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

+ **W.P.(C) 4040/2017**

ANAND

..... Petitioner

Through: Mr.P.S.Khare and
Mr.H.P.Chakravorti, Advocates

versus

**AGRICULTURE SCIENTIST RECRUITMENT BOARD (ASRB) &
ANR.**

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **12.05.2017**

C.M.17770/2017

By this application the petitioner seeks leave to bring on record additional documents.

The application is allowed.

W.P.(C) 4040/2017

1. We have heard learned counsel for the petitioner.
2. The petitioner assails the order dated 01.09.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A.Nos.2933/2016, 2937/2016 & 2934/2016 inter alia preferred by the petitioner (O.A.2934/2016). The Tribunal has dismissed the said O.A.
3. The petitioner was a candidate in the Open Competitive

Examination held by the respondents for appointment to the post of Assistants in Pay Band-II, in Grade Pay of Rs.4600/- in Indian Council of Agricultural Research ('ICAR' for short) Headquarters, New Delhi and in Grade Pay of Rs.4200/- in various ICAR Institutes for a total of 270 vacancies. The respondent conducted the examination in two stages i.e. a Preliminary Examination followed by the Main Examination in which those who had qualified in the Preliminary Examination could participate. The preliminary examination, which was an Objective Type Test was conducted in January-February, 2015. The result of the Preliminary Examination was declared on the official website of the respondent ICAR on 01.04.2015. A total number of 2699, out of 24,468 candidates, who had applied were declared qualified to undertake the Main Examination in the ratio of 1:10. Soon thereafter on 06.04.2015, the respondent ICAR removed its earlier declared result from its website on the ground that there was some discrepancies which had come to notice, and again declared the revised result on 15.07.2015. In the revised result, 8302 candidates out of total 24,468 candidates were declared as qualified for appearing in the main examination.

4. Pertinently, the petitioner appeared in the Main Examination conducted on 18.10.2015 without demur or protest, and without raising a grievance with regard to the enlargement of the number of qualified candidates in the Preliminary Examination. The petitioner, unfortunately, did not clear the main examination and only thereafter preferred the aforesaid Original Application on the ground that the respondents had declared, as qualified, the candidates in the

Preliminary Examination, in the ratio of 1:34 in respect of 270 vacancies.

5. The Tribunal has rejected the Original Application of the petitioner on the ground that the petitioner had acquiesced in the entire examination process by participating in the Main Examination conducted on 18.10.2015, and by not challenging the enlargement of the zone of consideration for the main examination between July, 2015 (when the revised result was declared) to October, 2015 (when the Main Examination was undertaken). The Tribunal while dismissing the Original Application has placed reliance on the following 11 decisions in the impugned order:

- (i) ***Madan Lal vs. State of J&K***; AIR 1995 SC 1088;
- ii) ***Dhananjay Malik & Ors. vs. State of Uttaranchal & Ors***: AIR 2008 SC 1913; (2008) 4 SCC 171;
- iii) ***National Institute of Mental Health & Neuro Sciences vs. Dr. K.Kalyana Raman &Ors***. AIR 1992 SC 1806;
- iv) ***Osmania University Represented by its Registrar, Hyderabad, Andhra Pradesh vs. Abdul Rayees Khan***: (1997) 3 SCC 124;
- v) ***K.H. Siraj vs. High Court of Kerala & Ors.*** (2006) 6 SCC 395;
- vi) ***University of Cochin Rep., by its Registrar vs. N. S.Kanjoonjamma and Others***, AIR 1997 SC 2083;
- vii) ***K.A. Nagamani vs. Indian Airlines & Ors.***, (2009) 5 SCC 515;
- viii) ***Amlan Jyoti Borooah vs. State of Assam & Ors.***, (2009) 3 SCC 227;

- ix) ***Manish Kumar Shashi vs. State of Bihar & Ors.*** ,(2010) 12 SCC 576
- x) ***Chandra Prakash Tiwari & Ors. Vs. Shakuntala Shukla & Ors.***(2002) 6 SCC 127: 2002 SCC (L & S) 830
- xi) ***Union of India & Another vs. H. .Chandrasekharan & Ors.*** (1998) 3 SCC 694.

6. The submission of the learned counsel for the petitioner is that there are several other Original Applications pending before the Tribunal on the same issue preferred by other similar situated candidates. We are not impressed by this argument. Merely because other Original Applications may be pending, is of no ground for the Tribunal not to proceed to hear and decide the petitioner's Original Application.

7. The further submission of the petitioner is that the dismissal of the Original Application was without even calling for a reply from the respondents. Once again, this argument does not impress us for the reason that if the petitioner's Original Application was *per se* meritless, the Tribunal was not obliged to issue notice and call for a reply of the respondents. There is no answer to the query as to why the petitioner did not assail the enlargement of the zone of consideration for the Main Examination (by revision of the list of successful candidates in the Preliminary Examination). The petitioner had sufficient time between 15.07.2016 (when the revised result declared), to 18.10.2016 (when the main examination was held) to lay a challenge to the criteria adopted by the respondents so as to enlarge the competition for 270 vacancies. The petitioner acted like a fence

sitter and did not assail the revised list of successful candidates in the preliminary examination when the time and opportunity was available to him. The petitioner clearly acquiesced in the exercises undertaken by the respondents, and waived his rights, if any.

8. In these circumstances, we find no merit in the petition. Dismissed.

VIPIN SANGHI, J

DEEPA SHARMA, J

MAY 12, 2017

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