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

+ **W.P.(C) 5492/2019 & C.M. APPL. 24099/2019**

AMRIT SINGH

..... Petitioner

Through: Mr.Rajinder Nischal with Mr.Ashish
Nischal, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Ms.Rashmi Bansal, Senior Standing
Counsel with Mr.Himanshu Pathak,
Advocate.

**CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH**

ORDER
23.08.2019

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Talwant Singh, J.

1. By way of this writ petition, the petitioner has challenged his non-selection as Constable (Generator Operator) in the Border Security Force under the OBC category, despite passing the written examination and being declared fit in the medical examination.

2. In brief, the facts are that in response to an advertisement issued by Respondent No.3 on 31st August, 2018 for filling up of 23 vacancies of Constable (Generator Operator), the Petitioner herein had applied for the same. Out of these 23 vacancies, 11 were reserved for Other Backward Classes (OBCs) and apart from other qualifications mentioned therein, the requirement for candidates applying under OBC category was that the OBC

certificate has to be issued on or after 1st October, 2015 i.e. three years preceding the closing date being 1st October, 2018.

3. The Petitioner appeared in the written examination and the result of the written examination was declared in January, 2019 and name of the Petitioner appeared at Serial No.3 under the OBC category and he was asked to appear for the second phase of the selection process, which took place between 18th February, 2019 to 22nd February, 2019. All other documents were found to be in order during document verification. However, as regards his OBC certificate, the Petitioner was informed that his certificate should have been issued after 1st October, 2015, but the certificate submitted by him was dated 29th December, 2014 and he was granted ten days time, i.e., up to 3rd March, 2019 to produce the OBC certificate issued in the prescribed format.

4. It is further stated that the Petitioner obtained another OBC certificate dated 26th February, 2019 from the concerned authority in the prescribed format and brought the same to the notice of the competent authority at the BSF Headquarters, New Delhi but the same was not taken into consideration on the ground that it was issued after the closing date, i.e., 1st October, 2018 and the selection process was over.

5. The final result was declared on 7th May, 2019 and out of the 11 vacancies for OBC, only 8 vacancies were filled but the Petitioner was ousted from the said selection list only on the ground that his OBC certificate was dated 29th December, 2014 and the fresh OBC certificate is dated 26th February, 2019, i.e., it was issued after the cut-off date of 1st October, 2018. As per the

Petitioner, the action of the Respondents is illegal and violative of Article 14 and 16 of the Constitution of India and the present matter is no more *res integra*. The Petitioner contends that the judgement of Division Bench of this Court in Writ Petition (Civil) No.5364/2014 titled ***Ravinder Kumar v. Union of India and Anr*** supports his case. The Petitioner has prayed for issuance of writ of mandamus to the Respondents to appoint him as Constable (Generator Operator) under the OBC category with all consequential benefits from the date his batch mates were appointed.

6. The writ petition was taken up for initial hearing on 20th May, 2019. Notice was issued to Respondents and they were directed to take necessary instructions to file reply within four weeks and in the mean time, filling up of 3 vacant posts of Constable (Generator Operator) was made subject to further orders of this Court in this regard.

7. A counter affidavit has been filed on behalf of the Respondent Nos.1 and 2. The main contention of the Respondents is that it was specifically mentioned in the advertisement at many places that candidates seeking reservation benefits must ensure that they are entitled to such reservation as per eligibility prescribed therein and they must have the certificates in the format prescribed by Government of India in support of their claims at the time of submitting the application.

8. As far as OBC candidates are concerned, it is pointed out by Respondents 1 and 2 that the said certificate and the creamy layer status certificate should have been obtained within three years before the closing date in the prescribed format only i.e. the said certificate should have been issued on or

after 1st October, 2015. The Petitioner had enclosed the caste certificate dated 29th December, 2014, which was neither in the prescribed format nor it was issued within three years before the closing date, i.e., on or after 1st October, 2015. However, taking a lenient view, the Petitioner was provisionally allowed to appear in written examination held on 30th December, 2018 and on the admit card it was mentioned that the Petitioner had to bring a self attested copy of the OBC caste certificate issued on or after 1st October, 2015. However, the Petitioner failed to produce the requisite OBC caste certificate and self declaration of creamy layer status at the time of written examination held on 30th December, 2018.

