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

+ **W.P.(C) 6426/2013**

Date of decision: 29th February, 2016

PARVEEN KUMAR TYAGI Petitioner

Through: Mr. Shanker Raju with
Mr. Nilansh Gaur, Advs.

versus

CHAIRMAN, STAFF SELECTION COMMISSION & ANR

..... Respondents

Through: Mr. Manish Mohan, CGSC with
Ms. Pooja Mishra &
Ms. Manisha Saroha, Advs.
Mr. Peeyosh Kalra, ASC(Civil) with
Ms. Mahua Kalra, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

Mr. Parveen Kumar Tyagi by this petition impugns the order dated 26.02.2013 passed in OA No.3623/2009.

The petitioner had applied for selection and appointment as Sub-Inspector (Executive) in Delhi Police pursuant to notification/advertisement published in Employment News dated 11.03.1994.

The petitioner's name did not figure in the list of selected candidates declared by the Staff Selection Commission on 25.9.1995. Feeling aggrieved, the petitioner filed OA No.1380/1996.

Several other non-successful candidates had earlier approached the Central Administrative Tribunal against their non-selection and order dated 26.7.1996 was passed by the Central Administrative Tribunal in OA No.2226/1995 and other cases. The question and issues raised, reached the Supreme Court in SLP Nos.16356-16358/1996. These SLPs were disposed of on 14.08.1997 in the following terms:-

“We have heard Shri R.K. Jain, the learned senior counsel appearing for the petitioners in Special Leave Petition (Civil) Nos.16356-16358/96 and Ms. Mana Chakraborty the learned counsel appearing for the petitioner in S.L.P. (C) No.24653/96 and Shri V.C.Mahajan, the learned senior counsel for the respondents. The matters relate to selection for appointment on the post of sub Inspector (Executive) in Delhi Police. Shri Jain states that even after appointing the selected candidates, a number of vacancies are still available on which appointments can be made. Shri Jain has pointed out that though the petitioners had obtained the cut off marks prescribed for the purpose of Personality Test (interview) they were not selected for the reason that they failed to obtain the minimum qualifying marks that were prescribed for Hindi in Paper III after the Personality Test had been conducted. It is submitted that in the merit list, as per the aggregate of marks obtained in all the papers, the petitions are better placed than the candidates who were selected by the Staff Selection Commission. In the circumstances, it is directed that in case vacancies are available for appointment on the posts of sub Inspector (Executive) in Delhi Police for which the impugned selection was made, the respondents may consider for appointment against those vacancies the petitions and other similarly situated candidates on the basis of merit as per the aggregate of the marks obtained by them in all the papers and if on the basis of

such consideration it is found that the petitioners can be so appointed the respondents shall appoint them against the existing vacancies by relaxing the requirement of minimum qualifying marks prescribed for Hindi in Paper III. The special leave petitions are disposed of accordingly.” (emphasis supplied)

Relying upon the observations made in the aforesaid order, contempt petition Nos.138-141 of 1998 were filed before the Supreme Court, but were dismissed vide order dated 7th August, 1998 recording as under:-

“In our opinion, no case is made out for taking action for contempt of court. The contempt petitions are, therefore, dismissed and the contempt notices are discharged.”

The contention raised before the Supreme Court in the contempt proceedings was that the order dated 14.8.1997 had directed the respondents to consider filling up posts against which there were vacancies. However, the respondents had explained that there were no vacancies in 1994 and their stand was accepted and therefore the contempt petitions were dismissed.

It is in this context that we would like to refer to the decision of the Division Bench of this Court dated 4.6.2010 in WP(C) No.3281/2003 **Virender Singh Panwar vs. Union of India & Anr.**, wherein identical issues had arisen. Dismissing the writ petition, it was observed:-

“16. A further challenge laid before the Supreme Court was dealt with in the order dated 14.08.1997 which itself makes it clear that the criteria of minimum marks was not set aside but in view of the existing

vacancies observations were made that the respondents may 'consider' filling up all those posts by relaxing the criteria for minimum marks on the basis of aggregate marks obtained by the petitioners therein and other similarly situated candidates like the petitioner. The petitioner, in fact, sought to take advantage of this direction and rightly so. However, the stand of the respondents of absence of vacancies for 1994 was accepted by the Supreme Court when the contempt petition was dismissed and nothing survived thereafter. The petitioner again claimed recruitment for vacancies if any arising subsequently even in respect of candidates who were originally recruited in 1994 when those vacancies had been included for purposes of recruitment for subsequent years. The select list cannot have an indefinite period of validity.

