

**Central Administrative Tribunal
Principal Bench: New Delhi**

OA No.1574/2013

Reserved on: 19.02.2016
Pronounced on: 23.08.2016

**Hon'ble Shri Sudhir Kumar, Member (A)
Hon'ble Shri Raj Vir Sharma, Member (J)**

Mr. Shri Praksh Yadav
Aged about 37 years (D.O.B.05.03.1976)
S/o Shri Nand Lal
R/o 1105^a, HBC, Sector-15,
Hisar-Haryana. -Applicant
(By Advocate: Ms.Deepika Tiwary for Shri H.K.Chaturvedi)

Versus

1. Delhi Subordinate Services Selection Board,
Through its Chairman,
F-18, Karkardooma Institutional Area,
New Delhi.
2. Directorate of Education,
Govt. of NCT of Delhi
Old Secretariat, Delhi-54.
3. Govt. of NCT Delhi
Through: Chief Secretary,
New Secretariat, Near ITO,
I.P. Estate, New Delhi. ...Respondents.
(By Advocates: Ms. Harvinder Oberoi)

ORDER

Per Sudhir Kumar, Member (A):

The applicant of this OA had applied for appointment to the post of TGT (Natural Science), Post Code No.07/10, under Respondent Nos. 2 and 3, in response to the Advertisement brought out by the respondents in this regard. He is aggrieved that in the Result Notice dated 15.03.2011, the last selected OBC

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category candidate was having much lower marks than him, and yet his name had not been considered by the respondents, as being an outside OBC candidate, from a place other than Delhi. He has, therefore, prayed that this Tribunal may set aside the order passed by the Respondent No.1, which had actually been passed in compliance of the order in his earlier OA No.1516/2011, but which he had assailed to be illegal, and liable to be set aside and quashed.

2. The applicant had been allowed to appear at the examination for the post of TGT (Natural Science), Post Code No.07/10 on 19.06.2010, on the strength of an OBC Certificate issued to him by the Tehsildar, Hisar, Haryana. He obtained 156 marks, but his name was not finally included in the result. He had then filed the aforementioned OA No.1516/2011, which this Tribunal had disposed off through order dated 07.12.2012, along with five connected cases. Earlier those cases had been adjourned *sine die* on the ground that the Hon'ble Supreme Court is seized of the issue involved, but the Bench had on that day had taken notice of the Full Bench's judgment of the Hon'ble Delhi High Court in the cases of (i) **Deepak Kumar & others v. District & Sessions Judge, Delhi & others** (W.P. (C) No.5390/2010 with connected petitions, (ii) **Sarv Rural and**

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Urban Welfare Society, Sandeep Soni vs. Union of India & Others and (iii) **Delhi Jal Board & another v. A.K. Awasthi & others**, 192 (2012) DLT 602 (Full Bench), and in particular Paras 65 to 69 thereof, and had disposed off those connected cases, with a direction to the Respondent No1-DSSSB to re-examine the cases of the applicants, and, directing that if their cases are covered by the Delhi High Court's Full Bench judgment, they shall be recommended for appointment, subject to fulfilment of other necessary conditions.

3. However, the applicant is aggrieved that the Respondent No1-DSSSB has once again rejected his candidature, because he is an outside OBC candidate, his OBC certificate having been issued by the Tehsildar, Hisar, Haryana, because of which he was not found eligible for appointment under OBC category candidate, and as per the existing policy of the Govt. of N.C.T. of Delhi, at the time of examination, the benefit of OBC category reservations was not admissible to the OBC outsider candidates, and instead they were to be considered under the UR category only. It was further pointed out that the judgment of this Tribunal was applicable only to the SC and ST categories, and does not apply to the OBC category, as has been observed by the Hon'ble Delhi

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High Court in Paras 56, 57 & 58 of the **Deepak Kumar & others**

v. **District & Sessions Judge, Delhi & others** (supra).

