

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : March 07, 2013*

+ **W.P.(C) 915/2013 & CM No.1768/2013**

DELHI SUBORDINATE SERVICES
SELECTION BOARD

.... Petitioner

Represented by: Ms.Zubeda Begum, Advocate
with Ms.Sana Ansari, Advocate.

versus

HARIOM AHLAWAT & ORS.

..... Respondents

Represented by: Mr.Ajesh Luthra, Advocate for
R-1.

Ms.Anjana Gosain, Advocate for
R-2 to R-4.

AND

W.P.(C) 5222/2012 & CM No.10661/2012

DELHI SUBORDINATE SERVICES
SELECTION BOARD

..... Petitioner

Represented by: Ms.Zubeda Begum, Advocate
with Ms.Sana Ansari, Advocate.

versus

PUNISH & ORS.

..... Respondents

Represented by: Mr.Ajesh Luthra, Advocate for
R-1.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. Receiving at the first instance a requisition to fill up 26 posts of Assistant Superintendent in the Central Jail Tihar, the Delhi Subordinate Services Selection Board (DSSSB) commenced selection process by issuing the necessary advertisement inviting applications and informing that of the 26 posts to be filled up the distribution would be: (i) UR-13; (ii) SC-04; (iii) ST-02; and (iv) OBC-07. The advertisement was subsequently modified when the Director General (Prison) intimated that not 26 but 46 vacancies had to be filled up as follows:- (i) UR-25; (ii) SC-06; (iii) ST-03; and (iv) OBC-12. As per the advertisement, the age eligibility was between 18 years to 27 years; relaxable as per the Government of India norms (which we are informed is 5 years) for SC, ST and OBC candidates. The selection process required eligible applicants to first take an objective paper: Part I, the same being to shortlist the candidates who could then take the analytical/descriptive paper: Part II. A lower cutoff in the Part I paper was prescribed for SC, ST and OBC candidate vis-à-vis the candidates in the unreserved category.

2. Successful candidates after evaluating Part I paper were shortlisted to take the Part II paper; and needless to state the ST, SC and OBC candidates were granted the benefit of relaxation in the upper age limit; for those who claimed benefit thereof. Similarly, while drawing up the list of successful candidates at Part I examination, those who did not achieve the cutoff mark prescribed in the unreserved category, but were competing as SC, ST and OBC candidates were given benefit of relaxation in the prescribed cutoff point.

3. Completing the selection process after evaluating the answer sheets of the Part II examination, DSSSB notified the select panel

consisting of 25 candidates in the unreserved category, 11 in the OBC category, 6 in the SC category and 3 in the ST category; and we highlight that as against 12 vacancies notified for OBC candidates the select list drawn up was of only 11 candidates and 1 vacancy was kept pending due to some dispute; nature whereof need not be noted by us as the same does not concern the instant dispute. The 3 lists are as under:-

UR CATEGORY

SL. No.	ROLL NO	NAME OF THE CANDIDATE	CAT	D.O.B.	MARK MAIN EXAM
1.	1213626	DEEPAK KUMAR RANA	UR/OBC	31.08.83	123
2.	1212653	PARVEEN KUMAR	UR/SC	17.06.82	116
3.	1213661*	SUNIL	UR	02.12.82	116
4.	1212803	JITENDRA KUMAR PATEL	UR	15.03.83	115
5.	1213521	CHETNA GUPTA	UR	09.09.81	115
6.	1214561	KUMAR RAJESH	UR	28.02.82	114
7.	1212107	NAVEEN KUMAR	UR	26.06.85	114
8.	1212841	KAVINDER	UR	17.05.84	114
9.	1213029	RAJNISH KUMAR	UR	10.08.83	114
10.	1214589	DEEPAK SAROHA	UR	26.09.81	113
11.	1213361	VIKAS	UR	24.04.83	113
12.	1210414	HARI OM	UR	19.01.82	113
13.	1212337	SANDEEP	UR/OBC	17.09.81	113
14.	1213599	ROHIT MANN	UR/OBC	08.09.84	113
15.	1211614	SURJEET KUMAR	UR	08.08.82	113
16.	1211934	DEEPAK SHARMA	UR	03.02.87	113
17.	1213538	ANUJ KUMAR	UR/OBC	02.06.82	113
18.	1212411	AKHILESH RATHORE	UR	01.01.82	113
19.	1213099	PRADEEP	UR	05.08.82	112
20.	1213362	HARI KISHAN SHARMA	UR/EX.	01.09.71	112
21.	1210325	MANISH MALIK	UR	27.09.85	111
22.	1212556	PRASHANT DAGAR	UR	21.05.87	111
23.	1214507	YOGESH	UR	06.03.83	111

