

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.3457, 3634 , 3635 and 3661 OF 2015 AND O.A.NO.665 OF 2016

New Delhi, this the 15th day of November, 2017

CORAM:

**HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER
AND**

HON'BLE MS. PRAVEEN MAHAJAN, ADMINISTRATIVE MEMBER

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In OA No.3457/15:

1. Raj Kumar
Age-29 years
Designation : unemployed
S/o Sh. Tej Singh
R/o –Vill. Dariyapur
Teh. & Distt. Dholpur
Rajasthan
 2. Harbilash Jatav
Age-33 years
Designation: unemployed
S/o Sh. Rambharose
R/o –Vill. Bhim Nagar Sarmathura,
District & Tehsil-Dholpur,
Rajasthan
- Applicants

(By Advocate: Dr.Vijendra Mahndiyan)

Vs.

1. Delhi Subordinate Services Selection Board,
FC-18, Institutional Area, Karkardooma,
Delhi-110302
Through its Secretary/Chairman
 2. Govt. of NCT of Delhi
Through its Chief Secretary
New Secretariat, I.P. Estate,
New Delhi.
- ...Respondents

(By Advocate: Shri Ramesh Shukla, proxy for Shri Vijay Pandita and
Ms.Rashmi Chopra)

In O.A. No. 3634/2015:

Mahesh Kumar Verma

Age-28 years

Designation : employed

S/o Sh. Puran Mal Bunker

R/o-Vill. & Post : Ghasipura,

Teh.Shahpura Dist. Jaipur, Rajasthan

(By Advocate: Dr.Vijendra Mahndiyan)

...Applicant

Vs.

1. Delhi Subordinate Services Selection Board,
FC-18, Institutional Area, Karkardooma,
Delhi-110302
Through its Secretary/Chairman

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

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Respondents

(By Advocate: Shri Ramesh Sukla, proxy for Shri Vijay Pandita, Shri K.M.Singh and Ms.Rashmi Chopra)

In O.A.No.3635/15:

Birudala Swapna

Age-29 years

Designation-employed

W/o Sh. Birudula Bhaskara Rao

R/o -Type 1-E-3/2,

Police Station Defence Colony,

New Delhi-110049.

...Applicant

(By Advocate: Dr.Vijendra Mahndiyan)

Vs.

1. Delhi Subordinate Services Selection Board,
FC-18, Institutional Area, Karkardooma,
Delhi-110302
Through its Secretary/Chairman

2. Govt. of NCT of Delhi

Through its Chief Secretary
New Secretariat, I.P. Estate,
New Delhi.

...Respondents

(By Advocate: Shri K.M.Singh and Ms.Rashmi Chopra)

In OA No.3661/15:

Ramesh Kumar Shokariya
Age 28 years
Designation –employed
S/o Sh. Jagdish Prasad
R/o Basant Vihar Colony,
Village- Ajeetgarh, Tehsil- Shri Madhopur
District-Sikar, Rajasthan.

...Applicant

(By Advocate: Dr.Vijendra Mahndiyan)

Vs.

1. Delhi Subordinate Services Selection Board,
FC-18, Institutional Area, Karkardooma,
Delhi-110302
Through its Secretary/Chairman

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

...Respondents

(By Advocate: Ms.Rashmi Chopra)

In O.A. No. 665/2016:

Rahul Verma
Age-30 years
Designation : unemployed
S/o Sh. Rattipal Verma
R/o-Village-Churi, Post-Banethi,
District – Jaipur, Rajasthan.
(By Advocate: Dr. Vijendra Mahndiyan)

...Applicant

Vs.

1. Delhi Subordinate Services Selection Board,

FC-18, Institutional Area, Karkardooma,
Delhi-110302
Through its Secretary/Chairman

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

...Respondents

(By Advocate: Shri K.M.Singh)

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ORDER

Per RAJ VIR SHARMA, MEMBER(J):

We have carefully perused the pleadings of the parties and have heard Dr.Vijendra Mahndiyan, the learned counsel appearing for the applicants, and Mr.K.M.Singh, Mr.Ramesh Shukla, proxy for Shri Vijay Pandita, and Ms.Rashmi Chopra, the learned counsel appearing for the respondents.

2. All these five Original Applications involving common questions of law and fact have been heard together, and we propose to dispose of the same by this common order.

