

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-2644/2016

New Delhi this the 8th day of August, 2016.

Hon'ble Mr. Shekhar Agarwal, Member (A)

Hon'ble Mr. Raj Vir Sharma, Member (J)

Naresh Kumar Tawar, Roll No. 116233,
Aged about 37 years,
S/o Sh. Chattar Singh Tawar,
R/o H.No. 134/13,
Arya Nagar, Bahadur Garh,
Haryana. ... Applicant
(By Advocate : Sh. M.K. Bhardwaj)

Versus

Govt. of NCT of Delhi through :

1. The Chief Secretary,
Govt. of NCT of Delhi,
Delhi Secretariat, I.P. Estate, Delhi.
2. Delhi Subordinate Services Selection Board,
Through its Secretary,
FC-18, Institutional Area
Karkardooma, Delhi-110092.
3. The Director of Education,
Govt. of NCT of Delhi, Directorate of Education
Old Secretariat, I.P. Estate, Delhi. ... Respondents

ORDER(ORAL)

By Hon'ble Mr. Shekhar Agarwal, M(A)

This OA has been filed seeking the following reliefs:

- i) To declare the action of respondents in not appointing the applicant as TGT (English) as done in case of Ms. Nirmal Sagar and other similarly placed persons by including their names in the result notice issued in 2015 & 2016 as illegal and arbitrary and issue appropriate directions to the respondents to appoint the applicant to the post of TGT (English) with all consequential benefits including arrears of pay from the date of appointment of similarly placed persons.

- ii) To direct the respondents to extend the benefits of order passed in case of Nirmal Sagar, Neeta Gautam etc. by considering the case of applicant for appointment to the post of TGT (English).
- iii) To direct the respondents to consider the case of applicant for appointment to the post of TGT (English) Post Code 01/2012 by giving benefit of reservation meant for SC Category with all consequential benefits including arrears of pay from the date of appointment of similarly placed persons.
- iv) To allow the OA with cost.
- v) Any other orders may also be passed as this Hon'ble Tribunal may deem fit and proper in the existing facts and circumstances of the case.

2. Learned counsel for the applicant submitted that this case is covered by the order of this Tribunal dated 28.03.2014 passed by a co-ordinate Bench in OA-1096/2013 which is reproduced below:

“ The applicant was born in Delhi and completed her post graduation and B.Ed. while staying in Delhi. The Sub-Divisional Magistrate (SDM), Kanjhawala issued SC certificate to the applicant on the basis that she belongs to caste Khatik and her father has been issued a SC certificate from Aligarh, U.P. The applicant had applied for the post of TGT (Natural Science) (Female) pursuant to an advertisement issued by the Delhi Subordinate Services Selection Board (DSSSB) in SC category appending her certificate issued from SDM, Delhi. She was placed at serial number 356 in the merit list under SC category with 157 marks. Whereas less meritorious candidates under SC category for the same post having marks 115 have been selected and appointed, the applicant has not been issued any appointment letter. On information sought under Right to Information Act 2005, the respondents have apprised the applicant vide letter dated 16.05.2011 that she has been treated as migrant SC and was not selected on this count. The case of the applicant is that a Full Bench of the Hon'ble High Court of Delhi in Deepak Kumar & ors. Vs. District & Sessions Judge Delhi & ors., 192 (2012) DLT 602 (FD) dealt with an identical issue of migrant SC and held that even if the certificate of SC has been issued from the State but the resident has moved to Union Territory, the candidate shall get the benefit of reservation. It is prayed that in view of this judgment, the Tribunal may set aside the communication dated 16.05.2011 and direct the respondents to treat the applicants SC certificate as legal with further direction to appoint the applicant as TGT (Natural Science) (Female) with all consequential benefits.

2. The only issue in this case is whether a migrant SC will get the benefit of reservation as a SC candidate in Delhi.

3. The respondents primarily relied on the judgment of the Hon'ble Supreme Court in Subhash Chander & ors. Vs. Delhi Subordinate Services Board & ors., Civil Appeal No.5092/2009 and argued that the judgment of the Hon'ble Supreme Court in Subhash Chander's case holds the field and, therefore, the benefit of SC certificate of another State cannot be given to an outsider/ migrant candidate in Delhi.

4. In the case of Deepak Kumar (supra), the three Judge Bench of the Hon'ble Delhi High Court went into three Judge Bench decision of the Hon'ble Supreme Court in S. Pushpa and others Vs. Sivachanmugavelu and others, (2005) 3 SCC 1 and finally held as follows:

(4) The later ruling in Subhash Chandra doubted the judgment in Pushpa, holding that it did not appreciate the earlier larger Bench judgments in the correct perspective. Yet, Subhash Chandra cannot be said to have overruled Pushpa, since it was rendered by a smaller Bench of two judges. This approach of Subhash Chandra has been doubted, and the question as to the correct view has been referred to a Constitution Bench in the State of Uttaranchal case.

(5) By virtue of the specific ruling applicable in the case of Union Territories, in Pushpa, whatever may be the doubts entertained as to the soundness of its reasoning, the High Courts have to apply its ratio, as it is by a formation of three judges; the said decision did notice the earlier judgments in Marri and Action Committee. Article 141 and the discipline enjoined by the doctrine of precedent compels this Court to follow the Pushpa ruling".

5. The learned counsel for the respondents Ms. Alka Sharma, however, vehemently argued that since the issue lies before a Constitution Bench of the Hon'ble Supreme Court, this matter cannot be decided based on the judgment of the Hon'ble High Court in Deepak Kumars case (supra).

6. We have gone through the judgments of the Hon'ble Supreme Court in S. Pushpa (supra) and of the Honble High Court in Deepak Kumar (supra) and are of the view that we would be governed by the decision of the Hon'ble High Court in the case of Deepak Kumar and as such, migrant SC will also get the benefit of SC category reservation in Delhi.

7. We, therefore, set aside the communication dated 16.05.2011 and direct the respondents to treat the SC certificate of the applicant as legal and appoint her as TGT (Natural Science) (Female) with all benefits, in two months from the receipt of a copy of this order. No costs."

3. Learned counsel for the applicant stated that the applicant would be satisfied in case directions were given to the respondents to extend the benefits of the aforesaid judgment to the applicant.

4. In view of the limited prayer made by the applicant, we dispose of this OA at the admission stage itself without issuing notice to the respondents and without going into the merits of the case with a direction to the respondents to examine the case of the applicant in the light of the judgment of this Tribunal in OA No. 1096/2013. In case the applicant is found to be similarly placed as applicant in the that OA, he may be extended the same benefits as were granted to the applicant in the aforesaid OA within a period of six weeks from the date of receipt of a copy of this order. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member(A)

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