

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

+ **WP(C) 3560/2016**

% **Reserved on : 2nd June, 2016**
Pronounced on : 5th August, 2016

AMIT KUMAR AND ANR. **...Petitioner**
Through : Mr.Saurabh Sharma, Advocate

Versus

GOVT. OF NCT OF DELHI AND ORS. **...Respondents**
Through : Ms.Harvinder Oberoi, Advocate for
respondents no.1 and 2
Mr.Ayush Chandra, Advocate for
respondents no.3/DJB

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J.

1. Amit Kumar and Ashok Kumar, in this writ petition, impugn the order dated 14th August 2014 passed by the Principal Bench of the Central Administrative Tribunal (the tribunal, for short) in OA No.399/2013 and seek appointment as Junior Engineer (Civil) in the Delhi Jal Board.
2. The case has a chequered and long history with several rounds of litigation before the tribunal. The Delhi Jal Board ('DJB' for short) had requisitioned the Delhi Subordinate Service Selection Board ('DSSSB' for short) for recruitment of 160 Junior Engineer (Civil)

which included 74 vacant posts reserved for Other Backward Classes ('OBC' for short). The DSSSB had issued advertisement No.1/2009 and the petitioners who are lohars, a recognized backward class, had applied for selection. Having secured more than 60 marks in the part-1 (preliminary examination), Amit Kumar and Ashok Kumar had appeared in the main examination and secured 85 and 80 marks, respectively. However, their names did not figure in the list of successful candidates declared on 6th November 2009, though only 52 OBC candidates out of 74 vacant posts reserved for OBCs, were selected and appointed. The petitioners assert that they have been denied and deprived appointment as Junior Engineer (Civil) without any valid reason and cause.

3. The respondents accept the factual position that 52 OBC candidates were appointed and 22 OBC vacancies had remained unfilled. The explanation was that selection of 22 candidates in the order of merit were kept pending for submission of OBC certificates from the Govt. of NCT of Delhi but later none of the candidates were found eligible. Amit Kumar who had secured 85 out of 200 marks was provisionally considered for selection but was not appointed as there were 7 candidates, who had secured 85 marks against the last vacancy, to which one Sanjeev who was eldest in age was declared selected. Candidature of six other candidates, including Amit Kumar, who had secured 85 marks were rejected. Ashok Kumar, who had secured 80 marks was not considered under the OBC category. The respondent-DSSSB state that there were 35 candidates above him and the last selected candidate in the OBC category, had secured 85 marks.

4. Thus admittedly, out of 74 posts reserved for OBC category only 52 candidates were selected and 22 vacant and advertised posts were never filled up, for the reason that the 22 candidates shortlisted were not entitled to reservation in the OBC category. The recruitment process without filling up 22 vacant OBC posts of Junior Engineer (Civil) in the Delhi Jal Board was closed on 12th March, 2010.
5. Aggrieved by the said action, the petitioners herein had filed OA No.3706/2010 on or about 1st November, 2010 against the Government of NCT of Delhi, DSSSB, and the DJB. This OA was decided on 20th October, 2011 with specific and clear findings on the contention and defense of the respondent-DSSSB. The reasoning and the directions given in the order dated 20th October, 2011 of the Tribunal are of significance and crucial. They read as under:-

“10. Having heard, the learned counsel for the parties and perused the records, we find that the respondents have not given any justification for not filling all 74 vacancies reserved for OBC. Further, once applicants had scored more than 30% marks in Part-I examination and more than 35% marks in Part-II examination, it is not understood that how the respondents did not consider them as qualified candidates. Once the total vacancies reserved for OBC category were 74, by preparing a select list of 52 OBC candidates, respondents could not have denied selection to the applicants by taking a stand that the applicant No.1 was younger in age than the last selected candidate and applicant no.2 had scored less marks than him. Such contention of the respondents could be countenance only if they had prepared list of 74 candidates and the marks scored by the applicants could be less than the last selected candidate placed at 74th position. Once the vacancies to be filled up from OBC were 74 and

respondents had prepared select list of 52 candidates, their contention that no waiting list for the posts in question was maintained is irrelevant.