4. The applicant has assailed the stand taken by the Respondent No.R-1-DSSSB in the impugned order, alleging discrimination, and infringement of his fundamental rights guaranteed under Article 16 of the Constitution, on the main ground that in the judgment of the Hon'ble Supreme Court in **S. Pushpa & Ors. vs. Shivachanmugalevu & Ors.** (Hon'ble 3

Judges' Bench, Civil Appeal No.6-7 of 1998) it had been held that the Scheduled Castes and Scheduled Tribes were eligible for all benefits in U.T., irrespective of their nativity. He has further taken the ground that the judgment in **Subhash Chandra & another vs. DSSSB & others** (Appeal (C) No.5092/2009) is not even correct law, as the law having been declared by the Hon'ble Two Judges' Bench, it could not have been against the decision in **S.Pushpa & Ors. vs. Shivachanmugalevu & Ors.** (supra). He has submitted that there is no other efficacious remedy available to him, except filing of this OA. In the result, he has prayed for the following reliefs:

"(a) Set aside the order No.F1(220)/CC-III DSSSB/2013/496 dt. Nil issued by DSSSB and direct respondent No.1 to consider the higher marks of the applicant and correct the select list result notice No.17 dt. 15.05.2011 for OBC Category and

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recommend the user department for issue of appointment;

(b) direct the respondent 2 to issue appointment for post of TGT (Natural Science) Post Code No.07/10, in Directorate of Education; retrospectively and also give seniority retrospectively to the applicant along with other consequential benefits;

(c) Pass any other or further orders, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case and for appointment of applicant FOR the post of TGT (Natural Science) Post Code No.07/10, in Directorate of Education."

5. The interim relief, as prayed for by him through Para 9, was never considered for being granted.

6. The respondents filed their counter reply on 30.09.2013, in which it was submitted that the judgment in **Subhash Chandra & another v. DSSSB & others** (supra) has been referred to a Larger Bench of the Hon'ble Supreme Court, and till the same is not struck down, it holds the field. It was further pointed out that in the Advertisement, as brought out by the Respondent No R-1 itself, it had been clearly indicated that the OBC candidates seeking benefit of reservation should submit their OBC certificates issued by the competent authority of Govt. of NCT of Delhi. It was further pointed out that the issue, as has been raised in the present OA, had been raised by the applicant in the

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aforementioned earlier OA No.1516/2011 also, and therefore, the present OA is barred by the principles of *res judicata*.

7. It was further submitted that the applicant has wrongly presented the facts of the case because the judgment in **S.Pushpa & Ors. vs. Shivachanmugalevu & Ors.** (supra) relates only to the SC/ST candidates, and that the issue of reservation for the OBC outsider candidates was duly discussed with respect to the judgment of the **S.Pushpa & Ors. vs. Shivachanmugalevu & Ors.** (supra) by the Hon'ble High Court in the judgment in **Deepak Kumar & others v. District & Sessions Judge, Delhi & others** (supra), and that petitions of the outsider OBC candidates were not allowed, as per the observation in Paras 56, 57 & 58 by the Hon'ble Delhi High Court. All other averments were denied as false, and it was prayed that the OA is liable to be dismissed.

8. Heard. Both the learned counsels for the parties advanced their arguments more or less on the lines of their pleadings, as already recorded in detail above. Learned counsel for the applicant emphasised that in view of the order passed in **Subhash Chandra & another v. DSSSB & others** (supra) there is no need to await the outcome of the reference to the Larger Bench of the Hon'ble Supreme Court, and that relief ought to be

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granted to the applicant. In his reply arguments, learned counsel for the respondents also emphasised on two points, firstly that the present OA was barred by the principles of *res judicata*, and secondly that in Paras 56,57 & 58 of the judgment in **Deepak Kumar & others v. District & Sessions Judge, Delhi & others** (supra), the Delhi High Court had clearly disallowed the petitions of the outsider OBC candidates.

9. With benefit, we may reproduce the said Paras 56, 57 & 58 of the Delhi High Court judgment in **Deepak Kumar & others v. District & Sessions Judge, Delhi & others** (supra) as follows:

"56. The Supreme Court had occasion to consider the claim of reservation for OBCs under the Constitution in Veena's case. The Court was alive to the fact that OBCs are notified in respect of each State. The Court had to consider the facts from an almost identical fact situation where candidates from one State claimed to be OBCs in another State or in another Union Territory. Veena (supra) pertained to the Union Territory of Delhi. The Court held that the OBC certificate issued by one State authority or in respect of a resident of a State with his origins in that State would be inadmissible in another State or Union Territory, for purposes of employment etc., and that the candidate cannot claim be an OBC in the other State. The Court pertinently held as follows:

"6 . Castes or groups are specified in relation to a given State or Union Territory, which obviously means that such caste would include caste belonging to an OBC group in relation to that State or Union Territory for which it is specified. The matters that are to be taken into consideration for

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specifying a particular caste in a particular group belonging to OBCs would depend on the nature and extent of disadvantages and social hardships suffered by that caste or group in that State.

