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

+ **W.P.(C) 7736 /2015**

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Judgment dated 14th August, 2015

DAVENDER KUMAR SINGH

..... Petitioner

Through : Mr. Rabindra Tiwary, Advocate

versus

GOVERNMENT OF NCT OF DELHI & ANR Respondents

Through : Mr.Arun Panwar, Advocate for
Mr.Raman Duggal, Senior Standing
Counsel for GNCTD

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

CM APPL.15172/2015(Exemptpion)

1. Exemption allowed subject to all just exceptions.
2. Application stands disposed of.

CM APPL.15170/2015 (Delay)

For the reasons stated in the application, delay is condoned.

Application stands disposed of.

W.P.(C) 7736/2015

1. By the present writ petition under Article 226 of the Constitution of India, petitioner seeks a direction to quash the order dated 23rd December, 2014 passed by the Principal Bench, Central Administrative Tribunal, New Delhi (hereinafter referred to as 'the Tribunal') in O.A. No.2686/2013
2. The facts which gave rise to the filing of O.A. are that petitioner had applied for participating in the recruitment for the post of Constable (Driver) in Delhi Police. An advertisement no.D/8364/12 was published

in Uttarakhand Rojgar Dharshan (3-8 June, 2012) for filling up 299 UR and 181 OBC vacancies in the said post. A corrigendum to the advertisement was issued by which a candidate had to qualify in the 1600 meters run in 7 minutes. A call letter was issued to the petitioner requiring him to appear in the Physical Endurance and Measurement Test (in short referred to as "PE&MT"). It is the case of the petitioner that although he qualified in the 1600 meters run, the respondents, in an arbitrary manner, disallowed him to participate in the long and high jump tests. Representation made by him did not yield any result. Another ground raised by the petitioner was that the advertisement did not provide for an appeal against the decision of the concerned authorities which conducted the PE&MT and thus the advertisement was issued in violation of the principles of natural justice.

3. In response to the O.A., a counter reply was filed wherein it was disclosed that pursuant to the application made by the petitioner, registration number 1815995 was issued and he was called to appear in the PE&MT. The petitioner appeared on 18th October, 2012 at ground number 1, PTS/Wazirabad, Delhi. The reply also disclosed that petitioner participated in the race event in batch number 3 at ground number 1, PTS/Wazirabad, Delhi and chest number 196 was issued to him to participate in the race event. The counter also disclosed that as per video of the said event, the race of batch number 3 started at 11:12:14 for 7 minutes as laid down in the advertisement. As per the video, the petitioner failed to qualify 1600 meters in 7 minutes.
4. Another stand was taken by the respondents in their counter affidavit that once petitioner had participated in the selection process, it was not open for the petitioner to raise any grievance with regard to the terms and conditions as detailed in the advertisement and the corrigendum after he was declared unsuccessful in the race event. A stand was also taken in the counter-

affidavit that petitioner was informed of his result. The respondents denied that petitioner had qualified in the race but he was arbitrarily disallowed by the respondents to participate in the long and high jumps.

5. In this background we may notice the submissions made by the learned counsel for the petitioner.
6. The first submission of the learned counsel for the petitioner is that the petitioner had in fact completed 1600 meters race in 7 minutes but the respondents in an arbitrary manner have not permitted him to take part in long and high jumps. Counsel has also raised a grievance that CD of race was neither produced before the Tribunal nor provided to the petitioner. Another grievance made is that representations of the petitioner were not decided by the respondents and lastly as the advertisement did not provide for filing an appeal, the advertisement should be quashed.
7. We have carefully examined the order passed by the Tribunal as also the O.A filed by the petitioner before the Tribunal. The sole ground which has been urged in the O.A as well as in the present petition is that the petitioner had qualified in 1600 meters race event in 7 minutes but his case was not considered by the respondents. The respondents stand has been noticed by the Tribunal in detail in its order dated 23rd December, 2013 which is a subject matter of the present writ petition. The respondents have clearly spelt out that petitioner had appeared in PE&MT on 18th October, 2012 at ground number 1, PTS/Wazirabad, Delhi. He participated in the race event in batch number 3 with chest number 196 but he could not qualify the race in 7 minutes time which was the criteria and thus he could qualify to participate in the long and high jumps. On the express stand taken by the respondents before the Tribunal, no rejoinder was filed. No malafides have been alleged on behalf of the petitioner against the respondents and thus in the absence thereof, decision of the respondents cannot be questioned.

We may also notice that test was conducted on 18th October, 2012 and as per respondents, he made a representation on 13th April, 2013 to the Deputy Commissioner of Police (Recruitment Cell) raising a grievance that he was not allowed to participate in the high jump and long jump. There has no explanation on the part of the petitioner either before the Tribunal or before this court as to why he did not make a grievance at the first available opportunity and why he waited from October, 2012 to April, 2013 to make a representation.

8. The second ground as raised by the petitioner is that advertisement itself should be quashed as no provision for appeal was provided. This submission of the petitioner is also without any force. Petitioner, in our opinion, is estopped from raising this ground after he participated pursuant to the advertisement which is sought to be faulted after he was declared unsuccessful.
9. In ***Om Prakash Shukla Vs. Akhilesh Kumar Shukla*** reported in 1986(Supp) SC 285, the Hon'ble Supreme Court held as under:-

“Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realized that he would not succeed in the examination. The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardships to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the district of Kanpur also. They were not responsible for the conduct of the examination.”

In ***Madan Lal vs. State of Jammu & Kashmir*** reported in AIR 1995 SC 1088, the Supreme Court has held as under:-

“....The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the

said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.”

10. There is no merit in this writ petition. We find no reason to interfere in the decision of the Tribunal. The writ petition is dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 14 , 2015

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