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

% ***Judgment Dated: 30th August, 2016***

+ W.P.(C) 6154/2016

AASHISH GUPTA

..... Petitioner

Through : Mr. R.N. Singh with Mr.A.S.Singh,
Advocates

versus

CENTRAL BOARD OF EXCISE & CUSTOMS & ORS

..... Respondents

Through : Mr. Amrit Pal Singh with Mr. Nirvikar
Verma, Advocates for respondents
No.1 to 4.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

1. The petitioner is aggrieved by the order dated 24.08.2015 passed by the Central Administrative Tribunal (hereinafter referred to for short as 'the Tribunal') by which the OA filed by the petitioner has been dismissed. The petitioner has also laid challenge to the order dated 02.05.2016 passed by the Tribunal by which the review application of the petitioner stands dismissed.
2. With the consent of the parties, the writ petition is set down for final hearing and disposal.
3. Necessary facts which are required to be noticed for disposal of this petition are that the petitioner appeared for the Combined Graduate Level Examination 2012(hereinafter referred to for short as 'CGLE-

2012') conducted by respondent no.4. The petitioner had opted for posting for any post in Delhi (Code-F) and had given his address as 1185, Laxmi Bai Nagar, New Delhi, where the petitioner was residing at that point of time and which accommodation was provided to the father of the petitioner. The petitioner has heavily relied upon the guidelines issued by respondent no.4 regarding nomination of candidates and the manner of filling up the application form. In May, 2013, respondent no.4 declared the result of CGLE-2012, the petitioner secured 255 rank in the merit list. The petitioner was selected as Inspector, Central Excise (Code-J) under State Code 'F' which was the code of Delhi in the notification for examination. According to the petitioner, respondent no.4 forwarded his dossier along with dossiers of other candidates to the centralised designated officer of Central Board of Excise and Customs, New Delhi for further allocation and appointment to the post of Inspector, Central Excise in Delhi State.

4. The complaint of the petitioner is that respondent no.1 has overlooked the guidelines/directions of respondent no.4 vide its letter dated 21.02.2013 and illegally and arbitrarily issued the directions that candidates would be allotted zones as per vacancies on the basis of merit-cum-preference basis. As per the petitioner, although there were sufficient vacancies, but the petitioner has been allotted the Chandigarh zone overlooking his preference for Delhi. The petitioner joined his duty as an Inspector, Central Excise in Chandigarh on 06.06.2014. In July, 2014, the petitioner submitted a representation for implementation of the guidelines of respondent no.4 based on which he requested for being transferred to Delhi, but no action was taken on his representation. The representation was rejected on 28.07.2014. The petitioner was informed that it was not possible to change his zone as the allocation is made on

the basis of merit-cum-preference and the availability of vacancies in the relevant cadre/category.

5. Aggrieved by rejection of his representation, the petitioner approached the Tribunal where his OA and review application stand dismissed, which has led to the filing of the present writ petition.
6. Mr. Amrit Pal Singh, the counsel for the respondents submits that upon receipt of the results based on the vacancies, a merit list was prepared. The first 10 persons were granted Delhi zone as per their merit and preference and since the petitioner was way down in the merit list, he was considered for Chandigarh. He submits that the guidelines sought to be relied upon have not been violated by the respondents.
7. We have heard the learned counsel for the parties.
8. Since the main thrust of argument of Mr. R.N.Singh, learned for the petitioner is based on the advertisement/notice for CGLE-2012 issued by the Staff Selection Commission, we deem it appropriate to reproduce the relevant portion of the advertisement, which reads as under:

“12. MODE OF SELECTION:

.....

The Commission will recommend the candidates in the Merit List on the basis of the aggregate marks obtained by the candidates in the written examination and interview(whenever applicable) and preference exercised by the candidates in the Application Form for different Posts/States at the time of Tier II/Interviews/Skill Test/Computer Proficiency Test depending on the number of vacancies available. Once the candidate has been given his/her first available preference, he/she will not be considered for the other options. Candidates are therefore advised to exercise preference in Application Form carefully and detailed options after Tier I examination. The option/preference once exercised by the Candidates will be treated as FINAL and IRREVERSIBLE. Subsequent request for change of allocation/service by candidates will not be entertained under any

circumstances/reasons.”

.....

B. Commission intends to make State-wise allocation of the candidates taking into consideration his position in the merit list and option exercised for the posts. The States/UTs for the purpose are grouped and coded as below:

Code	State/UT	Code	State/UT
A	Andhra Pradesh	O	Madhya Pradesh
B	Arunachal Pradesh	P	Manipur
C	Assam	Q	Meghalaya
D	Bihar	R	Mizoram
E	Chattisgarh	S	Nagaland
F	Delhi	T	Orissa
G	Gujarat	U	Punjab, Haryana & Chandigarh
H	Goa, Daman & Diu	V	Rajasthan
I	Himachal Pradesh	W	Tripura
J	Jammu & Kashmir	X	Tamil Nadu & Puducherry
K	Jharkhand	Y	Uttarakhand
L	Kerala & Lakshadweep	Z	Uttar Pradesh
M	Karnataka	\$	West Bengal & Sikkim
N	Maharashtra, Dadra & Nagar Haveli	#	Andaman & Nicobar

9. Mr. R.N. Singh, learned counsel for the petitioner submits that since the petitioner had opted for Code ‘F’ zone, the respondents had no choice but to post him at Code ‘F’ which is Delhi zone. He submits that as per this advertisement since it was highlighted that the candidates have to

exercise their preference only once and they would not be allowed to change their option, therefore, the same yardsticks should be applied against the respondents and they should also be bound and as such, they do not have the option to change the preference given by the petitioner. It is contended by learned counsel that since the petitioner had given the option ‘F’, the respondents could not have changed the place of posting to any other place but option ‘F’.

