

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

**CP-620/2016 in  
OA-2644/2016**

**Reserved on : 05.02.2018.**

**Pronounced on : 09.04.2018.**

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

**Hon'ble Ms. Praveen Mahajan, Member (A)**

Sh. 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.

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Petitioner

(through Sh. M.K. Bhardwaj, Advocate)

Versus

1. Sh. M.M. Kutty,  
Chief Secretary,  
Govt. of NCT of Delhi,  
Delhi Secretariat,  
IP Estate, Delhi.
2. Sh. Rajender Kumar,  
Delhi Subordinate Services Selection Board  
Through its Chairman,  
3<sup>rd</sup> Floor, UTCS Building, Institutional Area,  
Vishwas Nagar, Shahdara,  
Delhi-110032.
3. Smt. Punya Salila Srivastava,  
Directorate of Education,  
Govt. of NCT Delhi,  
Old Secretariat, I.P. Estate,  
Delhi.

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Respondents

(through Sh. K.M. Singh, Advocate)

## O R D E R

### **Ms. Praveen Mahajan, Member (A)**

This Contempt Petition has been filed by the applicant for alleged non-compliance of the Tribunal's order dated 08.08.2016 passed in OA-2644/2016.

2. It has been ordered therein that:-

"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 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."

3. On 14.05.2017, the respondents filed a compliance affidavit in which they have stated that the case of the applicant has been examined in the light of judgment dated 12.09.2012 of Hon'ble High Court in the case of WP(C) No. 5390/2010, C.M. No. 20815/2010 **(Deepak Kumar and Ors. Vs. Distt. & Sessions Judge Delhi & Ors.)** and a speaking order dated 02.02.2017 has been passed. The same is reproduced below:-

"This order is being passed in compliance of the directions of CAT issued vide its order dated 08.08.2016 in OA No.2644/2016 as well as in CP No.373/2016 in the matter of Naresh Kumar Tawar vs. K.K. Sharma & Ors.

Naresh Kumar Tawar had applied for the post of TGT (English) in Govt. of NCT of Delhi Post Code 01/10 under the SC category in response to the advertisement published by DSSSB in 2010. The eligibility of candidates for the said posts was determined as on the closing date of receipt of applications was 15.03.2010. Part I & II of the written examinations for the said post were conducted on 06.06.2010. The applicant was shortlisted for the Part II examination which was evaluated

and the result was declared on 11.03.2011. The applicant was shortlisted under the SC category as no pre-scrutiny of documents was done at the initial stages. The documents of only those candidates who had qualified the part-II examination were subjected to detailed scrutiny to determine their eligibility as regards their educational qualifications and caste certificates.

During the scrutiny of the applicant's documents, it was found that the applicant was an outsider SC and his candidature in respect of SC category was rejected on the ground that from 04.08.2009 to 12.09.2012 the benefit of reservation in respect of posts/services under the Government of NCT of Delhi and local/autonomous bodies under the Govt. was not being granted to SC/ST candidates hailing from States/UTs other than Delhi. This policy was being followed in compliance of the judgment of the Division Bench of the Hon'ble Supreme Court of India titled as "Subhash Chandra & Anr. Vs. DSSSB" (SLP (C) No. 24327 of 2005 along-with another Writ Petition © No. 507 of 2006 titled as "Sarv Rural & Urban Welfare Society vs. Union of India and Ors., wherein it was held that SCs/STs moving from one State to another State or Union Territory, shall not be entitled to carry his reservation to the State or Union Territory where he has moved.

Naresh Kumar Talwar is claiming the benefit of reservation in respect of recruitment/ selection which took place in 2011 (final result was declared on 11.03.2011), when the said benefit was not available to SC/ST candidates hailing from States/UTs other than Delhi as DSSSB was strictly following the law laid down by the Hon'ble Supreme Court vide judgment dated 04.08.2009 in the matter of "Subhash Chandra vs. DSSSB".

The CAT while disposing off the case of Naresh Kumar Talwar vide its order dated 08.08.2016 had remitted the matter back to DSSSB with the following directions:-

*"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 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."*

DSSSB has examined the candidature of the applicant in view of the aforesaid judgment of CAT in OA No. 1096/2013, which was passed in the case of Meenakshi Chauhan, as well as the Hon'ble High Court of Delhi titled Deepak Kumar & Ors. Vs. District & Sessions Judge, Delhi & Ors. In WP(C) 5390/2010, C.M. No. 20815/2010 which was delivered/passed on

12.09.2012 wherein while examining the "Subhash Chandra" judgment, it was stated that "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 Court have to apply its ration, as it is by a formation of three judges; the said decision did notice the earlier judgements in Marri and Action Committee. Article 141 and the discipline enjoined by the doctrine of precedent compels this Court to follow the Pushpa ruling".

