



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 1918/2015
MA 1737/2015
MA 1738/2015
with
OA 3354/2014

Reserved on 19.12.2019
Pronounced on 23.01.2020

Hon'ble Mr. S.N.Terdal, Member (J)
Hon'ble Mr. A.K.Bishnoi, Member (A)

OA 1918/2015

1. Zar Nigar
D/o Sh. Mustafa Husain,
Fresh Appointment,
Age 29 years, R/o 1445, Gali No. 51,
Jafrabad, Dellhi-110053.
2. Naeem Abbas,
S/o Sh. Asad Ulla,
Fresh Appointment,
Age 27 years,
R/o H.No.E-31, Street No.2,
Chand Bagh, Near 25 Foota Road,
Bhajanpura, Delhi-110094
3. Mohd. Akif
S/o Sh. Saeed Ahmad,
Fresh Appointment, Age 34 years,
R/o H.No 223, Gali No. 4,
H-Block, Sundar Nagri, Delhi-110093
4. Mohd. Anis Khan
S/o Sh. Bandey Ali Khan
Fresh Appointment, Age 35 years,
R/o B-273, Welcome Kabootar Market,
Seelampur, Delhi-110053.

... Applicants

(By Advocate: Mr. M.Rai S Farooqui)



VERSUS

1. South Delhi Municipal Corporation
Through its Commissioner,
Office at: Dr. Shyama Prasad Mukherjee
Civic Centre, Zakir Hussain Marg,
New Delhi.
 2. North Delhi Municipal Corporation
Through its Commissioner,
Office at: Dr. Shyama Prasad Mukherjee
Civic Centre, Zakir Hussain Marg,
New Delhi.
 3. East Delhi Municipal Corporation
Through its Commissioner
Office at: CSIDC Building,
Patpar Ganj Industrial Area,
New Delhi.
 4. Delhi Subordinate Service Selection Board
(DSSSB) Through its Secretary/
Chairman
Office at: FC-18, Industrial Area,
Karkardooma, Delhi
 5. Govt. of NCT
Through its Chief Secretary,
Delhi Secretariat, I.P. Estate,
New Delhi.
- ... Respondents

(By Advocate: Mr. Amit Yadav, Ms. Anupama Bansal and
Mr.R.K.Shukla)

OA 3354/2014

1. Rajesh Kumar
S/o Om Parkash, Aged 33 years,
621, Dulia Colony Village Alipur,
Delhi-110036
2. Mohd. Kamil
S/o Mustafa Husain,
Age about 27 years,
H.No. 1445, Street No. 51,
Jafarabad, Delhi-110053



3. Meenakshi Rani
D/o Harpal Singh
Aged about 27 years
L-12, A-Saket, New Delhi-110017

4. Naimat Ali
S/o Bafati, Aged about 28 years,
E-2 School, Ajmal Bagh,
Staff Qtrs., Jamia Nagar,
New Delhi-110025

5. Asif Hussain,
S/o Muna Hussain,
Aged 31 years
E-2/16, Nehru Vihar,
Mustfabad, Delhi-110094

(All Applicant are unemployed)

.. Applicants

(By Advocate: Mr. Naresh Kaushik with Ms. Akshita Rao)

VERSUS

1. Delhi Subordinate Services Selection Board,
Through its Chairman,
FC-18, Institutional Area, Karkardooma
Delhi

2. South Delhi Municipal Corporation
Dr. Shyama Prasad Mukherjee
Civic Centre, Zakir Hussain Marg,
New Delhi.

3. Govt. of NCT Delhi
Through its Chief Secretary,
Delhi Secretariat, I.P. Estate,
New Delhi.

... Respondents

(By Advocate: Mr. Amit Anand)



ORDER

(Hon'ble Mr. S.N.Terdal, Member (J)):

We have heard Mr. M. Rai S. Farooqui and Mr. Naresh Kaushik, counsel for applicants and Mr. Amit Yadav, Ms. Anupama Bansal, Mr. R.K. Shukla and Mr. Amit Anand, counsel for respondents, perused the pleadings and documents produced by all the parties.

