



\$~99

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

%

Date of decision: 20.11.2025

+ W.P.(C) 5536/2020, CM APPL. 19932/2020, CM APPL. 1708/2021, CM APPL. 1795/2021 & CM APPL. 16944/2022

ABHISHEK JAIN

.....Petitioner

Through: Mr. Sanjay Dewan, Senior Adv.
with Mr. Anish Dewan, Mr.
Nikhil Goel & Ms. Arshia
Kohli, Advs.

versus

DELHI TRANSCO LIMITED & ORS.

.....Respondents

Through: Mrs. Avnish Ahlawat, SC with
Ms. Palak Rohmetra, Ms. Aliza
Alam & Mr. Mohnish
Sehrawat, Advs. for R-1.
Ms. Sarika Singh, SPC for R-3.
Mr. Mahesh K. Bhardwaj, Ms.
Priyanka Bhardwaj & Mr.
Praveen Kaushik, Advs. for R-
4.

CORAM:

HON'BLE MR. JUSTICE AVNEESH JHINGAN

AVNEESH JHINGAN, J. (ORAL)

1. This petition is filed seeking quashing of seniority list dated 25.02.2020 issued by respondent no. 1- Delhi Transco Limited (for short 'DTL') and the orders of the respondent No.3- National Commission for Schedule Tribes (for short 'Commission') dated 08.04.2019, 15.07.2019 & 17.02.2020.

2. The brief facts are that in January, 2003 the petitioner joined DTL as Junior Engineer (Electrical) and on 25.09.2006 was promoted



to the post of Assistant Manager (Technical) (hereinafter referred to as 'AM'). A provisional seniority list of AM was circulated on 20.04.2009 in which the petitioner was higher in seniority to respondent no. 4. On 09.11.2015, the seniority list was finalised. The petitioner was promoted to the post of Manager (Technical) and was regularised on the promoted post on 29.01.2016. On a representation made by respondent no. 4 (hereinafter referred to as "respondent") in November 2016, raising grievance against the seniority list dated 09.11.2015, a committee including an outside expert from the Department of Personnel & Training (for short 'DoP&T') was constituted for giving recommendation. During the pendency of the representation, respondent approached Commission on 14.12.2017. The expert committee not agreeing with the objections raised by respondent submitted the report dated 27.03.2019. The Commission on 12.04.2019 sought report from DTL for having violated DoP&T guidelines during the recruitment process by de-reserving the reserved seat for SC/ST. It was recommended by the Commission that Government of NCT of Delhi (for short 'GNCTD') must restore the seniority of the SC/ST candidate i.e. respondent above the general candidates. On 28.06.2019 a provisional seniority list as per the recommendations of the Commission was circulated by the DTL. In the meeting held on 15.07.2019, the Commission noted that the compliance report submitted by the GNCTD and DTL assigning the seniority to respondent above the general category candidates was provisional, subject to the outcome of the legal opinion and approval of the competent authority. Commission stated that no legal opinion



was required. The petitioner on 25.07.2019 filed objections against the provisional seniority list dated 28.06.2019.

2.1 In September, 2019, legal opinion was given to GNCTD and DTL for filing a writ petition against the orders of the Commission. The Chairman of the Commission wrote a letter dated 27.09.2019 to the Chief Secretary of GNCTD to submit a report for not following the recommendations of Commission and the decision being taken to file a writ petition against the orders of Commission.

2.2 A notice dated 03.10.2019 was issued by the Commission for personal appearance of the Secretary, Department of Power, GNCTD and Chairman of DTL. In the meeting of the Commission held on 18.02.2020, the Secretary, Department of Power was directed to comply with the recommendations of the Commission and to submit the compliance report within seven days. Thereafter, the DTL on 25.02.2020 issued the final seniority list as per the recommendations of the Commission.

3. Learned counsel for the petitioner submits that the Commission had no jurisdiction to decide the seniority issue. The contention is that under Article 338A of Constitution of India, the Commission only has the power of recommendation. It is submitted that petitioner from the date of the initial appointment and after the promotion was always senior to respondent no.

4. Learned counsel for the DTL submits that the seniority list finalised on 29.01.2016 was as per the DoP&T circular, guidelines and after considering the merits of the employees at the stage of initial selection and at time of promotion. It is emphatically stated that there



was no de-reservation of the reserved seats, either at the time of initial appointment of the petitioner and respondent or when they were promoted.

4.1 Learned counsel submits that as the Secretary, Department of Power, GNCTD and the Chairman of the DTL were summoned by the Commission and pressurised to implement the recommendations, thereafter only, contrary to the legal position and the DoP&T circulars and guidelines the impugned seniority list dated 25.02.2020 was finalised placing respondent above the petitioner. The submission is that consequent to the letter written by the Commission to the Chief Secretary of GNCTD and thereafter the Secretary, Department of Power, GNCTD being summoned, the legal remedies for challenging the orders of the Commission were not availed.

5. Learned counsel for the Commission submits that the Commission made recommendations and had not decided the issue of seniority.

6. Learned counsel for respondent submits if the guidelines and the circulars are implemented in a proper manner then the respondent is higher in seniority to the petitioner.

