

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

%

Decided on: 24.04.2017

+ **W.P.(C) 3460/2017 and CM APPL.15141/2017 (stay)**

PUSHPA DEVI

..... Petitioner

Through: Mr Sachin Kumar Jain, Adv.

versus

RAJESH BHATIA AND ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

HON'BLE MS. JUSTICE DEEPA SHARMA (ORAL)

CM APPL. 15142/2017 (Exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 3460/2017 and CM APPL.15141/2017 (stay)

1. Vide this writ petition, the petitioner has assailed the order dated 27.03.2013 passed by the Central Administrative Tribunal (CAT), whereby her contempt petition (CP No.548/2016) was dismissed.

2. The brief facts of the case are that the petitioner had applied in response to the advertisement No.02/2012 for the Post of TGT (Code No.109/2012) and she was issued the E-Admit card No. 45000830. Later on, she also applied for the said Post published in advertisement no.01/13 - Post Code no.7/13. Her

application for Post Code No. 07/13 was rejected on the ground of her “*not having the requisite qualification as on closing date*”. The common examination of both the Post Code Nos. 109/12 and 07/13 was held on 28.12.2014. The petitioner had appeared in the examination held on 28.12.2014 by using the admit card issued in respect of advertisement No.2/2012. Her contention was that at the time of downloading of the admit card, a message was displayed on the website of the respondent that for common candidates who had applied against both advertisements of 2012 and 2013, the admit card will display only OARS applied post code 2/12 but such candidates will get benefits for all the post code applied at the time of result generation. She learnt that her candidature for Post Code 07/13 in Advertisement no.1/13 was rejected. She challenged her rejection of candidature against Post Code 07/13 vide Original Application No. 203/2015. When the results were declared, the petitioner-although had secured 103.25 marks in the said exam, which was more than the last selected candidate in the merit list of advertisement no.1/2013, yet her name did not appear in the merit list of advertisement no.1/2013. She claimed the following reliefs in her O.A.-

“In the premises aforesaid, it is most respectfully prayed that this Hon’ble Tribunal may be pleased to direct the respondent to include the name of applicant in the list of eligible candidates released/uploaded on website of respondent no.1 for examination for the post TGT Hindi Female (Post code No.7/13) already held on 28.12.2014 and consider the candidature of applicant for the post

code 07/13 under advertisement no.01/13 besides post 109/12 under advertisement no. 02/12 and any other or further order/relief which this Hon'ble Tribunal may deem just and proper in favour of the applicant in the facts and circumstances of the case.”

3. Disposing the said application, the Tribunal issued the following directions vide its order dated 18.01.2016-

“30. Therefore, both the OAs are partly allowed, and the respondents are directed to call the applicants of these two OAs for verification of their documents to verify their actual qualifications as possessed by them as on the last date for filling up of the application forms for the years 2012, as well as 2013, and to consider their candidature, and if their qualifications are found to be fulfilled as on the last date of receipt of those applications, as per the Notifications issued for the respective years 2012 & 2013, by the abovementioned Advertisements, to allow their candidature for the relevant posts.”

4. As per the directions contained in the Tribunal's order dated 18.01.2016, the petitioner was called upon for verification of her documents vide letter dated 23.06.2016. Her candidature for Advertisement No.01/13 for Post Code 07/13 for the post TGT, however, was rejected by the respondents vide order dated 07.10.2016 on the ground that the petitioner did not have the valid admit card. Aggrieved by the said order, the petitioner filed the Contempt Petition bearing CP No. 548/2016 in which the impugned order was passed. Vide impugned order the Tribunal has, after considering all the contentions of the petitioner, dismissed the said contempt petition.

5. The petitioner has challenged the said order on the ground that the Tribunal has erred both in facts and law and has failed to take into consideration

its own order dated 18.01.2016, whereby the Tribunal has partly allowed her O.A. and directed the respondents to verify her documents and actual qualifications as on the last date of filling up the applications for the year 2012 and 2013 and consider her candidature, if she fulfills the qualifications as per the notifications issued for the respective years, for the relevant posts. The petitioner submits that the respondents have failed to follow these directions while issuing the order dated 07.10.2016, rejecting the candidature of the petitioner on the same ground. Petitioner submits that the observation of the Tribunal that the recruitment process had already been closed is wrong and unfounded, since the selection process was continuing as on 27.01.2017-on which date the second merit list was issued by the respondent No.1 and the candidates were called upon for verification of the documents for various post codes, including Post Code 07/13. It is submitted that while the candidates who had secured 92.5 marks had been called/selected, the petitioner who had secured 103.25 marks has not been selected and this fact has not been appreciated by the Tribunal. It is submitted that the respondents have not complied with the directions in the Tribunal's judgment/order dated 18.01.2016 and thus has committed contempt.