10. Mr. Amrit Pal Singh, the counsel for the respondents submits that the petitioner had completely mis-read the advertisement and the mode of selection. While relying on column B, which has been extracted in the paragraph foregoing, Mr. Singh, learned counsel for the respondents submits that it was made abundantly clear that the Commission intends to make State-wise allocation of the candidates taking into consideration the position of a candidate in the merit list and option exercised for the post. He submits that there were only 10 vacancies available for the Delhi zone and the petitioner was ranked beyond the merit of first 10 candidates and thus, could not have been allotted Delhi zone. The counsel relies on the impugned order passed by the Tribunal where the result has been extracted to canvass his argument that the first 10 candidates who succeeded were given the Delhi zone. The result of Delhi and Chandigarh zone, which has been extracted by the Tribunal, is reproduced as under:

INSPECTORS CGL 2012							
DELHI							
S.No.	NAME	DOB	CAT	RANK	1 st PREF	IIND PREF	State Permanent Address
1	DEEPAK NARWAL	3.01.86	UR	99	F	U	Haryana
2	GAURAV SINGH	5.10.86	UR	108	F	U	Haryana

3	SANGEETA	11.10.88	UR	110	F	U	Haryana
4	RAJESH KUMAR YADAV	2.12.86	UR (OBC)	160	F		Delhi
5	MOHD WASIM	5.8.86	UR	164	F	U	Uttarakhand
6	DEEPA K	30.10.88	UR	170	F	U	Haryana
7	SUMIT KUMAR	21.10.89	UR (OBC)	189	F	U	Haryana
8	YADU BHARDWAJ	22.3.87	UR	210	F	U	Rajasthan
9	DHARMENDER	20.2.90	UR	215	F	V	Haryana
10	ASHISH CHAWLA	29.2.88	UR	224	F	U	Haryana
CHANDIGARH							
1	MANOJ VERMA	14.5.89	UR (OBC)	67	U	F	
2	PRADEEP SHEORAN	2.7.88	UR	136	U	F	
3	NA VEEN JINDAL	03.03.86	UR	187	U	F	
4	NITIN KUMAR	27.09.89	UR	227	F	U	
5	KARAN VOHRA	07.08.88	UR	247	U	F	
6	RAGHU SHARMA	15.04.89	UR	254	U	F	
7	AASHISH GUPTA	02.10.87	UR	255	F		
8	LOKESH KUMAR	28.12.90	UR	276	U	F	
9	RAHUL JAIN	27.09.89	UR	317	F	U	
10	KULDEEP	19.12.91	UR	318	U	F	
11	SHALINE DUHAN	21.11.90	UR	339	F	U	
12	LAV BISHT	11.03.88	UR	343	F	U	
13	TAMAN PREET SINGH	10.12.89	UR	346	U	F	
14	VIJAY KUMAR	04.10.85	UR	347	F	U	
15	BHUVNESH GUPTA	21.12.87	UR	350	U	F	

11. It is further reiterated by the learned counsel for the respondents that the last person to be allocated Delhi zone under the unreserved category was one Ashish Chawla who had ranked 224 and, one Nitin Kumar, who had given Delhi as his preference and had ranked 227 was not given Delhi zone who was far above in rank of the petitioner who had ranked 255.

12. We find force in the submissions made by the learned counsel for the respondents that the petitioner has completely misread the terms of the advertisement. We also find that the petitioner seems to have completely swayed by Clause 12 of the advertisement pertaining to Mode of Selection, as per which it was highlighted that the preference exercised by a candidate in the application form would be treated as final and irreversible and further a subsequent change of request would not be entertained in any circumstances/reasons.
13. The learned counsel for the petitioner has strongly urged before this Court that since the petitioner had no option to change the preference exercised in the application form, the same should also be binding on the respondents. In effect, that since the petitioner had given the option for Delhi, he should have been posted in Delhi alone. The stand of the petitioner is neither borne out from the advertisement nor it is logically plausible. In the present case, there were only 10 vacancies available in Delhi. The respondents have filled up the vacancies in terms of the advertisement wherein the respondents were entitled to take into consideration the position of the candidate in the merit list and the option exercised for the post. The result of Delhi and Chandigarh zone has been extracted in para 10 above. The first 10 persons in the merit list have been accommodated in Delhi and we find no infirmity in the stand of the respondents.
14. Since neither any *mala fide* has been alleged nor pointed out, neither it has been complained that a candidate who was down in merit compared to the petitioner has been selected for Delhi zone nor Clause B of the public advertisement has been violated by the respondents, we find no infirmity in the impugned order passed by the Tribunal. Resultantly, the petition must fail.

15. The writ petition is dismissed accordingly.

CM.APPL 25278/2016 & 25280/2016

16. The applications stand dismissed in view of the orders passed in the writ petition.

G.S.SISTANI, J

AUGUST 30, 2016
pst

I.S. MEHTA, J

