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

% ***Judgment Dated: 22nd August, 2016***

+ **W.P.(C) 7420/2016**

ANIL KUMAR MAHATO

..... Petitioner

Through : Mr. Saurabh Sharma, Advocate

versus

DELHI METRO RAIL CORPORATION AND ORS. Respondents

Through : Mr. R.V. Sinha with Mr. R.N. Singh
and Mr. A.S. Singh, Advocates for
respondents no.1 to 3.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

1. Petitioner is aggrieved by the order dated 21.12.2015 passed by the Central Administrative Tribunal (hereinafter referred to for short as '*the Tribunal*') by which the OA filed by the petitioner was dismissed. Petitioner is also aggrieved by the order dated 15.02.2016 by which the review petition filed by the petitioner herein was also dismissed.
2. The necessary facts, which are required to be noticed for disposal of the present writ petition, are that petitioner has been working as SC/TO with the DMRC since 2005. Petitioner appeared in an examination for the post of Assistant Manager (Operations) in response to an advertisement issued for Limited Departmental Competition Examination (for short '*LDCE*'). Petitioner was declared unsuccessful in the said examination. The petitioner filed an RTI dated 08/06/2012 wherein he asked for his marks along with marks of Sh. RC Meena, selected candidates and respondent No.4. Based on the RTI inquiry, the petitioner came to know

that he had scored well in Paper- 1 and Paper-2. In Paper-1, the petitioner had scored 28.5 out of 40 marks, i.e., 71.25% and in Paper-2, he scored 9.75 marks out of 20 marks, i.e., 48.75%. The petitioner had scored 38.25 out of 60, i.e., 63.75% in total of Paper-1 and Paper-2. The petitioner had also scored full marks in qualification and his ACR was relatively very good, i.e., 13 out of 15. However, the petitioner was not provided the marks of respondent no.4, who is the junior-most in the ST category.

3. The learned counsel for the petitioner submits that the petitioner is aggrieved by the action of the respondents for not selecting him for the post of Assistant Manager (Operations) in the ST category by intentionally giving him low marks, i.e., 26.6% marks in the oral interview in LDS 2012 despite the fact that he had scored 66% in the written examination conducted by respondent for the said post.
4. We may notice that this petitioner had also approached the Tribunal by filing an OA No.2675/2012 which was disposed of by the Tribunal vide its order dated 16.08.2012 with a direction to the Managing Director to pass a reasoned and speaking order. The speaking order so passed by the Managing Director dated 05.11.2012 was assailed by filing a second OA which also was dismissed by an order dated 21.12.2015. The following reliefs were prayed for in the second OA by the petitioner:

- “(a) To quash the Speaking order dated 05.11.2012 passed by the Managing Director of DMRC.
- (b) To quash the result dated 07.06.2012 for the post of Asstt. Manager Operation in ST category.
- (c) To quash the appointment of the Respondent no.4 for the post of Asstt. Manager operation in ST category.
- (d) To order the appointment of applicant after calling the records of exam including the marks in written, marks of seniority, marks of higher qualification, marks of ACR and

original ACR etc. of candidates in ST category and declare the applicant fit and suitable for the post of Asstt. Manager Operation in ST category with all the prior monetary and service benefits, and arrears.

- (e) To order to make a suitable panel for the appointment of Asstt. Manager Operation in ST category.
- (f) To allow OA with cost.
- (g) To pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case.”

5. Primarily, two grounds have been raised before us today. The first ground is that the Interview Board was biased against the petitioner and during the course of interview, one of the members of the Interview Board had gone out of the hall to attend a telephone call and he joined back after few minutes. During this period, other members of the Interview Board had discouraged the petitioner and they were biased towards the petitioner and thus, did not award him the correct marks.
6. The Screening Committee, while interviewing for the post of Assistant Manager, judges the candidate on the following attributes:-
 - (i) Leadership qualities and initiatives;
 - (ii) Truthfulness;
 - (iii) Confidence level;
 - (iv) Communication skills; and
 - (v) Knowledge of his area as well as general awareness.
7. The submission of the learned counsel for the petitioner regarding bias has been rejected by the Tribunal and, in our view, rightly so far the reason that the Interview Board comprised of four members, out of which one person was a member of the SC, ST community and the marks were awarded unanimously by the members of the Board, which would show that even if one of the members of the Board had left the hall for a few minutes, the other three members of the Board were

unanimous in awarding the marks and although, on his return, the member who had left the hall for a few minutes has also endorsed the marks awarded by the other members of the Board. While we are of the view that the member of the Board should not have left the hall even if it was for a few minutes and in case of dire emergency, the proceedings of the Board should have been stalled, be that as it may, since the marks have been awarded unanimously by the Board, we cannot say that there was any bias against the petitioner herein or that any prejudice was caused to the petitioner during the few minutes when a member had left the hall. We may notice that besides the marks awarded, the Managing Director has also considered the representation of the petitioner and has rejected the same.