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Application directing the respondents to:

(1) verify and find out whether any decision was taken to reduce the number of vacancies to be filled up from OBC category. If it is so revealed, they will communicate their such decision to applicants with reasons for the same.

(2) If it is found that no conscious decision was taken to reduce the number of vacancies to be filled up from amongst OBC candidates, respondents would assess the merit position of the applicants and in case it is found that they are to be included in top 74 candidates from OBC category, respondents would consider appointing them as Junior Engineer (Civil) in Delhi Jal Board.”

(3) In case there was any other reason for not appointing the applicants on the aforementioned post and such reasons still subsists, it would be open to the respondents to pass a speaking order and communicate the same to applicants apprising them of such reasons. OA stands disposed of. No costs.”

6. The aforesaid quotation unmistakably and plainly reflects that the tribunal had accepted the case put up by the petitioners and had decisively rejected the stand and stance of the respondents. The tribunal had observed and held that the respondents had acted illegally in preparing a select list of 52 OBC candidates, when 74 vacancies

reserved for OBC candidates were advertised and vacant. The two petitioners had bettered the minimum qualifying marks in part-I and Part-II examinations. Amit Kumar had secured equal marks as the last selected candidate but been denied appointment, as he was younger in age. The Tribunal firmly and affirmatively repelled the iniquitous and mistaken stand of the respondents that they were entitled to prepare a select list of 52 OBC candidates though there were 74 vacancies, as unacceptable. The fact that no waiting list was prepared was held to be irrelevant. However, even after recording the aforesaid categorical findings and allowing the OA, the Tribunal directed the respondent-DSSSB to carry out an exercise to verify whether any decision was taken to reduce the number of vacancies to be filled up in the OBC category and if so communicate the said decision to the petitioners with the reasons. If no conscious decision was taken to reduce the number of vacancies, the respondents would assess the merit position of the petitioners and if it was found that they were top 74 candidates in the OBC category, they would be considered for the appointment as Junior Engineer (Civil). In case there was any other reason for not appointing the petitioners and the reason still subsisted, respondents shall pass a speaking order and communicate the said reason. It is obvious that this “ground” referred to by the Tribunal would mean that the respondents would justify and state why they would not fill up the vacant posts in the OBC category.

7. The aforesaid order passed by the Tribunal dated 20th October, 2011 in OA No.3706/2010 has attained finality and was not challenged by the respondents or the petitioners.

8. The respondents by two office orders No.259 and 260 both dated 8th February, 2012 rejected the candidature of the two petitioners. In the case of Amit Kumar it was observed as under:

“In the case of Sh.Amit Kumar, Roll No.00210516 (DOB -02.01.1985) appearing at Sl.No.716 in the merit list has scored 85/200 marks and was provisionally considered for selection. However, there were 07 candidates including Shri Amit Kumar, the Appellant, who had secured 85/200 marks against last available vacancy. As per Board’s policy, if there are two or more candidates available against the last available vacancy, then the older one would be selected. Hence, Mr.Sanjeev, Roll No.00212499 (DOB, 17.07.1982) was selected for the last available vacancy in the OBC Category as he was the oldest amongst all other backward candidates, who have scored 85/200 marks. Therefore, Sh.Sanjeev, Roll No.00212499 was recommended for selection to the post of J.E. (Civil) (Post Code-002/09) and the candidature of all other candidates including Sh.Amit Kumar was rejected.

Further, as per Board’s policy, candidates equal to the number of vacancies available (In this case 74) are taken from the merit list only once and even if some of the candidates are later on found to be ineligible due to one or other reason (s), no further candidates are taken from the merit list for consideration for provisional selection i.e., no waiting list / panel is maintained by the Board.

Hence, in view of foregoing facts, the candidature of Shri Amit Kumar cannot be considered for provisional selection and recommendation for the post of J.E. (Civil), Post Code 002/09.”

