

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.564 OF 2010

New Delhi, this the 13<sup>th</sup> day of October, 2017

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

AND

HON'BLE MS. PRAVEEN MAHAJAN, ADMINISTRATIVE MEMBER

.....

Sh.Sanjeet Dabas,  
S/o late Sh.Sardar Singh,  
R/o 406, Near Swabhiman Library,  
VPO Madanpur Dabas, Delhi 110081 ..... Applicant  
(By Advocate: Mr.Tribindh Kumar, proxy for Mr.Rajesh P.S.Raghubanshi)

Vs.

1. GNCT of Delhi,  
through Chief Secretary,  
Delhi Secretariat,  
Players Building,  
IP Estate,  
New Delhi
  2. Delhi Subordinate Services Selection Board,  
Through its Secretary,  
F-18, Karkardooma Institutional Area,  
New Delhi.
  3. South Delhi Municipal Corporation,  
Through its Commissioner,  
Dr.S.P.M. Civic Centre,  
Minto Road, New Delhi 110002
  4. North Delhi Municipal Corporation,  
Through its Commissioner,  
Dr.SPM Civic Centre,  
Minto Road, New Delhi 110002
  5. East Delhi Municipal Corporation,  
Through its Commissioner,  
419, Udyog Sadan,  
Patparganj Industrial Area,  
New Delhi 110096..... Respondents
- (By Advocates: Mr.K.M.Singh, Mr.R.K.Jain, Mr.P.S.Tomar, proxy for Ms.Sangeeta Rai)

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## **ORDER**

**Per RAJ VIR SHARMA, MEMBER(J):**

The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

- “(a) direct the respondents to accord 5% relaxation in marks at senior secondary examination to the applicant and
- (b) to offer appointment for the post of Teacher (Primary), MCD, with all consequential benefits
- (c) pass any other order/direction which this Hon’ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case
- (d) award costs of the proceedings.”

2. Brief facts giving rise to the present O.A. are that the applicant, being a person belonging to the Other Backward Classes (OBC) category, applied for selection and recruitment to the post(s) of Assistant Teacher (Primary) and Teacher (Primary), pursuant to the advertisement Nos.07/2007 and 08/2007 issued by the respondent-Delhi Subordinate Services Selection Board (DSSSB). The said advertisements laid down the following:

**“Educational and other Qualifications:**

- (i) Senior Secondary (10+2) or Intermediate or its equivalent with 50% marks from a recognized Board.
- (ii) Two years Diploma/Certificate course in ETE/JBT or B.El.Ed. from a recognized institution.
- (iii) Must have passed Hindi as a subject at secondary level.

**Desirable:**

- (i) Computer Knowledge.”

Subsequently, with the approval of the competent authority, the respondent-DSSSB issued corrigendum whereby relaxation of 5% marks in the Senior Secondary (10+2) or Intermediate or its equivalent was given to candidates belonging to Scheduled Caste (SC), Scheduled Tribe (ST), and Physically Handicapped (PH) candidates. Similar relaxation of 5% marks in the Senior Secondary Examination, etc., was not provided to OBC candidates. The applicant was allotted roll no.16414454 jointly for both post codes 164 and 165 of advertisement nos.7/2007 and 08/2007 respectively, though he had scored less than 50% marks in the Senior Secondary(10+2) Examination. Accordingly, the applicant appeared in the recruitment examination, in which he scored 87 marks. The last selected candidate in OBC category for Post Code 165/07 obtained 86 marks in the recruitment examination. As the applicant was not selected, he made enquiry, and learnt that he was not selected because of his having scored less than 50% in the Senior Secondary (10+2) Examination. According to the applicant, once the relaxation has been granted to SC, ST and PH candidates, he is also, being an OBC candidate, entitled for the same relaxation, and the corrigendum issued by the respondent-DSSSB equally applies to him.

3. Resisting the OA, counter replies have been filed by the respondents. The applicant has also filed rejoinder replies thereto.

4. We have carefully perused the records and have heard the learned counsel for the parties.

5. In support of the applicant's claim, Mr. Tribindh Kumar, proxy for Mr. Rajesh P.S. Raghubanshi, the learned counsel appearing for the applicant, relied on the decisions of the Hon'ble Supreme Court in **St. Johns Teachers Training Vs. Regional Director, National Council for Teacher Education & Another**, Appeal (Civil) No.1068 of 2003, decided on 7.2.2003; **State of Maharashtra Vs. Sant Dnyaneshwar Shikhan Shastra Mahavidyalaya & others**, Appeal (Civil) No.1859 of 2006, decided on 31.3.2006; and **Ranu Hazarika & others Vs. State of Assam and others**, Civil Appeal No.2153 of 2011 and other connected Civil Appeals, decided on 28.2.2011.

