

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.699 of 2013
M.A.No.555 of 2013

Orders reserved on : 19.11.2018

Orders pronounced on : 28.11.2018

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)

1. Yatendra Singh Meena
S/o Sh. Dharm Singh Meena,
R/o Flat No.240, Sec-13, Pkt-B,
Phase-II,
Dwarka, New Delhi-110075.
2. Khemraj Meena
s/o Sh. Mohan Singh Meena,
R/o Q. No.G-2, Fire Station Mathura Road,
Hari Nagar, Ashram Chowk,
Delhi-110014.

....Applicants

(By Advocate : Shri M.K. Bhardwaj)

VERSUS

Govt. of NCT of Delhi and others

1. through the Chief Secretary,
Govt. of NCT of Delhi,
Delhi Secretariat, IP Estate,
New Delhi-110002.
2. Delhi Subordinate Selection Board (DSSSB)
through its Chairman,
FC-18, Institutional Area,
Karkardooma, Delhi-110032.
3. Delhi Municipal Corporation, North
Through its Commissioner,
SPM Civic Centre, Minto Road,
New Delhi.
4. New Delhi Municipal Corporation,
through its Commissioner,
Palika Kendra,
New Delhi-110001.

.....Respondents

(By Advocate : Shri Amit Anand and Ms. Sriparna Chattarjee and Mr. Rajneesh Vats for NDMC)

ORDER (Oral)

Ms. Nita Chowdhury, Member (A):

M.A.No.555 of 2013

The applicants have filed this MA seeking joining together in a single OA. For the reasons stated therein, the same is allowed, the applicants are permitted to join together in the single Original Application.

O.A. No.699 of 2013

By filing this OA, the applicants are seeking the following reliefs:-

- “a) To declare the action of respondents in not selecting and appointing the applicants as JE (Civil) as illegal and arbitrary and issue further directions for selection and appointment of applicants as JE (Civil) with all consequential benefits including arrears of pay.
- b) To declare result of the impugned examination JE (Civil) in various unreserved and ST category announced on 31.03.2009 by the respondent no. 2 as illegal and unconstitutional and struck down the same.
- c) Direct the respondents no. 2 to prepare the result in unreserved category and ST category first by the processes of making appointment against the posts of unreserved category and in doing so, they should consider all the candidates irrespective of their category based on reservation, whether OBC, SC or ST, and then having filled up all unreserved posts respondent no.2 can proceed to make appointment against the posts of the reserve category in order to merit from amongst the candidates available at that stage.
- d) To declare the action of respondents in not filling up all the advertised vacancies in general as well

as ST category as illegal and unjustified and issue appropriate direction to fill up all the vacancies advertised in advertisement No.02/2008 in general as well as ST category and consider the case of applicant against aforesaid available vacancies of JE (Civil) for selection and appointment.

- e) May also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice.
- f) To allow the OA with cost.”

2. Earlier the present applicants had filed Writ Petition No.8189/2009 before the Hon’ble High Court of Delhi and the Hon’ble High Court vide Order dated 28.9.2012 dismissed the said Writ Petition with the following relevant observations:-

“3. In that view of the matter, this Court has no jurisdiction to entertain this petition. However, in keeping with the approach of the Division Bench in LPA No. 606/2011, here also, liberty is granted to the petitioner to file an original application before the Tribunal, if so advised, within a period of six weeks from today, and in case an original application is filed under Section 19 of Administrative Tribunals Act, along with an application for condonation of delay, the Tribunal shall condone the delay of the petitioner as he was prosecuting his non-selection before this Court, and that period shall stand excluded.

4. The writ petition is, therefore, dismissed for want of jurisdiction.

CM APPL. NO. 4917/2009 (for Stay)

5. In view of the orders passed in the main petition, the interim orders passed on 9th December, 2011 shall remain in force for a period of six weeks from today, and thereafter, shall stand vacated.