2. In these OAs, the applicants have prayed for the following reliefs:

OA No. 1918/2015

- (i) pass an order thereby setting- aside the notice No. F.4(130)/P&P/13/DSSSB/20-33 dated 26.4.2013 of Dy. Secretary (P&P), Delhi Subordinate Services Selection Board, Govt. of NCT of Delhi in respect of prescribing the minimum qualifying marks 35% to the OBC category.
- (ii) Directing the respondents to relax the qualifying marks 30% equally to all reserve categories for the recruitment of Teacher (Primary-Urdu) to the Post Code No. 69/2009 against advertisement no. 004/09;
- (iii) pass an order thereby directing the respondents to give the appointments to the applicants having obtained the marks above 30% of qualifying marks for the Post of Teacher (Primary-Urdu) to the Post Code No. 69/2009 against advertisement no.004/09;
- (iv) Any other/further order(s) instruction(s) and direction(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case, may also kindly be passed in favour of the applicants and against the respondents.



OA 3354/2014

- (i) Allow the present Original Application;
- (ii) Direct the Respondent No. 1 to keep the qualifying criteria of for all the reserved categories at par and thereby lower the qualifying criteria of OBC candidates to 30% as equal as other reserve categories are getting; and
- (iii) Direct the Respondent No.1 to fill all posts vacant for the post of Teacher(Primary) in the national interest and in the interest of the Public; and/or
- (iv) Pass any such other order or orders as are deemed fit and proper in the facts and circumstances of the case."

3. As the identical reliefs were prayed for in both these OAs, common order has been passed. The relevant facts of the case are that on 11.12.2009, Delhi Subordinate Services Selection Board (DSSSB) issued advertisement inviting applications for the recruitment to various posts in different departments of Government of NCT of Delhi/Autonomous/Local bodies. All the applicants are belonging to OBC candidates. Subsequently by the impugned notice dated 26.04.2013 the DSSSB decided to change the prescribed minimum qualifying marks in one tier/two tier written examination and they reduced the minimum qualifying marks for general candidates and SC/ST candidates by 5% from 40% to 35% for general candidates and from 35% to 30% for



SC/ST, whereas for OBC candidates they retained 35% without reducing by 5%. The said notice is extracted below:-

"F.4(130)/P&P/13/DSSSB/20-33 dated 26.4.2013

NOTICE

In continuation of this office notice of even no dated 09.04.2013, the Board has decided to prescribe minimum qualifying marks in one Tier/two Tier written examinations for different categories as under:-

1. One Tier/Two Tier Written Examination (Objective Type/Descriptive type)

* General	:	40%
* OBC	:	35%
* SC/ST/PH	:	30%

* Ex-servicemen will be given 5% relaxation in their respective categories subject to a minimum of 30%
2. There shall not be any minimum qualifying marks for interview in three Tier Examination.
3. Selection through Academic records & Interview/Screening Test & Interview
 - i) Where selection shall be made on the basis of Academic records and interview, there will be no minimum qualifying marks for interview.
 - ii) Where selection shall be made on the basis of screening test followed by interview, the minimum qualifying marks in interview shall be the same as in one Tier & two Tier written examinations."



