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*** IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 20.01.2026*

+ W.P.(C) 527/2026, CM APPL. 2644/2026, CM APPL. 2645/2026

NATIONAL INSTITUTE OF TUBERCULOSIS AND
RESPIRATORY DISEASESPetitioner

Through: Mr. Ajay Pal Singh Kullar, Mr. Jasbir Bidhuri and Mr. Prakhar Khanna, Advs.

versus

MS. SHWETA & ORS.Respondents

Through: Mr. Suresh Sharma and Ms. Usha Sharma, Advs.
Mr. Abhishek Saket, SPCG along with Mr. Amit Acharya, GP, Mr. Abhigyan, Ms. Reya Paul and Ms. Nidhi Singh. for R-2 and 3.

CORAM:

**HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE AMIT MAHAJAN**

JUDGMENT (ORAL)

ANIL KSHETARPAL, J.

1. Learned counsel representing the parties have been heard at length for final disposal of the matter.
2. Through the present Petition, the Petitioner assails the correctness of the order dated 15.10.2025 [hereinafter referred to as 'Impugned Order'] passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi [hereinafter referred to as 'Tribunal'] in O.A. No.643/2024.



3. The genesis of the dispute arises from a recruitment notice issued by the National Institute of Tuberculosis and Respiratory Diseases [hereinafter referred to as 'Institute'] for various posts, including HMTS Dietary (Kitchen Staff), as the requisition was sent by the Institute, for inviting applications for 10 posts of HMTS Dietary (Kitchen Staff), out of which, 05 were of UR category, 03 were of OBC category, 01 of ST Category and 01 of EWS category.

4. The recruitment was to be carried out by Hindustan Life Care Limited, an outsource agency. While issuing recruitment notice, an error was committed and it was reflected that applications have been invited for 10 posts including, 03 post of SC category. The Respondent, belonged to SC category and applied for the said post and was declared topper in the written examination. Subsequently, it was found that there was no post of SC category and that, for UR category, the Respondent was overage. Thus, the Respondent No.1 was earlier issued an offer of appointment, however, the same was withdrawn, as she was overage.

5. Thereafter, the Respondent filed O.A. No.643/2024 before the Tribunal, which was contested by the Petitioner and it was allowed despite affidavit of the Petitioner to the effect that in fact, there was no vacancy for SC category.

6. Learned counsel representing the Petitioner while reiterating these facts, submitted that the Respondent cannot be granted appointment, as she was overage for recruitment in UR category, and there was no vacancy available in SC category. He submits that an error committed by an outsource agency, while issuing recruitment



notice cannot be used to force the Petitioner to recruit the Respondent, particularly when no vacancy for SC category exists.

7. *Per contra*, learned counsel representing the Respondent submits that vested right in the Respondent, while issuing advertisement and appointment letter, cannot be taken away and the rules of game cannot be changed, post selection. He further submits that Roster position as on today is legally irrelevant and the Respondent could be considered by granting age relaxation, particularly when she is a topper.

8. Lastly, he invokes Doctrine of Promissory Estoppel against the Petitioner.

9. Learned counsel representing the Respondent also relies upon the judgments in ***Rakhi Ray & Ors. vs. High Court of Delhi and Ors.***¹ and in [SLP (C) Nos.21392-21393/2019] captioned ***Union of India and Ors. vs. Sajib Roy.***

10. This Court has considered the submissions and observes that there is no dispute with regard to the factual stand taken by the Petitioner. Undoubtedly, there was an error in publishing the recruitment notice, however, that does not create a vested right in favour of the Respondent to seek appointment, when no vacancy for the SC category is available till date.

11. On a question by this Court, learned counsel representing the Petitioner has categorically stated that till date there is no vacancy for SC category.

¹ AIR 2010 SC 932



12. In the present case, the situation has been created by an inadvertent error, while issuing the recruitment notice by an outsource agency. Hence, there is no change in the rules of the game.
13. The respondent is not entitled to age relaxation because under the UR category, for which the vacancies were advertised, the Respondent has already crossed the maximum age for appointment. Once, a vacancy under the reserved category does not exist, the Respondent cannot be considered against the reserved category vacancy, which, in fact, does not exist.
14. Similarly, the Respondent cannot be permitted to stake a claim for appointment solely on the basis of a mistake committed while issuing recruitment notice. She may be entitled to some amount of damages, however, the same has not been claimed.
15. The reliance placed by the Respondent upon *Rakhi Roy (Supra)* goes against the Respondent because the Supreme Court has categorically laid down that any appointment made beyond the number of advertised vacancies is without jurisdiction. Similarly, the judgment in *Sajib Roy (Supra)* does not support the cause of the Respondent since there was no vacancy for SC category, which may entitle her for relaxation in upper age limit.
16. Keeping in view the aforesaid discussions, the Impugned Order passed by the Tribunal is not sustainable, hence, is set aside. However, liberty is granted to the Respondent to claim damages, if permissible in law.
17. Accordingly, the present Petition, along with pending



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applications, stands disposed of.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

JANUARY 20, 2026

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