(emphasis supplied)

9. In the case of Ashok Kumar, it was observed as under:

“The appellant i.e. Sh.Ashok Kumar, Roll No.0021010678 appearing at Sl.No.790. He secured 80/200 marks and was not even in the zone of consideration under the OBC category. Moreover, there were 35 candidates above him, who had secured more marks than Shri Ashok Kumar. It is also informed that candidate namely, Sh.Sanjeev, Roll No.00212499, who had secured 85/200 marks was the last selected candidate against the last available vacancy in OBC Category. The recruitment process for the post of J.E.(Civil) under post code 002/09 was closed on 12-03-10 with the approval of Competent Authority, DSSSB.

Further, as per Board’s policy, candidates equal to the number of vacancies available (in this case 74) were taken from the merit list only once and even if some of the candidates if later on found to be ineligible due to one or other reason(s), no further candidates are taken from the merit list for consideration for provisional i.e., no waiting list / panel is maintained by the Board.

Hence, in view of foregoing facts, Mr.Ashok Kumar cannot be considered for provisional selection and recommendation to the post of J.E. (Civil), Post Code 002/09.”

10. We have reproduced the exact reasons given by the respondents in their office orders dated 8th February, 2012 and highlighted the relevant portion in the case of Amit Kumar as we find the same is contrary to and negates the reasoning given by the tribunal in their order dated 20th October, 2011. No doubt sub-paragraphs of the directions given by the Tribunal in the said order gave an option to the

respondents to state and give reasons for not appointing or selecting the petitioners, but the justification could not have been repetition of to the ground or reasons already taken by the respondents before the tribunal and rejected. The said observation of the tribunal did not give liberty to the respondents to undo and un-write the finding rejecting the stand taken by the respondents before the tribunal. We are constrained to observe and hold that this aspect was ignored by the respondents in their order dated 8th February, 2012 in the case of Amit Kumar. The respondents without appreciating the scope and ambit of the remand and notwithstanding the findings already recorded, simply reiterated the repelled and dismissed stand. This was impermissible and contrary to law and the order of the tribunal dated 20th October, 2011.

11. Faced with the aforesaid situation, the two petitioners filed OA No.839/2012, which was disposed of by the order dated 4th October, 2012. This order notices the earlier finding and the directions given in the order dated 20th October, 2011 deciding OA No.3706/2010, but rejected the OA on the ground that the tribunal cannot interfere with the decision taken by the competent authority not to fill up unfilled vacancies in the OBC category and that there was no illegality or impropriety or violation of rules or instructions. The tribunal observed that the petitioners had not specifically challenged the order dated 8th February, 2012 in the OA, which was rejected for failure to make out a legal right.

12. Aggrieved, the two petitioners filed Writ Petition (Civil) No.28/2013. The exact order passed by the High Court dated 8th January, 2013 in Writ Petitioner (Civil) No.28/2013, reads as under:

“1. After some arguments learned counsel for the petitioner states that having consulted with his clients in light of the arguments which had transpired, leave be granted to withdraw the writ petition inasmuch as the writ petitioners would like to challenge the decision dated February 8, 2012 taken by DSSSB pursuant to interim orders passed by the Tribunal and thereby closing the recruitment process by selecting only 52 OBC candidates against 74 vacancies which were advertised.

2. A perusal of the impugned decision passed by the Tribunal would reveal that one of the principle grounds for which the writ petitioners have lost out is the non-challenge to the order dated February 8, 2012.

3. Under the circumstances, while dismissing the writ petition as withdrawn it is observed that if the writ petitioners lay a challenge to the order dated February 8, 2012, the same shall be decided by the Tribunal as per law.”

Thus the petition though dismissed as withdrawn with liberty to the petitioners to challenge the decision dated 8th February, 2012 taken by the DSSSB, had permitted the petitioners to raise all contentions once again if they would challenge the decision/order dated 8th February, 2012. This order of the High Court wrongly mentions that the order dated 8th February, 2012 of the DSSSB was pursuant to the interim order passed by the tribunal, but this would not make the slightest difference. The order dated 8th February, 2012 was passed

pursuant to the final order dated 20th October, 2011 passed in OA No.3706/2010, which had attained finality.