- d. Because the examination for 18 posts notified namely, post codes number 73/09, 75/09, 76/09, 77/09, 78/09, 79/09, 80/09, 81/09, 82/09, 83/09, 84/09, 85/09, 86/09, 87/09, 88/09, 89/09, 90/09 had already been held prior to the notification dated 26.04.2013. Therefore, the Respondent No. 1 have in effect applied different criteria of selection of posts notified under the same advertisement.
- e. Because the Respondent No.1 has been changing the pattern, rules, selection criteria in the said examination many times. It is humbly submitted that in the beginning there was a qualifying criteria, which was subsequently changed to cut-off as per the required number of candidates which was again changed to qualifying criteria. Further, the qualifying criteria in the beginning of the selection process was the same for all reserved category candidates, however the same has also been changed subsequently. Therefore, the actions of the Respondent are prima facie arbitrary and call for an indulgence by this Hon'ble Tribunal.
- f. Because the Hon'ble Supreme Court in Maharashtra State Road Transport Corporation and Ors. Vs. Rajendra Bhimrao Mandve and Ors MANU/SC/0737/2001 held as under:
- "It has been repeatedly held by this Court that the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced. Therefore, the decision of the High Court, to the extent it pronounced upon the invalidity of the circular orders dated 26.6.1996, does not merit acceptance in our hand and the same are set aside."
- g. Because the Hon'ble Supreme Court in the case of A.A. Calton Vs. Director of Education (193) 3 SCC 33) has held as under:



“It is no doubt true that the Act was amended by U.P. Act 26 of 1975 which came into force on August 18, 1975 taking away the power of the Director to make an appointment under [section 16-F \(4\)](#) of the Act in the case of minority institutions. The amending Act did not, however, provide expressly that the amendment in question would apply to pending proceedings under [section 16-F](#) of the Act. Nor do we find any words in it which by necessary intendment would affect such pending proceedings. The process of selection under [section 16-F](#) of the Act commencing from the stage of calling for applications for a post upto the date on which the Director becomes entitled to make a selection under [Section 16-F\(4\)](#) (as it stood then) is an integrated one. At every stage in that process certain rights are created in favour of one or the other of the candidates. [Section 16-F](#) of the Act cannot, therefore, be construed as merely a procedural provision. It is true that the Legislature may pass laws with retrospective effect subject to the recognised constitutional limitations. But it is equally well settled that no retrospective effect should be given to any statutory provision so as to impair or take away an existing right, unless the statute either expressly or by necessary implication directs that it should have such retrospective effect. In the instant case admittedly the proceedings for the selection had commenced in the year 1973 and after the Deputy Director had disapproved the recommendations made by the Selection Committee twice the Director acquired the jurisdiction to make an appointment from amongst the qualified candidates who had applied for the vacancy in question. At the instance of the appellant himself in the earlier writ petition filed by him the High Court had directed the Director to exercise that power. Although the Director in the present case exercised that power subsequent to August 18, 1975 on which date the amendment came into force, it cannot be said that the



selection made by him was illegal since the amending law had no retrospective effect. It did not have any effect on the proceedings which had commenced prior to August 18, 1975. Such proceedings had to be continued in accordance with the law as it stood at the commencement of the said proceedings. We do not, therefore, find any substance in the contention of the learned counsel for the appellant that the law as amended by the [U.P. Act 26](#) of 1975 should have been followed in the present case.”

- h. Because the Office Memorandum dated 25.06.2010 treats all the reserved category candidates on the same footing and does not differentiate between the OBC and the SC/ST. Moreover such differentiation has never been done by the Respondent No. 1 throughout the years. Therefore, bringing such change before the exam even though previous notification had kept the qualifying criteria of the reserved categories at par is not only arbitrary but devoid of any justification whatsoever.
- i. Because even the National Council for Teacher Education which provides the guidelines for all the Teachers in the country vide its notification dated 02.08.2011 has given an equal relaxation of 5% to all the reserved category candidates.
- j. Because even the University Grant Commission in its notice for National Education Testing (NET) for the year 2014 gave an equal qualifying criteria for all the reserved category candidates i.e. OBC (Non-creamy layer)/PWD/SC/ST.
- k. Because the Respondent No.1 itself has previously in all instances given an equal relaxation to all the reserved category candidates. However, the Respondent has unreasonably and arbitrarily changed the pattern since 26.04.2013 providing for a higher relaxation to the SC/STs and PWD candidates which amounts to discrimination and is violative of Fundamental Rights guaranteed under Article 14 and 16 of the Constitution of India.”



