

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

OA No. 3068/2018

This the 31st day of October, 2018

**Hon'ble Mr. K.N. Shrivastava, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)**

1. Urmila
W/o Sh. Manoj
R/o H.No. 361, Pole No. 74
Near Bhagat Singh Park
Mundka, New Delhi – 110041
Aged about 31 years
(Group `B')
(Candidate towards the post of Public Health Nurse)
2. Madhu Sharma
W/o Sh. Vinees Sharma
R/o 226/7 Block, Geeta Colony, Delhi-110031
Permanent Address : H. No. A-361, Gopal Nagar
Najafgarh, New Delhi – 110043
Aged about 37 years
(Group `B')
(Candidate towards the post of Public Health Nurse)
3. Shashi Kala Yadav
D/o Sh. Kapil Dev Yadav
W/o Sh. Anuj Yadav
R/o B-139, Gali No. 29, Rajapuri
Bharat Vihar, Uttam Nagar
New Delhi - 110059
Aged about 26 years
(Group `B')
(Candidate towards the post of Public Health Nurse)

....Applicants

(By Advocates : Mr. Ajesh Luthra)

Versus

1. GNCT of Delhi
Through its Chief Secretary
5th Level, 'A' Wing
Delhi Secretariat, IP Estate
New Delhi.

2. Delhi Subordinate Services Selection Board
Through its Secretary
F-18, Karkardooma Institutional Area
New Delhi.

3. Department of Health and Family Welfare
Through its Principal Secretary
9th level, A-Wing, IP Extension
Delhi Secretariat, Delhi – 110 002

...Respondents

(By Advocates : Mrs. Harvinder Oberoi)

ORDER (ORAL)

Mr. K.N. Shrivastava :

Pursuant to Annexure A-1 Advertisement No. 01/14 of Delhi Subordinate Services Selection Board (DSSSB), inviting applications for various posts, including the post of Public Health Nurse – Post Code -39/14 in the department of Health & Family Welfare, GNCTD, these applicants applied for the said post. As per the Advertisement, 72 vacancies were notified (UR-12, OBC-27, SC-22, ST-09, PH-02).

2. The written examination was held on 26.04.2015 and the result was announced on 03.06.2016. All these candidates have been selected under various categories as indicated below :-

Applicant No.	Name	Roll No.	Category	Marks
1.	Urmila	83003135	OBC	110.50
2.	Madhu Sharma	83000049	OBC	126.50
3.	Shashi Kala Yadav	83000143	UR (PH-OH)	81.50

The DSSSB – respondent No. 2 has already sent their dossiers to respondent No. 3 for issuing their appointment letters.

The grievance of these applicants is that despite their names having been recommended by the DSSSB, respondent No. 3 has not been issuing appointment letters to them.

3. Considering the nature of controversy involved, Mrs. Harvinder Oberoi, learned counsel for respondents was directed to file a short reply within two weeks vide order dated 14.08.2018. However, no short reply has been filed despite opportunities. Mrs. Harvinder Oberoi today placed on record a copy of letter of Dy. Secretary (H&FW) HR – Nursing Section, Delhi Secretariat; the contents of which are reproduced below :-

“This has reference to your letter dated 05.10.2018 w.r.t. court case Titled Urmila & Ors. Vs. GNCT of Delhi O.A. No. 3068/2018 listed for hearing in Hon’ble CAT in which it is requested to appoint a responsible officer who may give the necessary and proper instructions in the matter as urgent action is required since Hon’ble CAT wants to dispose of the matter.

In this regard it is submitted that the process of posting for the post of Public Health Nurse (Post Code-39/14) posting in r/o 09 dossier of PHN could not be completed due to unavailability of vacancies in DHS and stay granted by Hon’ble CAT in case titled Sagar Kumar & Oths. Vs. GNCT of Delhi in O.A. No. 1756/2016. The interim order dated 28.09.2017 is reproduced as under :

“The newly selected candidates may be appointed on the basis of their selection and offers of appointment and the applications in the present OA, who are working on contractual basis, may also be allowed till their cases are considered in accordance with the directions of Hon’ble High Court and formulation of the policy by the State Government.”

Now in this regard it is submitted that as intimated by the DHS the vacancy position of PHN 08 posts of PHN are vacant at this stage and 01 vacancy is available in Directorate of Family Welfare GNCT of Delhi.

The process of posting of 09 PHN is under submission with the competent authority and will be done in due course.”

4. Mrs. Obreoi, referring to aforementioned letter, contended that the respondents are not in a position to issue the appointment letters to the applicants in view of interim order dated 28.09.2017 of the Tribunal in **Sagar Kumar & Ors. Vs. GNCT of Delhi** in O.A. No. 1756/2016 decided on 28.09.2017

5. Mr. Ajesh Luthra, learned counsel for applicants argued that the interim order of the Tribunal in **Sagar Kumar** (supra) could not come in the way of respondent No. 3 in issuing appointment letters to the applicants, for the simple reason that this order clearly states that newly selected candidates may be appointed on the basis of their selection. He said that this order further says that those, who are already working on contractual basis, may also be allowed till their cases are considered in accordance with the direction of Hon’ble High Court. He further submitted that the applicants have been selected on regular basis against notified vacancies and as such they cannot be denied appointment against such vacancies.

6. We have considered the arguments of learned counsel for parties and have perused the pleadings.

7. Indisputably, the applicants have been selected by DSSSB on the basis of an indent placed by the user Department, namely, Ministry of Health & Welfare, GNCTD. The user Department, while indenting, has clearly intimated the vacancies available. It is trite law that a contractual employee occupying a post is allowed to continue until regular appointment is made against that post. Even the terms of contractual engagement would stipulate as such.

8. We, therefore, do not accept the arguments put-forth on behalf of respondents that the applicants, recommended by the DSSSB for appointment, cannot be issued appointment letters in view of the aforementioned interim order of the Tribunal. In its letter to Mrs. Harvinder Oberoi, learned counsel for respondents, the Dy. Secretary (H&FW) has mentioned that the process of posting of 09 PHN (recommended by DSSSB for appointment) is under submission with the competent authority. This would clearly indicate that the respondents have identified the vacancies, against which the DSSSB recommended candidates are to be appointed.

9. In the conspectus, we allow this OA and direct the respondents to issue appointment letters to these applicants to the post of PHN within a period of four weeks.

10. We also make it clear that these applicants would also be entitled to all the consequential benefits but not back-wages.

No costs.

(S.N. Terdal)
Member (J)

(K.N. Shrivastava)
Member (A)

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