(i) In **St. Johns Teachers Training Vs. Regional Director, National Council for Teacher Education & Another** (supra), the question was whether Regulation 5(e) and (f) and Regulation 8 of the NCTE (Application for Recognition, etc.) Regulations, 1995, framed by the NCTE were ultra vires the provisions of the NCTE Act, 1993. The appellant claiming to be a Christian Minority Teacher Training Institute made an application to the Regional Director, NCTE, Bangalore, seeking permission for starting course in Elementary Education Training. The respondents sent a letter to the appellant, stating that unless the State Government issued a "No Objection Certificate", their application shall be treated as incomplete and shall not be considered. The appellant filed a writ petition

before the Hon'ble High Court of Karnataka for a direction to the Regional Director, NCTE, to consider its application without insisting upon a NOC from the State Government. Referring to an earlier decision of the Hon'ble High Court, wherein the said Regulations had been declared ultra vires the NCTE Act, the learned Single Judge of the Hon'ble High Court allowed the writ petition. On appeal, the Division Bench set aside the judgment of the learned Single Judge. Hence, the appellant filed the Civil Appeal before the Hon'ble Supreme Court. Dismissing the Civil Appeal and connected writ petitions, the Hon'ble Supreme Court held that the impugned Regulations were perfectly valid and intra vires the Act.

- (iii) In **State of Maharashtra Vs. Sant Dnyaneshwar Shikhan Shastra Mahavidyalaya & others** (supra), the Hon'ble Supreme Court considered a question pertaining to power and functions of NCTE vis-à-vis the State Government/University in the matter of recognition for starting Teacher's Training and Education Courses. Taking into account the fact about the NCTE having been established under the NCTE Act, 1993 enacted by the Parliament and the Central Government having considered the matter at national level, it was held by the Hon'ble Apex Court that the final authority in the matter lay with NCTE.

- (ii) In **Ranu Hazarika & others Vs. State of Assam and others** (supra), the State of Assam amended the Assam Elementary Education (Provincialization) Rules, 1977 w.e.f. 10.11.2005. By the said amendment, instead of making the requirement of a diploma in teachers training mandatory, as stipulated in the Regulations framed by the NCTE, it was provided that preference to trained candidates would be given. Schedule-I to the amended Rules stipulated that such preference would be in the form of 10 additional marks to trained teachers in the selection process for recruitment of teachers. Having carried out the said amendment, an employment notice was issued in the newspapers inviting applications for filling up 5372 posts of Assistant Teachers. The prescribed minimum educational qualification was higher secondary, with preference to trained candidates. Being aggrieved by the said Amendment Rules, 2005, a group of writ petitions were filed on the grounds, *inter alia*, that the amendment was not in conformity with the Statutory Regulations framed by the NCTE. A prayer for setting aside the Advertisement was also made. While striking down the Amendment Rules 2005, the Hon'ble High Court observed that since the Amendment Rules 2005 were in force when the Advertisement was issued, if the State was inclined to

complete the recruitment process, it might be completed in terms of the Advertisement. Being aggrieved with the said observation made by the Hon'ble High Court, the appellants filed Civil Appeals. The Hon'ble Supreme Court allowed the Civil Appeals and set aside the said leave granted by the Hon'ble High Court to the State to complete the selection process in terms of the employment notice.

6. *Per contra*, Mr.R.K.Jain, the learned counsel appearing for respondent no.4-SDMC submitted that the contention as raised by the applicant in the present proceeding has already been overruled by the Tribunal in **Seema Vs. Delhi Subordinate Services Selection Board and others**, TA No.1204 of 2009(decided on 2.11.2010). Following the decision in **Seema Vs. Delhi Subordinate Services Selection Board and others** (supra), the Tribunal also dismissed three other similar O.As.501 to 503 of 2012 (**Prem Devi, etc. Vs. The Chief Secretary, Govt. of NCT of Delhi, etc.**), decided by a common order dated 10.1.2014. The view taken by the Tribunal has also been upheld by the Hon'ble High Court of Delhi in W.P. (C) No.2313 of 2014(**Anita Vs. Govt. of NCT of Delhi and others**), which was filed against the Tribunal's order dated 10.1.2014 passed in OA No.501/2012. Thus, the subject-matter of the present O.A. is squarely covered by the aforesaid decisions of the Tribunal and of the Hon'ble High Court. Therefore, the present O.A. is liable to be dismissed.

7. We have carefully gone through the decisions of the Tribunal and of the Hon'ble High Court of Delhi relied on by Mr.R.K.Jain, the learned counsel appearing for the respondent-SDMC.