4. The counsel for the applicants vehemently and strenuously relied upon the procedure followed by National Council for Teacher Education (NCTE) and the Notification issued by the Directorate of Education dated 30.11.2012, University Grant Commission, Staff Selection Commission and Kendriya Vidyalaya, Sangathan wherein the minimum qualifying marks were reduced uniformly to all the reserved candidates. He also relied upon the law laid down by the Hon'ble Supreme Court in the following cases:-

- "(1) **E.V.Chinnaiah Vs. State of Andhra Pradesh and Ors** (JT 2005(11) SC 482)
- (2) **A.A.Carlton Vs. Director of Education and Ors** (1983) 3 SCC 33)
- (3) **K.Manjushree Vs. State of A.P. and Ors** (2008) 3 SCC 512)
- (4) **Hemani Malhotra Vs. High Court of Delhi** (2008) 7 SCC 11)
- (5) **Maharashtra State Road Transport Corporation and Ors. Vs. Rajendra Bhimrao Mandve and Ors.** (2002) ILLJ819 SC)

He further submitted that the respondents have changed the rules of the game after the selection process was started.

5. The respondents have filed counter affidavit. In that they have stated that it is left to the discretion of the respondent-Board to fix the minimum qualifying marks for each of the category depending upon their requirements and there is no discrimination in reducing the minimum qualifying marks only for general candidates and SC/ST and not reducing



the said minimum qualifying marks for the OBC. The relevant averments made in the counter affidavit are extracted below:-

“Reply to grounds:

That in reply to grounds as raised by the applicant, no ground is made out and the present OA may kindly be dismissed.

5A & 5B. That it is denied. They by fixing different minimum qualifying marks for different category is no discrimination. That the same procedure is being followed by the other boards like SSC/UPSC also. That the DOPT has already differentiated the OBC category from SC/ST such as age relaxation for SC/ST candidate is 5 years while it is 3 years in case of OBC and further there is fee exemption for SC/ST candidates but such fee exemption is not applicable for OBC candidates. Hence, OBC candidates cannot be treated at par with SC/ST candidates

5C. That it is denied. That the responsibility of the board is not only to fill up the vacancy but is also to maintain the quality of the post i.e. to nominate well qualified candidate who can serve better and provide quality education to the children in the public interest.

5D and 5E. That it is denied. That the board has a right to change/modify any examination scheme/selection procedure for any post.

5F. That the minimum qualifying marks vide order dated 26/04/2013 was fixed well before the start of selection procedure for the said post i.e. the examination for the said post was held on 02/02/2014 while the said order was issued on 26/04/2013. Therefore, it is not the violation of the said order of the Hon’ble Supreme Court.

5G. That the said verdict of the Hon’ble Supreme Court is not applicable to the instant case as there is no change in the selection authority i.e. DSSSB.

5H. That this is denied. That the board has a right to change/amend the selection procedure and the said notice was issued well before i.e. about 9 months prior to the examination of the said post.”



The counsel for the respondents further submitted that the impugned Notification was issued well before the selection process was started on 26.04.2013 and the examination was started on 02.02.2014 and moreover since the applicants have participated in the selection process they cannot after participating in the examination process challenged the same particularly after they are unsuccessful in the selection process. In support of his contention he relied upon the law laid down by the Hon'ble Supreme Court in the following cases:-

- “(1) **Chattar Singh & Ors Vs. State of Rajasthan & Ors** (<http://indiankanoon.org/doc/461058/>)
- (2) **Rajya Sabha Secretariat & Ors. Vs. Subhash Baloda & Ors** (Civil Appeal No. 1099/2013)
- (3) Rajasthan High Court judgment in **Babita Sharma and Anr Vs. State of Raj and Anr.** (SB Civil Writ Petition No. 16215/2013 and others)
- (4) **A.P.Public Service Commission Vs. Baloji Badhavath & Ors** (Civil Appeal No. 2244/2008)

He particularly referred to the following paras in the case of Chatter Singh & Ors (supra):

“.....Candidates who obtain such minimum qualifying marks in the Main Examination as may be fixed by the Commission in their discretion shall be summoned by them for an interview.....

