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

% *Date of Judgment : 19th September, 2019*

+ **W.P.(C) 1703/2017**

UNION PUBLIC SERVICE COMMISSION Petitioner
Through **Mr. Naresh Kaushik, Mr. Tapasvi Raj**
and Mr. Vibhuti Tyagi, Advocates
versus

DR. VINEET RELHAN & ORS Respondents
Through **Mr. Rajiv Shukla, Ms. Shivani**
Kapoor, Mr. Gorang Goyal and Mr.
Shannu Baghel, Advocates for
respondent no.1.
Mr. Naman Jain, Advocate for Mr.
Sanjoy Ghose, ASC GNCTD for
respondents no.2 and 3.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

1. Being aggrieved by the decision rendered by the Central Administrative Tribunal (the Tribunal) dated 02.02.2016 and the order passed in review dated 02.12.2016 by the Tribunal, has led the petitioner to file the present writ petition.
2. Some necessary facts which are required to be noticed for disposal of this writ petition are that the petitioner published an advertisement for recruitment to the posts of Specialists Grade-III(Dermatology) on

13.07.2013 for the User Department, being the Department of Health and Family Welfare, GNCTD of Delhi, in the following manner:

“No. of vacancies	-	11
(a) SC	-	2
(b) ST	-	1
(c) OBC	-	5
(d) UR	-	3 including 1 PH”

3. The closing date for the advertisement was 01.08.2013. Out of 45 candidates, who applied online, 39 candidates fulfilled the minimum eligibility criteria, after submission of the documents and were called for an interview on 10.02.2014. Out of 39 candidates, 28 candidates appeared for the interview. The petitioner recommended 8 candidates in the following break-up: SC-2, OBC-3, UR-3 and 2-UR candidates were placed in the Reserve Panel. The present writ petition pertains to an ‘Unreserved’ candidate.
4. We are informed that the 3 candidates shortlisted and recommended in the ‘Unreserved’ category were Dr. Pooja Arora, Dr. Kanika Sahni and Dr. Surabhi Sinha. The Reserve list comprised Dr. Bhawna Harjai and Dr. Deepshikha Khanna. Out of the three recommended candidates, only one joined. Resultantly, vide communication dated 18.12.2014, the Delhi Government sought release of two candidates from the Reserve list. At the request of the Delhi Government, 2 General candidates were released from the Reserve list on 21.01.2015. The Delhi Government then requested the Commission to extend the Reserve list and release one more General candidate by a communication dated 27.02.2015. The said request was declined, leading to the filing of the OA by respondent no.1.

5. The Tribunal allowed the OA and the review petition and directed the Commission to forward the name of Dr. Vineet Relhan, who was the next eligible person, but did not form part of the Reserve list. The Tribunal also observed that this order had been passed in the peculiar facts of the case and would not be treated as a precedent.
6. Mr. Naresh Kaushik, learned counsel for the petitioner submits that the order of the Tribunal is bad in law and suffers from various illegalities and infirmities. Counsel submits that the Tribunal has exceeded its jurisdiction and failed to take note of the guidelines and circulars for preparation of the panel of Reserve list. Reliance is placed on paragraph 3 sub-para (c) of the guidelines, which we reproduce below:

“3. Preparation for IBR & Reserve List(to be done by Sr. PPS/PPS)

- ...
- c) Reserve list is to be drawn out of surplus names of merit list and their inter-se seniority shall be fixed based on the marks obtained by them as well as procedure adopted in item No.2(d) above. The maximum number of names to be kept in the Reserve List may be 50% of the total number of posts/vacancies in each category to which recruitment is being made, subject to a minimum of 02 (two) names in each category, depending upon the availability of candidates who fulfill the minimum cut-off marks for each category, in order of merit. In case 50% of the total number of posts/vacancies in each category works out to a fraction, this will be rounded off to the next higher number.”

(emphasis supplied)

7. Mr. Kaushik, learned counsel for the petitioner submits that the petitioner Commission has followed the uniform norm in preparing the ‘Reserve List’, of 50% of the total number of posts/vacancies in each

category, subject to a minimum of 02. Mr. Kaushik submits that in no circumstance should this be left to the discretion of the Commission as it may lead to allegations of arbitrariness against the Commission that the Commission exercised its discretion selectively.