13. The core issue and dispute was, whether the respondents could have closed recruitment process with the selection of only 52 OBC candidates when there were 72 vacant posts for which advertisement had been issued. It was not mandatory or necessary for DSSSB or the DJB to fill up and make appointments to all posts, albeit when eligible and qualified candidates were available non-selection had to be justified by the DSSSB / DJB. Arbitrariness and capriciousness in the decision not to fill up the vacant advertised post once apparent, is not immune from judicial review and correction. If the reasons and grounds for non-selection/appointment which form the backbone and substratum of the said decision are vile and unsound, the decision would suffer from an error in the decision-making process. What was raised and professed as a defense by the respondents to the OA no. 3706/2010, was rejected and renegaded in the final decision dated 20th October, 2011. The High Court had therefore pertinently observed in their short order disposing of the WP (C) No. 28/2013 that the tribunal had rejected the O.A. No.839/2012 filed by the petitioners primarily on the ground that the order dated 8th February, 2012 had not been challenged. The direction was that if the petitioners file a fresh OA laying a challenge to the order dated February 8, 2012 the tribunal would decide the application as per law.
14. The petitioners thereupon had filed the third OA bearing No.399/2013. This O.A. was disposed of vide order dated 14th August, 2014. This order reiterates the earlier order dated 11th July, 2014 which in turn

quotes the earlier order dated 20th October, 2011 passed in OA No.3706/2010 and highlights the directions given therein. The order dated 14th August, 2014 also quotes from the judgment dated 7th March, 2013 passed in Writ Petition (Civil) No.5236/2012 titled *Delhi Subordinate Services Selection Board Vs. Lokesh Kumar & Ors.* wherein the following observations was made:

“11. Before bringing the curtains down we wish to bring on record that the budget of the Delhi Subordinate Services Selection Board runs into crores of rupees every year. It is the duty of the Selection Board to ensure that as far as possible every vacancy notified to be filled up is filled up if eligible candidates are available. It does not subserve public interest if public post remains unfilled. We are finding in very second litigation being fought against the Selection Board that a panel is drawn up limited to the number of vacancies notified to the Selection Board by the Government of Delhi or autonomous bodies under the aegis of the Government of Delhi. The Selection Board does not scrutinize the certificates filed by the applicants before permitting them to take the competitive examinations. The result is that if 10 vacancies have to be filled up, a Select Panel of 10 is drawn up. Thereafter, the said 10 candidates are called for the certificate submitted by them to be verified. If any deficiency is found or noted in a certificate issued, the empanelled candidate is de-empanelled and the Board then takes a stand that since it has not drawn up a reserve list, it would not forward the name of the next selected candidate who is also above the qualifying mark limit prescribed. Not only does this

breed litigation but even results in public posts remaining unfilled. As in the instant case, the Delhi Jal Board urgently requires an Assistant Chemist and we have respondent No.1 as a selected candidate but yet the post is not being filled up because the Selection Board is refusing to send the dossier of respondent No.1 to the Delhi Jal Board. We make it clear that the decision to fill up or not fill up the vacancy cannot be the decision of the Selection Board, which is merely a recruiting agency. The employer is not the Selection Board. The office or the department of the Government which sends the requisition to the Selection Board would alone have the right to determine whether or not to fill up the vacancy. In future, the Selection Board would forward the names of all candidates who have secured marks above the eligible cut-off mark to the office or the department which has sent the requisition to the Selection Board to conduct the examination. It would then be for the said department to decide whether or not it would like to have candidates on the wait list. This would ensure that it is the employer who would decide whether to fill up the vacancy from the waitlisted candidate if the candidates in the select list are found either ineligible or do not respond to the letters offering appointment.