In accordance with the directions of CAT, the candidature of the applicant has also been examined with reference to the above mentioned judgment in the case of "Deepak Kumar". In this connection, it is relevant to emphasize that ever since 04.08.2009, benefit of reservation to SC/ST candidates hailing from States/UTs other than Delhi was not being given in the services/posts under the Govt. of NCT of Delhi in view of the law laid down by none other than the Hon'ble Supreme Court vide its judgement dated 04.08.2009 in the case of "Subhash Chandra & Anr. Vs. DSSSB (SLP (C) No. 24327 of 2005. The judgement titled "Deepak Kumar & Ors. Vs. District & Sessions Judge, Delhi & Ors. In WP(C) 5390/2010, C.M. No. 20815/2010 was prospective, accordingly the said judgment was followed uniformly and strictly by DSSSB in respect of all recruitments carried out after 12.09.2012.

Since, the selection for the post of Govt. of NCT of Delhi TGT (English) Post Code 01/10 was carried out in the year 2011 (11.03.2011) which was earlier than the date on which the judgement in the case of "Deepak Kumar" was passed/delivered (12.09.2012), accordingly the case of Naresh Kumar Tawar is not, at all, covered by the judgement of Hon'ble High Court in the case of "Deepak Kumar". As per standard principle of jurisprudence, no law or judgement can be applied retrospectively for the obvious reason that retrospective application of any law or court ruling can unsettle and render as topsy turvy matters/issues, which have already been settled and closed. The period during which the recruitment/selection of Govt. of NCT of Delhi PGT (Sanskrit) Post Code 34/10 was carried out, the law as laid down by the Hon'ble Supreme Court in the case of "Subhash Chandra" was in force and was being followed strictly, uniformly and without any exception. Keeping in view the above said legal position, the benefit of reservation was rightly denied to all the outside SC/ST candidates including Naresh Kumar Tawar, since he was an SC outsider and not an SC with respect of NCT of Delhi. The judgment of the Hon'ble High Court in the case of "Deepak Kumar" being prospective does not come to the rescue of Naresh Kumar Tawar at all.

It is pertinent to mention here that prior to 10.05.2013, DSSSB was not maintaining any panel of waitlisted candidates meaning thereby that once candidates were selected and their dossiers forwarded to the user department, the said recruitment was treated as closed irrespective of

the fact whether all the selected candidates had joined or not. In the instant case also, in pursuance of declaration of final result dated 11.03.2011, the recruitment to the said posts stood closed.

The Board had followed the law laid down by Hon'ble Supreme Court in case of "Subhash Chander" from 04.08.2009 to 12.09.2012 and had accordingly stipulated in unambiguous terms in the advertisements issued in this regard that benefit of reservation in the services/posts under the Govt. of NCT of Delhi and local/autonomous bodies subordinate to the Government will not be admissible in case of SC/ST candidates hailing from outside States/UTs. Consequently, benefit of reservation was not extended to outsider SC/ST candidates during the period 04.08.2009 to 12.09.2012 on the strength of the judgment of Hon'ble Supreme Court in the case of Subhash Chandra which was the law of the land during the said period. This judgment has neither been set aside nor has it been overruled. Since the law laid down by the Hon'ble Supreme Court vide judgment dated 04.08.2009 in the case of "Subhash Chandra" was in force from 04.08.2009 onwards, all the actions taken by DSSSB in compliance of the said judgment including denial of the benefit of reservation to outsider SC/ST candidates, which included the applicants also, were lawful and valid. Further, even the ruling in the case of "S.Pushpa" vis-à-vis the ruling in the case of "Subhash Chandra" has been referred for a decision before a larger bench in the case of "Subhash Chandra" has been referred for a decision before a larger bench in the case of '*State of Uttaranchal vs. Sandeep Kumar Singh*'.

