

\$~Special Bench

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

+ W.P. (C) 10131/2015

SUDHIR KUMAR

..... Petitioner

Through Dr. N. Pradeep Sharma & Mr. S.K.
Rout, Advocates.

versus

**DIRECTOR (RECRUITMENT CELL) DELHI DEVELOPMENT
AUTHORITY**

..... Respondent

Through Mr. Arun Birbal & Mr. Sanjay Singh,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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25.10.2016

CM No. 29440/2016

Pursuant to our last order, the respondents have produced before us the original category-wise skill based merit list of candidates, who were called for the second stage skill test for selection for the posts of Lower Division Clerk-cum-Typist.

2. The shortlisting of candidates was restricted to five times the number of vacancies advertised in each category, namely, the General or unreserved category, Other Backward Calsses (OBC), Scheduled Caste (SC) and Scheduled Tribe (ST) Category. The shortlisted candidates in each category had to undergo the skill test and only those qualifying the skill test were appointed.

3. The applicant-Sudhir Kumar having secured 65.33% marks in the first stage examination was included in the list of 391 candidates eligible for skill test in OBC category candidates. The last candidate in the OBC category had secured 62.81% marks.

4. Later on, it transpired and it is accepted and admitted position that the applicant was not eligible as an OBC candidate and was a general or unreserved category. To this extent, there is no dispute or lis between the parties.

5. The last shortlisted candidate in the general or unreserved list had secured 71.19% marks. The applicant having secured 65.33% marks had not qualified for the second stage skill test in the general or unreserved category. He had secured lower marks than the last shortlisted candidate in the general or unreserved category, who had 71.19% marks.

6. The applicant having not secured required marks was not eligible for short listing for the skill test as an unreserved or general category candidate. He cannot claim or seek appointment as he had cleared the skill test for he was wrongly shortlisted and included in the OBC merit list.

7. At this stage, learned counsel for the applicant submits that the 725 shortlisted candidates in the general category included disqualified candidates, who had adopted wrongful and unfair means. If the names of the disqualified candidates were excluded, the applicant would have

qualified. This contention would not detain us and has been specifically rejected after due consideration in our order dated 29th January, 2016. Resort to wrong and unfair means and resultant disqualification was ascertained subsequently and after the skill test. We have noticed that there was delay and laches and if the contention of the applicant is to be accepted, the entire selection process would have to be undertaken once again and this would be unworkable. The argument is also based on a wrong assumption. There were a number of candidates, who had secured between 71.19% and 65.33% marks, i.e., the marks secured by the last shortlisted candidate in the general/unreserved category and the marks secured by the applicant in the written examination.

8. Learned counsel for the applicant submits that the list of the general or unreserved category includes persons from OBC category and the other reserved category, who had secured more than 71.19% marks. He submits that the OBC and reserved category candidates should not have been included in the general list even if the said candidates had secured required merit marks.

9. On being asked whether this argument and contention was raised before the Tribunal or before us at the time when the writ petition was argued and dismissed vide order dated 29th January, 2016, it is conceded that no such argument was raised before the Tribunal or before this Court.

This assertion is also not made in the present application. Learned counsel for the applicant submits that he has raised this argument orally for he has recently procured the list of shortlisted candidates under the Right to Information Act. We would not permit the applicant to raise this argument orally. The general principle is that a reserved category candidate, who has secured merit position better than the last selected general category candidate, is entitled to selection in the general or unreserved list. However, the said principle may not be applicable where a reserved category candidate fulfils eligibility criteria because of a concession availed due to caste or class. We would not like at this stage to go into the said question as the factual matrix is not before us to be able to ascertain and decide whether the exception would apply. The examinations were held in January, 2013 and the final results were declared in September, 2013.

10. Learned counsel for the applicant has argued what is claimed is another error in the shortlisted/select list. Some OBC candidates, who had secured high merit marks and should have been included in the general list, have been not so included and their names were shown in the OBC list. Counsel for the respondent, on instructions, states that nine such candidates who had secured merit position, should have been included in the general category list, were wrongly included in the OBC list. This, however, did

not finally make any difference for the nine candidates had not qualified the skill test. This argument is inconsequential and would not help and assist the applicant in securing appointment. The argument contradicts the earlier assertion dealt with in paragraph 9 above.

11. In view of the aforesaid position, we do not find any merit in the present application and the same is dismissed.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

**OCTOBER 25, 2016
VKR**