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

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Date of Decision : February 19, 2015

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W.P.(C) 740/2015

SHYAM SUNDER

..... Petitioner

Represented by: Mr.K.K.Sharma, Advocate

versus

CHAIRMAN, STAFF SELECTION
COMMISSION & ANR.

..... Respondents

Represented by: Mr.Anil Gautam, Advocate with
Ms.Saahila Lamba, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

CM No.1313/2015

Allowed subject to just exceptions.

W.P.(C) No.740/2015

1. Learned counsel who appears for the respondents on advance copy of the writ petition being filed says that counter affidavit need not be filed and prays that the writ petition could be heard for final disposal today itself. Learned counsel for the petitioner agrees.

2. The grievance in the writ petition is to the criteria adopted by the respondent in case two candidates tie at the same position and only one can be offered employment. The criteria is in paragraph 11 of the notice of examination which says that tie shall be resolved with reference to the marks obtained at Part A of the written paper. It be noted that the written

examination had two parts : Part A and Part B.

3. Learned counsel for the petitioner urges that the tie can be broken only with reference to the age.

4. Learned counsel for the respondents has cited the decision reported as AIR 2000 Delhi 225 Dr.Satpal Singh & Ors. Vs. University of Delhi, 2015 (1) STC 159 (P&H) Mohit Sharma & Ors. Vs. State of Punjab & Ors., 2014 (3) AJR 653 Nisha Lakra Vs. State of Jharkhand and an unreported decision of the Madras High Court in W.P.(C) No.27672/2008 J.Anwar Sathath Vs. T.N.Public Service Commission decided on December 12, 2008, to urge that in case of a tie, any criteria can be adopted by the Appointing Authority or the recruitment agency and said criteria is not amenable to a legal challenge.

5. We are bound by the Division Bench judgment of this Court in Dr.Satpal Singh's case where criteria of tie for resolution of the similar situation was the marks obtained by candidates in the MBBS examination. The case concerned filling up of the seat in MCH Super Speciality Post Doctoral Courts in Gastroenterology. The selection was through an entrance examination comprising written test and a viva-voce. Two candidates had obtained equal marks. The tie was resolved, as per the criteria, on the basis of marks obtained at the MBBS examination. Dr.Satpal was desiring adoption of the criteria of age to be a tie breaker; as is the petitioner before us.

6. Before passing the final direction we note that learned counsel for the writ petitioner seeks to urge an argument with reference to the unreported decision of the Supreme Court pronounced on August 09, 2011 in CA No.7002/2004 D.P.Dass Vs. UOI & Ors. which interpreted OM dated August 28, 1946 and OM dated December 22, 1959.

7. We have put it to learned counsel for the petitioner whether the

petitioner would like to formally withdraw the writ petition or amend the same because we find no pleadings in the writ petition concerning the two office memorandums, and needless to state we do not know what would be the stand of the respondents if pleadings were made regarding the two office memorandums.

8. We note that the Supreme Court was dealing with appointment to a civil post in the Indian Ordnance Factories Health Service. The instant writ petition concerns a Central Para Military Force.

9. Learned counsel for the petitioner states that the writ petition be decided on existing pleadings.

10. We do not adjudicate petitioner's claim with respect to the OM dated August 28, 1946 and OM dated December 22, 1959 for the reason there are no pleadings in the writ petition. On the existing pleadings we find that the challenge is to the criteria fixed by the respondents to break the tie with reference to marks obtained in Part A Paper.

11. In view of the various judgments hereinabove noted cited by the respondents and expressing the view that we would be bound by a decision of the co-ordinate Bench of this Court in Dr.Satpal Singh's case, we dismiss the writ petition but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

FEBRUARY 19, 2015

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