

\$~27

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

+ W.P.(C) 1313/2018, CM Nos.5454/2018 & 5455/2018

SH. GANGA RAM

..... Petitioner

Through: Mr.R.P.S.Bhatti, Advocate

versus

DELHI SUBORDINATE SERVICES
SELECTION BOARD AND ANR.

..... Respondents

Through: Mr.Nitesh Kumar Singh,
Advocate for Mrs.Avnish
Ahlawat, St.Counsel for
GNCTD (Services)

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

%

15.02.2018

1. The petitioner is aggrieved by the order dated 07.02.2018, passed by the Central Administrative Tribunal rejecting O.A.No.615/2018, filed by him for seeking directions to the respondent/DSSSB to consider his candidature for appointment to the post of Warder (Post Code-37/13), by permitting him to once again undergo a Physical Endurance Test (PET), stated to be scheduled for some additional candidates who had provisionally qualified for the PET, from 12.02.2018 to 16.02.2018, at the Sports Complex, Chhatrasal Stadium, Model Town, Delhi.

2. The brief facts of the case, as narrated in the impugned order are that the petitioner, who is an OBC candidate, had applied for selection and recruitment to the post of Warder in the Delhi Prison Department, GNCT of Delhi, in terms of Advertisement No.2/2013 (Post Code-37/2013), issued by the respondent/DSSSB. On the basis of his written examination, the petitioner was shortlisted for a PET. It is the petitioner's version that on 01.07.2016 at 5:10 pm he had received an SMS, on his mobile phone, asking him to download the admit card for the PET. When he downloaded the admit card, it indicated that he was to report at the examination centre at Chhatrasal Stadium on the very next day i.e. on 02.07.2016, between 2:00 pm to 3:00 pm.

3. The petitioner did report for participating in the PET at the named venue, on the date and time fixed. The PET was divided into the following stages:

- (i) A measurement of height & chest expansion
- (ii) 1600 mtr. race in 6 minutes.
- (iii) Long jump
- (iv) High jump

4. As per the copy of the evaluation sheet of the PET, conducted in respect of the petitioner on 02.07.2016, after measurement of his height and chest expansion, the petitioner had participated in the 1600 mtr. race in which he could not qualify. As a result, he did not participate in the long jump and high jump that was to be conducted thereafter.

5. The relevant documents relating to the petitioner's evaluation along with other candidates and the documents pertaining to proof of

despatch of a letter dated 28.06.2016, to the petitioner, calling upon him to participate in the PET, through speed post as also other public notices issued by the respondents/DSSSB, informing the candidates at large about the date of the Physical Endurance Test, are collectively handed over by the learned counsel for the respondents/DSSSB and taken on record.

6. The petitioner stated before the Tribunal that he had approached the respondents with a request that he be afforded one more opportunity to appear in the PET on the ground that the time gap between the communication sent to him through SMS on 01.07.2016 and the date and time fixed for the PET was less than 24 hours and he had felt tired due to which he could not perform well and qualify in the PET. Further, the petitioner claimed that the letter dated 28.06.2016, sent to him by the respondent/DSSSB by speed post, intimating him about the date and time of the PET, was received by his mother only after he had left for his PET on 02.07.2016, late in the evening.

7. The Tribunal did not find any substance in the allegations levelled by the petitioner in the O.A. and observed as follows:

“3. After considering the averments made in the OA, as well as the documents filed by the applicant alongwith the OA and upon hearing Mr.R.P.S.Bhatti ld. counsel appearing for the applicant, we do not find any substance in the claim made by the applicant in the present OA. There is no averment made by the applicant in the OA that those candidates, who have been shortlisted by the respondent-DSSSB to appear for PET vide notice dt. 10.01.2018 (Annexure A-11), had earlier appeared, but

failed to qualify the PET, like the applicant. It transpires from the notice dt. 10.01.2018 (Annexure A-11) that on the basis of their performance in the written examination for the post of Warder (Post Code- 37/13) the respondent-DSSSB has declared certain additional candidates to have provisionally qualified for PET and has accordingly scheduled the PET to be held on and from 12.02.2018 to 16.02.2018 for them only and not for the candidates, like the applicant, who had earlier appeared but failed to qualify the PET in the year 2016. The applicant has not brought to our notice any provision in the Advt./Employment Notice (ibid) that in the event of failure of any candidate to qualify PET, the respondent-DSSSB can subsequently allow such candidates to again appear for PET. Having failed to qualify the PET held on 02.07.2016, the applicant cannot be said to have any right to claim an additional opportunity to appear for PET."

8. Learned counsel for the petitioner had stated on the last date of hearing that the main grievance of the petitioner is that the letter dated 28.06.2016, issued by the respondents/DSSSB, calling upon the petitioner to undergo a PET for the post of Warder in the Prison Department, Govt. of NCT of Delhi, was received by him only in the evening of 02.07.2016, by which time, he had already undertaken the test, on the basis of the SMS received from the respondents/DSSSB.

9. To test the correctness of the aforesaid submissions, learned counsel for the petitioner was directed to produce the original envelope in which the letter dated 28.06.2016 was despatched by the respondents and simultaneously, learned counsel for the respondents/DSSSB was directed to produce the relevant records to

ascertain the mode of despatch of the said letter.

10. Today, learned counsel for the petitioner hands over a set of documents under index dated 15.02.2018, that includes the original letter dated 28.06.2016 and the original envelope in which the said letter was received by the petitioner. A perusal of the said envelope reveals that the article contained therein was despatched to the petitioner's address by the Indian Postal Department through speed post. The number on the envelope tallies with the number mentioned against the petitioner's name in the extract of the relevant despatch records produced by the learned counsel for the respondents/DSSSB. Further, the despatch record of the respondents records that the said article had been despatched through speed post on 29.06.2016. Having regard to the fact that the petitioner is a resident of Village Karkardooma, Delhi and the letter was sent by the respondent, also stationed in Delhi and in ordinary course, an article despatched by the Speed Post is delivered to the addressee within 24 hours, it shall have to be assumed that the said letter was duly delivered at the address of the petitioner on 30.06.2016 or latest, on the next day i.e. on 01.07.2016. In such circumstances, the version of the petitioner that the letter in question was received by his mother in the late afternoon of 02.07.2016, by which time he had undergone the PET, does not cut any ice. In any case, not much would turn on the letter since the petitioner had admittedly received an SMS from the respondents/DSSSB on his mobile phone intimating the date, time and venue of the PET and he had duly participated therein.

11. Further, the contention of the learned counsel for the petitioner that the petitioner was tired and had too little time to prepare for the PET, is found to be fallacious. There is no magic wand that would have made the petitioner physically fit in a couple of days. The petitioner knew all along that he was to undergo a PET for the subject post, for which he was expected to be physically fit, not overnight, but with efforts made to build his stamina over the previous few months. Therefore, it makes no sense for the petitioner to claim that if he knew the date of the PET well in advance, he would have cleared the test.

12. We do not find any merit in the present petition, and the same is accordingly dismissed, along with pending application, by upholding the decision of the Tribunal.

HIMA KOHLI, J.

PRATIBHA RANI, J.

FEBRUARY 15, 2018

'hkaur'