

Central Administrative Tribunal  
Principal Bench  
New Delhi

O.A.No.4033/2012

Order Reserved on: 19.09.2016  
Order pronounced on 27.09.2016

Hon'ble Shri V. Ajay Kumar, Member (J)  
Hon'ble Shri V. N. Gaur, Member (A)

Poonam Devi  
Age 28 years  
Roll No.3410145  
D/o Satbir Singh  
VPO-Bhurthala  
Tehsil-Kosli, Rewari  
Pin – 123302.

... Applicant

(By Advocate: Shri Rajesh Kumar for Shri Sachin Chauhan)

Versus

1. Govt. of NCTD  
Through the Chief Secretary  
Govt. of NCTD  
Nava Sachivalya IP Estate  
New Delhi.
2. The Secretary  
DSSSB  
FC-18, Institutional Area  
Karkardooma  
(Near Railway Reservation Centre)  
New Delhi – 110 092.
3. The Director of Education  
Directorate of Education  
Govt. of N.C.T.D., Old Secretariat  
Delhi.

.... Respondents

(By Advocate: Ms. Harvinder Oberoi)

**ORDER**

**By V. Ajay Kumar, Member (J):**

Seeking a direction to the respondents to fill up the remaining vacancies of PGT (Sanskrit)[Female] – Post Code No.34/10 notified vide Advertisement No.2 of 2010, and to consider the applicant's candidature accordingly, the OA has been filed.

2. The respondents, vide Annexure A2-Advertisement No.2 of 2010, have called for applications for selection to various posts, including for 19 posts of PGT (Sanskrit)[Female] - Post Code 34/2010 [UR-10, SC-3 and OBC-6]. The applicant applied in the OBC category by annexing the OBC certificate issued from the Haryana State along with her application form. On qualifying in Part-I, she was allowed to participate in Part-II and the results were declared on 22.08.2012 whereunder it was shown that the applicant got 89 marks in Part-II exam. The respondents, though 19 vacancies were available but selected only 9 candidates, i.e., 6 UR, 2 OBC and 1 SC, leaving 10 vacancies [4 UR, 4 OBC and 2 SC], unfilled.

3. The applicant submits that 4 OBC vacancies were unfilled and she can be considered against any of those vacancies as per her merit. The applicant further submits that even under General Category, the cut off merit, according to the applicant, was 89 marks and since the applicant also got 89 marks along with two other General candidates, her case can be considered against the said category also. The learned counsel for the applicant submits that non-filling of all the

notified vacancies, though qualified persons like the applicant and others were available, is illegal and arbitrary.

4. Per contra, the respondents submit that on scrutiny of the applicant's documents, it was found that she has submitted OBC certificate issued from the State of Haryana and accordingly, she is an OBC-Outsider. Hence, she is not entitled to get the benefit of OBC Certificate, being not possessing the OBC certificate issued by the competent authority of Govt. Of NCTD and accordingly her candidature was rejected being as OBC-Outsider. It is also submitted that the applicant's candidature could not be considered under Un-Reserved category also as she was provisionally shortlisted under OBC category, since once a candidate was allowed to sit in the Part-II Examination after having selected in a particular category, cannot be allowed to change the category at the time of final result.

5. The respondents further submit that the Benchmark for UR category is fixed as 90/200 and the applicant has not obtained the said Benchmark. The Board is empowered as per the terms and conditions of the Notification to fix the minimum Benchmark for all the categories for a qualitative selection. Therefore, even if to consider the candidature of the applicant in UR category, she has to secure 90 marks.

6. Heard Shri Rajesh Kumar for Shri Sachin Chauhan, the learned counsel for the applicant and Ms. Harvinder Oberoi, the learned counsel for the respondents, and perused the pleadings on record.

7. The applicant has not questioned the action of the respondents in not treating her as OBC candidate. The only prayer in the OA is to direct the respondents to fill up all the notified vacancies. The contention of the applicant is that she is entitled for consideration of her candidature under UR category as there are vacancies and the last selected candidate got only 90 marks, and the applicant having got 89 marks, will have to be considered against the remaining vacancies as per her merit. It is not in dispute that the respondents are empowered under the terms and conditions of the Notification to fix a Benchmark for selection to a post under consideration, in respect of a particular category, to have a qualitative selection. It is also not disputed that no employer can be compelled to fill up all the vacancies. The applicant having failed to secure the minimum Benchmark marks of 90 under General category, cannot contend that her candidature should be considered against the remaining vacancies.

8. In the circumstances and for the aforesaid reasons, the OA is dismissed. No costs.

(V. N. Gaur)  
Member (A)

(V. Ajay Kumar)  
Member (J)

/nsnrvak/