

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.3258/2001

New Delhi, this the 19th day of March, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K.NAIK, MEMBER (A)

Krishan Mohan Tiwari
s/o Sh. Ramayan Pd. Tiwari
r/o 1/11337, Gali No.6,
Subash Park Extn.,
Navin Shahdara, Delhi - 110 032. ... Applicant

(By Advocate: Sh. Vikas Singh)

Versus

1. National Capital Territory of Delhi
through its Director (Education)
Sham Nath Marg
Delhi - 110 054.
2. Delhi Subordinate Services Selection Board
3rd Floor, UTCS Building
Institutional Area, Behind Karkardooma Courts
Complex, Shahdara
Delhi - 110 032.
3. Ajay Kumar Mittal
s/o Lal Chand Mittal
At Serial No.7
District allotted South-West
Through respondent No.1
4. Pramod Kumar
s/o Yadram
At Serial No.8
District allotted North-East
Through respondent No.1 ... Respondents

(By Advocate: Sh. George Parackin)

O R D E R

Justice V.S. Aggarwal:-

Applicant (Krishan Mohan Tiwari) had applied for the post of Post Graduate Teacher - Political Science (Male). This was in pursuance of an advertisement issued dated 12.6.1998 inviting applications. In the advertisement, six vacancies were disclosed out of which three were Unreserved, one for Scheduled Caste, one for Scheduled Tribe, one for



42

OBC, one for Retired Defence Personnel and one for Physically Handicapped.

2. On 7.8.1998, the respondents had advertised posts of PGT-Political Science (Males) out of which two were Unreserved, two were for Scheduled Caste, two were for Scheduled Tribe, one was for OBC, two were meant for Retired Defence Personnel and one was reserved for Physically Handicapped.

3. On 1.3.1999, the respondents advertised for four more posts of PGT-Political Science (Males) out of which one was for Unreserved, one was for OBC, one for Scheduled Tribe and one for Scheduled Caste.

4. Examination for these posts were conducted on 22.8.1999 and the result was published on 4.10.1999/5.10.1999. 21 names were shown. The name of the applicant was later on shown as withheld category. He was not allotted any zone. Applicant contends that he has been illegally deprived of the appointment.

5. By virtue of the present application, the applicant seeks direction to the respondents to issue an appointment letter to him to join the post of Post Graduate Teacher - Political Science and to pay him the salary for the period he had been deprived from joining the post.

CS Ag

43

[3]

6. According to him, there were 21 candidates so notified and applicant's rank was 10th. He was entitled to the said post. The applicant has arrayed two private respondents, namely, Sh. Ajay Kumar Mittal and Shri Pramod Kumar.

7. The Original Application has been contested. In the reply filed, the respondents plead that the reservation to Scheduled Caste and Scheduled Tribe/OBC is less than 50 per cent of the total vacancies. Within the respective categories, 3 per cent reservation has been allowed to Physical Handicapped candidates. It is asserted that 17 vacancies of male category of PGT-Political Science were to be filled up, out of which, four were to be Scheduled Castes, four were to be Scheduled Tribe, three were to be OBC and six were to be General candidates. The respondents had requested the Delhi Subordinate Services Selection Board (for short 'DSSSB') to nominate two Physically Handicapped candidates from among the 17 vacancies and adjust them against the category from which they have been selected without giving any additional reservation to them. But the DSSSB nominated three Scheduled Tribe candidates as against four requisitioned one vacancy could not be filled up. Since the DSSSB had nominated the two Physically Handicapped candidates over and above the number of candidates requisitioned, they were to be adjusted against the category they belonged to.



44

8. It is contended that amongst the Unreserved vacancies, 1 OBC candidate at Sl. No.5 who had come on merit, could not be treated as a reserved category candidate. One Physically Handicapped candidate is also to be treated as General category candidate because he was at Sl. No.8. One Scheduled Caste candidate, who is at Sl. No.9 is also treated as General candidate. The respondents' department has treated only seven candidates as reserved category candidates. Since two vacancies were meant for Physically Handicapped and they belonged to General category, the junior most candidate in the General category was sent back.

9. It is further contended that 3 per cent reservation was given to Physically Handicapped persons. The respondents had clubbed the entire vacancies arisen in different subjects in a recruitment year to provide suitable reservation to the Physically Handicapped.

