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

+ W.P.(C) 8268/2016

% **Judgment dated 19th September, 2016**

AMIT KUMAR

..... Petitioner

Through : Ms.Rekha Palli, Sr. Adv. with
Mr.Aditya Singh, Adv.

versus

STAFF SELECTION COMMISSION AND ORS Respondents

Through : Ms.Bharti Raju, CGSC 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)

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1. Exemption allowed subject to all just exceptions.
2. Application stands disposed of.

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3. Challenge in this writ petition is to the order dated 1.9.2016 passed by Central Administrative Tribunal (hereinafter referred to as '*the Tribunal*') whereby the Tribunal has dismissed OA No.2773/2016 filed by the petitioner herein.
4. The brief facts, which are required to be noticed for the disposal of the present writ petition, are that on 28.5.2011, the Staff Selection Commission (in short '*SSC*') published a notification inviting application for the post of Sub-Inspectors in Central Police Organisation (CPO), Assistant Sub-Inspectors in Central Industrial

Security Force (CISF) and Intelligence Officers in Narcotics Control Bureau (NCB) – 2011, by way of a combined selection test. In furtherance to the said notification, the petitioner applied for the said examination. Upon being eligible in the written tests (Paper-I and Paper-II), Physical Endurance Test, Medical Examination and Interview, the petitioner was provisionally appointed as an Intelligence Officer in NCB vide letter dated 26.4.2012. Thereafter the petitioner was posted at NCB Office, Lucknow Zone. Since the petitioner was found indulging in malpractices at the stage of Paper-I and Paper-II, respondent no.1 issued a Show Cause Notice dated 6.5.2013 to the petitioner herein. The petitioner submitted his reply dated 14.5.2013. Another Show Cause Notice was issued to the petitioner on 31.5.2013 alleging that he had resorted to copying in the said examination in collusion with other candidates. The said Show Cause Notice was also replied to by the petitioner on 11.6.2013 again stating that he had not engaged in any malpractice at any stage of the examination. In the meantime, while the petitioner was undergoing training at CBI Academy, Ghaziabad, his services were terminated vide order dated 12.6.2013, which led to the filing of OA No.2362/2013 before the Tribunal. The Tribunal allowed the OA and set aside the Show Cause Notice and order of termination vide order dated 8.12.2014. Since the respondents failed to reinstate the petitioner pursuant to the order dated 8.12.2014 passed by the Tribunal, he was forced to file a contempt petition, being No.161/2015, before the Tribunal. The respondents thereafter vide order dated 2.3.2016 reinstated the petitioner. On 29.7.2016, respondent no.1 again issued a Show Cause Notice to the petitioner alleging that he had indulged in malpractices in Paper-I and Paper-II. The petitioner replied to the said Show Cause Notice on

12.8.2016, a copy whereof has been filed as Annexure P-20 to the present petition. The petitioner then filed OA No.2773/2016 before the Tribunal against the Show Cause Notice dated 29.7.2016. The said OA filed by the petitioner was dismissed by the Tribunal on 1.9.2016 primarily on the ground that the petitioner (applicant before the Tribunal) had not filed reply to the Show Cause Notice. Para 7 of the impugned order reads as under:

“7. Moreover, the Hon’ble Apex Court has, in a number of cases, including in the case cited above, deprecated the tendency of litigants to approach the Tribunal without first filing reply to the Show Cause Notice, and has also criticized this Tribunal, whenever the Tribunal had entertained such Applications, when the applicants had not even given any reply to the Show Cause Notice issued to them. Further, the applicant has in Para-6 of the OA wrongly stated that he has exhausted all available remedies, while actually he has not even filed any reply to the Show Cause Notice, which has been impugned by him in this OA.”

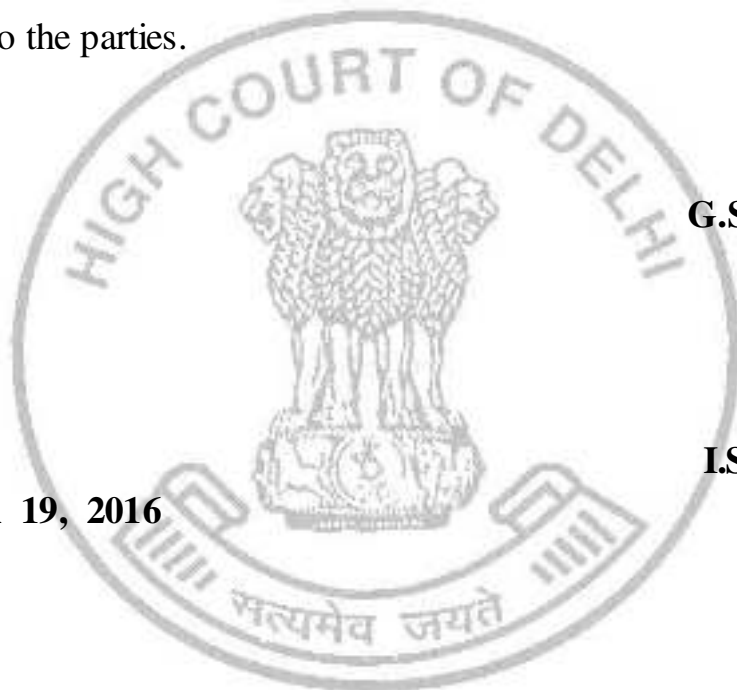
5. Learned senior counsel for the petitioner submits that the Tribunal has overlooked the reply to the Show Cause Notice dated 29.7.2016 which was filed by the petitioner on 12.8.2016 and, thus, the order passed by the Tribunal is bad in law and erroneous.
6. Learned counsel for the respondents enters appearance on an advance copy.
7. We have heard learned counsel for the parties. We may notice that in para 7 of the impugned order passed by the Tribunal, the Tribunal has primarily dismissed the OA for the reason that the petitioner had failed to file reply to the Show Cause Notice whereas factually this aspect is incorrect as probably it was not brought to the notice of the Tribunal.
8. Resultantly, we quash the impugned order dated 1.9.2016 passed by the

Tribunal and remand the matter back to the Tribunal for fresh hearing.
List this matter before the Tribunal on 22.9.2016.

9. As learned senior counsel for the petitioner submits that there is urgency in the matter, we request the Tribunal to consider the prayer of the petitioner herein for interim relief on 22.9.2016.
10. Writ petition stands disposed of in view of above.

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11. Application stands disposed of in view of the order passed in the writ petition.
12. DASTI to the parties.



G.S.SISTANI, J

I.S. MEHTA, J

SEPTEMBER 19, 2016

msr