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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 7874/2016

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Reserved on: 10th October, 2017
Date of Decision: 7th December, 2017

ANIL KUMAR RATHORE & ANR. Petitioner
Through Mr. A.K. Singh, Advocate.

versus

UNION OF INDIA & ANR. Respondent
Through Mr. Abhay Prakash Sahay, Central
Government Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J.

Anil Kumar Rathore and Sanjaya Kumar Tripathy by this writ petition seek ante dating of their promotion to the post of Sub-Inspector/General Duty pursuant to the Limited Departmental Competitive Examination (LDCE) held in the year 2007. They claim entitlement to similar treatment and benefit as was given to Mahesh Kumar Nitharwal. Another prayer made is that they should be paid consequential monetary benefits and arrears with seniority.

2. The two petitioners, who were working as Constables in the Central Reserve Police Force (CRPF), had appeared in the LDCE-2007. They

had cleared the Physical Efficiency Test (PET) and had appeared in the written examination followed by personality test and interview. The petitioners accept and admit that they did not figure in the select list published. Other participants, as per the marks secured by them, had secured a better merit position and were selected.

3. LDCE held in 2006 became subject matter of a batch of writ petitions led by W.P. (C) No. 1510/2007, ***Ct. Barot Jignesh Kumar Vs. Union of India & Ors.*** The primary ground of challenge was that the respondents had wrongly specified and fixed minimum qualifying marks for interview/viva voce for selection. This batch of writ petitions was disposed of vide decision dated 2nd May, 2008, holding that marks by the selection/interview board cannot be substituted by the Court on its own judgment and the Court also did not have any mechanism to see and ascertain whether the marks awarded by the interview board were proper or not. The assertion by the petitioners therein that they had done well in the written examination and could not have been declared unsuccessful on the ground that they did not secure minimum qualifying marks in the interview was, therefore, not accepted as a general proposition to allow the writ petition. However, the Division Bench had noticed with reference to the marks awarded in the interview relating to LDCE-2006 that some of the unsuccessful candidates, who had filed writ petitions, had secured exactly 5 marks less than the marks required in the interview, which was indicative of a general pattern. The Division Bench had also recorded that while LDCE was for departmental candidates who were already in service, and had stipulated minimum qualifying marks in the interview/viva voce, albeit, there was no prescription or mandate in the Recruitment Rules for minimum

qualifying marks in interview for the balance 50% posts earmarked for selection by way of direct recruitment/open selection. No rationale or reason for the said difference was adverted to in the counter affidavit. The Court observed that duties being performed by the promotees appointed through LDCE as well as the direct recruits appointed as Sub-Inspectors/General Duty were identical and without any difference. Accordingly, the Division Bench had observed that uniformity should have been maintained. However, no relief was granted to the petitioners therein, for they had appeared in the interview with open eyes and knowing the rule position which had required them to obtain minimum qualifying marks in the interview/viva voce. They had raised objection to the stipulation of minimum qualifying marks after they were declared unsuccessful, i.e., after taking their chance.

4. In the aforesaid circumstances, while not interfering with the selection process in which the petitioners therein had participated without any demur or protest, it was left to the authorities to re-consider the question of whether or not they wanted to retain the provision for minimum qualifying marks in interview. Decision on the said aspect was to be taken within a period of four months from the date of receipt of a copy of the said judgment. In case the authorities agreed to dispense with the requirement of minimum qualifying marks in interview, cases of the petitioners therein for promotion as Sub-Inspector/General Duty would be examined again on the basis of the written test and interview marks. Another reason specifically noted by the Division Bench, which was an important consideration, was that out of 90 vacancies, as advertised, only 51 candidates were appointed to the post of Sub-Inspector/General Duty. Thus, many of the vacant

advertised posts remained unfilled. It was observed that had there been no stipulation of minimum qualifying marks in the interview, the petitioners therein would have qualified as Sub-Inspectors/General Duty.

5. Pursuant to the aforesaid decision, the matter was examined by the authorities and the requirement of minimum qualifying marks in the interview was dispensed with for the LDCE-2006.

6. There was another set of writ petitions, post the said decision by the respondents on the administrative side, as some of the candidates were not granted seniority with effect from 1st August, 2008 at par with their batch mates. On writ petitions being filed, the benefit was granted to them, as is apparent from the order dated 28th October, 2014 passed in W.P. (C) No. 960/2014, ***Jignesh Kumar Vs. Union of India & Ors.*** and order dated 4th November, 2015 in W.P. (C) No.8371/2015, ***Anil Kumar Chauhan Vs. Union of India & Ors.***

7. The two petitioners herein had appeared and qualified the LDCE held in 2009. They were sent for basic training for appointment as Sub-Inspector/General Duty and were appointed and given seniority at the said post from 20th October, 2009.