10. At the direction of the Court, additional affidavit has been filed by the respondents. They placed on the record the result declared by DSSSB which reads as under:



"DELHI SUBORDINATE SERVICES RELECTION BOARD
PGT EXAMINATION HELD ON 22ND AUGUST - 1999
MERIT LIST (CIVIL LIST) POST/SUBJECT/CATEGORY/GENDER WISE
DIRECTORATE OF EDUCATION, G.N.C.T. DELHI

SUBJECT: (08) PGT-POLITICAL SCIENCE GENDER : MALE

Sl.No.	Roll No.	Appl. No.	Scan No.	Name	Father Name	Category	DOB	SEL As	Post Code	Distt.	Total Allot. Marks
1.	11007445	13374	006140	Amresh Chandra Pandey	Sheetala Prashad Pandey	GEN	16/10/70	UR	15/98	East	85
2.	11010135	13951	008460	Kulwant Kaushik	Khazan Singh	GEN	02/04/70	UR	77/99	S.W.	84
3.	11008948	13695	007394	Hasnain Akhtar	Hasmai Ali	GEN	15/12/71	UR	15/98	N.E.	83
4.	11007964	14090	006554	Lakshmi Kant	Ram Kishore	GEN	03/02/74	UR	15/98	East	83
5.	11009470	13205	007862	Shashi Bhushan	Bahori Giri	OBC	29/10/70	OBC	15/98	N.E.	82
6.	11008141	14355	006695	Haroon Rashid Gilani	Abdul Rashid Gilan	GEN	02/03/64	UR	90/98	East	81
7.	11007545	13513	006221	Purushottam Meena	Narayan Meena	ST	01/05/72	ST	77/99	S.W.	79
8.	11007300	13159	006023	Ajay Kumar Mittal	Lal Chand Mittal	VIS	22/03/71	VIS	15/98	S.W.	77
9.	11007369	13266	006080	Pramod Kumar	Yadram	SC	01/07/69	SC	77/99	N.E.	77
10.	11008187	14425	006736	Krishna Mohan Tiwari	Ramyam Prasad Tiwari	GEN	01/06/68	UR	90/98	----	77
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46

11. Learned counsel for the applicant, in the first instance, contended that applicant was at Sl. No.10 and that two persons above him, namely, S/Shri Ajay Kumar Mittal and Pramod Kumar who scored equal number of marks were placed before the applicant on merit. The applicant is elder in age. Further his contention was that so far as the OBC is concerned, there are no instructions that if he comes on merit, he will be treated as General candidate. Though it was conceded to be so in case of Scheduled Tribe candidate, namely, Shri Purushottam Meena, he had to be treated as General candidate.

12. It was further urged that in the reservation as per the reservation policies, they could not exceed 50% of the total vacancies.

13. It cannot be disputed that the applicant who was placed at Sl. No.10 had scored equal number of marks as of S/Shri Ajay Kumar Mittal and Pramod Kumar and the applicant is elder to them in age. It is settled principle which was not disputed that when on merits he scored equal number of marks, unless there is a rule to the contrary the person elder in age has to be placed above them in the order of merit. Thus to this extent the plea must succeed.

14. The second submission that so far as the reservation for the Physically Handicapped persons is concerned, it should not exceed 3 per cent of the posts. In the present case, the respondents have




47

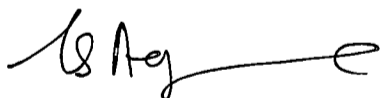
[7]

exceeded the same by taking more than 3 per cent of handicapped persons in the result. As it effects the rights of the other persons they indeed can raise a grievance.

15. The learned counsel for the applicant contended that an OBC candidate who has come on merit should not be treated as General candidate. We find that this submission for purposes of the present application cannot be accepted as the Government of India, Department of Personnel & Training O.M. dated 1.7.1998 it had been clarified that in cases of direct recruitment even an OBC candidate who has come on his own merit, will not be adjusted against the reserved vacancy. Keeping in view the same, this plea has to be rejected.

16. Keeping in view these factors, the Original Application is disposed of in terms that the respondents should reconsider the whole matter and also the claim of the applicant for appointment on his merit. The said exercise should be completed within two months of the receipt of the order.


(S.K. Naik)
Member (A)


(V.S. Aggarwal)
Chairman

/NSN/