6. The application stands disposed off subject to the above order.”

3. Pursuance to the aforesaid liberty granted to the applicants, they have filed this OA but as per the directions of the Hon’ble Delhi High Court (supra), the applicants have not chosen to file any application for seeking condonation of delay in filing this OA. However, as the Hon’ble Delhi High Court observed that “the Tribunal shall condone the delay of the petitioner as he was prosecuting his non-selection before this Court, and that period shall stand excluded, the delay in filing this OA is condoned.

4. Brief facts of the case are that the DSSSB as per the requisition of Municipal Corporation of Delhi and New Delhi Municipal Counsel had advertised vacancies for the post of Junior Engineer (Civil) as per its advertisement No.02/18 and 03/08 under Post Code 018/08 and 039/08 respectively. The breakup of vacancies for the said posts is as under:-

	Vacancies						
Post Code	UR	SC	ST	OBC	PH	EXSM	Total
018/08	118	42	22	86	06*	01*	268
039/18	42	11	05	21	02*	00	079

* Vacancies included in the vacancies of UR?SC/ST/OBC/Categories as per horizontal reservation.

4.1 The combined written examination Part-I (Objective) for short-listing and Part-II (Descriptive) Examination for selection, was held on 21.12.2008. Descriptive answersheets of candidates who were declared short-listed as per result of

Part-I (Objective) examination were evaluated and the result was finalized based on the marks obtained by the candidates in Part-II (Descriptive) Exam.

4.2 The applicant No.1 - Shri Yatendra Singh Meena (ST candidate) and applicant No.2 - Shri Khem Raj Meena (ST candidate) had obtained 82/200 & 86/200 marks respectively in Part-II exam whereas the last selected candidates under ST category had obtained 92/200 marks under post code 018/08 and 95/200 marks under post code 039/08. Since the marks obtained by both the applicants are less than the marks obtained by the last selected candidate in post codes, therefore, they were not selected.

4.3 Being aggrieved by the aforesaid action of the respondents, the applicants have filed this OA seeking the reliefs as quoted above.

5. In the counter reply filed by the respondents stated that for considering the UR category candidates for selection under post code 18/08, the Board has gone down to the minimum marks i.e. 90/200 marks, thus the Board was unable to select 45 candidates against 116 vacancies. However, in the case of ST category 20 candidates against 20 vacancies were found within the range of marks upto 92/200 marks.

6. During the pendency of this OA, this Tribunal vide Order dated 6.2.2018 observed that

“At the very outset, learned counsel for the applicant submitted that whole vacancies were not filled up. Respondents are directed to inform how much vacancies are lying vacant except those in which court cases are pending. Respondents have no objection to it.

List on 19.03.2018. Meanwhile respondents shall ensure to furnish aforementioned information.”

7. In compliance of aforesaid directions of this Tribunal, respondents filed status report wherein it is stated that final selection for post code 18/08 (MCD) and 39/08 (NDMC) was made on the basis of part-II exam and held on 21.12.2008 in the respective category in which the candidates were shortlisted for Part-II Examination on the basis of their mark in Part-I exam. The cut off marks of last selected candidate in Part-II exam in UR category under Post Code 18/08 were 90 and under Post Code 39/08 were 92 and under Post Code 39/08 were 95. The applicant Y.S. Meena belongs to ST category and he has obtained 82 marks in Part-II examination and was not selected in UR category and ST category on having marks lower than the last selected candidate in post code 18/08 and in 39/08.

7.1 They further stated that 08 candidates having roll no.1810180, 1811513, 1811522, 1811060, 1811650, 1811517, 1811314 and 1811437 are above the applicants in merit list for the said post codes, who were also not selected.

Further as per the details as under there are no unfilled vacancy in post code 39/08 in UR or ST category.

7.2 They further stated that as per available information from the Legal Branch, there are two cases, i.e., the present OA and Writ Petition No.1795/2011 titled as Shivendra Singh Vs. DSSSB are pending. The applicant Shivendra Singh belongs to SC category.

