

National Commission for Scheduled Tribes

File NO. NKL/4/2014/MHFW1/SEOTH/RU-III

Proceedings of sitting taken by Shri Ravi Thakur, Hon'ble Vice-Chairperson, National Commission for Scheduled Tribes in the matter of Ms Niang Khaw Lian & others representation dated 08/09/2014 regarding non-issuance of appointment to the post of Staff Nurses (Post Code – 20/13, 21/13 and 22/13) through Delhi Subordinate Services Selection Board (DSSSB) under the Govt of National Capital Territory of Delhi.

Date of Sitting: - 21/11/2014.

List of Participants: - Annexure – I

Representation dated 08/09/2014 was received in the Commission from Ms Niang Khaw Lian & Others regarding non-issuance of appointment letter for the post of Staff Nurses (Post Code - 20/13, 21/13 and 22/13) in Govt. of NCT of Delhi against the reserved posts of STs advertisement dated 19/02/2013

2. The Commission called facts/comments in the matter from the Chairman, DSSSB and DG, Directorate of Health Services, Govt. of NCT of Delhi vide letter dated 08/09/2014 followed by subsequent reminders. Having received no reply from Govt. of NCT of Delhi. A meeting was fixed by Commission on dated 07/11/2014. The officers did not appear, nor sent any intimation to Commission. The Commission

1
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नई दिल्ली/New Delhi

16-1-2015

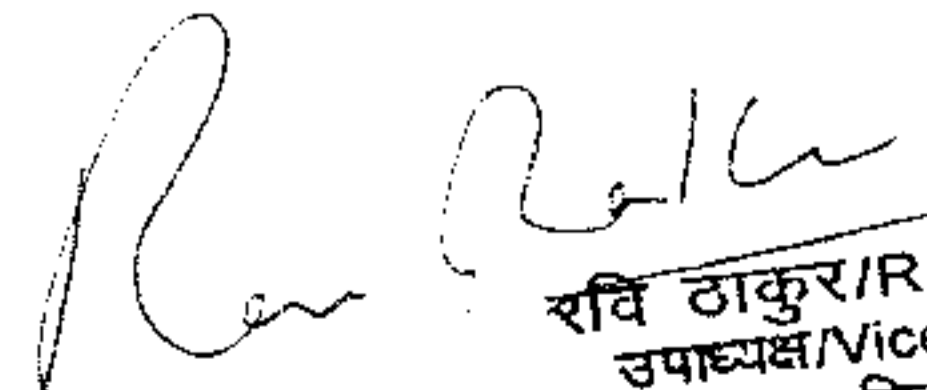
thereafter issued Summons to the DG, Directorate of Health Services and Chairman, DSSSB, Govt. of NCT of Delhi and notice to Chief Secretary and Secretary, Department of Personnel, Govt. of NCT of Delhi to come for discussion on 21/11/2014. After receipt of notice and Summons a detailed reply dated 07/11/2014 from DSSSB received on 17/11/2014 and 19/11/2014, from Secretary, Health & Family Welfare Department was received.

3. The Commission mentioned to the officers of Govt. of NCT of Delhi, Commission is a Constitutional Body setup under Article 338 A of the Constitution and has taken serious note that there has been no response from Govt. of NCT of Delhi in the matter to the communication in the matter.
4. Petitioners were given opportunity to explain their case for non-issuance of appointment letters.

On discussion the following points emerged:-

1. That application were invited in prescribed OMR Form for the post under Govt. of NCT of Delhi, New Delhi Municipal Corporation and Municipal Corporation of Delhi vide vacancy notice advertisement No. 1/13 by DSSSB.
2. That the total number of posts advertised for Staff Nurses were UR – 781, SC – 458, ST – 244, OBC – 716, EX – 323, PH (OH) OL – 43.
3. That the 244 number of posts were reserved for Scheduled Tribes candidates.

2



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4. That the DSSSB as per procedure has taken written examination of the eligible candidates on 09/06/2013.
5. That the candidates secured the minimum qualification marks and come in the zone of consideration as per merit list, and were called for submission of documents as per advertisement notice dated 10/01/2014 during the period 27/01/2014 to 05/02/2014.
6. That the selected candidates belonging to category under UR, OBC, and SC/ST (Delhi) having cut off marks as per merit for UR – 103, OBC – 70, SC – 69.25 and ST – 66.75 were announced on 29/04/2014 have been issued appointment letters and have joined their duties.
7. That around almost all the ST candidates who have qualified the written examination and selected for the post of Staff Nurse (Post Code - 20/13, 21/13 and 22/13) as per advertisement No. 1/13 by DSSSB have not been issued appointment letter due to various unnecessary conditions imposed on them by DSSSB.
8. That the Govt. of NCT Delhi has issued instructions on reservations for SC/ST vide their letter No. F-19(6)/2012/S-IV/883 dated 10/05/2013 inter-alia, stating that “all the Scheduled Caste/Scheduled Tribe candidates irrespective of their nativity are eligible for reservation in the civil posts under Govt. of NCT