3. In these O.As., the applicants have prayed for issuance of a direction to the respondents to consider their candidatures for selection and recruitment to the post of Staff Nurse (Post Code 77/09 of Advertisement No.004/2009) and to issue letters appointing them to the post of Staff Nurse in the Health & Family Welfare Department, Government of NCT of Delhi on the basis of their merit positions in the list of successful SC candidates prepared pursuant to the selection conducted by the respondents in respect of Post Code 77/09 of Advertisement No.004/2009..

4. Brief facts giving rise to the O.As. are that respondent no.1-Delhi Subordinate Services Selection Board (DSSSB), vide Advertisement No.004/2009 (Post Code 77/09), invited applications from eligible candidates for recruitment to the post(s) of Staff Nurse in the Health & Family Welfare Department, Government of NCT of Delhi. The Advertisement notified the total number of vacancies as 1802(UR-940, OBC-503, SC-279, ST-140 including PH (OH-OL)-19, EXSM-186). The applicants, having fulfilled the eligibility criteria, responded thereto and applied for selection and recruitment as Scheduled Caste (SC) candidates. In terms of the Advertisement, they also submitted copies of educational certificates, and SC certificates claiming reservation benefits. The respondent-DSSSB issued Admit Cards mentioning the applicants as SC candidates to appear in the recruitment examination. Accordingly, the applicants appeared in the recruitment examination. As per the result of the recruitment examination declared by the respondent-DSSSB, the applicants were declared successful in the recruitment examination and their names appeared in the list for SC category candidates. The applicants secured more marks than that of the last selected SC candidate. When no offers of appointment were issued to them, the applicants made enquiry with the respondent-DSSSB and came to know that they were not considered as SC candidates because the SC certificates, on the basis of which they applied for selection and claimed reservation benefits as SC candidates, were issued by authorities other than authorities of the State/GNCT of Delhi. Having

secured less marks than that of the last selected UR category, they were not included in the list of selected candidates of UR category.

4.1 It is the case of the applicants that one Km.Pinki, an SC candidate of the recruitment examination for Post Code 77/09 of Advertisement No.04/2009, filed O.A.No.1687/2011 (**Km.Pinki Vs. The Secretary, Delhi Subordinate Services Selection Board and others**) challenging the action of the respondent –DSSSB in not considering her as an SC candidate in view of her having claimed reservation benefits on the basis of SC Certificate issued by authority other than authority of Government of NCT of Delhi, and in not finally selecting/nominating her for appointment as an SC candidate in spite of her having secured more marks than that of the last selected SC candidate. The Tribunal, vide order dated 15.5.2014, allowed the O.A. and directed the respondents to consider the applicant for appointment to the post of Staff Nurse under SC category as per her merit position, and that on such appointment, she would be entitled for all consequential benefits, except back wages.

4.2 One Shri Vivek Kumar Khangar, also an SC candidate of the recruitment examination for Post Code 77/09 of Advertisement No.04/2009, filed O.A.No.1123 of 2013 (**Shri Vivek Kumar Khangar Vs. Chief Secretary and another**) . The Tribunal allowed the said O.A. and granted the same reliefs as granted to the applicant in O.A.No.1687/2011 (supra).

4.3 O.A.Nos.3304 of 2013(**Samay Singh and four others Vs. Govt. of NCT of Delhi and another**), 2889 of 2014(**Lala Ram Bairwa Vs.**

DSSSB and another), and 1530 of 2015 (**Umesh Kumar Vs. Delhi Subordinate Services Selection Board and another**) were also filed by some other SC candidates of the recruitment examination for Post Code 77/09 of Advertisement No.04/2009 claiming same benefits as extended to the applicants in O.A.No.1687/2011 and O.A.No.1123 of 2013 (cited supra). The Tribunal disposed of the said O.As. in 2014 and 2015 with direction to the respondents to consider the claim of the applicants in the light of the judgments referred to in the orders and to take appropriate decision.

4.4 It has been emphatically asserted by the applicants that in compliance with the aforesaid orders, the respondent-DSSSB has already considered the claims of the applicants in those cases and selected and nominated them for appointment to the post of Staff Nurse (Post Code 77/09, Advertisement No.004/2009). Accordingly, the applicants in those cases have been appointed to the post of Staff Nurse.