8. The second ground which has been urged before us by the learned counsel for the petitioner is that a joint seniority list of the General candidates and the Reserve candidates should not have been prepared and in case a separate list was prepared, the petitioner would have been awarded higher marks than the respondent no.4 on the basis of seniority. Respondent no.4 is also a Reserve candidate and has been selected. Mr. Sinha, learned counsel who enters appearance on an advance copy submits that the order of the Tribunal would show that no such ground was raised during the hearing before the Tribunal and further no such ground has been even raised in the present writ petition. He submits that even otherwise the petitioner had participated in the selection process with open eyes and once having participated he cannot find fault in the process of selection. In rebuttal, learned counsel for the petitioner has drawn our attention to the grounds 'M' and 'N' of the writ petition. Reliance is also placed by the counsel for the petitioner on a decision of the Supreme Court in the case of *U.P. Rajya Vidyut Parisad SC/ST*

Karamchari Kalyan Sangh v. U.P. State Electricity Board & Ors., (CA No.4026/1988) decided on 23.11.1994.

9. Grounds ‘M’ and ‘N’ of the writ petition read as under:

“M. The separate zone of consideration was defined by the Supreme Court in

1. U.P. Rajya Vidyut Parisad SC/ST Karamchari Kalyan Sangh v. U.P. State Electricity Board & Ors., CA No.4026 of 1988 decided on 23.11.1994
2. C.D. Bhatia v. Union of India SLP (C) No.14568-69/1995
3. Basudeo Anil v. Union of India C.A.No.1194/1992
4. Subhash Chnader v. Union of India and Ors. W.P.(C) No.13000/2009 decided on 24.02.2010
5. Shri Gopal Meena S/o Shri Tej Ram Meena vs Union of India (UOI), through The....on 10 July, 2007

In these cases Hon’ble Supreme Court formulated guideline for separate zone of consideration for SC/ST for reserved seat given below.

N. Hon’ble Supreme Court in C.A. No.4026/88 in U.P. Rajya Vidyut Parisad SC/ST Karamchari Kalyan Sangh v. U.P. State Electricity Board & Ors stated that “We have concluded the hearing of arguments. We are prima facie in agreement with the contention of the learned counsel for the appellant that there has to be a separate zone for consideration so far as SC/ST candidates are concerned. Clubbing the Scheduled Caste with the general category in the same zone of consideration would defeat the very purpose of reservation. Mr. B. Sen learned senior counsel appearing for the board, states that he would like to place the matter before the board and seek the further instructions from the board.”

10. A reading of grounds ‘M’ and ‘N’ does not support the submission made by counsel for the petitioner that either before the Tribunal or before this Court, the petitioner had raised a plea regarding preparation of a joint seniority list. We are also unable to accept this submission of the

learned counsel for the petitioner as the impugned order does not disclose that any such ground was raised. Moreover, in the present writ petition, no complaint of such kind was made. The judgment in the case of *U.P. Rajya Vidyut Parisad SC/ST Karamchari Kalyan Sangh*(supra), extracted above in the grounds would show that this is not a judgment at all and cannot be relied upon, thus would not apply to the facts of the present case. The petitioner had participated in the examination process and once his having participated in the examination process cannot find fault in the same. In the case of *Union of India and Ors. v. Vinodh Kumar and Ors.*, reported at 2007(8) SCC 100, in paragraphs 18 and 19 it was held as under:

“18. It is also well-settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. [See *Munindra Kumar and Others v. Rajiv Govil and Others* - AIR 1991 SC 1607]. [See also *Rashmi Mishra v. Madhya Pradesh Public Service Commission and Others* - 2006 (11) SCALE 5]

19. In *Chandra Prakash Tiwari and Others v. Shakuntala Shukla and Others* [(2002) 6 SCC 127], it was held:-

"32. In conclusion, this Court recorded that the issue of estoppel by conduct can only be said to be available in the event of there being a precise and unambiguous representation and it is on that score a further question arises as to whether there was any unequivocal assurance prompting the assured to alter his position or status - the situation, however, presently does not warrant such a conclusion and we are thus not in a position to lend concurrence to the contention of Dr. Dhawan pertaining the doctrine of Estoppel by conduct. It is to be noticed at this juncture that while the doctrine of estoppel by conduct may not have any application but that does not bar a contention as regards the right to challenge an appointment upon due participation at the interview/selection. It is a remedy which stands barred and it is in this perspective in *Om Prakash*

Shukla (Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors., a three Judge Bench of this Court laid down in no uncertain terms that when a candidate appears at the examination without protest and subsequently found to be not successful in the examination, question of entertaining a petition challenging the said examination would not arise."

It was further observed :

"34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview and participates therein, 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 there was some lacuna in the process."

11. We do not find any infirmity in the order passed by the Tribunal which would require us to interfere in the proceedings under Article 226 of the Constitution of India. No ground is made out to entertain this petition. Resultantly, the writ petition is dismissed.

G.S.SISTANI, J

I.S. MEHTA, J

AUGUST 22, 2016

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