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

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Date of Decision: 18.07.2017

% **W.P.(C.) No. 3470/2017**

SANDEEP SHARMA

..... Petitioner

Through: Mr. Joginder Sukhija and Mr. Shailendra Babbar, Advocates

versus

CHAIRMAN,

STAFF SELECTION COMMISSION & ORS.

..... Respondents

Through: Mr. Vivek Goyal, CGSC for UOI
Mr. Ankur Chhibber, Advocate for R2.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred the present writ petition to assail the order dated 29.03.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (CAT/ Tribunal) in R.A. No. 136/2015 preferred in O.A. No. 3623/2009. The Tribunal had dismissed the Original Application preferred by the petitioner on 26.02.2013, and thereafter, the aforesaid review application was also dismissed on 29.03.2016. The petitioner seeks a direction to the respondents to issue to the petitioner an appointment letter for the post of Sub-Inspector (Executive) [S.I. (Exec.)], with all consequential benefits, in terms of the order dated 22.09.2008

passed in W.P. (C.) 7591/1999 titled ***Narendra Kumar and Ors. v. Union of India.***

2. The case of the petitioner was that after clearing the written examination on 07.07.1995 for the post of S.I. (Exec.) (in respect of 24 posts from the 1994 batch), he was asked to appear for physical endurance test and interview. However, his name did not figure in the final list of the selected candidates announced on 25.09.1995. The petitioner claimed that the respondents had used their discretion to impose qualifying standards in the written examination, and some persons who had secured lesser marks were given appointments, while he was denied the same.

3. Aggrieved by the action of the respondents, the petitioner and others, approached the Tribunal vide O.A. Nos. 2226/1995, 1880/1995 and 1975/1995, which were dismissed on 23.05.1996.

4. Thereafter, the petitioner and others approached the Supreme Court in SLP (C) Nos. 16356-16358/1995 titled ***Vijay Pal & Ors. v. Union of India***, wherein on 27.08.1996, the Supreme Court did not stay the appointment of selected candidates, but observed that any appointment made shall be subject to orders passed in the said petition. The Supreme Court disposed of the said SLPs vide order dated 14.08.1997, observing as follows:

“We have heard Shri R.K.Jain, the learned senior counsel appearing for the petitioners in Special Leave Petition (Civil) Nos. 16356-16358/96 and Ms. Mana Chakraborty the learned counsel appearing for the petitioner in SLP (C) No.24653/96 and Shri V.C. Mahajan, the learned senior counsel for the respondents. The matters relate to selection for appointment on the post of Sub Inspector (Executive) in Delhi Police. Shri Jain

states that even after appointing the selected candidates, a number of vacancies are still available on which appointments can be made. Shri Jain has pointed out that though the petitioners had obtained the cut off marks prescribed for the purpose for Personality Test (interview), they were not selected for the reason that they failed to obtain the minimum qualifying marks that were prescribed for Hindi in Paper III after the Personality Test had been conducted. It is submitted that in the merit list, as per the aggregate of marks obtained in all the papers, the petitioners are better placed than the candidates who were selected by the Staff Selection Commission. In the circumstances, it is directed that in case vacancies are available for appointment on the posts of Sub Inspector (Executive) in Delhi Police for which the impugned selection was made, the respondents may consider for appointment against those vacancies the petitioners and other similarly situated candidates on the basis of merit as per the aggregate of the marks obtained by them in all the papers and if on the basis of such consideration it is found that the petitioners can be so appointed the respondents shall appoint them against the existing vacancies by relaxing the requirement of minimum qualifying marks prescribed for Hindi in Paper III. The special leave petitions are disposed of accordingly.” (emphasis supplied)

5. The respondents, however, did not offer any appointments to the petitioner and others, following which they filed a contempt petition in the Supreme Court, bearing Nos. 138-141 of 1997. In the said contempt petitions, the then Commissioner of Police, Mr. T. R. Kakkar submitted an affidavit stating that no vacancies pertaining to the year 1994 were available. The relevant extract from this affidavit reads as follows:

“.....The Delhi Police had intimated availability of 300 vacancies to Staff Selection Commission for filling up on the basis of 1994 examination but only 264 candidates were recommended for appointment by the Staff Selection

Commission, on the basis of the existing selection procedure. The unfilled vacancies of 1994 and vacancies for 1995, were intimated to the Staff Selection Commission (kindly see Annexure -3). This matter was also discussed with Staff Selection Commission in which the Staff Selection Commission was informed that currently no vacancy for the year 1994 is available with the Delhi Police, as all the unfilled vacancies of 1994 were to be filled with vacancies available for the year 1995, in recruitment process for the years 1995.

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.....Accordingly the Delhi Police had clarified to the Commission that the Delhi Police do not have any vacancies pending with them for the year 1994 and the unfilled vacancies of 1994 examination were included in the vacancies intimated to SSC to be filled on the basis of 1995 examination. After making appointment of candidates as S.I. (Ex.) on the basis of 1995 and 1996 examination, recalculation of vacancies and cancellation of candidature of some unwilling candidates of 1995 and 1996 selection, presently some vacancies are available with the Delhi Police."

6. The learned Commissioner went on to submit in Para 9 of his affidavit, that on receipt of the final order dated 14.08.1997 passed in the SLPs, the Delhi Police had requested the Staff Selection Commission (SSC) to intimate the number of candidates to be considered for appointment. However, appointments to the post of S.I. (Exec.) could be accommodated only upon receiving recommendations from the SSC.

7. The said contempt petitions were dismissed by the Supreme Court on 07.08.1998, with the following order:

“In our opinion, no case is made out for taking action for contempt of court. The contempt petitions are, therefore, dismissed and the contempt notices are discharged.”

8. Since no appointments were granted to the petitioner and others, representations dated 11.05.1999 was preferred by them, requesting the Chairman SSC to send the recommendations for their appointments. However, vide reply dated 17.06.1999, their request was declined. On 24.07.1999 the petitioner and others again gave a reminder by way of a written representation, addressed to the Chairman, SSC but vide reply dated 28.09.1999, their request was again declined by the SSC on the ground that no vacancies were available of the year 1994 for the post of S.I. (Exec.).

9. We may now take note of a few other developments that took place in respect of a few other candidates in the said examination. During the pendency of the case of the petitioner and others, in SLP (C) Nos. 16356-163558/1995 before the Supreme Court, six (6) other candidates filed O.A. No. 2350/1995 titled ***Narendra Kumar and Ors. v. Union of India*** raising the similar grievance. In this Original Application, it appears that the Tribunal by way of an interim order directed that the appointments made by the respondents shall be subject to the result of the Original Application. Thereafter, the said Original Application was kept in abeyance till the final order was passed in the aforesaid SLPs filed by ***Vijay Pal and Others***. Eventually, the tribunal while relying upon the final order dated 14.08.1997 in the said SLPs (wherein it was held that candidates would be considered in case vacancies were available), extended the same benefit to the candidates in ***Narendra Kumar*** (supra) vide its final order dated 08.01.1998.

10. However, since the aforesaid order of the tribunal in the case of Narendra Kumar was not complied with-on the ground that no vacancies were available for appointment of the six candidates, an execution application was filed before the tribunal by the said applicants. The said application was dismissed by the tribunal. The six candidates then preferred a writ petition titled *Narendra Kumar and Ors. v. Union of India*, W.P. (C.) No. 7591/1999. The said writ petition was allowed vide order dated 22.09.2008, and the petitioners therein were directed to be accommodated in the batch of 1994, and their services were directed to be counted for pensionary benefits and notional fixation of pay.