24.	1212205	HARIOM AHLAWAT	UR	05.07.87	111
25.	1213645*	SOMKANT KHARE	UR	05.07.84	111

*Provisional subject to verification of signatures which has slight variations. Copies of OMR Answer sheets containing declaration written by the candidates in their own handwriting are placed in their respective dossiers.

OBC CATEGORY:

SL. No.	ROLL NO	NAME OF THE CANDIDATE	CAT	D.O.B.	MAR K MAIN EXA M
1.	01212583	ANIL KUMAR	OBC	28.09.80	116
2.	01210216	NEERAJ KUMAR	OBC	25.03.80	115
3.	01213571	PARAMVEER	OBC	07.03.81	113
4.	01210226	NAVEEN DAHIYA	OBC	25.12.79	112
5.	01214022	MUKESH	OBC/DE	01.05.75	112
6.	01214419	PRADEEP KUMAR MANN	OBC	29.11.79	111
7.	01214064*	SURENDER KUMAR DAGAR	OBC	01.04.83	111
8.	01212723	LAXMI GOLA	OBC	23.03.80	110
9.	01211935	YOGENDER SINGH (YOGINDER SINGH)	OBC	07.06.83	110
10.	01212533	SANJAY KUMAR	OBC	01.12.81	110
11.	01214051	PUNISH	OBC	10.11.82	109

*Provisional subject to verification of signatures which has slight variations. Copy of OMR Answer sheet containing declaration written by the candidates in his own handwriting is placed in dossier of the candidate.

SC CATEGORY:

SL. No.	ROLL NO	NAME OF THE CANDIDATE	CAT	D.O.B.	MARK MAIN EXAM
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1.	01213461	DHARMENDRA SINGH MAURYA (TOMAR)	SC	08.05.79	113
2.	01214010	DEEPAK KUMAR	SC	19.04.79	112
3.	01210693	UDAI RAJ SINGH	SC	20.11.82	111
4.	01214075	RAHUL KARDAM	SC	04.09.80	111
5.	01214627	GHANSHYAM DAS	SC	22.11.80	108
6.	01210063	JAGDISH	SC	31.07.85	107

ST CATEGORY:

SL. No.	ROLL NO	NAME OF THE CANDIDATE	CAT	D.O.B.	MARK MAIN EXAM
1.	01212959	DHARAM SINGH MEENA	ST	15.10.85	110
2.	01213350	CHET RAM MEENA	ST	10.07.83	107
3.	01212745	AKASH KUMAR MEENA	ST	02.02.87	107

4. Taking a stand that while drawing up the select panel, inadvertently it went unnoticed that candidates who had obtained same number of marks required them to be placed in the order of merit with reference to the date of birth; the elder being ranked above the younger, DSSSB claimed that 6 candidates in the unreserved category had obtained 111 marks and that the list pertaining to the unreserved candidates required to be redrawn as under:-

SL. No.	ROLL NO	NAME OF THE CANDIDATE	CAT	D.O.B.	MARK MAIN EXAM
1.	01214507	Yogesh	UR	06.03.83	UR-21
2.	01213645	Somkant Khare	UR	05.07.84	UR-22
3.	01210325	Manish Malik	UR	27.09.85	UR-23
4.	01211209	Manjeet	UR	04.05.86	UR-24
5.	01212556	Prasant Dagar	UR	21.05.87	UR-25

6.	01212205	Hariom Ahlawat	UR	05.07.87	No vacancy
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5. Similarly, noting that 7 OBC candidates had obtained the same i.e. 109 marks and that while drawing up the list it got omitted to be noted that said 7 candidates had to be placed in the order of merit with reference to their date of birth, the list was revised and the 7 OBC candidates were ranked as under:-

SL. No.	ROLL NO	NAME OF THE CANDIDATE	CAT	D.O.B.
1.	01210716	Ram Babu	OBC	05.08.77
2.	01214580	Rajpal Singh	OBC	01.04.82
3.	01211779	Subodh Gahlot	OBC	09.05.82
4.	01214547	Manoj Rana	OBC	01.08.82
5.	01214051	Punish	OBC	10.11.82
6.	01210722	Sarita Yadav	OBC	08.12.82
7.	01210354	Pradeep	OBC	19.07.83

In this manner, Punish got relegated from serial No.11 to serial No.15 in the OBC category.

