a communication dated July 28, 2015 with a view to clear the confusion among the candidates on the format of the OBC certificate with an observation that the commission accepts caste certificate even in old format if the same fulfils the basic parameter required for OBC certification. In support of his contention, he would rely upon the judgment of this Court in the case of *Ajay Kumar vs. Staff Selection Commission through its Regional Director, Northern Region 2015 (217) DLT 502* to contend that this Court considering identical facts wherein the candidate did not submit the OBC certificate as per demand of recruitment notice along with his application form, has held that the lapse was very insignificant as the lapse was rectified subsequently by the petitioner and this Court granted relief to the petitioner. He would also rely upon the judgment of this Court in W.P (C) No.5743/2014 decided on Feb. 11, 2015

in the matter of *Amit Pal vs. Union of India and ors* wherein the respondents have cancelled the appointment on the ground that the certificate given by the petitioner did not refer to OBC status of the petitioner in terms of the central govt. notification, the Court held that once the certificate complies with necessary requirements of law which is that the petitioner must be a person of OBC status, not falling in creamy layer, then the form of certificate is immaterial.

6. On the other hand, Mr. K.K. Tyagi, learned counsel for the respondent would submit that the reckoning date of recruitment to the post of Management Trainee (Accounts) is the last date for submission of application i.e July 12, 2010. It was made clear in the advertisement that self attested photocopies of documents in proof of age, qualifications, caste etc should be attached with the print out of the application and the original certificates will however be scrutinized/verified at the time of interview. The reckoning date being July 12, 2010, the petitioner was not only required to submit OBC certificate on the basis of which, the petitioner had applied for the recruitment against the desired post issued on or before July 12, 2010 but the OBC certificate should be meant for the Central Government jobs in terms of the relevant notification. According to the respondent, as the certificate dated June 10, 2009 was meant for the State Government jobs and the certificate dated October 13, 2010 was

subsequent to the cut off date of July 12, 2010 could not have formed the basis for appointment in the respondent corporation. According to him, the cut off date having been prescribed must necessarily be adhered to. Any departure therefrom, would not entail the benefit of the notification as sought to be claimed. He would rely upon the judgment of this Court in the case of *Sarita Kumari Verma vs. Union of India and ors* W.P (C) No.1543/2015 decided on July 22, 2015.

7. Having considered the submissions made by learned counsel for the parties, it is noted that the initial advertisement issued by the respondent only stipulated, that the applicants were required to send self attested photocopy of the caste certificate, without any format to facilitate and to ensure that the applicants give a proper certificate. The contention of Mr. Raju, the respondent, had for the first time along with the call letter for the interview given the format which letter was issued somewhere between August - October 2010 appears to be relevant. The relevant portion of the call letter reads as under:

*“Certificate in support of your claim of being  
SC/ST/OBC (NCL)/PH, issued by the Competent  
Authority as per the format(s) attached”.*

Immediately thereafter the petitioner had applied for the caste certificate/non creamy layer certificate as per the appropriate format which

was issued to the petitioner on October 13, 2010 which even though after the cut off date of July 12, 2010, the fact the format was prescribed for the first time through the call letter for interview and the petitioner having received the certificate, according to the format, the same need to have been accepted. The submission of Mr. Tyagi, that it was beyond the last date of July 12, 2010, would be inconsequential in the facts, and needs to be rejected. The reliance placed by Mr. Tyagi on the judgment of this Court in the case of *Sarita Kumari Verma* (supra) is misplaced, as the same would not be applicable for the reason, in *Sarita Kumari Verma* (supra) case, this Court had dismissed the writ petition noting the fact that format of the caste certificate was prescribed in the advertisement dated August 25, 2012 itself but despite that the applicant in the said case did not care to apply for appropriate certificate till December 21/25, 2013 when CPT was held. The same was applied for by the petitioner in the said case after the due date. It was the conclusion of the Court that the action of the respondents in that case was in conformity with the advertisement, which need to be strictly followed as held by the Supreme Court; in the case of *Bedanga Talukdar vs. Saifudaullah Khan 2011 (12) SCC 85*. The writ petition was dismissed in the facts of that case. The said judgment would not be of any help to Mr. Tyagi. It is noted that the appeal by Ms. Sarita Kumari Verma against the judgment dated July 22, 2015 has been rejected.

8. The further ground of the respondent in rejecting the certificate dated June 10, 2009 issued from Tonk where he was not ordinarily resident, which is a requirement for issue of certificate is concerned, as I have already upheld the applicability of the certificate dated October 13, 2010, this ground for rejection of the certificate, also loses the significance. Moreover, the certificate dated October 13, 2010 has also been issued to the petitioner from Jaipur of which he was ordinarily a resident on the transfer of his father.

9. That apart, I note the petitioner had undergone training and was appointed as Senior Assistant Manager (Accounts) and while working on probation he was terminated on the ground that his certificate was not as per format for Central Government jobs, which according to me is not justified.

10. In view of my discussion above, the termination of the petitioner is held to be illegal. The petitioner is entitled to re-instatement with full back wages and all consequential reliefs including continuity of service for all purposes.

11. No order as to costs.

**(V.KAMESWAR RAO)**  
**JUDGE**

**OCTOBER 29, 2015**

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