11. Thereafter, the petitioner along with others filed O.A. No. 3623/2009 to seek appointment – like Narendra Kumar and 5 others had been granted. The same was dismissed by the Tribunal on 26.02.2013. The petitioner then preferred a Review Application. By the impugned order, the said Review Application too has been dismissed. The petitioner is challenging in this present writ petition the order passed in the review application. Pertinently, the order dated 26.02.2013-whereby the Original Application was dismissed has not been assailed by the petitioner. However, we have heard the submissions of the petitioner on all aspects, and not just on the aspect of review.

12. The petitioner has advanced three submissions. The first submission is that there were interim orders operating in *Vijay Pal* (supra) and, therefore, the petitioner was also entitled to reservation of a seat by the respondents. The second submission is qua discrimination between the petitioner and the applicants party to *Narendra Kumar* (supra). It is

contended that all the applicants before the Tribunal were identically situated. In fact, the applicants in **Vijay Pal** (supra) were the first to approach the Tribunal. Denial of relief to the applicants in **Vijay Pal** (supra) would be highly unjust, since the applicants in **Narendra Kumar** (supra) have been granted the relief and accommodated in respect of vacancies of the year 1994 on the basis of the order passed in **Vijay Pal** (supra). Thirdly, the submission of the petitioner is that the respondent was not correct in claiming that there were no remaining vacancies of the year 1994 against which the petitioner could be accommodated.

13. Having heard the counsels of both sides, and perused the entire record, we find no merit in the submissions of the petitioner.

14. While passing the order dated 22.09.2008 in **Narendra Kumar** (supra), this Court emphasized the distinction between the facts of **Narendra Kumar** (supra), and the facts of **Vijay Pal** (supra) – to which the petitioner was a party. The relevant observation of this court in **Narendra Kumar** (supra) is reproduced below:

*“We do not agree with this submission because the admitted position in Vijay Pal and others was that there was no interim order passed by the Tribunal or by the Supreme Court for keeping any post vacant or for filling up any of the posts subject to the final outcome of the original application or the SLP. However, in the case of the six Petitioners that we are concerned with, **interim orders were initially passed that posts should be kept available for them and if those posts are later to be filled up, it would be subject to the final outcome of the original applications. In that sense, posts were and are available for being occupied by the Petitioners.***

This being the position, there is a vital difference between the case of Vijay Pal and the case of Petitioners. In the case of Vijay Pal posts were not available, but in the case of the Petitioners, posts are available subject to the final orders of the Tribunal.

On merits both the learned counsel were in Agreement (before the Tribunal) and now before us that the case of the Petitioners is covered by the case of Vijay Pal. Under the circumstances, we have no option but to agree with the contentions of learned counsel for the Petitioners and direct that in terms of the decision of the Supreme Court, the Petitioners should be accommodated in the post of Sub-Inspector (Executive) in the Delhi Police.

As we have noted above, learned counsel for the petitioners has submitted that six posts are available. If that is so, these petitioners can be accommodated against those posts. However, if learned counsel for the Petitioners is not correct and six posts are not lying vacant, then the Respondents have no option but to accommodate the Petitioners in terms of the interim order passed by the Tribunal, which obviously merges with the final order in favour of the Petitioners. This will mean that six of the existing appointees will have to give way to the Petitioners.

The impugned order passed by the Tribunal denying appointment to the petitioners to the post of Sub-Inspector (Executive) is quashed. Necessary steps be taken by the Respondents to accommodate the Petitioners on or before 31st December, 2008. We make it clear that the Petitioners will not be entitled to any back wages till the date of their appointment. The petitioners will be accommodated in the batch of 1994 and will be entitled to count their services for pensionary benefits and notional fixation of pay.” [emphasis supplied]

15. Pertinently, during the pendency of the said O.A. No. 3623/2009, the petitioner along with others filed C.M. No. 13209/2011 in **Narendra Kumar**

(supra) for clarification/ modification of – what were claimed to be, factually incorrect observations, that there were no interim orders passed in the case of **Vijay Pal** (supra). It was contended by the petitioner that interim orders were passed in SLP (C) Nos. 16356-163558/1995 vide order dated 27.08.1996, as well as in O.A. Nos. 2226/1995, 1880/1995 and 1975/1995, decided on 23.05.1996. However, this application of the applicants was dismissed, since they were not parties to **Narendra Kumar** (supra) and the said C.M. was disposed of allowing the applicants to seek remedy before the tribunal.

