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

+ **WRIT PETITION(CIVIL) No. 519/2017**

Date of decision: 8th September, 2017

KUMARI BANDNA AND ANR. Petitioners

Through Mr. Ankur Chhibber, Advocate.

versus

UNION OF INDIA AND ORS. Respondents

Through Mr. Farman Ali & Mr. Nitish Gupta, Advocates for Mr. Ravi Prakash, CGSC.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE I.S. MEHTA

SANJIV KHANNA, J. (ORAL):

Pursuant to an advertisement published in the Employment News in the month of September, 2015, Kumari Bandna and Anjum Jahan Sheikh had applied for selection and appointment against two vacancies of Head Constable (Midwife) in Indo-Tibetan Border Police (ITBP). Cut-off date for submission of the application was 30th October, 2015. Written examination was held on 2nd December, 2015 and the results were declared on 3rd December, 2015. The viva-voce was conducted on 3rd December, 2015 and final results were declared. Kumari Bandna was declared selected in the General category (Unreserved) and Anjum Jahan Sheikh was declared selected in the

OBC category. The two petitioners were required to undergo detailed medical examination on 4th December, 2015.

2. However, offer of appointment letter was not issued. The petitioners made representations dated 15th September, 2016. By two identical notifications/communications dated 8th November, 2016, the respondents informed the petitioners that the recruitment process for the two posts of Head Constable (Midwife) had been cancelled due to administrative reasons and hence, offer of appointment letter would not be issued.

3. The petitioners have filed the present writ petition for issue of Writ of Certiorari for setting aside the letters dated 8th November, 2016 and for issue of Mandamus directing the respondents to issue appointment letters to the petitioners as per their merit position and in terms of the result declared on 3rd December, 2015, with consequential benefits.

4. Learned counsel for the petitioners submits that the petitioners have acquired a vested right having been selected and hence, action of the respondents is contrary to law and appointment letters should be issued. Reference is made to the decision of the Supreme Court in ***N.T. Devin Katti and Others versus Karnataka Public Service Commission and Others***, (1990) 3 SCC 157. It is submitted that even if there was a cadre review and the posts of Head Constable (Midwife) had undergone a change, this should not affect the accrued rights of the petitioners. Once the selection process had commenced, any amendment or change or reduction of posts vide cadre review should not adversely affect prior selection of the petitioners.

5. We have considered the said contention, but regret our inability to agree with the petitioners.

6. The respondents in the counter affidavit have pointed out that there was a comprehensive cadre review in the para medical posts in ITBP. As a result of the said cadre review, there was a change in the number of posts of Head Constable (Midwife). The aforesaid cadre review was approved by the Ministry of Home Affairs on 24th November, 2015 and 8th December, 2015. In these circumstances, it was not required and necessary to fill up the earlier vacant posts of Head Constable (Midwife). In fact, after the cadre review, there were no vacant posts of Head Constable (Midwife). Thus, for the aforesaid administrative reason, the respondents decided to cancel the selection and not issue appointment letters to the petitioners.

7. The only question, which arises for consideration, is whether the petitioners had acquired a vested right and can compel the respondents to appoint them even if for valid and good reasons, they had decided not to fill up the said posts, which were advertised. The answer, in our opinion, has to be in the negative and against the petitioners. Decision in *N.T. Devin Katti and Others* (supra) relied by the petitioners, in fact, supports the stand of the respondents. In the said case, there was a change in the reservation criteria during the pendency of the selection process pursuant to the State Government orders. A different mode of selection was also prescribed. In this context, the Supreme Court observed that the candidates, who had appeared and undergone written and viva-voce tests had acquired a vested right for being considered for selection in accordance with the terms and conditions in the advertisement, as there was no stipulation

to the contrary. It was observed that if the Recruitment Rules were not amended retrospectively during the period of selection, the selection must be held in accordance with the unamended rules. However, the Supreme Court was conscious and had clarified, lest there be any confusion, that the candidate on making an application for a post pursuant to the advertisement does not acquire a vested right of selection, but if he or she is eligible or otherwise qualified in accordance with the relevant rules, he or she acquires a vested right of being considered for selection.

8. The Constitution bench of the Supreme Court in ***Shankarsan Dash vs. Union of India*** (1991) 3 SCC 47 has elucidated that a candidate included in the merit list acquires no indefeasible right in appointment even if vacancies exist. State is under no legal obligation and duty to fill up any or all of the vacancies unless the recruitment rules so mandate and require. This does not mean that the state can act in an arbitrary manner and not fill up vacancies. The decision to not fill up vacancies that exist has to be bonafide and for good reasons. Following this decision, in ***State of Orissa & Anr. Vs. Raj Kishore Nanda & Ors.*** (2010) 6 SCC 777 it was held that empanelment does not give vested right in favour of empanelled candidates. Empanelment, at best, is a condition of eligibility for purpose of appointment. A valid and bonafide decision taken by the appointing authority to leave certain vacancies unfilled even after preparation of select list cannot be assailed. The Tribunals or Courts would hesitate to issue any such directions unless the decision not to appoint is malafide or arbitrary. In the present case, the respondents have not

acted in an arbitrary manner and hence, the petitioners are not entitled to relief as prayed for.

9. The writ petition has no merit and is dismissed, without any order as to costs.

SANJIV KHANNA, J.

I.S. MEHTA, J.

SEPTEMBER 08, 2017
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