7. There cannot be a quarrel with the proposition that the Commission has only the power of recommendation and to not decide the disputes arising out of a service matter.

8. The powers of the Commission was considered by the Supreme Court in the case of **All India Indian Overseas Bank SC & ST Employees Welfare Association & Ors. vs. UOI & Ors. 1996(6) SCC 606**, wherein a challenge to the directions issued by the



Commission to stop the promotion process till the investigation by the Commission and passing of the final verdict, it was held that no such power rest with the Commission:

“10. Interestingly, here, in clause (8) of Article 338, the words used are “the Commission shall ... have all the powers of the Civil Court trying a suit”. But the words “all the powers of a Civil Court” have to be exercised “while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause 5”. All the procedural powers of a civil court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a civil court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of clause (8) of Article 338 of the Constitution.

11. The Commission having not been specifically granted any power to issue interim injunctions, lacks the authority to issue an order of the type found in the letter dated 4-3-1993. The order itself being bad for want of jurisdiction, all other questions and considerations raised in the appeal are redundant. The High Court was justified in taking the view it did. The appeal is dismissed. No costs.”

8.1 In the case of **Collector v. Ajit Jogi, (2011) 10 SCC 357**, it was held as under:

“23. The contention that there was sufficient



material to reach such a conclusion is not relevant. The scope of the duties of the Commission as noticed above, did not involve inquiry or adjudication in regard to the rights of parties or caste status of the parties. The same is the position even under Article 338-A (which was subsequently inserted) providing for a separate Commission for Scheduled Tribes with identical duties. The order of the Commission cannot therefore be sustained. The High Court was justified in setting aside the said order dated 16-10-2001.”

(emphasis supplied)

8.2 The Division Bench of the Uttarakhand High Court in the case of **Pankaj Kumar vs. State of Uttarakhand and Ors.** MANU/UC/0713/2019, held as under:

27. Clause (f) of Article 338-A(5), (which is what is specified in clause (f) of Paragraph 3 of the Rules of Procedure of the National Commission for Scheduled Tribes), prescribes, as the functions and responsibilities of the Commission, the duty to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule specify. The power conferred on the President to specify by way of Rules is made subject to the provisions of any law made by Parliament. No Rule made by the President, or any law made by Parliament, conferring power on the National Commission for the Scheduled Tribes to pass orders of



injunction, temporary or permanent, have been brought to our notice. In the absence of any such Rule or Law having been made, reliance placed on clause (f) of Article 338-A(5) of the Constitution, or on clause (f) of Paragraph 3 of the Rules of Procedure, is misplaced.’

8.3 The Division Bench of Bombay High Court in **Union of India Thr. Secretary Ministry vs. National Commission for Scheduled Castes, 2022 SCCOnline Bom 1588**, held that the Commission had no jurisdiction to interfere with the decision compulsorily retiring the employee.

9. Before proceeding further, it would be appropriate to reproduce the relevant portions of the minutes of meetings of the Commission:-

9.1 In meeting held on 08.04.2019 it was adopted:

“After examination of recruitment files, Reservation Division, DoP&T had submitted its comments and confirmed during the sitting dt. 08.04.2019 that DTL has violated the DoP&T guidelines on De-reservation during the process for recruitment of Asst. Manager(T) in year 2006 and deprive the ST category candidates. Therefore NCST recommended that Secretary, Department of Power, GNCTD and DTL must restore the seniority of ST candidate Sh. Hemant Kumar above the two general category candidates recruited by De-reserving the ST vacancies during direct recruitment for year 2006. All the consequential benefits must be granted with retrospective effects, i.e. prior to the date of promotion of any of the above mentioned two general category candidates.”

9.2 In the meeting held on 15.07.2019, it was resolved:

“Vide recommendation dt. 27.05.2019 Secretary, Department of Power, GNCTD and CMD, DTL to



rectify the seniority list as per DoP&T OM No. 20011/1/2008-Esstt(D) dt 11.11.2010 and submit the report in 10 days. Compliance report is submitted vide letter dt. 15.07.2019, wherein an order dt.28.06.2019 is attached according to which seniority of petitioner is provisionally re-assigned above the three subsequently selected candidates subject to the outcome of the legal opinion and subsequent approval of the competent authority in that regard.

Vice chairperson shows displeasure to this vague and incomplete compliance and asked GNCTD and DTL representative as “why the recommendations of NCST are not complied till date and the matter is deliberately diverted for legal opinion and subsequent approval when no legal opinion is required if the seniority list is in compliance with DoP&T O.M. dt. 11.11.2010.”

9.3 In the meeting held on 17.02.2020, it was approved:

“Secretary, Department of Power, GNCTD and CMD, DTL must comply the following recommendations and submit the compliance report to the commission within 7 days:-

1. In view of comments from DOPT, instruction issued vide DOPT OM No. 28011/6/76-Estt.(D) dated 24th June, 1978 and DOPT OM No. 20011/1/2008-Esstt(D) dated 11.11.2010 it is clear that the additional three candidates were recruited through subsequent selection and as per DTL’s additional requirement moreover the additional 3 requirement was neither approved nor appraised to CMD, DTL. Hence DTL should place the additional 3 candidates below the original 28 candidates in seniority list. In view of above, DTL should finalize the seniority list dated 28.06.2019 and publish immediately.

