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

% ***Judgment Dated: 11th July, 2016***

+ W.P.(C) 5816/2016

UNION OF INDIA & ORS.

..... Petitioners

Through

Mr. Arun Bhardwaj, CGSC with Mr.
Mimansak Bhardwaj, Advocate

versus

SHOBHNA SHARMA & ORS.

..... Respondents

Through

Mr. S.K. Gupta, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

CAV. PET.543/2016

Mr. Gupta, Advocate has entered appearance. Accordingly, caveat petition is disposed of.

CM.APPL 23973/2016(Exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 5816/2016

1. With the consent of the parties, we have set down the writ petition for final disposal.
2. Mr. Gupta, learned counsel for the respondents submits that it is not necessary for him to file a counter affidavit.

3. The Union of India is aggrieved by the order dated 05.08.2015 passed by the Central Administrative Tribunal(hereinafter referred to for short as 'the Tribunal') by which the OA filed by the respondents No. 1 to 15 stands allowed.
4. Both the counsel for the parties, at the outset, submit that the Tribunal has lost sight of the relief which was actually sought by the respondents (petitioners before the Tribunal). Mr. Gupta also submits that the Tribunal has not returned any finding on the relief which was actually sought by the petitioners before the Tribunal.
5. The following facts of the present case are being noticed which are necessary for disposal.
6. As per the recommendations of the 6th Pay Commission, a cadre review was carried out by the petitioner in which the post of Office Superintendent Grade –II in the Pay Scale of Rs.5500-9000 as well as Head Clerk in the Pay Scale of Rs.5000-8000 was merged and new post of Office Superintendent was created in the Pay Band II with Grade Pay of Rs.4200/-. It is the case of the petitioner that vide OM dated 10.01.2012, the Director General, CPWD instructed that till the Recruitment Rules for the newly created post of Office Superintendent were framed, further recruitment would be carried out according to the existing Recruitment Rules(RRs) for the post of Head Clerk. The posts were to be filled up by two modes, first by way of seniority and second by way of limited departmental examination after the merging of the post of Head Clerk in the newly created post of Office Superintendent. On 23.07.2012, the petitioner issued a Notification for the purpose of conducting LDCE for the newly created post of Office Superintendent as per the Director General, CPWD, OM dated 28.01.1981. It is the case of the petitioner that this Notification was issued keeping in mind

the anticipated number of vacancies and the result was to be declared for the qualified candidates but limited number of vacancies had occurred as on 31st March of that year. It is for this reason that exact numbers of vacancies were not notified at the time of issuance of the Notification of the examination. On 08.08.2012, the petitioner issued the strength of various posts including the Office Superintendent (360 posts) and the cadre strength of Northern Regions was 360, i.e., 60% of 601 posts. On 08/09.12.2012, the petitioner conducted the LDCE examination where all the respondents herein participated. 47 candidates qualified the examination, the petitioner promoted only 22 candidates. Resultantly, 25 candidates were not promoted, including the respondents herein. It is also the case of the petitioner that the respondents feared that the posts of Head Clerk were not filled up as per the prescribed quota mentioned in the RRs of Head Clerk and thus, the respondents started seeking information under the Right to Information Act (RTI Act). While it is the case of the petitioner that necessary information was supplied, the respondents were dissatisfied and resultantly they approached the Tribunal.

7. Both the learned counsel for the parties are in agreement that the learned Tribunal has not decided the issue which was raised by the respondents. Mr. Bhardwaj, counsel for the petitioner submits that the Tribunal exceeded its jurisdiction by quashing the entire examination conducted by the petitioner while no such relief was prayed for by the respondents. Neither there was any pleading nor any arguments were addressed by the counsel for the parties. Mr. Gupta, learned counsel for the respondents submits that the respondents are primarily aggrieved by the fact that the petitioner had not notified the precise number of vacancies which were available and this issue has not been decided by

the Tribunal which is also evident by the reading of the order of the Tribunal, particularly paragraph 36, wherein the Tribunal held both LDCE 2012 and 2014 examinations to be illegally and wrongly conducted by the petitioner. In para 36 page 71 of the order, the Tribunal held as under:

“However, since we have held above that in this case both LDCE 2012 and 2014 had been held illegally and wrongly, we refrain from determining as to how many vacancies should have been filled up on the basis of the two LDCE examinations, which is, as it is, an administrative task, and cannot be performed by this Tribunal in the present process of judicial review.”

8. We have heard the learned counsel for the parties and given our thoughtful consideration to the matter.
9. The following reliefs were sought by the respondents in the OA filed before the Tribunal:
 - “(i) quash and set aside the impugned communication dated 24.01.2014 (Annexure A-1) and also declared the action of respondents in not dividing the vacancies of the cadre of Office Supdt. In accordance with the quota prescribed as illegal and arbitrary;
 - (ii) direct the respondents to recalculate the vacancies for the year 2012-2013 for the quota meant for LDCE and consider the case of the applicants for promotion based upon the examination conducted on 08.12.2012 and 09.12.2012 in accordance with the merit position and grant consequential benefits.”
10. Upon reading of the impugned order and taking into consideration the submissions made by the counsel for the parties, we set aside the order of the Tribunal dated 05.08.2015. As agreed, the matter is remanded

back to the Tribunal with a direction to decide the matter as per the pleadings and relief sought by the respondents herein.

11. The writ petition is disposed of accordingly.

CM.APPL 23972/2016(stay)

12. Since the instant writ petition stands disposed of, the application is also disposed of accordingly.

G.S.SISTANI, J

I.S. MEHTA, J

JULY 11, 2016
pst