9. The result of the said written examination was declared on 16th January, 2019 and the Petitioner passed the first phase of written examination. In the result uploaded on the website, it was mentioned in clear terms that successful candidates should bring all original documents pertaining to the caste certificate, education, etc. and produce the same before the selection board at the time of documentation during second phase examination.

10. A call letter was issued to the Petitioner to report on 18th February, 2019 along with all original documents. However, the Petitioner again failed to submit the OBC caste certificate on the said date and the same was accordingly mentioned in the check list prepared by the officials of Respondent on 18th February, 2019 during the second phase examination.

11. The Respondents 1 and 2 contend that the Petitioner was granted three consecutive opportunities to produce the OBC caste certificate issued on or after 1st October, 2015 but he failed to submit the same till completion of

second phase examination on 22nd February, 2019. In substance, the OBC certificate and creamy layer status certificate were not submitted by the Petitioner, so his candidature was considered as unreserved candidate in the merit list drawn on 30th April, 2019 and final result was declared on 7th May, 2019. Only 4 vacancies were available in unreserved category, which were duly filled up. The last candidate selected in the merit under unreserved category had secured 56 marks whereas the Petitioner had secured only 46 marks, due to which he could not make to the merit list. As per the Respondents, the entire recruitment process was conducted in accordance with existing Recruitment Rules, SOP and Instructions on the said subject. Hence, it has been prayed that the petition be dismissed as the same is devoid of any merit.

12. We have heard the counsel for the parties. Learned counsel for the Petitioner has reiterated the same stand as has been taken in his petition that as on date, 3 vacancies under the OBC category are yet to be fulfilled; the Petitioner has qualified the written examination; physical test and the medical examination and his OBC certificate submitted with the application is dated 29th December, 2014, which is beyond the three-year window prescribed in the advertisement and since he was busy in his written examination, physical endurance test and medical examination, etc., so he could not find time to apply for a fresh OBC and creamy layer certificate which he was able to apply only in February, 2019 and the same was issued to him on 26th February, 2019 but the Respondents did not consider the same on the ground that the same is issued beyond the cut off date prescribed in the advertisement.

13. Learned counsel for the Petitioner has relied upon a Division Bench judgment of this Court W.P.(C) No.5364/2015 titled **Ravinder Kumar v. Union of India and Anr.** dated 31st May, 2017, wherein this Court has referred to judgments titled **Ram Kumar Gijroya v. Delhi Subordinate Services Selection Board & Anr.**, (2016) 4 SCC 754; **Manjusha Banchhore v. Staff Selection Commission & Anr.** W.P.(C) No.7304/2010 decided on 06.05.2013; **Delhi Subordinate Services Selection Board & Anr. v. Anu Devi & Anr.** W.P.(C) No.13870/2009 dated 17.02.2011; **Anil Kumar v. Union of India** W.P.(C) No.405/2013 and **Rakesh Kumar v. Union of India and Ors.** W.P.(C) No.5416/2012 and held as under:

“13. The Petitioner, in the present case, submitted the OBC certificate dated 21.05.2002 along with the application form. This certificate was not in the prescribed format. The second OBC certificate dated 13.07.2010 was furnished at the time of the interview, before the preparation of the final merit list and was as per the prescribed format. Identical undertakings have been adversely commented upon in **Manjusha Banchhore** (supra) and rejected on the ground of force and coercion. When a candidate is informed that unless an undertaking is furnished, he/she would be treated as disqualified, the same amounts to leaving the candidate with no choice or option. It would be unjust and unfair to pin down the Petitioner for the said reason, for consent to such an undertaking would not be free, having been obtained under the threat of disqualification. Hence, the same, cannot be said to have any legal and binding effect to negate the legal claim and right. Entitlement for consideration for appointment under the reserved categories is by

virtue of the said status being by birth, and when the status and certificate is not in dispute, relief should be granted as held in *Anu Devi & Anr.* (supra). The certificate issued by the competent authority, to this extent, is thus only an affirmation and declaration of the status already in existence.