2. DTL fails to maintain the Reservation



Roster register as per DOPT guidelines, also the register submitted at NCST are not verified by Liaison officer and Appointing authority, therefore DTL must take corrective action in accordance with DOPT guidelines and submit the certified copy of correct Reservation Roster Register.

3. DTL illegally De-reserve 3 no ST vacancies during the recruitment year 2006. In this regard NCST recommends that total number of De-reserved vacancies must be identified and process for recruitment against these vacancies must be initiate at earliest.

In view of the above commission is in the view of that Secretary Power, GNCTD Delhi does not take up the matter seriously and delayed the case with one reason or another. So it is advised that need full rectification be done as per DoP&T OM guidelines and appear in NCST on 25.02.2020 at 01:00 pm for sitting.”

10. The letter dated 27.09.2019 written by the Chairman of the Commission to the Chief Secretary of GNCTD is reproduced:-

“Translated Typed copy of D.O. Letter dated 27.09.2019 issued by Chairperson, NCST.”

Dr. NAND KUMAR SAI

GOVERNMENT OF INDIA
National Commission for Schedule Tribe
6th Floor, Loknaya Bhawan,
Khan Market New Delhi- 110003

HK/5/2017/STGDH/SEHRMT/RU-I

Dated: 27.09.2019

Chief Secretary, Delhi Government,

It has come to the notice of the Commission that in relation to the file No. HK/5/2017/STGDH/SEHRMT/RU-I of the requester, Mr. Hemant Kumar, Manager, Delhi Transco Limited,



during the recruitment for the year 2006, has de-reserved the posts reserved for the Scheduled Tribes and has made irregularities in making the seniority list of the recruitment for the respective year and violated the guidelines issued by DoPT.

Delhi Transco Limited, contrary to the recommendation of the commission, is not sending the case to DoPT and wrongly going to file a writ petition against the commission in the Delhi High Court through private lawyer. In this case, issue necessary instructions to the Power Department, Delhi government and after investigating the matter, submit a report to the Commission within 10 days.

With Thanks,

Your's

(Dr. Nand Kumar Sai)

Chief Secretary,
Delhi Government,
5th Floor, Delhi Secretariat,
IP Estate, New Delhi- 110002”

11. Albeit, the stand taken by the learned counsel for the Commission that only recommendations with regard to the representation received by respondent were made but the minutes of meeting reproduced above and the letter written by the Chairman to the Chief Secretary of GNCTD clearly reflects that the line between the recommendations and directions was done away with.

12. In meeting held on 15.07.2019, the Commission objected to the provisional seniority list issued being subject to the approval of the competent authority and the legal opinion received. It was resolved that no legal opinion was required and the respondent should be put on higher pedestal in seniority list over the direct recruits.

13. The Secretary, Department of Power, GNCTD and the



Chairman of DTL were summoned by the Commission to ensure implementation of the recommendations and for appearance thereafter to report implementation. The summoning of the officials showed the results, GNCTD & DTL succumbed to the pressure and issued the impugned provisional seniority list implementing recommendations of the Commission.

14. It would be apposite to note that the stand of DTL even as on date is that the impugned seniority list was issued under pressure of the Commission and list is contrary to the factual position and statutory provisions.

15. Be that as it may, a restraint would be exercised from commenting upon the inter-se merit of the candidates, more so, when the other candidates affected by the revision of seniority list are not before this Court.

16. Another angle to be considered for not dealing with inter-se seniority of petitioner and respondent is that the representation of respondent no. 4 against the seniority list dated 29.01.2016 was pending when the respondent approached the Commission and thereafter the Commission took over the issue of seniority. It is admitted by the learned counsel of GNCTD & DTL that the officials conceded to the tactics adopted by the Commission and issued the impugned seniority list against the statutory provisions and DoP&T guidelines. This was done inspite of the fact that there was no de-reservation done of the reserved seats either at the time of initial appointment of the petitioner or at the time of the promotion.

17. The reading of the minutes of the meeting of the Commission



along with the letter written by the Chairman of the Commission leaves not an iota of doubt that the seniority issue was decided by the Commission that the respondent be placed higher in seniority over the general category candidates.

18. Considering that the stand taken on behalf of the Commission is that it had made recommendations, the impugned orders of the Commission are not being interfered.

19. As to how the General Manager- DTL gave a statement before the Commission that recommendations of Commission shall be implemented and for not availing legal remedies against the orders of the Commission, despite the stand of the DTL that the impugned seniority list was not in accordance with law, is left to be dealt with by the appropriate authorities to look into the matter if so advised.

20. In view of the above discussion, the impugned seniority list dated 25.02.2020 is quashed.

21. The writ petition is allowed.

22. The respondents shall be at liberty to proceed with the seniority issue in accordance with law.

23. All pending applications are also disposed of.

AVNEESH JHINGAN, J.

NOVEMBER 20, 2025

'JK'

Reportable:- Yes