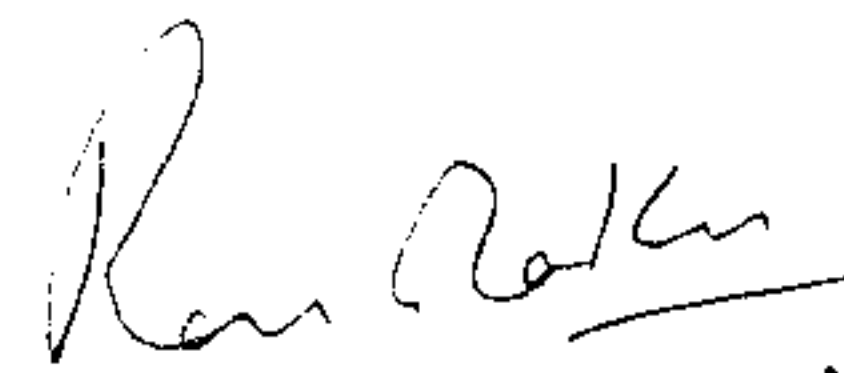
Delhi, which are reserved for SC/ST candidates”.

9. That Hon'ble Minister of State for Home Affairs, Govt. of India vide its latest letter No. MOS/Home/357773/87/2014 dated 19/09/2014 addressed to the Hon'ble Lt. Governor, Delhi the administrator of Govt. of N.C.T of Delhi has referred and reiterated to the Services Department, Govt. of N.C.T of Delhi letter No. F.19 (5)/2012/S-IV/883 dated 10/05/2013 to follow the reservation policy with regard to SCs/STs in civil posts under Govt. of N.C.T of Delhi and contended with clarification that Govt. of N.C.T of Delhi has already been instructions on reservation for SC/ST and this has been the position of Govt. of N.C.T of Delhi. Govt. of India/MHA has held that till date neither there has been no review nor there is any need felt for the same.

10. “In the advertisement it has stated that:-

- Reservation benefits will be available to the SC/ST/OBC/Physically Handicapped and other Special Categories of candidates in accordance with the instructions/ orders /circulars issued from time to time by the Govt. of Delhi. The reservation benefits under SC/STs shall be admissible as per judgment dated 12/09/2012 of Hon'ble High Court of Delhi as passed in No. 5390/2010, CM No.

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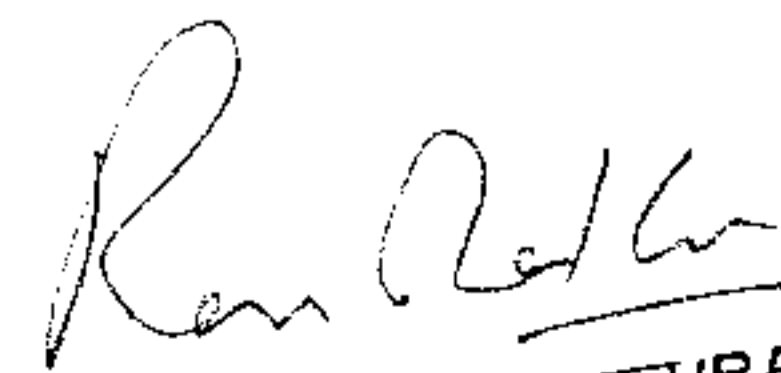
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20815/2010- Deepak Kumar and Ors Vs District and Sessions Judge, Delhi & Ors. as per which SC/ST candidate of other States/U.Ts. shall also be eligible for reservation benefits. However this shall be further subject to policy decision of Govt. of Delhi for SC/ST migrants of other states.

- Candidates who wish to be considered against reserved vacancies and/ or to seek age relaxation, must be in possession of relevant certificates issued to them on or before the closing date by the competent/ notified authority (in prescribed format) otherwise their claims for SC/ST/OBC/Physically Handicapped/ Ex- Serviceman & other special category will not be entertained and their applications will be considered against Un-reserved (UR) category vacancies, if eligible otherwise.