7.3 As far as DSSSB s concerned, the recruitment process was closed & unfilled vacancies were returned to be included in the next requisition. As such no vacancy is pending with DSSSB. While forwarding the dossiers of the selected candidates for post code 18/08 P&P Branch of the Board vide letter dated 4.8.2009 addressed to Additional Deputy Commissioner, MCD had informed to send a fresh requisition in respect of the unfilled vacancies in post code 18/08. Similarly, while forwarding the dossiers of the selected candidates for post code 39/08 P&P Branch of the Board vide letter dated 9.4.2009 addressed to Director (Personal) NDMC had informed to sent a fresh requisition in respect of the unfilled vacancies in post code 39/08.

The vacancies returned to department for the post of 18/08.

Category	Vacancy	Filled	Posts remained unfilled and returned to user department
UR	118	71	44

OBC	86	16	69
SC	42	38	04
ST	22	19	02
PH	06	5 (03 UR, 01 OBC, 01 ST)	01
Total	269	149	119

The vacancies returned to department for the post of 39/08.

Category	Vacancy	Filled	Posts remained unfilled and returned to user department
UR	41	41	0
OBC	20	08	12
SC	11	11	0
ST	05	05	0
PH	02	02	0
Total	79	67	12

7.4 They further stated that as per then existing scheme of examination Part-I examination was for shortlisting the candidate for evaluating their Part-I examination descriptive answersheets. The final selection was made as per the merit list of the Part-II examination. The candidates who were short listed in the reserved category as per their marks in Part-I examination were considered in their respective reserved category only.

6. During the course of hearing, learned counsel for the applicants contended that the respondents have acted contrary to well settled law position regarding applying reservation in the matter of appointment, as in the said list the ST category candidates who had secured more marks than the last selected candidate in General category have also

been adjusted against the reserved vacancies for ST category, as the same is evident from the select list that the General category candidate, who secured 90 marks, has been declared selected in General category and therefore, all the candidates who secured 90 or more marks were required to be adjusted against general slot irrespective of their category. If action was taken in said manner, all the 18 candidates selected in ST category would have got appointment against general slot and as a result thereof, both the applicants would have got appointment.

6.1 Counsel further contended that out of 23 candidates selected in ST category, 12 candidates have not got any relaxation being ST category candidates, therefore, all the aforesaid 12 candidates were required to be selected in General category quota. If the same was done, 12 more candidates in ST category would have got appointment including the applicants.

6.2 Counsel also contended that two vacancies in ST category remained unfilled as admitted by the respondents and the applicants who were two in number could be accommodated against aforesaid two vacancies being the successful candidates.

6.3 Counsel also submitted that entire action of the respondents in the matter is highly illegal, arbitrary and

unjustified and the same is also violative of Articles 14 and 16 of the Constitution of India.

6.4 Counsel for the applicant also cited a case in which one ST candidate who had secured 90 marks was not selected whereas one General Candidate who secured 90 marks has been selected as the criteria of selection of General category was made minimum cut off marks 90 out of 200 marks whereas in the case of ST minimum cut off marks were 96 out of 200 marks in the said Part-II examination.

7. Counsel for the respondents submitted that in the case of ST category, the candidates scored well as such the cut off was high whereas in the case of General category candidates, the Board has gone down to the minimum marks i.e. 90/200 marks and even then 44 vacancies were remained unfilled.

8. After hearing learned counsel for the parties, this Court also finds that cut off marks for ST candidates was high whereas for General category candidates, the Board has reduced the cut off to the minimum marks of 90 out of 200 in the said Part-II examination.

9. However, the main contention of the applicants that those ST candidates, who secured 90 or more marks out of 200, ought to be adjusted in the General category as the law is well settled that if reserved category candidate secured minimum marks as defined for selection of General category candidates

and has not got any relaxation being ST category candidate, the said candidate should have been considered against the available vacancies of the General category and not exclusively in the particular reserved category only, has not been dealt with by the respondents either during the course of hearing or in their counter affidavit.

10. In view of the above position and having regard to the fact that two ST vacancies of the post in question are still vacant, the respondents are directed to consider the case of the applicants in the light of the above observations and if they are found to be eligible to be appointed against the said vacant post, they may be considered accordingly. The decision so taken by them shall also be communicated to the applicants expeditiously. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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