6. Due to aforesaid redrawing of the lists, Hariom Ahlawat, the first respondent in W.P.(C) No.915/2013 who was at serial No.24 in the category of unreserved candidates, having obtained 111 marks got pushed out from the merit list as he could not find a place in the merit list of 25 candidates on account of the fact that he was born on July 05, 1987 and was the youngest amongst the 6 candidates in the unreserved category who had obtained 111 marks. Similarly, Punish who had obtained 109 marks and found himself at serial No.11 of the original list drawn up got relegated to serial No.15 in the list of OBC candidates and hence out of the select list.

7. But before the lists were redrawn, since DSSSB intimated to the Director General (Prisons) the names of the selected candidates as originally drawn up, the Director General (Prisons) started issuing letters offering appointment to the candidates and the result was that both Hariom Ahlawat and Punish accepted letter offering appointment and joined. By the time on June 26, 2009, DSSSB requested Director General (Prisons) to keep in abeyance the select list forwarded, appointments had already been made. The lists were later up redrawn on December 21, 2009.

8. The result was that Hariom Ahlawat and Punish faced threat of losing their job and both approached the Central Administrative Tribunal questioning the lists being redrawn.

9. Deciding OA No.3429/2010 filed by Hariom Ahlawat the Tribunal found, and we quote from the order of the Tribunal:-

“In their counter reply dated 22.12.2010, the DSSSB has submitted the revised merit list in respect of candidates with marks 111 as per their age. The list shows a total 11 candidates; the name of the applicant figuring at serial No.10. In this list, four candidates have actually been shown as selected under the reserved category (Sl.1, 2, 3 and 5) Sl. No.8, Manjeet whose name had been recommended as a substitute for Hariom Ahlawat had the applicant not continued in service. As per the remarks column, he had ‘left’. Taking this into account, the rank of the applicant which initially was sixth on leaving of Manjeet it came down to fifth. Further among the candidates selected, two (Shri Anuj Kumar and Shri Sandeep) had not joined/had resigned within six months respectively. As per Shri Ajesh Luthra, the learned counsel for the applicant, out of the originally notified 25 vacancies under the UR category, still two more vacancies remained unfilled, against which the appointment of the applicant could be sustained.”

10. The factual content of the aforesaid paragraph were not refuted before us.

11. Allowing the claim of Hariom Ahlawat, the view taken by the Tribunal is that all notified vacancies had required to be filled up and thus, subject to a candidate obtaining the minimum eligible cutoff marks, right to appointment accrued to such candidates who would find a place in the category of appointed candidates if candidates higher up in the merit did not join or whose papers were found to be wanting.

12. Allowing O.A.No.3433/2010 filed by Punish vide order dated November 16, 2011, the reasoning of the Tribunal is similar to its earlier decision where the Tribunal has noted that discounting those OBC candidates who had either not joined or whose papers were found to be not in order, Punish would find a place amongst 11 candidates.

13. Challenge to the two decisions is by DSSSB; and we highlight not the Director General (Prisons), who seems to be happy for the reason the population of prisoners, both undertrials as well as convicts in the Central Jail Tihar is far in excess of the capacity of the prison and thus he needing all posts to be filled up.

14. The grievance to the impugned decisions by DSSSB, is that it had drawn up a select panel of only 25 candidates in the unreserved category and 11 in the OBC category and thus the effect of the impugned decisions is the elongation of the select list.