8. The two petitioners till May, 2016 did not make any representation or claim any ante dated seniority on the basis that they would have qualified the LDCE-2007, but for the reason that minimum qualifying marks had been stipulated for the interview/viva voce. The petitioners made their first representation on 31st May, 2016. The representation did not receive a favourable response and thereafter, the present writ petition was filed in September, 2016.

9. The respondents in their counter affidavit, in our opinion, have rightly referred to the delay and laches, for the petitioners had made the first representation and approached the Court after almost 9 years. The LDCE in question was held in the year 2007 and the first representation made by the petitioners was admittedly on 31st May, 2016. What is more pertinent and important is that the records pertaining to the LDCE held in 2007 were weeded out on 24th February, 2015 in accordance with the establishment manual. Thus, the respondents do not have any records of the said examination to ascertain the factual position and also meet the assertions raised by the two petitioners that they were not selected as they had not secured minimum qualifying marks in the interview. The respondents in the absence of records cannot reply by either denying or accepting the said statement.

10. Another aspect, which we must notice, is that granting seniority to the petitioners at today's date from 2008 or 2009 would result in re-drawing of the seniority list, positions which have been adopted and accepted. The petitioners' claim for parity with their batch mate Mahesh Kumar Nitharwal is misconceived. It is not the case of the petitioners that any of the candidates, who had appeared in the LDCE-2007 and were declared unsuccessful, have been granted benefit of promotion and selection as Sub-Inspector/General Duty after erasing or doing away with the minimum qualifying marks criteria or stipulation in the interview. Mahesh Kumar Nitharwal was declared successful in the LDCE-2007 as per the result declared and notification published on 18th September, 2007 itself. It is not the case of the petitioners that Mahesh Kumar Nitharwal or any other person was granted promotion in the LDCE-2007 on the basis of doing away with

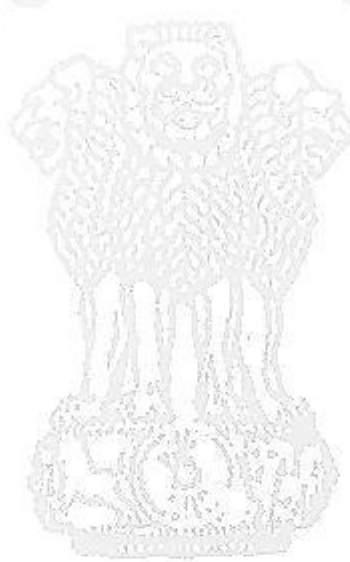
the requirement or criteria of minimum qualifying marks in the interview. The said list would show that as many as 130 candidates had qualified and were granted promotion to the post of Sub-Inspector/General Duty. Further, it is also not the case of the petitioners that some of the posts had remained vacant.

11. There would be another difficulty in the way of the petitioners. If relief is granted to them, then similar relief has to be granted to other candidates who had appeared in the LDCE-2007 and “possibly” were not selected because of the stipulation of minimum qualifying marks in the interview/viva voce. As records of the LDCE-2007 have been weeded out in normal course, the verification exercise cannot be undertaken in their cases as well as in the case of the two petitioners. It is, therefore, correct on the part of the respondents to assert and argue that they do not know whether or not the two petitioners would have qualified even if the stipulation with regard to minimum qualifying marks in the interview was erased and not applied.

12. The petitioners have submitted that Jignesh Kumar had filed writ petition in 2014 and Ashwani Kumar Chauhan had filed writ petition in 2015, and in those cases principle of delay and laches were not applied. The argument is without any merit, for Jignesh Kumar was one of the petitioners, who had filed the lead writ petition i.e. W.P. (C) 1510/2007, which was pronounced on 2nd May, 2008. Moreover, both of them were held eligible and entitled to selection in the LDCE-2006. The only question was relating to their seniority once the Rule requirement was modified. Seniority was granted. Moreover, in the LDCE-2006, there were vacant posts. In the present case, the question of delay and laches stares and is an

obstruction. It is difficult to accept the prayer of the petitioners for we do not have the records and it cannot be ascertained with certainty whether or not the two petitioners would have qualified, but for the stipulation of minimum qualifying marks. The petitioners cannot be declared as successful and placed before others including those appointed on the basis of any assumption and supposition.

13. In view of the aforesaid position, we do not find any merit in the present writ petition and the same is dismissed without any order as to costs.



(SANJIV KHANNA)
JUDGE

(NAVIN CHAWLA)
JUDGE

DECEMBER 7th, 2017
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