8. In **Sachin Gupta Vs. Delhi Subordinate Services through its Chairman & Ors**, 152(2007)DLT 378, the challenge before the Hon'ble High Court of Delhi was to the Recruitment Rules for appointment of Assistant Teachers (Primary) in the GNCTD and MCD. Both the GNCTD and MCD had framed the Recruitment Rules which were identical. Apart from prescribing the essential eligibility criteria with regard to the minimum and maximum eligibility age, the Recruitment Rules also prescribed the passing of Hindi subject at Secondary level, and minimum 50% marks in the SSSCE. Upholding the said Recruitment Rules, the Hon'ble High Court of Delhi observed that the candidates selected have to shoulder the responsibility of imparting values of academic excellence in young impressionable minds. Considering the nature of the responsibility to be thrust on the candidates, the requirement of 50% marks in the Senior Secondary Examination was not a tough benchmark at all. Further Article 14 mandates that equals are to be treated alike, but it does not prohibit classification. Relying on the decision of the Hon'ble Supreme Court in **State of West Bengal Vs. Anwar Ali Sarkar**, 1952 CriLJ 510, where it was held that classification is permissible, if the same is founded on an intelligible differentia and the said differentia has a rational relation to the object sought to be achieved, the Hon'ble High Court took the view that the

qualification of 50% of marks in Senior Secondary Examination fulfilled the above test as it ensures that the best from amongst the young, dedicated and meritorious candidates are selected for the post of teachers and the same cannot be faulted by the petitioners.

9.           **In Municipal Corporation of Delhi & ors. Vs. Seema** [W.P. (C) No.1376 of 2010), decided on 17.8.2009, the Hon'ble High Court of Delhi has held that the SC/ST candidates and OBC candidates cannot form one homogenous group and the question of parity or equality of SC/ST with OBC candidates does not arise.

9.1           It is pertinent to mention here that W.P. (C) No.1376 of 2010 was filed against the Tribunal's order dated 17.8.2009 passed in T.A.No.1204 of 2009, by which the respondents were directed to accede to the claim of the applicant as an OBC candidate for relaxation of 5% marks in Senior Secondary School Certificate Examination and to appoint her on the basis of merit in the OBC category. Allowing W.P. (C) No.1376 of 2010 and setting aside the Tribunal's order dated 17.8.2009, the Hon'ble High Court of Delhi remanded TA No.1204 of 2009 to the Tribunal for considering certain other grounds urged by the petitioner in her TA, vide judgment dated 17.8.2009(ibid).

9.2           TA No.1204 of 2009 was again reconsidered by the Tribunal in pursuance of the Hon'ble High Court's direction contained in the order dated 17.8.2009(ibid). After considering the grounds urged by the applicant and examining the relevant provisions of the NCTE Act and Regulations framed

by the NCTE and the Recruitment Rules, the Tribunal dismissed the said T.A., vide judgment dated 2.11.2010, the operating part of which is reproduced below:

“To conclude, the Hon’ble High Court while remanding this TA to the Tribunal has already conclusively rejected the ground of any claimed parity, for purposes of equality of OBC candidates with the SC/ST ones, on the ground that they do not form one homogenous group and cannot be treated at par with the SC/ST candidates. Having considered at length the relevant provisions of the NCTE Act and the 2001/2003 Regulations prescribing the minimum qualifications for appointment of Primary Teachers vis-à-vis the RRs of the MCD, 2007 duly framed under the DMC Act, we do not find the present case as one of constitutional inconsistency or repugnance. We have also been guided in the matter by the law already laid as regards the basic validity of the MCD RRs vis-à-vis the NCTE Act and Regulations and several allied aspects by the Hon’ble High Court in Sachin Gupta’s case and ors (supra). The contentions raised in Ground B or the allied Grounds C, D and E of the TA of there being any repugnance to the NCTE Act or any usurpation on the part of the MCD of the powers of the NCTE are not found to be tenable. Resultantly, on a reconsideration of the matter in accordance with the remand directions of the Hon’ble Delhi High Court, the TA is found to be devoid of merit and dismissed hereby with no orders as to costs.”

10. In **Prem Devi, etc. Vs. The Chief Secretary, Govt. of NCT of Delhi, etc.** (supra), the applicants were OBC candidates for recruitment to the post of Teacher (Primary) pursuant to the Advertisement No.08/2007. They had scored less than 50% marks in Senior Secondary School Certificate Examination. They claimed relaxation of 5% marks in Senior Secondary School Certificate Examination as was given to SC,ST and PH candidates. The Tribunal took the view that the subject-matter of O.A.Nos.501 to 503 of 2012 filed by Prem Devi and others was squarely

covered by the decisions referred to in the preceding paragraphs. Accordingly, the Tribunal dismissed the O.As., vide judgment dated 10.1.2014.

11. W.P. (C) No.2313 of 2014 filed by Anita (applicant in OA No.501 of 2012) was dismissed and the Tribunal's order dated 14.1.2014(ibid) was upheld by the Hon'ble High Court of Delhi, vide judgment dated 1.8.2014.

12. The decisions cited by the learned counsel appearing for the applicant, being distinguishable on facts, are of no help to the case of the applicant,

13. In the light of what has been discussed above, we do not find any merit in the O.A. Thus, the O.A., being devoid of merit, is dismissed. No costs.

**(PRAVEEN MAHAJAN)**  
**ADMINISTRATIVE MEMBER**

**(RAJ VIR SHARMA)**  
**JUDICIAL MEMBER**

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