.....Therefore OBCs are not eligible to claim reduction of 5% of the marks secured by them in the Preliminary Examination for enabling them to appear in the Main examination. Thus, this appeal by special leave.....



.....The next question is: whether the OBCs are to be treated alike Scheduled Castes and Scheduled Tribes and given the 5% cut off marks in the Preliminary Examination under proviso to Rule 13 and whether omission thereof prohibits the right to equality envisaged in Article 14? provides..... Equality for unequals is secured by treating them unequally. Affirmative action or positive discrimination, therefore, is inbuilt in equality of opportunity in status enshrined in Articles 14 and 16(1) of the Constitution. Therefore, Scheduled Castes and Scheduled Tribes stand as two separate classes while OBCs stand apart.....

The State had evolved the principle of reservation to an office of the State or post as an affirmative action to accord socio-economic justice guaranteed in the Preamble of the Constitution; the fundamental rights and the directive principles which are the Trinity of the Constitution to remove social education and economic backwardness as a constitutional policy to accord equality of opportunity, social status or dignity of person as is enjoined in Articles 14, 15, 16, 21, 38, 39, 39A, 46 etc. [Article 335](#) enjoins the State to take the claims of Dalits and Tribes into consideration for appointment to an office/post in the services of the State consistently with efficiency of administration. Though OBCs are socially and educationally not forward, they do not suffer the same social handicaps inflicted upon Scheduled Castes and Scheduled Tribes. Articles 15(2) and 17 furnish historical and social dissatisfaction inflicted on them. The object of reservation for the Scheduled Castes and Scheduled Tribes is to bring them into the mainstream of national life, while the objective in respect of the backward classes is to remove their social and educational handicaps. Therefore, they are always treated dis-similar and they do not form an integrated class with Dalits and Tribes for the purpose of [Article 16\(4\)](#) or 15(4). Obviously, therefore, proviso to Rule 13 confines the 5% further cut off marks in the preliminary examination from the lowest range fixed for general candidates. So, it is confined only to the Scheduled Castes and Scheduled Tribes who could not secure total aggregate marks on par with the general candidates. The Rule expressly confines the benefit of



the proviso to Scheduled Castes and Scheduled tribes. By process of interpretation, OBCs. cannot be declared alike the Scheduled Castes and Scheduled Tribes. Therefore, the contention that the doctrine of fusing "any backward class of citizen" in [Article 16\(J\)](#), further classification of Scheduled Castes and Scheduled Tribes and OBCs. as distinct classes for the purpose of reservation and omission to extend the same benefits to OBCs violates [Article 14](#) is devoid of substance. If the logic of equality as propounded by minority Judge is given acceptance, logically they are also entitled to reservation of seats in the House of the People or in the Legislative Assemblies of States, though confined to Scheduled Tribes and Scheduled Castes, by operation of [Article 334\(a\)](#) of the Constitution with a non obstante clause engrafted therein. The founding fathers of the Constitution, having been alive to the dissimilarities of the socio-economic and educational conditions of the Scheduled Castes and Scheduled Tribes and others segments of the society have given them separate treatment in the Constitution. The Constitution has not expressly provided such benefits to the OBCs except by way of specific orders and public notifications by the appropriate Government. It would, therefore, be illogical and unrealistic to think that omission to provide same benefits to OBCs, as was provided to Scheduled Castes and Scheduled Tribes, was void under Articles 16(1) and 14 of the Constitution.

Accordingly we are of the view that the OBCs. are not entitled to 5% cut off marks in the preliminary examination, as provided under proviso to Rule 13."

