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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 10489/2015

Date of decision: 18th May, 2016

HARIOM

..... Petitioner

Through Ms. Rekha Palli, Sr. Advocate with
Ms. Punam Singh, Ms. Ankita Patnaik, Ms. Shruti
Munjal and Ms. Garima, Advocates.

versus

COMMISSIONER OF POLICE & ANR

..... Respondent

Through Mr. Santosh Kr. Tripathi, ASC for
GNCTD.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

Hariom, a Head Constable in Delhi Police, impugns order dated 17th August, 2015 passed by the Principal Bench of the Central Administrative Tribunal, whereby his OA No.4266/2014 has been dismissed on the ground of limitation.

2. The petitioner who was working as a head constable, pursuant to the advertisement for filling up 19 vacant posts of Sub-Inspectors (Exe.), had participated in Phase-II, 2009 Examination. The general public had also participated for filling up 380 open posts. Thus, Phase-II, 2009 Examination was a common examination for selection

by way of direct recruitment from general public, and against 10% quota earmarked for departmental candidates, i.e., Constables, Head Constables and Assistant Sub Constables working in the Delhi Police.

3. The petitioner had secured 157 marks but did not qualify as a departmental candidate because other departmental candidates had higher marks. The last selected departmental candidate had secured 163 marks. However, the petitioner had secured higher marks than the last open unreserved selected candidate who had secured 155 marks. As the petitioner had not applied in the open category, he was not selected in the open category.

4. Two other unsuccessful departmental candidates like the petitioner, who had secured higher marks than the last selected open candidate, filed Original Applications before the Tribunal. Their claim was that although they had appeared as departmental candidates, they had secured higher marks than the last selected candidate in the open unreserved category and, therefore, they should be considered for appointment in the open category. The Original Applications were dismissed by the Tribunal. The said order was challenged before the High Court in W.P. (C) 5220 of 2012 and other connected matters. The writ petitions were initially dismissed vide

order dated 22nd May, 2013. Subsequently, review petitions were allowed by order dated 22nd August, 2013, and the two writ petitioners were directed to be appointed as Sub-Inspectors (Executive) under the unreserved category from the general public/open category.

5. The petitioner had not challenged or questioned his non selection as an open candidate in the Phase-II, 2009 Examination. It has been accepted and admitted that the results/select list was published in October, 2010. The petitioner claims that he had made oral representations in the year 2010, but we are not inclined to accept the said contention in the absence of any documents. Admittedly, no written communication was addressed between 2010 and December, 2013.

6. The petitioner filed OA No.182 of 2014 in January 2014. This OA was disposed of on 21st January 2014 with a direction to the respondent authorities to decide the representation. By order dated 9th September, 2014, the representation was rejected, observing that the vacancies against which the petitioner was claiming appointment had been carried forward to the next stage of the recruitment process. The next recruitment was in the year 2012.

7. Aggrieved, in November, 2014 the petitioner filed OA No.4266

of 2014 in which the impugned order has been passed.

8. The petitioner relies on the information furnished under the Right to Information Act, 2005, to assert that there were at least 16/14 vacancies in the open category, that were not filled up after the Phase-II, 2009 examination and were carried forward. The petitioner has also drawn our attention to information furnished on 7th January, 2016 with reference to the 2012 examination, and submits that all vacancies could not be filled up and were carried forward. The argument however misses the point that vacancies notified for the 2012 examination would include vacancies and new posts created between the 2009 and 2012 examinations. The petitioner cannot per se claim right of consideration for the said vacancies not included in the Phase II, 2009 examination. At best the petitioner's claim would be restricted to unfilled vacancies advertised and for which the 2009 Phase II examination was held. This claim was made, post 2012 examination.

9. In light of the aforesaid position, we had asked the respondent authorities to file an affidavit. The respondent authorities have filed their response/reply dated 10th March, 2016. It is stated that on completion of recruitment, all vacancies as advertised for the post of Sub-Inspector (Executive) in the 2009 Examination were filled up

and were not available as on 21st January, 2014. An order passed by the Joint Commissioner of Police, Headquarters, the first appellate authority under the Right to Information Act has been enclosed. The order quotes and includes tables, details etc. and states that all the advertised vacancies for the Phase-II, 2009 Examination were duly filled up and were not vacant. The two candidates appointed pursuant to the direction given by the High Court in W.P.(C) No.5220 of 2012 were accommodated against future vacancies to ensure compliance of the order/direction as the selected candidates had already joined against the advertised vacancies in the Phase II, 2009 examination.

10. We may have gone deeper and examined the question of vacancies in greater detail, albeit we find that in the present case the OA has rightly been dismissed on the ground of limitation. The select list was published in the month of October, 2010. The petitioner was notified and was aware that he had secured 157 marks and was not considered for appointment against unreserved vacancies in the open category. He was also aware that the last selected unreserved candidate from the open category had secured lower marks, i.e., 155 marks. Two police officials similarly situated had objected and had filed an OA, which was dismissed. Their writ petitions were also dismissed, but thereafter the review application

was allowed and they were directed to be appointed vide order dated 22nd August, 2013. The petitioner filed the first OA i.e. OA No.182 of 2014 in 21st January, 2014, nearly four years after the select list was published in October, 2010. Thus the petitioner had invoked and initiated the legal process after substantial delay and long after the declaration of results. The cause of action had arisen when the results were published. The invocation was beyond the time stipulated as per the limitation period in Section 21 of the Administrative Tribunals Act, 1985.

11. The petitioner relies on *State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava and Ors.* (2015) 1 SCC 347. Having examined the factual matrix, we observe that the petitioner had failed to act at the relevant time and had woken up after a long delay, whereas his two counterparts in the Delhi Police had approached the Court at an earlier point of time and after a long battle had succeeded in August, 2013. The petitioner should not be given the benefit of the judgment as he was a fence sitter. In the meantime, in 2012, another examination was held, and vacancies were filled. We have already observed that the petitioner cannot claim any right on the vacancies or new posts of Sub Inspectors (Exe.) created post the vacancies, included in the Phase II, 2009 examination. There are

other pertinent reasons as to why the bar of limitation would be attracted. As per the list available at page No.138 of the paper book, there were at least fifteen other departmental candidates, who had secured marks between 155 and 163 i.e., marks of the last open category general candidate and the last selected candidate under 10% departmental quota. Two unsuccessful candidates had approached the Tribunal in 2010 and order dated 22nd August, 2013 has been passed in their favour. Thirteen others including the petitioner would be entitled to a similar benefit in case the present writ petition is allowed. The respondents would have to redo and rework the entire exercise of finding out who would or would not have qualified from the open category. Law of limitation, sometimes perceived as technical and iniquitous, serves an important public purpose. It ensures certainty and negates ill effect when settled positions are sought to be altered. At the distinct point of time in 2014, about four years after the results of the 2009 examination were declared, the said exercise would create unforeseen complications and possibly litigation on issues like seniority. The open category candidates selected in the 2009 Examination have already joined. They are not impleaded. Question of seniority etc. with those selected in 2009 and 2012 would be an issue. This is not the case of an illiterate or denied

person not aware of his rights, who for economic and social reasons possibly had limited resources or had hesitated in approaching courts/tribunals/authorities.

12. In view of the above, we do not find any merit in the present writ petition and the same is dismissed. There will be no order as to costs.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

MAY 18, 2016
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