15. We have repeatedly passed orders that it is the Service Department which has to take the decision whether to maintain a wait list or not. The DSSSB is merely a recruiting agency and is not the competent authority to decide whether or not a wait list has to be maintained. We have been noticing in the past that since a large number of candidates

apply for a few posts, due to shortage of manpower, DSSSB does not scrutinize the applications with reference to the documents annexed by the candidates with respect to the eligibility conditions being fulfilled. After the selection process is over, DSSSB scrutinizes the certificates filed by the candidates with their application forms. As in the instant case, where candidature of 3 OBC candidates was rejected on account of not producing the relevant OBC certificate, we found in other cases, similar things happening pertaining to not only OBC candidates but even ST, SC as well as General category candidates, for the latter, issues pertaining to acquiring eligibility as of the cutoff date arose, rendering them ineligible.

16. Now, as in the instant case, if only 11 OBC candidates are shortlisted in the merit list and thereafter it is found that 3 are ineligible, we see no justification for the Board to only forward names of 8 candidates to the Service Department. Ineligible candidates being removed, subject to eligibility and qualifying, 3 more candidates have to be included in the select panel and names forwarded to the Service Department. Besides, we find that considerable time, sometimes up to as many as 2 years lapses, between the dates when applications are invited from eligible candidates and results declared. We have been noticing that in large number of such cases many candidates obtain gainful employment elsewhere and notwithstanding finding a place in the select list do not even respond to the letters offering appointment. Since select list is restricted to the number of vacancies, upon said candidates not responding to the letters offering appointment, the posts remain unfilled.

17. Crores of rupees are spent on the establishment of the DSSSB. Crores of rupees are spent by DSSSB while issuing public

advertisements inviting applications. Simple logic demands that maximum benefit of revenue spent should be attempted to be achieved.

18. It hardly needs any emphasis to state that public interest is served when public posts are filled up. Public interest suffers when public posts remain vacant. The law of the land is that nobody has a vested right to be appointed even when a vacancy is notified and the person has qualified, but subject to the exception that there should be a good justification to not fill up the vacancy. Meaning thereby, filling up of a notified vacancy is the norm and not to fill up the same is the exception.

19. Since admittedly, both Hariom Ahlawat and Punish had qualified at the main exam and some persons above them in the redrawn merit list have either not joined or were found ineligible, and as a result vacancies are available to be filled up by said two persons; noting further that both of them were issued letters offering appointment as per the first list drawn up, we find no infirmity in the view taken by the Tribunal on the given facts of the case. We note that Hariom Ahlawat had been offered appointment in CISF which he did not accept because he found the instant employment. Equities are in his favour. Similarly, Punish had been offered a job by HDFC Bank which he did not accept having obtained the instant employment.

20. Before closing we would like to observe, with reference to the facts of the instant case, that DSSSB is not following a logical step wise process to draw up the select list.

21. Since as per law, if those who seek benefit of reservation, obtain marks high up in the merit list and would find a place while competing with unreserved/general category candidate have to be listed in the unreserved category, while drawing up the lists DSSSB has to take

care of the situation where a candidate, pertaining to eligibility, competes on the strength of being a SC/ST or OBC candidate. For example, if the upper age qualification requirement is 27 years, relaxable by 5 years for SC/ST/OBC candidate, any person who takes benefit of relaxation has to compete in his/her category. Similarly, as in the instant case, pertaining to Part I examination, qualifying marks for unreserved category were more than those in the reserved category. Those who earned the right to participate at the Part II selection process after availing the benefit of being in the reserved category; with reference to the qualifying marks obtained at the Part I examination have likewise to retain their character as reserved category candidates and cannot merge with the unreserved category candidates irrespective of the marks they obtain at the Part II examination. To put it in simple words. A reserved category candidate must join the race and complete the same without availing any benefit of being in the reserved category if the name of the candidate has to be placed in the merit list pertaining to the unreserved category.

22. Noting that in the instant case, as a result of the revision effected in the select list when error committed of not placing candidates with equal marks in the descending order with reference to the date of birth was noted, the two respondents before us would not find themselves within the first 25 and 11 candidates respectively in the list of unreserved and OBC candidates, but having obtained marks above the cutoff limit and enough number of candidates above them either being later on found to be ineligible or did not respond to the letter offering appointment or joining and resigning within a month or two resulting in the notified vacancies in the two categories not being filled up, we do not disturb the final directions issued in the two orders passed by the Tribunal.

23. The writ petitions are accordingly dismissed but without any orders as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

MARCH 07, 2013
dk/mm