12. We concur with the view taken by the Central Administrative Tribunal that the Delhi Subordinate Services Selection Board shall forward the name of respondent No.1 to the Delhi Jal Board for being appointed as an Assistant Chemist.

13. The writ petition is dismissed.

14. There shall be no order as to costs.”

15. After the aforesaid discussion the impugned order dated 14th August, 2014 directs as under:

“On the other hand, learned counsel for respondents submitted that the respondents have streamlined the selection process and once they have prepared a select list in the order of merit, even if some of the candidates included in the list are found ineligible, they cannot pick up more of such candidates who participated in the selection for being included in the list, as there is no practice to do so. Mrs. Harvinder Oberoi, learned counsel for the respondents could not dispute the position, as laid down by this Tribunal in the aforementioned Original Application and upheld by Hon’ble High Court. Regarding applicant No.2, the respondents have taken a stand that he has secured 80/200 marks and since the cut off marks were 85/200, he could not be included in the select list.

5. In the order relied upon by the applicant, the Hon’ble High Court of Delhi has condemned the practice of preparing the penal (sic. ‘panel’) only to the extent of number of available vacancies and not to forward the name of next selected candidate who is above the qualifying marks of the limit prescribed resulting in public posts remaining unfilled.

6. In view of the aforementioned particular fact that the applicant No.1 secured 85/200 i.e. equal to the marks secured by the last selected candidate and applicant No.2 also secured 80/200 marks, we dispose of the OA with direction to the respondents to examine the claim of the applicants in view of the aforementioned judgment of Hon’ble High Court of Delhi and pass reasoned and speaking order.”

16. Thus once again the respondents were asked to consider the case of the petitioners, though it was noticed that Amit Kumar had secured 85

marks, equal to the marks obtained by the last selected candidate. The tribunal had referred to and quoted extensively from the judgment of the Delhi High Court in Writ Petition (Civil) No.5236/2012 disapproving and proscribing the DSSSB for preparing a limited panel and not forwarding the names of the next selected candidate, who had made or secured the qualifying marks, as a result of which public posts had remained unfilled. Impugned order predicates and relies on the earlier directions given in the order dated 20th October, 2011 passed in OA.No.3706/2010, which we have quoted above, yet the all important final relief was denied and Amit Kumar was left at the mercy of the respondents.

17. The discretion and latitude given to the respondents vide order dated 14th August, 2014, did not result in a favourable order. Amit Kumar's candidature was again rejected vide office order dated 11th December, 2014. Ashok Kumar suffered a similar fate. The petitioners as advised filed a Contempt Petition No.3171/2015, which stands dismissed vide order dated 7th January, 2016, recording and holding that there was absence of willful disobedience for the respondents had passed a speaking order dated 11th December, 2014. The petitioners if aggrieved, could question the speaking order in appropriate proceedings.
18. During the last six years, Amit Kumar had petitioned the tribunal on four occasions including once by way of contempt, for the respondents' in spite of the adverse and unfavourable findings, still continue to reiterate their initial stand that they were justified and correct in not filling up 22 vacant posts in the OBC category for no

waiting list was then prepared. This stand and stance of the respondents stood specifically repudiated and negated in the order dated 20th October, 2011 passed in O.A.No.706/2010, which order has attained finality. This rejected stand when reiterated as a defense in OA.No.399/2013 was disallowed and renounced in the order dated 14th August, 2014. This order also refers to the judgment dated 7th March, 2013 in the Writ Petition No.5236/2012 and quotes the portion condemning the practice of not sending names of qualified eligible candidate resulting in the vacant advertised posts remaining unfilled. The grievance of the petitioners is apparent. They have primarily directed their challenged to the last paragraph i.e. paragraph 6 the order dated 14th August, 2014, which is not in consonance and compatible with the findings and directions given in the earlier paragraphs. The tribunal had categorically and clearly rejected the position of the respondents that they as per will need not make a panel for all the vacant posts from the eligible and qualified candidates. Remanding the matter in such circumstances was not justified and correct for it only opened up and ensured another round of litigation as has happened. This results and causes injustice and puts the parties to inconvenience, expenditure and harassment.