11. That the matter was discussed in a meeting taken by Chief Secretary on 29/09/2014 which was attended by Chairperson (DSSSB), Secretary (Health), Secretary (Services) and Additional Secretary (Law). It was decided that Services Department would make a reference to Ministry of Home Affairs and obtain their direction for taking further necessary action in the matter. Reservation is guided by Rules/Orders/Notifications etc. Issued by Govt. of India from time to time and was informed that the matter is being referred to Ministry of Home

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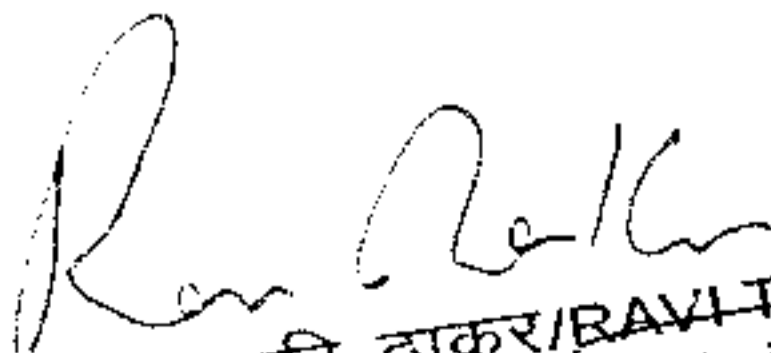
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Affairs, Govt. of India for seeking clarification/directions on the issue.

5. Commission on discussion noted and pointed out that:-

- a. That NCST had given its views to MHA on grant of reservation to migrant SCs/STs in civil posts under the Govt. of NCT of Delhi as the proposal of MHA dated 27/11/2009.
- b. That Delhi is a National Capital Territory and a large number of people had migrated to Delhi after independence in 1947. The huge increase in population from 1951 (17.44 Lakhs) to 2001 (137.83 Lakhs) cannot be attributed to normal growth only, but also combines the effect of continuous migration of people from other regions in search of opportunity or employment. While no Scheduled Tribes have been specified in relation to Delhi, the number of ST migrants from other States who have settled in Delhi, is also not available to indicate possible reservation requirements. The ST migrants may unwittingly face discrimination in the matter of reservation vis-à-vis SC migrants whose communities were also included in the list of SCs specified in relation to Delhi and may have been returned as SC of Delhi in various Census enumerations and also secured Caste certificates mentioning that they were original SC communities of Delhi, entitling them to the benefits meant only for the original SC communities of Delhi. The position of Delhi is quite unique as being the National Capital Territory, it has facilities and services created/ supported with Central Funds and Revenues.

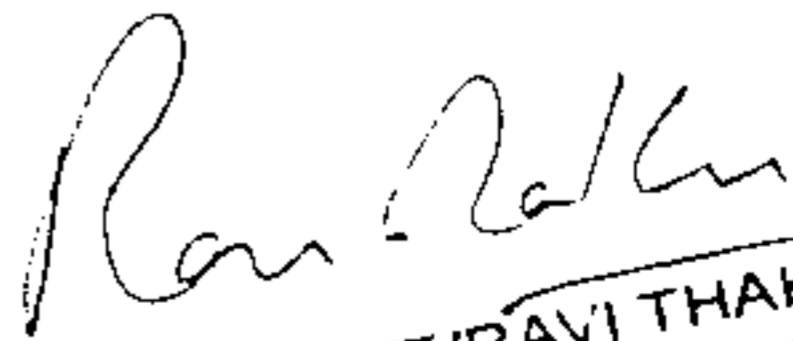
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Therefore, it is quite appropriate that the migrant ST population settled in Delhi should not be discriminated against whether it is a matter of service or admission to educational institutions under the Government of NCT of Delhi.

- c. That, since there are significant differences in the relative backwardness of different tribal communities living in different geographical regions of the country, it will be difficult to prevent marginalization of local tribal communities and monopolization of benefits by more advanced (migrant) communities if a common reservation policy/ order is contemplated for all (disparate) UTs (which are also home to Vulnerable Tribes of Jarawas, Shompens, and Nicobarese etc. in A & N Islands, and all the native tribal inhabitants of Lakshadweep Islands).
- d. The Commission had sent views and recommendation to the Ministry of Home Affairs
 - I. While refraining to comment on the merit of the Hon'ble Supreme Court judgment since Commission does not have any legal expertise, the Commission recommend that a common list of ST communities may not be notified under Article 342 in respect of all UTs including Delhi as this may lead to marginalization of the original tribal inhabitants of the concerned UT beside compromising the sanctity of Article 342.
 - II. Keeping in view the unique status of NCT of Delhi, being the National Capital of the country and existence of various offices of

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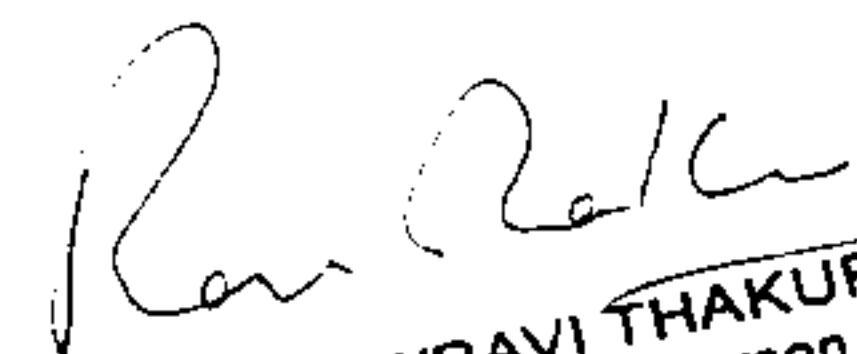

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the Union Government in Delhi and the fact that the employment opportunities and educational facilities of high order have been created by the NCT of Delhi through the use of Central Revenues. It is desirable to extend the benefit of period of residence while retaining the reservation level of 7.5% for Scheduled Tribes as admissible at National level.