6. We have heard the learned counsel for the petitioner and have also perused the record. Indisputably, the petitioner had applied for the post of TGT advertised in two independent advertisements no. 2/12 and 1/13 and a common

exam for both the posts advertised in these two advertisements were held on 28.12.2014. She was issued admit card in response to her application made qua advertisement no.2/12, but her application was rejected for advertisement no.1/13. She had applied for the same post i.e. TGT and code of the post for TGT in advertisement no.2/12 was 109/12, and in advertisement no.1/13 it was 07/13. She had challenged the rejection of her candidature for the Post Code No.07/13 in O.A.No.203/2015. Vide order dated 18.01.2016, the Tribunal, while partly allowing the O.A., directed the respondents to call the petitioner for verification of her documents and qualifications as on the last date of the receipt of the application, and to allow her candidature for the relevant post. In compliance of this order the respondents called upon the petitioner and checked her candidature which they did not find as per the requirements in the advertisement no.1/13, and therefore rejected it.

7. There is no dispute that the prospective candidates had to apply independently for the post advertised vide advertisements no.2/12 and 1/13 and the Codes for the same post in both the advertisements were different i.e. 109/12 and 7/13 respectively. Although the common exam for both the advertisements was held on i.e. 28.12.2014, the results for the two advertisements were declared separately. The contention of the petitioner is that although she had secured 103.25 marks, she was not declared successful, but the candidates who had

secured 92.5 marks in Post code 07/13 (advertisement no.1/13), had been selected. It is apparent that the result had been declared after the disposal of OA of the petitioner. Her contention that the marks secured by her in the examination for Post Code No.109/12 (advertisement no.2/12) be considered, as having been secured by her for Post Code No. 07/13 (advertisement No.1/13), on the ground that common exam was held for both the advertisements and post codes, has no merit in view of the fact that while disposing of her O.A., the Tribunal has rejected her prayer to *".....consider the candidature of applicant for the post code 7/13 under advertisement no.01/13 besides post 109/12 under advertisement no.02/12...."*, and no directions to the effect that her candidature for Post Code No. 109/12 under advertisement no.2/12 be considered as her candidature for the post code no.07/13 under advertisement no.01/13 was issued. On the other hand, the Tribunal in its order 18.01.2016 has clarified that, even if, on reconsidering the actual qualifications and documents possessed by the petitioner on the date of filling up the application form, they are found to be eligible candidates in the respective years, or are permitted to appear at any supplementary or subsequent examination for the same/similar post, no benefit will accrue to her and *"their candidature will be considered to have been only notionally allowed for appearance in the examination held on 28.12.2014"*.

8. In the background of these facts, no fault can be found in the impugned order. Undisputedly, the candidature of the petitioner in respect of advertisement No.01/13 was rejected. When she appeared in the common examination, her appearance could be considered only in respect of the advertisement No.2/12. In view of the fact that the prayer of the petitioner to consider her candidature for advertisement no.02/12, also for advertisement no.01/13, was rejected by the Tribunal, and her candidature for the advertisement no. 1/13 was directed to be considered only "notionally", no substantive right accrued in favour of the petitioner for consideration of her marks obtained by her in exam for advertisement no. 2/12 also for advertisement no.1/13. Both were independent advertisements and the examination result had to be considered independently. The result of candidates who had applied against advertisement no.2/12 could not be merged with the result of the candidates who applied qua advertisement no.1/13. The applications were invited independently, merit list prepared separately. Therefore, even if the candidature of the petitioner was approved notionally, since no relief was given by the Tribunal in its order dated 18.01.2016 for consideration of the marks obtained by her in exam qua advertisement no.2/12, against advertisement no.1/13, the petitioner's marks qua the exam for advertisement No.2/12 could not have been considered qua her rejected candidature for advertisement No.1/13. The petitioner had accepted the

said order dated 18.01.2016 and had not challenged it. She had only preferred the contempt petition and the Tribunal in the impugned order has correctly held that there was no violation of the order dated 18.01.2016.

9. We find no fault with the order of the Tribunal. The writ petition has no merit and the same is dismissed with no order as to costs.

**DEEPA SHARMA
(JUDGE)**

**VIPIN SANGHI
(JUDGE)**

**APRIL 24, 2017
BG**