As regards grant of benefit of reservation to outsider SC/ST candidates, by DSSSB, in some cases, in compliance of Hon'ble High Court/CAT orders, it is pertinent to refer to the judgment of Hon'ble Supreme Court in the case titled "Basawaraj & Anr. Vs. The Spl.Land Acquisition Officer", AIR 2014 SC 746 wherein it was, inter alia, laid down that:

"It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate any illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but only has a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well.

If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot

invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order.

A wrong order/decision in favour of any particular party does not entitle any other party to claim benefit on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far, for otherwise it would make functioning of administration impossible."

It is abundantly clear from the aforesaid observations of Hon'ble Supreme Court that any wrong/erroneous or illegal decision cannot be treated as a precedent and cannot be perpetuated. Treating a wrong/error or an illegal decision as a precedent would amount to perpetuation of such wrong/error or illegality which is not permitted/warranted as per the ruling of Hon'ble Supreme Court in the case of "Basawaraj". It is relevant to point out that extension of benefit of reservation to SC/ST candidates hailing from States/UTs other than Delhi was not in accordance with the law as laid down by the Hon'ble Supreme Court in the case of "Subhash Chandra" which was in force w.e.f. 04.08.2009 to 12.09.2012. The grant of benefit of reservation to SC/ST candidates hailing from outside States/UTs was thus erroneous and liable to be withdrawn.

Granting benefit of reservation on pick & choose basis to outsider SC/ST candidates in respect of Exams conducted and results declared during the period 04.08.2009 to 12.09.2012, will unsettle the entire recruitment/selection process in a number of cases as more than 110 results were declared in the said period. Majority of the selected candidates have been in job for more than 04 years now and in case these results are reopened or revised, the jobs of these incumbents would be put to jeopardy and may need to be terminated. Even otherwise, the resultant vacancies have been carried forward to subsequent recruitments made by DSSSB. The recruitment process has already been closed. After the closure of recruitment process, DSSSB ceases to have any role. Since, the judgement dated 12.09.2012 of Hon'ble High Court in the case of "Deepak Kumar" was prospective, accordingly the DSSSB complied with the directions as contained in the said judgment of "Deepak Kumar" prospectively. The implementation of the judgement with retrospective effect will open a *Pandora's Box* for the Board. The established merit list will be turned *topsy-turvy* and will further lead to a litany of court cases.

Keeping in view the law laid down by Hon'ble Supreme Court vide its judgement dated 04.08.2009 in the case of "Subhash Chandra", taking into account the fact that the judgement dated 12.09.2012 of Hon'ble High Court in the case of "Deepak Kumar"

was prospective, relying upon the judgement of Hon'ble Supreme Court in the case of "Basawaraj & Anr." and in light of the reasons recorded in the foregoing paragraphs, benefit of reservation cannot be accorded to Naresh Kumar Tawar in respect of the post of TGT (English), Govt. of NCT of Delhi (Post Code 01/10). Accordingly, the status of the candidature of Naresh Kumar Tawar for the above said post remains unchanged (not qualified).

This issues with the approval of the Competent Authority."

4. We have gone through the facts of the case and rival submissions. We are constrained to point out that the so called speaking order dated 02.02.2017 is only an attempt to circumvent the clear cut order dated 08.08.2016 passed in OA-2644/2016. The directions of the Tribunal were to examine the case of the applicant in the light of the judgment of this Tribunal in OA-1096/2013. Instead of complying with the same, an attempt has been made to pull wool over the eyes of the Tribunal by citing various reasons by way of the order dated 02.02.2017. The issues raised in the said order, in our view, stand taken care of in paras-3 & 4 of order dated 28.03.2014, passed in OA-1096/2013. It has been stated therein that:-

"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 Honble 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."

Finally, the Tribunal had concluded in Para-6 that:-

"6. We have gone through the judgments of the Honble 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 Honble High Court in the case of Deepak Kumar and as such, migrant SC will also get the benefit of SC category reservation in Delhi.

5. The order of the Tribunal dated 08.08.2016 in OA-2644/2016 was never challenged by the respondents at any stage. It is not open to the respondents to try and supplement or interpret what has been decided by the Tribunal. In our view, there is no ambiguity in the said order and it is incumbent upon the respondents to comply with the same.

6. As a matter of indulgence, we grant further 06 weeks time to the respondents to file the compliance report failing which further action will be taken as per law.

7. List the C.P. for hearing on 28.05.2018.

**((Praveen Mahajan)**  
**Member (A)**

**(Raj Vir Sharma)**  
**Member (J)**

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