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

% *Date of Judgment : 16th October, 2019*

+ W.P.(C) 10943/2019

LOKESH Petitioner

Through Mr. Anil Singal, Advocate

versus

COMMISSIONER OF POLICE & ANR Respondents

Through Mrs. Avnish Ahlawat, Standing
Counsel with Mr. Nitesh Kumar
Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

CM. APPL 45222/2019 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present writ petition is directed against order dated 24.09.2019 of the Central Administrative Tribunal (the 'Tribunal'). The order is a short order since the Tribunal has relied upon its earlier order dated 05.09.2019 passed in OA No.3198/2013, being an order in an identical matter. A copy of order dated 05.09.2019 has also been filed along

with this petition, although a reading of order dated 05.09.2019 would show that this order is itself also based on an earlier order dated 28.02.2014 passed in OA No.1839/2013 by the Tribunal.

4. Learned counsel for the respondents has entered appearance on advance copy.
5. With the consent of the parties, we set down the writ petition for final hearing and disposal at the admission stage itself.
6. Necessary facts which are required to be noticed for disposal of this writ petition are that an advertisement was published by the respondents in the year 2010 for filling up 499 posts of Head Constable (Ministerial) in the Delhi Police, including 230 vacancies in Unreserved category. The petitioner applied under the Unreserved category; he qualified the typing and written examination; but did not find his name in the final list of selected candidates. The cut-off for the Unreserved category was 92 marks and 25 candidates had secured 92 marks. Their names were arranged as per age; and accordingly 05 persons were included in the list of selected candidates.
7. The petitioner was among the 16 candidates in the merit list of unselected candidates under the Unreserved category, but was not offered appointment. Meanwhile, in the year 2013 one Anish (Roll No.447850), placed at Serial No.12 in the unselected candidates, filed OA No.3198/2013, which was dismissed by the Tribunal. It is the case of the petitioner that when the petitioner filed the OA, one vacancy was reserved by an interim order of the Tribunal.
8. Mr. Singal, learned counsel for the petitioner has strongly urged before us that in case the respondents had prepared a reserve list, the 19

unfilled vacancies would have been filled-up and the name of the petitioner would have been included in the selected candidates. He relies on a Circular, as per which Ministries/Departments were advised to prepare a 'reserve list' as certain vacancies remained unfilled for various reasons including non-joining of candidates, resignation of candidates, death, etc. Learned counsel submits that the Tribunal has completely lost track of the fact that the petitioner had secured 92 marks and he was eligible for the unfilled vacancies and one seat had been lying vacant. He approached the Tribunal without any delay; and the Tribunal, without taking into consideration all the aforementioned factors, dismissed the OA primarily on the ground that even if the seat which was kept reserved under the interim orders of the Tribunal is considered, the petitioner was below in the list; and hence the reserve seat would be offered to a candidate who was senior in age in the list prepared by the respondents.

9. Reliance has also been placed by the learned counsel for the petitioner on the judgment in the case of *Union of India v. Shrey Bajaj and Anr.*, (W.P.(C).11739/2016) decided on 16.12.2016, more particularly on paragraph 11, wherein the observations made by the Supreme Court in the case of *Manoj Manu & Anr. v. Union of India & Ors.* reported as (2013) 12 SCC 173 have been extracted.
10. Learned counsel for the respondents, who has entered appearance on advance copy, has opposed this writ petition on the ground that there is no infirmity in the view taken by the Tribunal which would require interference in the present proceedings. Learned counsel for the respondents submits that although as per the DoP&T Circular, it was

advised that a reserve list should be prepared, but factually no reserve list was prepared and in the absence of a reserve list, no benefit can accrue to the petitioner as all the available vacancies were considered and filled-up. Learned counsel has also justified the view taken by the Tribunal by highlighting the fact that out of the 19 vacancies, 18 vacancies have already been carried forward and a fresh advertisement has been published in the month of October, 2019. Learned counsel for the respondents submits that as far as one seat which was kept reserved by the interim order of the Tribunal is concerned, the petitioner would not be eligible for the same as in the list prepared, there are other candidates who are higher in merit compared to the petitioner.

11. Mr. Singal, learned counsel for the petitioner, at this stage, clarifies that the vacancies have been carried forward only in the month of October, 2019 post the order of the Tribunal.
12. We have heard the learned counsel for the parties and have considered their rival submissions.
13. It is not in dispute that an advertisement was published by the respondents as far back as in the year 2010 for recruitment of 230 vacancies for Unreserved category to the post of Head Constable (Ministerial) in the Delhi Police. The recruitment process was concluded and the result was declared in March, 2013. The cut-off for the Unreserved category was 92 marks and 25 candidates had secured 92 marks, whose names were arranged age-wise in the list. The petitioner qualified the typing and written examination. The respondents prepared a list of unselected candidates and the name of the petitioner was at Serial No.16. It is also not in dispute that the OA filed

by one Anish in the year 2013, being OA No.3198/2013, was dismissed by the Tribunal. It is also not in dispute that another OA No.1839/2013, filed by one Vikas, who was at Serial No.3 was also dismissed by the Tribunal on another ground.

14. The fact which has prevailed upon the Tribunal in dismissing the OA filed by the petitioner is that although an advisory had been issued by the DoP&T but for unknown reasons, a reserve list was in fact not prepared by the respondents. In our view, there are good reasons why a reserve list should have been prepared at the appropriate stage; but, that being said, the clock cannot be put back. As informed by the learned counsel for the respondents a fresh recruitment process has commenced. It is also common knowledge that after a list is finalized, there are selected candidates who do not join for various reasons such as finding better avenues or tender resignations for various reasons, resulting in seats lying vacant. Thus, it is always advisable that a reserve list be prepared; though a reserve list is normally effective for a period of six months, since beyond six months there may be a change of circumstances and persons who were otherwise eligible may not be eligible, either due to age factor or, as in the case of recruitment to uniformed forces, for reasons of physical fitness etc.
15. In the present case, the OA filed in the year 2013 was dismissed in the year 2019; and much has changed between the year 2010 when the recruitment process was started, until 2019.
16. Resultantly, we find no merit in the present writ petition. The same is accordingly dismissed.

CM.APPL 45221/2019(stay)

17. The application also stands dismissed in view of the order passed in the writ petition.

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

OCTOBER 16, 2019

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