III. A constitutionally valid scheme of reservation may, however, be evolved to extend benefits of reservation to migratory Scheduled Tribes living outside their original place of nativity as indicated in para 41 of the judgment of the Hon'ble Supreme Court of India in SLP (C) 24327 of 2005 (WP (C) No.507 of 2006).

6. The DOPT instructions in respect of STs vide order No. 36013/4/85 (SCT) dated 24/5/1985, 36012/22/93 (SCT) dated 29/12/1993 is that there shall be a reservation of 15 percent for the members of the Scheduled Castes, 7.5 percent for the members of the Scheduled Tribes and 27 percent for the members of the Other Backward Classes in the matter of appointment by direct recruitment to civil posts and civil services on all India basis by open competition. Except in Delhi, reservation for the Scheduled Castes and Scheduled Tribes in case of direct recruitment to Group C and Group D posts normally attracting candidates from a locality or a region is generally fixed on the basis of proportion of their population in the respective State/UTs.
7. The Govt. of NCT of Delhi is guided by MHA rules and regulations.

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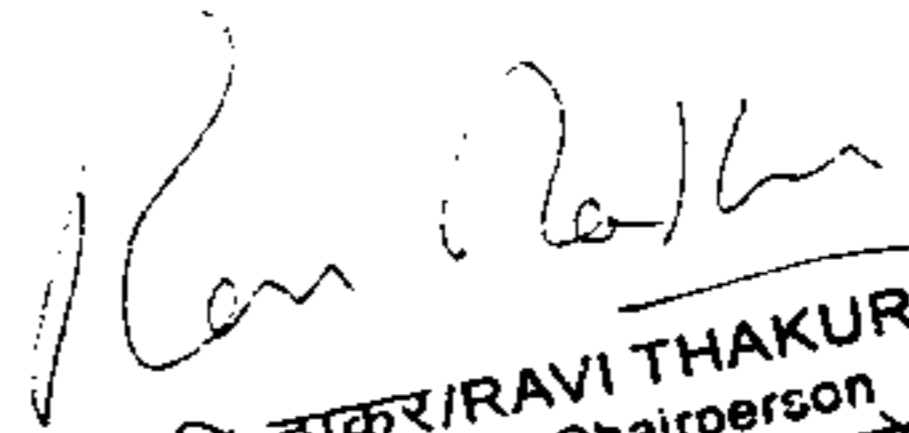

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8. Govt. of NCT of Delhi is Union Territory and statehood has not been granted. At the time of advertisement (20/13) there were no conditions which have been later imposed on 21/38/2014 for ST candidates appears to be incorrect as the part of Govt. of NCT of Delhi.
9. The Commission observed the Govt. of NCT of Delhi i.e. Secretary (Health), Secretary (Services) and Member, Delhi Subordinate Services Selection Board (DSSSB) are relying on the latest judgement of the Hon'ble Delhi High Court dated 27/11/2013 in the matter of Ravindra Devi v/s Govt. of NCT of Delhi and Ors. [WP (C) 3049/2012] as the opinion of Law Department of Govt. of NCT of Delhi who are insisting on the domicile of candidate's for appointment to the said posts which was not a condition for Reserved candidates in the advertisement dated 19/02/2013.
10. That the prevailing reservation policy as per letter No. F.19 (6) /2012/S-IV/883 dated 10/05/2013 which is being followed by Govt. of NCT of Delhi but after the aforesaid Court order a clarification from Ministry of Home Affairs, Govt. of India has been sought in the matter.
11. The Commission noted DSSSB is not following the rules/instructions the reservation issued by the Govt. of India i.e. DOPT. In the absence of executive instructions from DOPT, the nodal Ministry, the Govt. of NCT of Delhi is taking recourse to court orders publications and have discriminated the Scheduled Tribe qualified candidates.

9


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12. The Commission advised the Chairman/Secretary, Delhi Subordinate Services Selection Board (DSSSB), Govt. of NCT of Delhi to issue/release appointment letters to the ST candidates and see that ST candidates are not harassed/discriminated any more who have already been deprived/delayed appointments and the loss is irreparable.


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