He further referred to para 29 of the Rajasthan High Court judgment in the case of Babita Sharma and Anr. (supra) in which it has been held:

"29. We are of the view that, in academic matters, unless there is a clear violation of statutory provisions, the Regulations or the Notification issued, the Courts



shall keep their hands off since those issues fall within the domain of the experts. This Court in [University of Mysore v. C.D. Govinda Rao](#), AIR 1965 SC 491, [Tariq Islam v. Aligarh Muslim University](#) (2001) 8 SCC 546 and [Rajbir Singh Dalal v. Chaudhary Devi Lal University](#) (2008) 9 SCC 284, has taken the view that the Court shall not generally sit in appeal over the opinion expressed by expert academic bodies and normally it is wise and safe for the Courts to leave the decision of academic experts who are more familiar with the problem they face, than the Courts generally are. UGC as an expert body has been entrusted with the duty to take steps as it may think fit for the determination and maintenance of standards of teaching, examination and research in the University. For attaining the said standards, it is open to the UGC to lay down any "qualifying criteria", which has a rational nexus to the object to be achieved, that is for maintenance of standards of teaching, examination and research. Candidates declared eligible for lectureship may be considered for appointment as Assistant Professors in Universities and colleges and the standard of such a teaching faculty has a direct nexus with the maintenance of standards of education to be imparted to the students of the universities and colleges. UGC has only implemented the opinion of the Experts by laying down the qualifying criteria, which cannot be considered as arbitrary, illegal or discriminatory or violative of [Article 14](#) of the Constitution of India."

Reliance was also placed on the following paragraphs of the judgment of Hon'ble Supreme Court in the case of *Rajya Sabha Secretariat & Ors* (supra) in which it has been held:

'xv. CUT OFF PERCENTAGE OF MARKS: The minimum cut of percentages of marks in Written Test and Personal Interview in an examination is 50%, 45% and 40% for vacancies in GENERAL, OBC and SC/ST categories respectively. The above percentages are



relaxable by 5% in case of physically handicapped persons of relevant disability and category for appointment against the vacancies reserved in Lok Sabha Secretariat for physically handicapped persons. These percentages are the minimum marks which a candidate is required to secure in each paper component paper/component and aggregate in the written test and in aggregate in the personal interview. However, the cut-off percentages may be raised or lowered in individual component/paper/aggregate to arrive at reasonable vacancy: candidate ratio.”

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20. It was also submitted that the respondents having participated in the selection process, it was not permissible for them to challenge the recruitment process subsequently. Reliance was placed upon the judgment of this Court in *Manish Kumar Shahi Vs. State of Bihar & Ors.* reported in 2010 (12) SCC 576 in that behalf.

23. The question before us is whether the interview board can be faulted for making the certificate marks a component of the 25 interview marks, and whether thereby the candidates were in any way taken by surprise. In this connection we must note that the appellants had advertised that the NCC/Sports and Computer certificates were 'desirable'. The call-letter, in paragraph 5 thereof, specifically called upon the candidates to bring their certificates at the time of the Personal Interview. It further stated that credit for the same shall be given only if the certificate was accompanied by a declaration by the concerned institute that the course done by the candidate was recognized by AICTE or DOEACC. Thus, it was clear that credit was to be given to those certificates as a part of the interview. The respondents, therefore, can not make any grievance that they were taken by surprise by giving of 7 (out of 25) marks for such certificates to the successful candidates. Nor can the respondents say that any prejudice is caused to them, since all candidates having such certificates were uniformly given 5 and/or 2 marks for the certificates, and those who were not having them were not given such marks. The process cannot, therefore, be called arbitrary.”



After hearing the entire matter, the counsel for the applicants(OA no. 3354/2014) Shri Naresh Kaushik submitted that he is not pressing the main relief of non reduction of minimum qualifying marks for OBC candidates from 35% to 30%. From the perusal of the relief it is clear that once the main relief is not pressed nothing remains in this OA. Even otherwise, in view of the facts and circumstances narrated above and in view of the law laid down by the Hon'ble Supreme Court referred to and extracted above, there is no merit in this OA. Accordingly, both these OAs are dismissed. MAs pending stand disposed of. No order as to costs.

(A.K.Bishnoi)
Member (A)

(S.N.Terdal)
Member (J)

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