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

+ W.P.(C) 2159/2015

% *Judgment dated 18th November, 2015*

ATUL KUMAR & ORS Petitioners

Through : Mr.M.K. Bhardwaj, Adv.

versus

COMMISSIONER OF POLICE & ORS Respondents

Through : Mr.Naushad Ahmed Khan, ASC (Civil)
for GNCTD.

Mr.Tarunvir Singh Khehar, Adv. for
Delhi Police.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. With the consent of counsel for the parties, present writ petition is set down for final hearing and disposal.
2. Eleven petitioners had instituted the present writ petition, assailing the Order dated 19.1.2015 passed by Central Administrative Tribunal (hereinafter referred to as the 'Tribunal'), by which O.A.No.554/2013 filed by petitioners were dismissed. We are informed that during the pendency of this writ petition, out of eleven petitioners, four petitioners i.e. petitioners no.1, 3, 5 and 8 stand appointed to the post of Constable and consequently the writ petition qua petitioners no.1, 3, 5 and 8 stands dismissed as not pressed. It is also informed to the Court that respondents no.3 to 8 are proforma parties.
3. As per the petition, pursuant to an advertisement published by respondents no.1 and 2 on 26.11.2011 inviting applications from eligible candidates for filling up 2622 vacancies of Constable (Executive) Male in Delhi Police, the petitioners submitted their applications. According to the

petitioners they fulfilled the eligibility conditions and participated in the selection process. After completion of the selection process including the written test, respondents no.1 and 2 declared the final result in the month of May, 2012. Thereafter the petitioners were called to appear in the medical examination on 7.8.2012. Thereafter respondents no.1 and 2 issued a final Select List and one additional list of candidates. In the additional list, it was made clear that the final selection would depend upon the vacancies arising category-wise in case finally selected candidates in the main list do not join the department for the reasons being medically unfit, adverse Police Verification Report (PVR) or otherwise not willing to join the department. Police verification of the petitioners was carried out and their names were found mentioned in the additional select list. Out of the additional list prepared, six persons have since been selected. Since the petitioners were not selected, they approached the Tribunal by filing the O.A. on 11.2.2013. The Tribunal, vide the impugned order dated 19.1.2015, has rejected the O.A filed by the petitioners primarily on the ground that prior to the filing of the O.A, a fresh advertisement has been published by respondents no.1 and 2 on 26.1.2013 for filling up the remaining vacancies. The said advertisement was not challenged by the petitioners and the select list of the year 2011 would come to an end upon issuing of a second advertisement.

4. Learned counsel for the petitioner submits that publication of second advertisement for the post of Constable (Executive) Male in the year 2013 would not come in the way of the petitioners as the process, which was initiated pursuant to the advertisement of the year 2011 continued upto 31.3.2014, which is also evident from the fact that four petitioners out of eleven petitioners in this writ petition have been offered employment pursuant to the advertisement of the year 2011.

5. Mr.Naushad and Mr.Kehar, learned counsel appearing on behalf of the respondents no.1 and 2, submit that there is no infirmity in the impugned order passed by the Tribunal, the order of the Tribunal is a well-reasoned order based on the settled position of law and would require no interference in proceedings under Article 226 of the Constitution of India. Counsel have strongly urged before this court that there were cogent reasons for respondents no.1 and 2 in not filling up all the vacancies and even otherwise there would be candidates, who are placed higher in the merit list, than the petitioners and their rights cannot be compromised merely because the petitioners have approached this Court. Counsel further submits that the judgment rendered in the case of *Miss Neelima Shangla v. State of Haryana & Others*, reported at AIR 1987 SC 169, sought to be relied upon by counsel for the petitioners, would also not be applicable to the facts of the present case as in the aforesaid matter the second advertisement had not been published.
6. We have heard learned counsel for the parties, considered their rival submissions and also examined the advertisement published by the respondents in the year 2011 for filling 2677 vacancies, in which, amongst others, the petitioners also made applications, they participated in the selection process and after completion of selection process including written test, medical examination and Police Verification, they were found successful and eligible. The respondents filled up 2340 vacancies initially and 282 posts remained unfilled, which according to the petitioners stand carried forward and form part of the second advertisement published by respondents no.1 and 2 in the year 2013. We may also notice that the advertisement published in the year 2013 has not been challenged by the petitioners and selection procedure pursuant to the second advertisement stands concluded to the extent that medical

examination of successful candidates have already been carried out.

7. A division Bench of this Court in ***Gaurav Kumar and Ors. v. Govt. of NCT of Delhi And Ors.***, W.P.(C) 2342/2013, while relying upon the decisions rendered by the Supreme Court of India, wherein it has been held that once the second advertisement has been published the candidates from the first advertisement cannot be included, held as under:

“9. Of the various contentions urged by the respondents, one was that once a selection process was completed and notwithstanding posts remaining vacant, if the next selection process commenced and was completed, the previous select list expires and a belated grievance pertaining to not being offered appointment cannot be entertained.

10. For record we may note that on facts the respondent pleaded that pertaining to Phase-2, advertisements were issued inviting applications to fill up 6032 vacancies on November 07, 2009.

11. The said defence projected by the respondents has been accepted by the Tribunal as per the impugned decision dated May 04, 2011, and we find that of the 11 applicants before the Tribunal, only one? the petitioner litigates further.

12. We concur with the view taken by the Tribunal which finds support from, if not more, two decisions of the Supreme Court. The first is reported as (2007) 5 SCC 572 State of U.P. and Anr. v. Nidhi Khanna and Anr. Nidhi Khanna was at serial No.1 of the wait list and had an issue of one post of Lecturer in Geography, for which she had applied being vacant. By the time she raised the grievance the next phase selection process had commenced and another merit list prepared. The Supreme Court held that once the second stage recruitment commences, the earlier panels lapse notwithstanding vacancies available pertaining to the year of empanelment of the previous list being unfilled. The second is the decision reported as (2010) 6 SCALE 126 State of Orissa and Anr. v. Rajkishore Nanda wherein it was held that once a selection process was over and the select list had expired, vacancies carry forwarded to the next year, no relief could be granted at a belated stage.

13. Accordingly, the writ petition is dismissed but without any order as to costs.”

8. Similar view has been expressed by the Division Bench of this Court in the case of ***Parveen Kumar v. Govt. of NCT Of Delhi And Anr.***, W.P.(C) 477/2012.
9. We have carefully examined the judgment passed by the learned Tribunal. The Tribunal has examined the matter on merits and accepted the explanation rendered by the Department. The respondents have filed a detailed additional affidavit in this court setting out the details and the manner in which the vacancies were filled up. We may also note that as per Sub-point (iv) of Rule 9 of Delhi Police (Appointment & Recruitment) Rules, 1980:

“a panel shall be drawn up of selected candidates on the basis of existing and anticipated vacancies. This panel shall be valid till the next recruitment is held.”

10. In this case, the Tribunal has rightly applied the law and rejected the O.A. filed by the petitioners. To appoint the petitioners or anybody else from the additional list prepared pursuant to the advertisement of the year 2011, which has not been challenged, would cause serious prejudice to those persons selected out of the advertisement published in the year 2013 and the vacancies are already carried forward in the advertisement for the successive year. Thus, in these circumstances, no relief can be granted to the petitioners herein. Consequently, the writ petition is dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

November 18, 2015 msr