16. We cannot accept the submission of the petitioner that there were interim orders passed by either the Tribunal or the Supreme Court in O.A. Nos. 2226/1995, 1880/1995, 1975/1995 and SLP (C) Nos. 16356-163558/1995 for keeping any posts vacant to accommodate the applicants in **Vijay Pal** (supra), or for filling up posts subject to the final outcome of the said O.As. or SLP, respectively. In fact, the order of the tribunal pronounced on 26.07.1996 shows that the only directive given was that no appointment to be made by the respondents, till the final disposal of the said O.As. Eventually, the Original Applications were dismissed. Therefore, the said interim direction dissolved. The Supreme Court did not stay the appointment of the selected candidates, but observed that any appointment made shall be subject to the orders passed in the said petition. Eventually, the Supreme Court disposed of the Special Leave Petitions on 14.08.1997. We have taken note of the order passed by the Supreme Court on the said date. The Supreme Court did not disturb the appointments of the selected candidates made by the respondent. All that was observed was that, “*in case*

vacancies are available for appointment on the post of Sub Inspector (Exe.), Delhi Police.....”. Thus, the petitioner could be considered by the respondent for appointment, in case vacancies were available for appointment to the post of S.I. (Exec.) Delhi Police in respect of the year 1994, on merit by relaxing the requirement of minimum qualifying marks prescribed for Hindi in paper III.

17. We find no force in the argument of the petitioner that his case is similarly situated to that of **Narendra Kumar** (supra). In **Narendra Kumar** (supra) this court had made a comprehensive distinction between **Vijay Pal** (supra) and **Narendra Kumar** (supra). It was, inter alia, observed:

“This being the position, there is a vital difference between the case of Vijay Pal and the case of the petitioners. In the case of Vijay Pal posts were not available, but in the case of the Petitioners, posts are available subject to the final orders of the Tribunal.”

18. Here, it is also apt to note the observation made by this court in **Virender Singh Panwar v. Union Of India And Anr.**, W.P. (C.) No.3281/2003 vide order dated 04.06.2010, wherein this court had again drawn a distinction between **Narendra Kumar** (supra) and **Vijay Pal** (supra). This court held:

“19. In the end, there was one further plea raised by the petitioner though not contended in the pleadings, arising from a judgment by a Division Bench of this Court in W.P.(C) No.7591/1999 Narendra Kumar & Ors. v. UOI & Anr. decided on 22.09.2008. The petitioners therein were identically situated as the petitioner herein and after the written test had taken the physical test, but were disqualified on the basis of lack of minimum marks in Hindi language test. In the said judgment, it

has been pointed out that in the process of selection, out of 30 posts reserved for departmental candidates only 24 posts were filled up. Thereafter, Vijay Pal Singh and Ors. v. UOI and Ors. case (supra) has been discussed. The distinguishing fact mentioned in Narendra Kumar & Ors. v. UOI & Anr.s case (supra) is that not only was the original OA filed by the petitioner admitted but interim directions had been passed that the posts to be filled in were subject to final orders that may be passed in the OAs pending before the Tribunal.

20. In terms of the judgment Vijay Pal Singh and Ors. v. UOI and Ors. case (supra), the petitioners were entitled to appointment as to availability of posts and those petitioners were declined appointment on the ground that posts were not available since all of them were filled up. It was, however, found that out of 30 posts reserved for departmental candidates, to be filled in by direct recruitment, only 24 posts were actually filled up and thus 6 posts in that category were available and there were 6 petitioners before the Court in that matter. The vital difference noted in that judgment is that unlike Vijay Pal Singh and Ors. v. UOI and Ors. case (supra), there was an interim direction in that case.