19. We have gone through the reply filed by the DJB before the tribunal in OA.No.399/2014. They have accepted that 22 posts of Junior Engineer (Civil) meant for OBC category had remained unfilled and the process was closed in spite of having qualified candidates. They have referred to the order dated 4th October, 2012 passed in OA No.839/2012, which as noticed above was made the subject matter of

challenge in WP(C)No.28/2013. The counter affidavit observes that this writ petition was dismissed which we have noticed above is not factually correct. The writ petition was dismissed as withdrawn with liberty to the two petitioners to challenge the orders dated 8th February, 2012. We have also noticed observations made by the High Court in paragraph 2 of their order dated 8th January, 2013 to the effect that the tribunal had dismissed the OA only on the ground of non-challenge to the order dated 8th February, 2012 and not for any other reason. Counsel for the DJB had drawn our attention to the requisition No.DJB AC(T)/JEs(Civil)/Apptt. 2012 / dated 24.1.2013 for filling up vacant posts of Junior Engineer (Civil) in the said Board. They have also filed on record a copy of the advertisement No.3/13 dated 12th September, 2013 and notification dated 31.5.2015 for filling up vacant posts and fixing examination schedule. These requisitions and subsequent events do not deter and prevent us from passing this order for the reason the petitioner No.1 had approached the tribunal way back in 2010. The respondents, including the DJB, were aware of the claim of the petitioners, who had to repeatedly knocked at the doors of the tribunal as the respondent DSSSB has tried to overrule and disregard the observations and finding recorded in the order dated 20th October, 2011 passed in the OA No.3706/2010 to deny benefit to the petitioner No.1 (Amit Kumar). In such circumstances, it cannot be countenanced and accepted that the unfilled vacancies have now been made the subject matter of recruitment process initiated subsequently. Amit Kumar's claim and right to one vacant post being earlier in point of time and for which he has been resolutely pressing cannot be denied

and undone for this reason. The respondents including the DJB, who were always aware and conscious of Amit Kumar's case and claim, cannot hide behind this subterfuge and excuse.

20. Coming to the facts of the present case, we find that the petitioner No.1, Amit Kumar is entitled to succeed. He had secured the same marks, as the last selected candidate, but was not got selected because he was younger in age and as per the respondents the eldest candidate was selected. Six other candidates including Amit Kumar had secured same marks, as secured by the last selected candidate. As there were 22 vacancies, petitioner no.1 (Amit Kumar) should have been included in the list of 22 unfilled vacancies in the OBC category.
21. However, the petitioner no.2, Ashok Kumar, we believe cannot succeed in view of the facts on record. He has secured 80 marks and there were 35 candidates between him and the last selected candidate, who had secured 85 marks. In the aforesaid factual matrix, we do not think the second petitioner i.e. Ashok Kumar would have qualified and was within the next 22 candidates entitled to fill-up the un-filled vacancies by the order of merit.
22. We have already referred to the order of the tribunal dated 20th October, 2011 passed in OA No.3706/2010 and the decision of the Delhi High Court in **Mukesh Kumar and Anr.** (supra) and the precept that no candidate has a vested right to claim appointment even if his/her name is included in the select list, but this rule does not give the State a license to act in an arbitrary or discriminatory manner. In **Shakarsan Dash Vs. Union of India** (1991) 3 SCC 47, the position was lucidly summarized in the following words:-

“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. Subash Chander Marwaha* [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165], *Neelima Shangla v. State of Haryana* [(1986) 4 SCC 268 : 1986 SCC (L&S) 759], or *Jatinder Kumar v. State of Punjab* [(1985) 1 SCC 122 : 1985 SCC (L&S) 174 : (1985) 1 SCR 899].”

