

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.996/2019

New Delhi this the 28th day of March, 2019

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

Shri Chetan Kumar,
Aged 28 years old, Group 'C',
S/o Sh. Hare Ram,
R/o Village Gudhrana,
PO Khatela, Tehsil Hodal,
Distt. Palwal-121105

- Applicant

(By Advocate: Mr. Raj Kumar Bhartiya)

VERSUS

1. Government of NCT of Delhi,
Through its Chief Secretary,
New Secretariat, IP Estate, New Delhi
2. The Chairman,
Delhi Subordinate Services Selection Board,
Govt. of NCT of Delhi,
FC-18, Institutional Area,
Karkardooma, Delhi-110092
3. The Principal Secretary (Services)
Govt. of NCT of Delhi,
New Secretariat, IP Estate, New Delhi - Respondents

ORDER (Oral)

Ms. Nita Chowdhury:

This Original Application has been filed by the applicant,
claiming the following reliefs:-

- “i. Declare the action of respondents in not declaring or considering the candidature of the applicant as selected candidate for the appointment to the post of Teacher (Primary), Post Code 16/17 in the category of PH(OH) who is 70% disable, is illegal

and arbitrary and against the principle of natural justice and direct the respondents to treat the applicant as selected candidate against the notified vacancies of post code 16/17 in PH(OH) Category who is 70% disabled and give him appointment, after extending the time period to till the e-dossier and upload all the documents etc., to the post of Teacher (Primary), Post Code 16/17 in the category of PH(OH) with all consequential benefits as given to other selected candidates;

- ii. To allow the applicant to fill the e-dossier and upload all the documents etc., to the post of Teacher (Primary), Post Code 16/17 with all consequential benefits as given to other selected candidates;
- iii. The respondent be directed to keep one post of Teacher (Primary), Post Code 16/17 vacant for the applicant till the decision of the original application from this Tribunal;
- iv. To pay the cost of the proceeding and by way of award in favor of applicant;
- v. To declare fresh list of selected candidates after including the name of the applicant in the PH(OH) category;
- vi. To declare fresh list of selected candidates after including the name of the applicant in the PH(OH) Category in lieu of any seat lying vacant;
- vii. Issue directions to the respondents to fill a PH(OH) Seat by appointing in place made vacant by transfer of a PH(OH) category post or at any place still lying fit for the applicant;
- viii. Pass any other/further relief/order in favor of the applicant which may be just and proper under the circumstances of the case;"

2. When the matter is taken up for admission, we first of all examine Annexure A/1 which is a true copy of the original representation dated 04.02.2019 made by the applicant to the Deputy Secretary, DSSSB and which reads as under:-

“Sub: To consider my name in the physically handicapped category.

Sir,

I beg to state that, I am Chetan Kumar Son of Shri Hare Ram is the resident of Village Durana, District Palwal. I have applied to give the examination of DSSSB Primary Teacher, post code 16/17, new code 1/18 in which I inadvertently ticked the column of OBC category instead of physical handicapped. When the results of the DSSSB (PRT) examination were declared, I saw as I have not been selected in the category of physical handicapped. I secured 89.18% marks while the cut off list of the category of physically handicapped is 88.17% has been declared. Whereas, the merit list of OBC has gone up to 98.50%. Therefore, I cannot be selected in the category of OBC. It is prayed before you that I may be selected in the category of physical handicapped as I have qualified the cut off list of the category of physical handicapped, my mistake be ignored and I may be selected in the category of physical handicapped for the same post.”

3. From the above, it becomes clear as stated by the applicant himself that he applied for the said post under OBC category but could not qualify for the same as he scored only 89.18% marks against the merit list of OBC, whereas the cut off list of the OBC was 98.50%. Now, the applicant is requesting that he may be selected in the category of Physically Handicapped as he could be considered as qualified as per the merit list of Physically Handicapped which is only 88.17% marks.

4. We may also mention that a similar issue has already been decided by the Hon’ble Supreme Court in the case of **Union of India & Ors. vs. Dalbir Singh & Anr.** (Civil

Appeal No. 3409/2009) vide judgment dated 09.05.2009 which reads as under:

“10.In our opinion, having opted to consider his case only under OBC category, he cannot thereafter claim that his case requires to be considered in the general merit, only because, he has scored better percentage of marks than the last selected candidate in the general merit. In our considered view, the Administrative Tribunal having found that the appellants were justified in not considering the respondent's case for appointment under the OBC category, ought not to have directed the appellants to consider his claim under general category.

5. In view of the factual matrix of the case and in light of the judgment in Dalbir Singh (supra), there is no merit in this OA and the same is accordingly dismissed. MA No. 1117/2019 for exemption from filing the documents and the letters on record is also dismissed. No order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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