4.4.1 The applicants have filed a copy of the Result Notice No.322 dated 21.8.2015 issued by the respondent-DSSSB in compliance with the Tribunal's order dated 13.8.2014 passed in OA No.3304 of 2013 (**Sh.Samay Singh & Ors. Vs.GNCTD**) declaring them to have been selected for the post of Staff Nurse (Post Code 77/09, Advertisement No.004/2009). The said Result Notice No.322, dated 21.8.2015, is quoted below in extenso:

“GOVERNMENT OF NCT OF DELHI
DELHI SUBORDINATE SERVICES SELECTION BOARD
FC-18, INSTITUTIONAL AREA, KARKARDOOMA, DELHI-92
No.F.3(9 to 13)/DSSSB/Result/2010-11 dated
RESULT NOTICE NO.332

**STAFF NURSE POST CODE 77/09
HEALTH & FAMILY WELFARE DEPTT.
GOVT. OF NCT OF DELHI**

In compliance of orders of Ld.CAT dated 13.08.2014 as passed in OA No.3304/2013 case titled – Sh. Samay Singh & Ors. Vs. GNCTD the candidates with following particulars have been provisionally selected to the post of Staff Nurse, Health & Family Welfare Department, GNCTD in the Pay Scale of Rs.9300-34800/-GP-4600/- under the post code-77/09.

The vacancies had been advertised by the Board as per requisition of Health & Family Welfare Department, G.N.C.T. of Delhi vide advertisement No.04/2009, with closing date of receipt of application as 15.01.2010.

POST CODE 77/09 (SC CATEGORY)

Sl. No.	Merit No.	Name of Candidates	Roll No	Category	D.O.B.	Marks
1	2183	SAMAY SINGH BAIRWA	00413912	SC	12.08.1987	82/200
2	2346	PUSHPENDRA DEWATWAL	00416883	SC	06.09.1987	81/100

The selection of the above candidates under SC category shall be further subject to the fulfilment of all eligibility conditions as prescribed by the statutory RRs & terms and conditions of advertisement, as indicated in the advertisement inviting applications and also subject to thorough verification of their identity with reference to their photographs, signatures, handwriting etc. On the application forms, admission cards, attendance sheet, etc. The candidature of the candidates is liable to be cancelled by the user Department also, in case the candidate is not found fulfilling the eligibility conditions or any other genuine reasons. The competent authority of the user Department shall arrange to verify the correctness of information/documents as furnished in the application forms after verification of the same from original documents. Mere inclusion of name in the result notice does not confer any right upon the candidates over the post.

The appointing authority shall also arrange to verify genuineness/validity of SC Certificate of the candidate from certificate issuing authority before appointment.

While every care has been taken in preparing the result, the DSSSB reserves the right to rectify errors and omissions, if any.

This issues with the approval of the Competent Authority.

Deputy Secretary (CC-II)

No.F.3(9 to 13)/DSSSB/Result/2010-11/205 Dated 21.08.2015

Copy for information and further necessary action to:

1. Sr. P.A. to the Chairman, DSSSB
2. Sr. P.A. to Member II, DSSSB
3. PA to the COE, DSSSB

4. Dy. Secretary (P&P) DSSSB in duplicate for intimation to the user Department.
5. Dy. Secretary(Legal), DSSSB
6. System Analyst with the request to update the result on the official website of the Board.
7. Reception office
8. Notice Board
9. Office order file.

Deputy Secretary”

4.6 It has been asserted by the applicants that they being similarly placed as applicants in the above referred cases, representations were made by them in 2015 and 2016 requesting the respondents to consider their cases and take appropriate decision for their selection and appointment to the post(s) of Staff Nurse as per their merit positions in the list of SC candidates but the respondents did not pay any heed to the same.

5. In the above context, it has been submitted by Dr.Vijendra Mahndiyan, the learned counsel appearing for the applicants that the inaction of the respondents and/or denial of consideration of their cases by the respondents being discriminatory is violative of Articles 14 and 16 of the Constitution of India, and, therefore, the direction, as prayed for in the O.As., should be issued to the respondents.

