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

+ **WRIT PETITION (CIVIL) No. 10748/2016**

Date of decision: 27th January, 2017

RAJ KUMAR VASWAN & ORS. Petitioners

Through Ms. Rekha Palli, Sr. Advocate with Ms.
Punam Singh & Ms. Ankita Patnaik, Advocates.

versus

COMMISSIONER OF POLICE & ORS. Respondents

Through Mr. Peeyoosh Kalra, ASC & Ms. Sona
Babbar, Advocate for GNCTD.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

The petitioners, eleven in number, in this writ petition have raised a limited challenge. Their grievance is that the respondents are not complying with the directions given in paragraph 16 of the impugned order dated 16th July, 2016 passed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) whereby OA No. 1899/2016, *Raj Kumar Vaswan and Others versus Commissioner of Police and Others* and connected OAs were disposed of. Paragraph 16 of the order dated 16th July, 2016 reads as under:-

“16. We also notice that earlier respondents had advertised 142 vacancies of the post of Head Constable (AWO/TPO). Subsequently, this number was increased to 475 with further stipulation that number of vacancies may undergo a change. Under these circumstances, we dispose of this O.A. with a direction to the respondents to consider whether additional vacancies are available to appoint the applicants as well in addition to those figuring in the revised merit list. We are

conscious of the fact that there may be some other candidates in between those figuring in the revised merit list and the applicants herein. That number is not known to us. Such candidates would also have to be appointed. Let the respondents examine and see whether without violating the merit of the selection process the applicants can be accommodated. This will, of course, be subject to availability of vacancies. The respondents may do so within next 08 weeks from the date of receipt of a certified copy of this order. No costs.”

2. The petitioners herein had applied for selection against 123 open unreserved category and 184 open Other Backward Classes vacancies for the post of Head Constable (AWO/TPO).

3. Selection or merit list of 381 candidates and an additional list of 15 candidates was published in December 2014. Police verification and medical examination of these candidates was conducted in February and April 2015. However, appointment letters were not issued. Subsequently, on 30th September, 2015, additional list of 247 candidates, who had qualified in the written examination, was published. This additional list was published after the six questions were deleted and answer key to three questions was changed. The Tribunal in the impugned judgment has referred to the said questions, which were deleted or the answer key of which was changed and has affirmed the decision of the respondents. To this extent, the petitioners have not challenged the decision of the Tribunal during the course of arguments and have accepted the finding and view expressed by the Tribunal. We record that the learned senior counsel appearing for the petitioners has stated that in the rejoinder affidavit some additional grounds have been raised, but she has instructions not to press the same.

4. It is obvious that once the answer key of three questions was changed and six questions were deleted, the petitioners herein would have

to compete with the additional 247 candidates, who had qualified in the written examination. The best and most meritorious, who had cleared the written examination, would be selected. To this extent, we do not think the petitioners can raise any grievance and question inclusion of 247 candidates, once they do not challenge and question the impugned order of the Tribunal regarding six questions which were deleted and three questions in respect of which answer key was changed. This is a necessary sequitur once the petitioners accept the decision of the Tribunal to this extent.

5. We would also reject the argument of the petitioners that they should be given first preference and should be rated senior to the 247 candidates, because their names were included in the first list published in December 2014. That would not be correct for the merit list should reflect the exact and true merit position after we include 247 candidates, who were declared successful. After clearing the written examination, candidates had to appear for the trade test and typing test and thereafter the final select list or merit list was published.

6. Now, we come back to paragraph 16 of the impugned order, which records that in case there are vacancies and the selected candidates as per the merit list do not join, those lower in the merit rank should be appointed. The respondents have not challenged the said directions given by the Tribunal and have to abide by the same.

7. On 11th November, 2016, we had issued notice in the writ petition recording that the petitioners have given up challenge of other issues raised before the Tribunal, and their grievance was that the vacancies in the general open category were not being filled up. The order dated 11th November, 2016 records the submission of the petitioners that 475 vacancies were advertised, but selection letters had been issued to only 376 candidates. The respondents were, therefore, asked to clarify.

8. The respondents have filed affidavit dated 2nd December, 2016 wherein they have stated that 137 open unreserved category and 204 open OBC category vacancies for the posts were advertised. The number of vacancies for the open unreserved category and open OBC category was, as per paragraph 8 of the affidavit, subsequently revised to 123 and 184, respectively. However, the total number of posts advertised remained the same. Accordingly, on the basis of the second merit or final list, 123 open unreserved category and 184 open OBC category candidates were selected. In addition, six candidates belonging to the open unreserved category and nine candidates belonging to open OBC category were kept in the additional or waiting list. Candidates in the additional list are to be accommodated in case the open unreserved category or open OBC category candidates do not join or for some other reason not appointed.

9. The petitioners on the other hand have referred to the reply dated 24th August, 2016 received by them under the Right to Information Act as per which some of the selected open unreserved category candidates or open OBC candidates have not joined.

10. Counsel for the respondents has obtained instructions and accepts that 246 selected candidates have joined the training course. Some of the selected candidates were declared unfit in the medical examination or have not been issued appointment letters due to adverse police verification reports. Petitioners submit that there have been self cancellation also.

11. Learned counsel for the respondents, on instructions, accepts that they have not challenged the directions given in paragraph 16 of the order dated 16th July, 2016 and would abide and comply with the same. We take the said statement on record and would dispose of the present writ petition on the basis of the said statement and reiterating the directions given in paragraph 16 of the Tribunal's order dated 16th July, 2016.

12. We do acknowledge and would accept that the completion of the

exercise in terms of paragraph 16 quoted above may take a little time as some of the rejected candidates can challenge their rejection and may also obtain stay orders. This would require a policy decision, by the respondents in accordance with the guidelines issued by Department of Personnel and Training. However, an expeditious and early decision in such matters and in terms of the directions given in paragraph 16 is desirable and always appreciated. It would curtail and prevent another round of litigation.

13. With the aforesaid observations, the writ petition is disposed of.

JANUARY 27, 2017
VKR

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