However, it may not be so in another State to which a person belonging thereto goes by migration. It may also be that a caste belonging to the same nomenclature is specified in two States but the considerations on the basis of which they had been specified may be totally different. So the degree of disadvantages of various elements which constitute the data for specification may also be entirely different. Thus, merely W.P.(C) 5390/10, 7717/10, 7878/10, 8368/10, 816/11, 1205/11, 1513/2011, 1713/11, 3278/11, & 3223/11 because a given caste is specified in one State as belonging to OBCs does not necessarily mean that if there be another group belonging to the same nomenclature in another State, a person belonging to that group is entitled to the rights, privileges and benefits admissible to the members of that caste. These aspects have to be borne in mind in interpreting the provisions of the Constitution with reference to application of reservation to OBCs."

57. It is also clear that in the case of OBCs, the considerations which weigh with the executive government in issuing notifications are different than in the case of the Scheduled Castes and Tribes. The power to issue Notifications is not rigidly conditioned as in the case of Articles 341 and 342; Parliament also does not have exclusive jurisdiction. The degree of backwardness in the case of OBCs is of an entirely different kind than in the case of Scheduled Castes and Tribes. In view of the above discussion, this Court is of the opinion that the above three writ petitions W.P.(C) 816/2011, 1713/2011 and 8368/2010 have to fail.

58. In this case too, the petitioners had applied for appointment to the post of LDC pursuant to the advertisement issued by the District Judge. The first two petitioners are members of Other Backward Classes (OBC) but whose castes are notified in

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relation to other states and whose fathers had shifted residence to Delhi. The third and fourth petitioners (Sandeep Kumar and Alaxender Toppo) belong to Scheduled Tribes, notified as such in other states such as Haryana and Bihar. The fifth petitioner is a member of a Schedule Castes notified in Bihar. Their common case is that all of them claimed that their applications were processed and they were permitted to W.P.(C) 5390/10, 7717/10, 7878/10, 8368/10, 816/11, 1205/11, 1513/2011, 1713/11, 3278/11, & 3223/11 appear in the written examination, subsequently in the typing test and also in the interview (the latter being held on 13.05.2010). It is also stated that they were issued with letters of appointment in June, 2010, and they underwent medical examination. One petitioner i.e. Radhey Shyam even resigned from his existing service."

10. In view of above findings of law, as laid down by the Hon'ble Delhi High Court, it is clear that when the Advertisement, as had been brought out by the respondents, had clearly stated that the OBC candidates from outside of Delhi will not be eligible for employment, the applicant cannot be allowed to claim and avail of any relief beyond what was contained in the Advertisement, the contents of which are binding on both the sides. If many other candidates from outside Delhi were aware of the clear-cut warning provided in the Advertisement itself, and chose to follow the prescription of the Advertisement strictly, in accordance with law of the land, and they had not applied for the said post, then the reliefs, as prayed for in the present O.A., cannot be granted to the applicant.

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11. We also do not find any merit in the arguments of learned counsel for the applicant that any issue determined in respect of SCs and STs would *ipso facto* apply *mutatis mutandis* to OBC candidates also. The very basis of the SCs' & STs' reservation is quantitative, and the OBC reservation is qualitative, available only to those below the creamy layer, as per the Supreme Court's nine-Judges' Bench judgment in **Indra Sawhney v. Union of India**, 1992 Supp (3) SCC 210 (217).

12. We find merit in the submission of the learned counsel for the respondents that the same issue cannot be agitated by the applicant again and again, taking precious time of this Court, and therefore, this OA ought to have been rejected at the threshold, as being barred by the principle of *res judicata*. But this Tribunal had still entertained this case only due to the fresh impugned order having been passed by the respondents, which had given a modicum of a fresh cause of action in the hands of the applicant.

13. In the result, we find no merit in the present OA, and the same is dismissed, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

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