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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION (CIVIL) NO. 7224/2016**

Date of decision: 30th September, 2016

S S DOGRA

..... Petitioner

Through Mr. Srigopal Aggarwal, Advocate.

versus

SECRETARY I C A R NEW DELHI AND ANR. Respondents
Through Mr. Gagan Mathur, Advocate for Mr.
S.R. Mathur, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J. (ORAL):

The petitioner-S.S. Dogra in the present writ petition, prays for setting aside of the order dated 3.09.2015 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (Tribunal for short), whereby OA No. 3325/2014 preferred by the petitioner and one Mr. H.K. Joshi has been dismissed. The petitioner submits that due to financial constraints, Mr. H.K. Joshi has shown an unwillingness to contest the decision and the present writ petition has only been filed by S.S. Dogra.

2. By notice No. 2(1)/2012-Exam-II/B dated 3.05.2013, the Agricultural Scientists Recruitment Board (ASRB, for short) had invited applications from interested persons, who were eligible to appear in the Limited Departmental Competitive Examination (LDCE-2013) for the post

of Assistants. petitioner had participated in the said examination held on 29.08.2013 and 30.08.2013. He was declared unsuccessful, having not secured pass marks of 45%, applicable to general category candidates.

3. The contention of the petitioner is that in the earlier exams, the pass or qualifying marks were 40% for the unreserved category and 30% for the reserved category candidates. Even in the examination conducted on 29.09.2014, the qualifying marks were reduced to 40% for the unreserved category. The increase in the qualifying marks for the examinations held in 2013 is per se discriminatory and invalid. It offends the Right to Equality under Article 14.

4. The petitioner submits that as per the copy of file notings under the Right to Information Act, 2005, the pass marks of 45% for unreserved category and 40% for Scheduled Casts and Scheduled Tribes were fixed and approved by the Chairman on 26.09.2013. The examination, it is stated, was held on 29.08.2013 and 30.08.2013. It is accordingly urged that the prescription of higher qualifying marks in comparison to the earlier years would amount to a change in the "rules of the game" after the commencement of the "game" and the same is impermissible.

5. The Recruitment Rules have been placed on record. As per the appendix to the Rules, the ASRB has the discretion to fix qualifying marks in any or all subjects of the examination. This position is undisputed and accepted. Reference can be made to Paragraph 6 of the appendix which

reads:-

"6. The ASRB will have the discretion to fix qualifying marks in any or all of the subjects of the examination."

6. In the present case, the petitioner had participated in the examination conducted by the ASRB in terms of the aforesaid stipulation. Qualifying marks were not fixed in the Appendix and as per the Rule, the same were to fixed by the ASRB. No doubt, the examination was held on 29.08.2013 and 30.08.2013., but this does not mean that the ASRB could not have fixed the pass or qualifying marks after the date of examination. The "rules of the game" did not undergo a change. The candidates were informed that they had to qualify the examination in order to be eligible for promotion.

7. The quantum of qualifying/pass marks, as prescribed in the past, would only be an indicator and would not confer a vested right on the petitioner or impose an obligation on the respondent to fix the same qualifying marks, particularly in view of the express Rule which empowers the ASRB to fix the qualifying marks in any or all subjects of the examination. Fixing of the percentage of qualifying marks, be it at 40% or 45%, would falls within the administrative or policy domain. The determination of the qualifying marks is a matter of discretion, which when fixed and not absurd or perverse, cannot be struck down solely on the premise that it would have been appropriate to fix the qualifying marks at 40%, in view of the past precedents.

8. The qualifying marks had not been stipulated and were to be fixed by the ASRB under the Rule. The respondents could have altered or increased the percentage of qualifying marks and the same would not amount to discrimination against candidates who has appeared in the examination in 2013. A case for discrimination is not made out solely on the ground that in the earlier examinations, the ASRB had fixed the pass marks at 40%. Each examination is separate and distinct.

9. All the candidates, who had appeared in the 2013 examination, were tested on the same criteria. The attempt was to raise the standard and select candidates who had faired well and secured the requisite marks as prescribed. Possibly, the protests and objections raised by the candidates have compelled the authorities to reduce the qualifying marks once again and fix them at 40% for unreserved candidates. The earlier increase in the percentage of qualifying marks for the examinations held in 2013 cannot be struck down for this reason.

10. In view of the above, the writ petition is dismissed.

SANJIV KHANNA, J.

SUNITA GUPTA, J.

SEPTEMBER 30, 2016
VKR