



GOVERNMENT OF NCT OF DELHI
DELHI SUBORDINATE SERVICES SELECTION BOARD
FC-18, INSTITUTIONAL AREA, KARKARDOOMA,
DELHI-92

F.3(1)/CC-III/DSSSB/Vol.II / 4081

Date: 29/03/17

ORDER

This order is being passed in compliance of the directions of CAT issued vide its order dated 12.01.2017 in OA No.3481 of 2015. in the matter of Dinesh Mahawar vs. DSSSB &Ors.

Sh. Dinesh Mahawar, having Roll No 07714107, who had applied under SC category had applied for the post of Staff Nurse, Health & Family Welfare in Govt. of NCT of Delhi Post Code 77/09 under the SC category in response to the advertisement No 04/09.. Dinesh Mahawar had scored 76 marks in the Exam and was placed 3360 in the merit list. The eligibility of candidates for the said posts was determined as on closing date of receipt of applications was 15.01.2010. The Combined Part-II(written examinations) for the said post was conducted on 30.05.2010. The applicant was shortlisted for the Part-II examination which was evaluated and the result was declared on 27.01.2011. 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 Govt. 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 judgement 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 (C) No.507 of 2006 titled as "Sarv Rural & Urban Welfare Society vs. Union of India &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.

Sh. Dinesh Mahawar is claiming the benefit of reservation in respect of recruitment / selection which took place in 2011 (final result was declared on 27.01.2011), 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 judgement dated 04.08.2009 in the matter of "Subhash Chandra vs. DSSSB".

The CAT while disposing off the case of Sh. Dinesh Mahawar vide its order dated 12.01.2017 had remitted the matter back to the DSSSB with the following directions:

“Thus, we find that the candidature of the applicant could not have been rejected by the respondents on the ground of late acquisition of SC certificate as well as GNM certificate. We, therefore, allow this O.A. and quash the impugned order dated 21.08.2015. The respondent No-2 is directed to consider the candidature of the applicant for appointment to the post of Staff Nurse under post code-77/09. In case, he is found to be eligible then he shall be offered appointment and shall also be eligible for grant of consequential benefit of pay fixation and seniority. The above benefits of pay fixation and seniority. The above benefits be extended to the applicant within a period of 08 weeks from date of receipt of a certified copy of this order. No costs..”

DSSSB has examined the candidature of the applicant in view of the aforesaid judgement 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 as “Deepak Kumar &Ors. Vs. District & Sessions Judge, Delhi &Ors. In W.P.(C) 5390/2010, C.M. No.20815/2010 which was delivered / passed on 12.09.2012 wherein, while examining the “Subhash Chandra” judgement, 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 ratio, 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 judgement 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 W.P.(C) 5390/2010, C.M. No.20815/2010 was prospective, accordingly the said judgement 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 Staff Nurse Post Code 77/09 was carried out in the year 2011 (27.01.2011) 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 Dinesh Mahawar 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 topsyturvy matters/issues, which have already been settled and closed. The period during which the recruitment/selection of Govt. of NCT of Delhi (Staff Nurse) Post Code 77/09 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 to NCT of Delhi. The judgement of the Hon'ble High Court in the case of "Deepak Kumar" being prospective does not come to the rescue of Dinesh Mahawar 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 'SubhashChander' 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 judgement of Hon'ble Supreme Court in the case of Subhash Chandra which was the law of the land during the said period. This judgement has neither been set aside nor has it been over-ruled. Since the law laid down by the Hon'ble Supreme Court vide judgement 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 judgement including denial of the benefit of reservation to outside SC/ST candidates, which included Naresh Kumar Tawar 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 '*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 judgement of Hon'ble Supreme Court in the case titled "Basawaraj&Anr. Vs. The Spl. Land Acquisition Officer, AIR 2014 SC 746 wherein it was, interalia, 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 "Sushash 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 the judgement 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 Sh. Dinesh Mahawar in respect of the post of Staff Nurse, in Health & Family Welfare Department, Govt. of NCT of Delhi (Post Code 77/09). Accordingly, the status of the candidature of Dinesh Mahawar for the above said post remains cancelled

This issues with the approval of the Competent Authority.

Bhatia
29/03/17

Dy. Secretary (CC-II)

Dinesh Mahawar,
R/o. Qr. No.1156, Sector-3, M.B. Road,
Saket, Pushp Vihar,
Delhi-110017

Copy for information to:

1. Sr.PA to Chairman, DSSSB.
2. Sr.PA to Member-II, DSSSB.
3. P.A. to Secretary, DSSSB.
4. Dy. Secretary (P&P)
5. System Analyst, IT branch with the request to upload on the website of the Board.
6. Dy. Secretary (Legal), for information of Govt. Counsel.
7. Reception Office.
8. Notice Board,
9. Guard file.

Bhatia
29/03/17

Dy. Secretary (CC-II)