

**Central Administrative Tribunal
Principal Bench**

OA No. 3079/2013
MA No. 3016/2018

This the 15th day of May, 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

D.Raja Shekar
S/o Sh. D.Udandaiah
R/o RZ 16A/9C Gali No. 2
Main Sagarpur, New Delhi.

... Applicant

(By Advocate: Sh. Pradeep Kumar)

Versus

1. State of NCT of Delhi,
Through its Chief Secretary,
Delhi Secretariat, I.P.Estate, New Delhi.
2. Delhi Subordinate Services Selection Board,
Govt. of NCT of Delhi,
FC-10, Institutional Area,
Karkardooma, Delhi-110032.
Through its Chairman
3. Department of Health & Family Welfare
Govt. of NCT of Delhi
9th Level, A-Wing, Delhi Secretariat, New Delhi
Through its Secretary (Health)
4. Ms. Kavita
Roll No. 07800463
Through the Delhi Subordinate Services
Selection Board,
Govt. of NCT of Delhi,
FC-10, Institutional Area,
Karkardooma, Delhi-110032.

5. Ms. Sanno
Roll No. 07800124
Through the Delhi Subordinate Services
Selection Board,
Govt. of NCT of Delhi,
FC-10, Institutional Area,
Karkardooma, Delhi-110032.

... Respondents

(By Advocate: Sh. H.A.Khan)

ORDER (ORAL)

By Justice L.Narasimha Reddy, Chairman

The National Capital Territory (NCT) of Delhi issued a notification on 26.12.2009 inviting applications for selection of candidates to various posts including Technical Assistant (TA) and Lab Technician (LT) Group IV. The applicant stated that he belongs to SC category and a certificate to that effect was issued by an authority of State of Andhra Pradesh. In the advertisement, one post was reserved in TA and five posts were reserved in LT (Group IV) for SC candidates. The selection process involved conducting of a preliminary examination and a final examination. The applicant participated therein and was successful in the preliminary examination. However, in the results for the final examination, his name was not indicated and was not included in the list of selected candidates. The applicant obtained information by taking recourse to Right to Information Act. The respondents informed him that his

social status as SC candidate cannot be accepted in Delhi Administration and he was treated as unreserved candidate. In the ultimate selection list, the cut off marks for unreserved candidates were 117.5, whereas the applicant secured 114 marks. A candidate who secured 98 marks was included in overall combined result and the candidate with 85 marks belonging to SC category was appointed against the post of TA. As regards LT (Group IV), three candidates who secured 125, 106 and 85 belongs to SC category were selected.

2. To a question put by the applicant, the respondents answered stating that he was not extended benefit of reservation of SC category in view of judgment of Hon'ble Supreme Court in ***Subhash Chandra & Anr. vs. DSSSB & Ors.***, Civil Appeal No. 5092 of 2009 arising out of SLP (C) No. 24327/2005. This OA is filed challenging the action of the respondents in not selecting and appointing him against the vacancies reserved in favour of SC candidates for the post of TA (Group IV).

3. We heard Sh. Pradeep Kumar, learned counsel for applicant and Sh. H.A. Khan, learned counsel for respondents.

4. The undisputed fact is that the applicant participated in the selection process for the post of TA and LT as a candidate

belonging to SC category. However, his certification was by an authority of State of Andhra Pradesh. The respondents recognized only such of the SC candidates who are certified by an authority of the Delhi Administration. The law in this regard is very clear. In **S. Pushpa vs. Sivachanmugavelu & Ors.** [(2005) 3 SCC 1] the Hon'ble Supreme Court held that caste certificate issued to SC candidates by an authority in Union Territory (UT) will hold good for the appointments and admissions made in UT. In other words, it was ascribed as Pan India status. In **Subhash Chandra's** case (supra), Hon'ble Supreme Court has held that judgment in **S. Pushpa's** case (supra) is only 'obiter'. Learned counsel for applicant has also placed before us the recent judgment of Hon'ble Supreme Court in **Bir Singh vs. Delhi Jal Board and Ors.** Civil Appeal No. 1085/2013 wherein the Court dealt with this very aspect but the ultimate conclusions were with reference to the posts of DANICS and DANIPS. We do not find any general proposition covering the posts of lower category.

5. Recently, a Full Bench of Hon'ble Delhi High Court in **Deepak Kumar & ors. vs. District and Sessions Judge, Delhi & Ors.** decided on 12.09.2012 held that a two judge bench which has decided the **Subhash Chandra's** case (supra) cannot declare the judgment in **S. Pushpa's** case (supra) decided by three judge bench of Hon'ble Supreme

Court as a obiter and that law laid down by Hon'ble Supreme Court in **S. Pushpa's** case (supra) continues to hold the field. Once the Hon'ble Supreme Court has held in **Subhash Chandra's** case (supra) that the judgment in **S. Pushpa's** case (supra) is only obiter, there is no way except to follow the principle laid down therein.

6. Though the Full Bench of Hon'ble Delhi High Court held albeit indirectly that the judgment of **Subhash Chandra's** case (supra) does not lay down the correct proposition of law, we do not subscribe to that view in the absence of judgment of Hon'ble Supreme Court on that very issue.

7. We, therefore, dismiss the OA in view of the judgment of Hon'ble Supreme Court in **Subhash Chandra's** case (supra).

8. Pending MA stands disposed of. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L.Narasimha Reddy)
Chairman

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