8. In *State of Haryana v. Subash Chander Marwaha* [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165] 15 vacancies of Subordinate Judges were advertised, and out of the selection list only 7, who had secured more than 55 per cent marks, were appointed, although under the relevant rules the eligibility condition required only 45 per cent marks. Since the High Court had recommended earlier, to the Punjab Government that only the candidates securing 55 per cent marks or more should be appointed as Subordinate Judges, the other candidates included in

the select list were not appointed. They filed a writ petition before the High Court claiming a right of being appointed on the ground that vacancies existed and they were qualified and were found suitable. The writ application was allowed. While reversing the decision of the High Court, it was observed by this Court that it was open to the government to decide how many appointments should be made and although the High Court had appreciated the position correctly, it had “somehow persuaded itself to spell out a right in the candidates because in fact there were 15 vacancies”. It was expressly ruled that the existence of vacancies does not give a legal right to a selected candidate. Similarly, the claim of some of the candidates selected for appointment, who were petitioners in *Jatinder Kumar v. State of Punjab* [(1985) 1 SCC 122 : 1985 SCC (L&S) 174 : (1985) 1 SCR 899] , was turned down holding that it was open to the government to decide how many appointments would be made. The plea of arbitrariness was rejected in view of the facts of the case and it was held that the candidates did not acquire any right merely by applying for selection or even after selection. It is true that the claim of the petitioner in the case of *Neelima Shangla v. State of Haryana* [(1986) 4 SCC 268 : 1986 SCC (L&S) 759] , was allowed by this Court but, not on the ground that she had acquired any right by her selection and existence of vacancies. The fact was that the matter had been referred to the Public Service Commission which sent to the government only the names of 17 candidates belonging to the general category on the assumption that only 17 posts were to be filled up. The government accordingly made only 17 appointments and stated before the court that they were unable to select and appoint more candidates as the Commission had not recommended any other candidate. In this background it was observed that it is, of course, open to the government not to fill up all the vacancies for a valid

reason, but the selection cannot be arbitrarily restricted to a few candidates notwithstanding the number of vacancies and the availability of qualified candidates; and, there must be a conscious application of mind by the government and the High Court before the number of persons selected for appointment is restricted. The fact that it was not for the Public Service Commission to take a decision in this regard was emphasised in this judgment. None of these decisions, therefore, supports the appellant.”

The decision in the case of *Neelima Shangla Vs. State of Haryana* (1986) 4 SCC 268 referred to in paragraph 8 of the above quotation, would be the appropriate and apposite in the factual matrix of the present case. In *Neelima Shangal* (supra), as in the present case, a list of 17 candidates was sent by the Public Service Commission on the assumption that 17 vacant posts in the general category would be filled up. However, the said posts were not filled up and other eligible candidates were not appointed, for the Commission had not recommended other candidates. The Supreme Court held that it was open for the government to not fill up all the vacancies for valid reasons, but selection cannot be arbitrarily restricted to a few candidates notwithstanding availability of qualified candidates. There must be conscious application of mind by the government before number of persons selected for appointment is restricted. Union Public Service Commission could not have taken the said decision.

23. In the present case, the DSSSB has violated the aforesaid ratio by time and again professing that they had not empanelled Amit Kumar or prepared a reserved panel. As per policy they had made a merit list of 74 candidates equal to the number of vacancies available. Even if 22

candidates were found to be ineligible, no further candidates could be enlisted and recommended. The said reasoning, as noticed above, was rightly rejected in the order dated 20th October, 2011 passed by the Tribunal in OA No.3706/2010, which order has attained finality.

24. In view of the aforesaid discussion, we partly allow the writ petition and issue mandamus to the DSSSB to send the name of Amit Kumar to the DJB as selected candidate for the post of Junior Engineer (Civil). The said exercise will be undertaken within one month from the date a copy of this order is received by the DSSSB. The Delhi Jal Board thereafter will process the case and issue appointment letter to Amit Kumar, within a month thereafter. However, Ashok Kumar, as observed, is not entitled to any relief. In the facts of the case, there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(NAJMI WAZIRI)
JUDGE

August 5th, 2016
ssn/NA