14. Accordingly, we allow the present Writ Petition and set aside the impugned order of the Tribunal. The Respondents are directed to take into account the marks obtained by the Petitioner, treating him as an OBC candidate and thereafter accordingly process his candidature as per the order of preference, subject to character and antecedent verification. The Petitioner, on appointment, would be entitled to consequential benefits with regard to seniority, notional increments counting of period for further promotion etc. The Petitioner, however, would not be entitled to back wages. Compliance shall be made within 8 weeks from the date of this judgement. The parties are left to bear their own costs.”

14. On the other hand, learned counsel for the Respondents had relied upon a judgment in the matter of *Gaurav Sharma v. State of UP through Secretary* Special Appeal No.156/2017 and other connected matters decided by a Three Judges Bench of High Court of Judicature at Allahabad on 4th May, 2017 in support of the contention that the caste certificate submitted after last date for submission of applications cannot be considered. The judgment of the Allahabad High Court is basically dealing with the cases where the definition of OBCs and ‘creamy layer’ was different in the parameters laid down by the State Government and the Central Government

and under those circumstances, the said judgement was passed holding that the certificate in the prescribed format is submitted by a particular date. The Petitioners in the said case had initially submitted the caste certificates in the format prescribed by Government of India whereas the format prescribed by the UP Government was quite different and it was also noted that there were inconsistencies in the list of castes included in Other Backward Classes notified by the Government of India and U P Government.

15. In the present case, the earlier certificate submitted by the Petitioner is dated 29th December, 2014 and later on he obtained another certificate from the same authority on 26th February, 2018. Although, it has been mentioned in the judgement of the Allahabad High Court that the financial condition of a holder of a certificate is liable to change or fluctuate over a period of time but where both the OBC and creamy layer certificates are issued by the same authority and they reiterate that the Petitioner does not belong to the creamy layer as per the norms laid down by Government of India, there is no occasion to presume that his final status might have varied between the intervening period with specific reference to the last date mentioned in the advertisement, i.e. 1st October, 2018 and he might have been covered in the creamy layer limit after the expiry of three years from the date mentioned in the certificate dated 29th December, 2014 i.e. after 29th December, 2017 and he again came back within the definition of exclusion from 'creamy layer' on 26th February, 2019.

16. It is pertinent to mention here that the creamy layer exclusion certificate is issued after verifying the status of the family for the last three years in view of conditions specified in O.M. No.36012/22/93-Estt.(CST) dated
W.P. (C) 5492/2019

08.09.1993 (Amended from time to time), hence the certificate dated 26.02.2019 verifies that the Petitioner's family falls outside the creamy layer of OBC w.e.f 26.02.2016. Hence there is no iota of doubt that as on last date of applying for the post in question, i.e. 01.10.2018, Petitioner was an OBC and was not covered in the creamy layer.

17. It is admitted case of the Respondents that even as on date, out of 23 total vacancies of generator operator, only 11 vacancies have been filled up and specifically in OBC category 11 vacancies were notified and only 5 vacancies were filled up. During the arguments, it has been also noticed that these vacancies have not been re-advertised till date. The Petitioner fulfils the eligibility criteria and he has passed the written examination, physical endurance test, and medical examination and has obtained a fresh OBC certificate dated 26th February, 2019 which specifically mentions that he is still not covered under the creamy layer prescribed for OBC candidates and in view of the judgement of this Court in *Ravinder Kumar's* case (supra), this Court is of the view that the Petitioner is entitled to his appointment as Constable (Generator Operator) in Border Security Force under the OBC category.

18. In view of the above discussion, the petition is allowed and the Respondents are directed to appoint the petitioner as Constable (Generator Operator) under the OBC category with Border Security Force. It is made clear that the said appointment shall be subject to verification regarding genuineness of his OBC and creamy layer exclusion certificate dated 26th February, 2019 and in case the training of his batch has already started, then he shall undergo training along with the next batch. Petitioner shall not

claim back wages, although he would be entitled to other benefits like seniority, notional increments and counting of period for further promotion, etc. The compliance be made within eight weeks from the date of this judgement. The pending application is disposed of. No order as to costs.

TALWANT SINGH, J.

S. MURALIDHAR, J.

AUGUST 23, 2019 /pa

