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

+ **W.P.(C) 14083/2018**

SURENDER PAL

..... Petitioner

Through: **Mr.Anil Goel, Mr.Rajeev Kumar and
Mr.Rizwan Aftab, Advocates.**

versus

DELHI SUBORDINATE SERVICES SELECTION BOARD

..... Respondent

Through:

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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28.12.2018

CM.APPL. 54908/2018 (*exemption*)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

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The present petition has been filed by the petitioner seeking directions to the respondent to comply with the order dated 19.09.2018 passed by learned Central Administrative Tribunal (CAT), Principal Bench, New Delhi, in OA No.100/3552/2018 as well as a direction to decide the Contempt application/petition bearing no.707/2018 and M.A. No.5190/2018 at the earliest. An additional prayer is also made for restraining the respondents from taking further action pursuant to result notice No.739 dated 07.12.2018.

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The brief and relevant facts to decide the present petition are that the petitioner had applied for the post of Fireman (Band) pursuant to an advertisement issued by the respondent for 26 posts, on 20.10.2015. He stood second in the written examination in the Scheduled Caste category, but could not participate in the Physical Endurance Test ('PET') on 18.09.2018, as he was suffering from high fever from 13.09.2018 and was on bed rest for 5 days. Vide an application dated 13.09.2018, the petitioner had brought his inability to the notice of the respondent and had also requested them to defer his PET.

Getting no response to his request, the petitioner filed OA bearing no.100/3552/2013 before the Learned Tribunal. The said OA was disposed of on 19.09.2018 and the Learned Tribunal directed the respondent to allow the petitioner to participate in the PET whenever it was next scheduled, also observing that the PET should be held preferably within a period of one month.

The petitioner claims that he visited the office of the respondent several times, but no action was taken to conduct his PET and he even lodged a complaint to that effect at the Public Grievance Monitoring System on 11.10.2018.

On noticing that the respondent had uploaded a Notification for PET for Tier-I written examination and had not called the petitioner for the same, he filed a contempt application bearing no.707/2018, in which notice was issued on 03.12.2018 by the Learned Tribunal and the petition was adjourned to 05.02.2019.

The petitioner claims that despite the contempt notice having been issued, the respondent on 07.12.2018 uploaded a Result Notice in which the petitioner was declared 'Not eligible' and was shown 'absent' in the PET. This led the petitioner to file M.A. No.5190/2018 on 11.12.2018 seeking stay of the further process of selection. A reading of the petition discloses that application was fixed for 14.12.2018 but the matter could not be heard and was adjourned to 17.12.2018. It is averred that on 17.12.2018 the case was not found in the cause-list and on inquiry, it was found that it has been adjourned for 07.01.2019.

The petitioner then filed another M.A. bearing no.5333/2018 for preponing the hearing of M.A.No.5190/2018 but said M.A. is stated to be now listed for 06.02.2019.

Grievance of the petitioner in the present petition is two-fold, firstly that the respondents are not complying with the order passed in O.A. on 19.09.2018 and till date the petitioner has not been called for PET. Secondly, the learned Tribunal has adjourned the case to 07.01.2019 and this delay in hearing would result in the respondent proceeding ahead with the selection process and irreparable loss will be caused to the petitioner thereby.

A perusal of the prayer in the writ petition shows that the petitioner has not impugned any order of the learned Tribunal. Instead the relief sought is a direction to the learned Tribunal to decide the contempt petition at the earliest and a direction to the respondent to comply with the order passed in O.A. as well as restraining them from taking further action pursuant to the result notice dated 07.12.2018.

This court is of the view that none of the reliefs sought in the present petition can be granted by this court in view of the judgment of the Constitution Bench of the Apex Court in L. Chandra Kumar vs. Union of India, reported as (1997) 3SCC 261. Hon'ble Apex Court therein has clearly held that in so far as service matters are concerned, the Central Administrative Tribunal will be the court of first instance and writ petition will be filed before the High Court only by way of appeal challenging/impugning the orders passed by the learned Tribunal.

The reliefs sought in the petition as mentioned above are clearly in the nature of reliefs which are in the domain of the learned Tribunal as court of first instance and moreover the contempt petition as well as the application for stay of further process pursuant to the declaration of the result is still pending before the learned Tribunal. It is not appropriate for this court, at this stage to issue any directions to the respondents which are a subject matter of the contempt petition and of which the Learned Tribunal is seized of. Nor would it be appropriate to stay any further process pursuant to the result notice as the stay application is also still pending before the learned Tribunal and no order has been passed against the petitioner as yet.

Learned counsel for the petitioner has argued that in case the process of selection goes on, his client will be prejudiced as the respondent is not deliberately conducting his PET, despite an order of the learned Tribunal and since the Tribunal has not passed any order on the issue pending before it, he had no option but to approach this court. Learned counsel for the petitioner has confirmed that the hearing before the Tribunal is scheduled on 07.01.2019. Since the hearing before learned Tribunal is fixed for

07.01.2019, which is only 10 days away, this court is of the view that the prayer for preponement of date of hearing is not reasonable.

The present petition, thus, has no merit and deserves to be dismissed. It is, however hoped that the learned Tribunal will make every endeavour and effort to hear the matter as expeditiously as it can, keeping in mind the nature of reliefs sought and more particularly the fact that the petitioner does have an order dated 19.09.2018 in his favour, which till date remains unimplemented.

With these observations, the present petition is dismissed with no order as to costs.

JYOTI SINGH, J

ANUP JAIRAM BHAMBHANI, J

DECEMBER 28, 2018

SSC

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