6. *Per contra*, it has been contended by Mr.K.M.Singh, the learned counsel appearing for the respondents that the claims of the applicants are clearly hit by the doctrine of delay and laches. Referring to the counter reply, it has been submitted by Mr.K.M.Singh that the applicants were in the zone of consideration for selection under SC category. But on scrutiny of their dossiers including the SC certificates submitted by them, it

was found that the SC certificates submitted by the applicants were issued by authorities other than authorities of the State/Government of NCT of Delhi and, thus, the applicants, being outsider SC candidates, were not eligible for the benefit of reservation for appointment to posts under the Government of NCT of Delhi, as per the decision of the Hon'ble Supreme Court dated 4.8.2009 in **Subhash Chandra & Anr. Vs. Delhi Subordinate Services Selection Board**, Civil Appeal No.5092/09(Arising out of SLP(Civil) No.24327 of 2005). Therefore, the applicants were considered as UR category candidates. Having scored less marks than that of the last selected UR category candidate, they were not selected as UR category candidates.

7. After having given our thoughtful consideration to the rival contentions, we have found no substance in the contentions of the learned counsel appearing for the respondents.

8. It has not been refuted by the respondents that the orders passed by the Tribunal in the cases referred to in paragraphs 4.1 to 4.3 of this order have been complied with by them and appropriate decisions taken by them in favour of the applicants therein. From the Result Notice No.322 dated 21.8.2015 issued by the respondent-DSSSB in compliance with the Tribunal's order dated 13.8.2014 passed in OA No.3304 of 2013 (**Sh.Samay Singh & Ors. Vs.GNCTD**) , which has been quoted in extenso in paragraph 4.4 of this order, it transpires that the respondent-DSSSB has selected and nominated two SC candidates for appointment to the post(s) of Staff Nurse.

It is, thus, clear that the orders passed by the Tribunal in the cases referred to above have attained finality and the respondents have implemented the same. Therefore, they cannot now be allowed to justify their action in the cases of the applicants of the present O.As. by taking the same plea which has repeatedly been overruled by the Tribunal in the cases referred to by us in the preceding paragraphs. The facts and circumstances of the present case being same and the applicants herein being placed at par with the applicants of the cases referred to in the preceding paragraphs, we are of the considered view that the orders passed by the Tribunal in the cases referred to above have to be construed as *in rem* and not in *personam* . Therefore, the respondents ought to have also considered the cases of the applicants of the present O.As. and other similarly placed persons for selection and recruitment in order of their merit positions under SC category while considering and taking decisions in favour of the applicants of the cases cited supra. The applicants and other similarly placed persons and the applicants of the cases referred to above form one and the same class. The inaction on the part of the respondents and/or denial of consideration of the cases of the applicants of the present O.As., along with the applicants in the cases referred to above, amount to invidious discrimination being meted out to the applicants of the present O.As. and other similarly placed persons. In this connection, it would be apposite to refer to the decisions of the Hon'ble Supreme Court in **Indrapal Yadav Vs. Union of India**, 1985(3) SCR 837, and in **State of Uttar Pradesh & others Vs. Arvind Kumar Srivastava**

and others, Civil Appeal No.9849 of 2014 [arising out of SLP (Civil) No.18639 of 2012], decided on 17.10.2014. In **Indrapal Yadav Vs. Union of India** (supra), it has been observed by the Hon'ble Supreme Court that those who could not come to Court need not be at a comparative disadvantage to those who rushed in here, and if they are otherwise similarly situated, they are entitled for similar treatment, if not by anyone else, at the hands of the court. In **State of Uttar Pradesh & others Vs. Arvind Kumar Srivastava and others** (supra) it has been observed by the Hon'ble Supreme Court that normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

9. In the light of our above discussions, we direct the respondents to consider the selection, or otherwise, of the applicants of the present O.As. and other similarly placed candidates for the post of Staff Nurse (Post Code 77/09, Advertisement No.004/2009) by treating them as SC candidates on the basis of their merit positions in SC Category and take appropriate

decision by passing a reasoned order and communicate the same to all concerned within a period of three months from today. However, considering the facts and circumstances of the case, we order that in the event of their selection and appointment, the applicants and other similarly placed persons shall only be entitled to the service benefits from the date(s) of their joining the service.

13. Resultantly, the O.As. are allowed to the extent indicated above. No costs.

(PRAVEEN MAHAJAN)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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