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

+ LPA 289/2017

KRISHAN LAL SHARMA Appellant

Through: Mr.S.K. Anand, Adv.

versus

UNION OF INDIA AND ORS Respondent

Through: Ms.Priyansha Sinha with Ms.Manisha
Saroha, Advs. for R-1 & 2.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

21.04.2017

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1. The appellant before us assails the order dated 11.08.2016 whereby W.P.(C) No.7572/2015 was dismissed as well as the order dated 03.02.2017 dismissing as well as the Review Application thereof.

2. Pursuant to the advertisement dated 25.08.2012 in Employment News for participation in the FCI Examination 2013 for recruitment for Assistant Grade-III in (General) – Post Code No.A, (Accounts) – Post Code No.B, (Technical) – Post Code No.C and (Depot)-Post Code No.D Cadres. The application form gives an option to the candidates to choose any of the post as such mentioned above or as many as posts subject to the condition that he fulfils the educational qualification, eligibility conditions, etc. prescribed for the posts as required according to the provision of the notice of aforesaid examination.

3. As per the application form submitted by the appellant, a copy

whereof is on record, the petitioner had applied for all the four posts and he appeared in the examination for appointment to the said posts which were conducted by respondent No.2. In the application form, the appellant also declares that he does not possess the qualification either the technical or accounts posts.

4. It appears that the appellant's case was processed for Assistant Grade-III (Technical), on a discovery of this error, the candidature of a petitioner was cancelled by a letter dated 15.04.2015.

5. Aggrieved thereby, the petitioner filed W.P.(C) No.7572/2015 praying for setting aside all the order dated 15.04.2015 and directing the respondents to process their recommendations of the petitioner's candidature for appointment as Assistant Grade-III (General) as well as (Depot). The respondents contested the petitioner's claim pointing out that he was considered ineligible for appointment to the post of Assistant Grade-III (Technical) as he did not possess any technical degree.

6. In the counter affidavit, the respondents have also extracted "General Information" which was mentioned in the notice of examination to the effect that:

"In view of large number of applications, scrutiny of the eligibility and other respects will not be undertaken before issuing call letter for written test and before calling the documents verification. The candidates are therefore advised to go through the recruitments of educational qualification, age etc. and satisfy themselves that they are eligible, before applying for any particular post/group. Candidature will be cancelled if any information or claim is not found sustained at the time of verification of documents."

7. On this basis, the respondents have justified the cancellation of the

appellant's candidature before the learned Single Judge.

8. We found that the writ petition was considered by the learned Single Judge and rejected by the impugned order dated 11.08.2016 wherein the learned Single Judge has correctly noted that inasmuch as the cancellation of the petitioner's candidature was on account of correction of a technical error, no right could accrue to the appellant. It cannot be disputed that the appointment had to meet the rigours of the prescribed essential qualification.

9. Before us, the appellant submits that he is entitled to appointment to the post of Assistant Grade-III (General) and (Depot). This submission is pressed on the ground that because of two years delay in rejection of the appellant's candidature, he has become overage and cannot apply for other competitive examination.

10. So far as the appointment to the post of Assistant Grade-III (General) or (Depot) is concerned, for which the appellant possesses the requisite qualification, vide order dated 11.08.2016 the learned Single Judge noted that the last candidate who qualified for the General posts has scored 133.75 marks and for the Assistant Grade –III (Depot) posts, the last selected candidate, which was way beyond the marks scored 133.5 marks by the appellant. As such, the appellant was disentitled to either of these posts on merits. In this view of the matter, so far as the order dated 11.08.2016 of the learned Single Judge, the same cannot be faulted on any legally tenable ground.

11. After the dismissal of the writ petition, the appellant/petitioner herein had filed CM No.39056/2016 for modification of the order dated 11.08.2016. In hindsight the petitioner's case was that instead of Paper III, he should have been given Paper II which was meant for the candidate for

the post of Assistant Grade-III (General) or (Depot). This application was rejected by the learned Single by the order dated 24.10.2016 observing that the challenge on this ground was an afterthought and that the results had long been declared. At that stage, learned counsel for the appellant sought to withdraw the said application with liberty to pursue remedies as may be available under law. The application was consequently dismissed as withdrawn on 24.10.2016 as had been sought.

12. It appears that after the dismissal of the writ petition, the appellant relies another ground of challenge which was set up by way of Review Petition No.542/2016. The appellant in the Review Petition contented that he took the wrong examination not of his own volition but because he was allowed to appear in the Technical Cadre objective type examination even though he was eligible only for the Assistant Grade-III (General) or (Depot). While considering the Review Petition, by order dated 03.02.2017 the learned Single Judge has noted that no such ground was taken in the main writ petition.

13. We also found that the appellant had failed to point out such error even at the time he undertook the examination. The order dated 03.02.2017 noticed that even if the appellant was aggrieved by the ground that the respondents had made him to wrong examination and therefore, was wrongly processed, he had to raise this objection at the earliest and not with a long period of two years after the rejection of his candidature by the letter dated 15.04.2015.

14. There is substance in the respondent's submission that even if it could be held that the respondents were at fault, the order of the learned Single dated 11.08.2016 in the writ petition would come in the way of the appellant

not being entitled for any relief.

15. We are also of the view that much water has flown since the rejection of the appellant's candidature and no relief can be granted to him for the reasons noted in the impugned orders.

16. This appeal is completely misconceived and is hereby dismissed.

ACTING CHIEF JUSTICE

ANU MALHOTRA, J

APRIL 21, 2017

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