21. In our considered view, this judgment is of little assistance to the petitioner who is identically situated with petitioners in Vijay Pal Singh and Ors. v. UOI and Ors. case (supra) and not like the petitioners in Narendra Kumar & Ors. v. UOI & Anr.s case (supra). It is undisputed that there were no interim orders passed in the case of the petitioner before us while the Division Bench has noted this very fact as the distinguishing fact for issuance of directions for appointment as compared to Vijay Pal Singh and Ors. v. UOI and Ors. case (supra). Since appointments were made subject to final outcome in Narendra Kumar & Ors. v. UOI & Anr.s case (supra), the relief was granted to 6 petitioners as there were 6 vacancies existing.

22. We are thus clearly of the view that not only does the judgment in Narendra Kumar & Ors. v. UOI & Anr.s case (supra) not support the case of the petitioner but goes against

the case of the petitioner as it seeks to carve out a distinguishing feature from Vijay Pal Singh and Ors. v. UOI and Ors. case (supra) which is not present in the case of the petitioner herein who is actually similarly situated as the petitioners in Vijay Pal Singh and Ors. v. UOI and Ors. case (supra).

23. We are thus of the considered view that the petitioner is not entitled to be appointed against any vacancy of 1994 selection process as no such vacancy exists and thus dismiss the writ petition leaving the parties to bear their own costs.”

[emphasis supplied]

19. Thus, we do not find any merit in the submission of the petitioner that his case is similarly situated to the case of **Narendra Kumar** (supra). In **Narendra Kumar** (supra) the petitioners had the benefit of an interim order passed by the tribunal, and even if no vacancies were available, six of the existing employees were to give way for them. However, in **Vijay Pal** (supra) the court had specifically directed that the petitioner and others may be considered for appointment to the said posts, only in case vacancies are available for appointment in the 1994 batch, and the respondents may consider the petitioner for appointment against those vacancies only on the basis of merit after grant of relaxation of the minimum requirement of qualifying marks to accommodate them against the said vacancies. Thus, since there were no interim orders for keeping posts vacant in favor of the petitioner, this contention stands rejected.

20. Finally, with regard to the existence of vacancies, we find merit in the contentions of the respondents that there were no unfilled vacancies left for the year 1994. Reference may be made to the affidavit filed by the

Commissioner of Police before the Supreme Court, wherein he had stated that there were 300 vacancies available for filling up on the basis of the 1994 examination, out of which only 264 candidates were recommended for appointment of S.I. (Ex.) by the SSC. The recruitment of S.I. (Ex.) in Delhi Police is made on a year to year basis, and such vacancies are intimated to the SSC. Thus, the unfilled vacancies for the year 1994 were added to the vacancies of 1995 and appointments were made on the basis of the examination conducted for the year 1995. Similarly, the appointments for 1996 were done on the basis of the present vacancies, along with the unfilled vacancies of the previous year, i.e. 1995. Hence, it is clear to us that even if there were some vacancies existing – after making appointments of S.I. (Ex.) on the basis of 1995 and 1996 examination; re-calculation of vacancies, and; cancellation of some unwilling candidates, there could not be said to be vacancies of the year 1994, since the vacancies of 1994 had been filled up with the 1995 batch. Thus, the petitioner and others could not be given any appointment in the 1994 batch. The same contention was raised by the petitioner and others in the contempt petition filed before the Supreme Court, which was dismissed vide order dated 07.08.1998 on the basis of the aforementioned affidavit placed on record by the Commissioner of Police. The petitioner cannot seek to re-agitate the same issue before us. Hence, this claim of the petitioner also stands rejected.

21. We are, thus, in agreement with the decision of the learned Tribunal in dismissing the O.A No. 3623/2009. We are also of the view that the Tribunal rightly rejected the petitioner's review application since there was no merit in the petitioner's claim.

22. Accordingly, we find no merit in this petition. Dismissed.

VIPIN SANGHI, J.

REKHA PALLI, J.

JULY 18, 2017