17. The challenge laid by the petitioner was thus on the basis of having been called for interview and thus minimum marks not applying on the basis of Vijay Pal Singh and Ors. v. UOI and Ors. case (supra) have no basis.

18. Insofar as the last plea about the OA being first allowed and then dismissed is concerned, all that is apparent from the record is that originally some order was sought to be passed but the matter was listed for directions whereafter the finally signed order had been made available and thus the same cannot be faulted.

19. In the end, there was one further plea raised by the petitioner though not contended in the pleadings, arising from a judgment by a Division Bench of this Court in W.P.(C) No.7591/1999 Narendra Kumar & Ors. v. UOI & Anr. decided on 22.09.2008. The petitioners therein were identically situated as the petitioner herein and after the written test had taken the physical test, but were disqualified on the basis of lack of minimum marks

in Hindi language test. In the said judgment, it has been pointed out that in the process of selection, out of 30 posts reserved for departmental candidates only 24 posts were filled up. Thereafter, Vijay Pal Singh and Ors. V. UOI and Ors. case (supra) has been discussed. The distinguishing fact mentioned in Narendra Kumar & Ors. v. UOI & Anr.'s case (supra) is that not only was the original OA filed by the petitioner admitted but interim directions had been passed that the posts to be filled in were subject to final orders that may be passed in the OAs pending before the Tribunal.

20. In terms of the judgment Vijay Pal Singh and Ors. V. UOI and Ors.'s case (supra), the petitioners were entitled to appointment as to availability of posts and those petitioners were declined appointment on the ground that posts were not available since all of them were filled up. It was, however, found that out of 30 posts reserved for departmental candidates, to be filled in by direct recruitment, only 24 posts were actually filled up and thus 6 posts in that category were available and there were 6 petitioners before the Court in that matter. The vital difference noted in that judgment is that unlike Vijay Pal Singh and Ors. V UOI and Ors.'s case (supra), there was an interim direction in Narendra case.

21. In our considered view, this judgment is of little assistance to the petitioner who is identically situated with petitioners in Vijay Pal Singh and Ors. V UOI and Ors.'s case (supra), and not like the petitioners in Narendra Kumar & Ors. v. UOI & Anr.'s case (supra). It is undisputed that there were no interim orders passed in the case of the petitioner before us while the Division Bench has noted this very fact as the distinguishing fact for issuance of directions for appointment as compared to Vijay Pal Singh and Ors. V UOI and Ors.'s case (supra). Since appointments were made subject to final outcome in Narendra Kumar &

Ors. v. UOI & Anr.'s case (supra), the relief was granted to 6 petitioners as there were 6 vacancies existing.

22. *We are thus clearly of the view that not only does the judgment in Narendra Kumar & Ors. v. UOI & Anr.'s case (supra), not support the case of the petitioner but goes against the case of the petitioner as it seeks to carve out a distinguishing feature from Vijay Pal Singh and Ors. V UOI and Ors.'s case (supra) which is not present in the case of the petitioner herein who is actually similarly situated as the petitioners in Vijay Pal Singh and Ors. V UOI and Ors.'s case (supra). ”*

The aforesaid quotation refers to the decision of the Delhi High Court in the case of ***Narendra Kumar & Ors. vs. Union of India & Anr.***, WP(C) No.7591/1999 which was decided on 22nd September, 2008. In Virender Singh Panwar, the decision in the case of ***Narendra Kumar (supra)*** was distinguished on two grounds. There was an interim order passed by the Tribunal and the petitioners in the case of ***Narendra Kumar (Supra)*** were departmental candidates who were selected under 10% departmental quota. This selection under the 10% quota was for 30 posts and only 24 posts had been filled up. There were 6 vacancies and there were 6 petitioners. In these circumstances, directions were issued in ***Narendra Kumar (supra)*** that the six vacant posts should be filled up.

Thus, the factual matrix of ***Narendra Kumar (supra)*** is distinguishable and at variance with the case at hand. The petitioner herein is identically situated as the candidates who had filed contempt petition Nos. 138-141 of 1998 before the Supreme Court and the petitioners in the case of **Virender Singh Panwar (Supra)**.

In view of the aforesaid, we do not find any merit in the present writ petition and the same is dismissed. No Costs.

SANJIV KHANNA, J

NAJMI WAZIRI, J

FEBRUARY 29, 2016/ak