

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

O.A. No.4309 of 2016

This the 8th day of January, 2019

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

Smt. Jyoti
W/o Sh. Pradeep Kumar,
R/o RZ-46, Gupta Market,
Behind DTC Terminal,
Najafgarh, New Delhi-43.

....Applicant

(By Advocate : Ms. Seema Sharma)

VERSUS

Delhi Subordinate Services Selection Board
Through its Chairman,
Govt. of NCT of Delhi,
FC-18, Institutional Area,
Karkardooma, Delhi-110092.

.....Respondent

(By Advocate : Ms. Harvinder Oberoi)

ORDER (Oral)

Ms. Nita Chowdhury, Member (A):

Heard learned counsel for the parties.

2. By filing this OA, the applicant is seeking the following reliefs:-

“i. That the respondent may kindly be directed to appoint the applicant on the post of assistant teacher in post code no.101/2012 in OBC Category.”

3. During the course of hearing, learned counsel for the applicant submitted that in pursuance of advertisement No.02/2012, applicant applied for the post of Asstt. Teacher Primary Post Code No.101/2012 under OBC candidate category and also appeared in the examination held by respondent on 25.8.2013 and the result was declared on 24.6.2015 in which applicant secured 131.75 marks and his name shown at serial no.12688. She further submitted that cut off marks for the category of OBC candidates was declared as 132.25 by the respondents. She further submitted that out of 226 vacancies of OBC category only 220 candidates were selected and out of the said 220 selected candidates, the selection of 10 candidates under the OBC category were cancelled and consequent thereof 16 posts under the OBC category remained vacant. Counsel also contended that the respondents did not issue any waiting list for consideration of vacant post.

3.1 Counsel further contended that as per the list of total candidates in OBC category, who obtained marks from 131.75 to 132, comes to 18 and the applicant also falls in the said list. If the respondent issued the cut off marks as 131.75, the applicant will fall within the said list. However, respondents issued a fresh list of cut off marks closed the selection process leaving the vacant post unfilled.

3.2 Counsel also contended that first three names of OBC are considered in unreserved categories and in that situation, total remaining vacancies of the post in question would be 19. Counsel also contended that complete vacancies have not been filled up.

3.3 Another contention of the counsel for the applicant is that respondents have also called a candidate who secured 131.75 marks for verification of documents whereas the applicant who also secured 131.75 marks but he was not called for verification of documents, which amounts to discrimination.

4. On the other hand, learned counsel for the respondents submitted that the applicant herein having Roll NO.10112264 belongs to OBC category has obtained 131.75 marks whereas last selected OBC candidates has secured 132.25, hence the applicant has not been selected for the said post. Counsel by referring to the counter affidavit submitted that DSSSB filled up 225 vacancies of OBC category candidates, out of 226 vacancies. The last selected candidate has obtained 132.25 marks.

4.1 Counsel further submitted that the wait list/panel in r/o OBC category has also been prepared upto the extent of 10% of the post notified in addition to the number of candidates selected as per the notified vacancies and the last selected candidate from the wait list/panel has secured

131.75 marks. Although the applicant has also obtained 131.75 marks still she was on the 8th position after last selected OBC candidate in waiting panel as per consideration of date of birth, due to which her name was not included in the waiting panel.

5. From the aforesaid factual position, it is quite clear that although the applicant, who belongs to OBC category, has also secured 131.75 marks but only three candidates who also secured 131.75 were called for verification of documents from the wait list/panel and the respondents have categorically stated that although the applicant has also obtained 131.75 marks still she was on the 8th position after last selected OBC candidate in waiting panel as per consideration of date of birth, due to which her name was not included in the waiting panel. This position has not been refuted by the applicant in the rejoinder filed by the applicant.

6. Counsel for the applicant by referring to the additional affidavit filed by the applicant has submitted that having regard to Result Notice dated 30.6.2018 (Annexure P-5) and Notice No.708 dated 5.9.2018 (Annexure P-6), it is evident that the respondents called the candidates for the appointment, which means that the selection process is still going on. Applicant's counsel also referred to the information given to the applicant under RTI by the respondents vide

letter dated 23.2.2018, which shows that 13 candidates of OBC categories under Post Code 101/2012 secured 131.75 marks and out of said 13 candidates, three have already been called for the appointment and only 10 vacancies are left in the said benchmark. Counsel also submitted that respondents have gave information to her another RTI application vide letter dated 11.9.2018 which shows that against Post Code No.101/12 under OBC category 37 posts are still left unfilled and vacant.

7. Counsel for the respondents submitted that so far as Notice No.708 of 5.9.2018 is concerned, the same clearly shows that only candidates under OBC categories, having secured 132 to 132.50 marks, and other categories were called and were given direction to provide self attested copies of document at email address or through speed post/registered post to DSSSB on or before 20.9.2018 and she further submitted that process of 37 unfilled vacancies pertaining to Post Code No.101/12 was closed on 21.7.2018 and as such the contention of the applicant that selection process is still going on is not tenable.

8. Having regard to the aforesaid, this Court finds that action of the respondents does not amount to discrimination and arbitrary, as the applicant has not disputed the fact that the three candidates, who also obtained 131.75 marks and were given appointment, but still she was on the 8th position

after last selected OBC candidate in waiting panel as per consideration of date of birth, due to which her name was not included in the waiting panel.

9. So far as the contention of the applicant that number of vacancies of the post in question still remains unfilled is concerned, it is a settled law that no person has any right to seek a mandamus for getting appointment on a particular post. In the case of ***Shankarsan Dash Vs. Union of India***, 1991(3) SCC 47 the Hon'ble Apex Court said:

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha and Others, [1974] 1 SCR 165; Miss Neelima Shangla v. State of Haryana and Others, [1986] 4 SCC 268 and Jitendra Kumar and Others v. State of Punjab and Others, [1985] 1 SCR 899."

10. It is also a settled legal position that a wait list candidate does not have any indefeasible right to get appointment merely for the reason that his name finds place in the wait list. But the fact is that in the present case applicant's name was not even included in the wait list/panel as is evident from the averment of the respondents which has not been refuted by the applicant in this case.

11. In the result, in view of the aforesaid facts and circumstances of this case, this Court does not find any merit in the claim of the applicant and accordingly the present OA is dismissed. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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