8. Learned counsel for respondent no.1 submits that there is no infirmity in the order of the Tribunal. He submits that the Tribunal has passed the order in best interests of the Delhi Government, which had made a request for extension of the Reserve list from two to three candidates as doctors are in huge demand. He submits that no *mala fides* have been alleged. Respondent no.1 fulfills all the eligibility conditions and was ranked as no.3 after the three recommended candidates earlier.
9. Learned counsel for respondent no.1 also relies upon the judgment in the case of ***Manoj Manu and Another v. Union of India and Others***, reported as (2013) 12 SCC 171, more particularly, paragraphs 14, 15 and 16, which we reproduce below:

“14. There is a sound logic, predicated on public interest, behind O.M. dated 14th July 1967. The intention is not to hold further selection for the post already advertised so as to save unnecessary public expenditure. At the same time, this very O.M. also stipulates that the Government should not fill up more vacancies than the vacancies which were advertised. The purpose behind this provision is to give chance to those who would have become eligible in the meantime. Thus, this OM dated 14th July 1967 strikes a proper balance between the interests of two groups of persons. In the present case since the requisition of the DoP&T contained in communication dated 20th November 2009 was within the permissible notified vacancies, the UPSC should have sent the names of six candidates instead of three.

15. This Court in *Sandeep Singh vs. State of Haryana & Anr.* (2002) 10 SCC 549 commended that the vacancies available should be filled up unless there is any statutory embargo for the same. In *Virender S.Hooda & Ors. Vs. State of Haryana & Anr.* AIR 1999 SC 1701, 12 posts for direct recruitment were available when the advertisement for recruitment was made which was held in the year 1991. Some of the selected candidates did not join in this batch almost similar to the present case, the Court held that the appellant's case ought to have been considered when some of the candidates for reasons of the non- appointment of some of the candidates and they ought to have been appointed if they come within the range of selection.

16. It is not the case of the UPSC that under no circumstances the names are sent by way of supplementary list, after sending the names of the candidates equal to the vacancies. As per the UPSC itself, names of "repeat/common" candidates are sent and in the present case itself, three names belonging to such category were sent. However, exclusion of the persons like the appellants has clearly resulted in discrimination as one of those three candidates Rajesh Kumar Yadav had also secured 305 marks and once he was appointed to the post in question, the appellants with same marks have been left out even when the vacancies were available."

10. Mr. Kaushik submits that the above judgment relied upon by the learned counsel for respondent no.1 may not apply to the facts of the present case; however, learned counsel for respondent no.1 submits that the situation of Reserve list has been discussed in paragraph 9 of the judgment in *Manoj Manu and Another* (supra), which we reproduce as under:

"9. It can be clearly inferred from the reading of the aforesaid that it is not the case where any of these persons initially joined as Section Officer and thereafter resigned/left/promoted etc. thereby creating the vacancies again. Had that been the situation viz. after the vacancy had been filled up, and caused

again because of some subsequent event, position would have been different. In that eventuality the UPSC would be right in not forwarding the names from the list as there is culmination of the process with the exhaustion of the notified vacancies and vacancies arising thereafter have to be filled up by fresh examination. However, in the instant case, out of 184 persons recommended, six persons did not join at all. In these circumstances when the candidates in reserved list on the basis of examination already held, were available and DoP&T had approached UPSC “within a reasonable time” to send the names, we do not see any reason or justification on the part of the UPSC not to send the names.”

11. We have heard the learned counsel for the parties. While we find force in the submission of Mr. Kaushik that there should be minimum exercise of discretion by the Commission and the Rule should be followed uniformly, however the Tribunal has taken note of the communication received from the Delhi Government dated 27.02.2015, which we reproduce below:

“GOVERNMENT OF NATIONAL CAPITAL
TERRITORY OF DELHI
HEALTH & FAMILY WELFARE DEPARTMENT
9TH LEVEL, A-WING, DELHI SECRETARIAT,
I.P. ESTATE, NEW DELHI-110002

No.F.11/116/H&FW/2011/1611

Dated: 27/02/15

To

The Secretary
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi-110069.
(Kind attention Sh. Parimal Thakur, Dy. Secretary R1
UPSC.)

Subject: Request for fresh Dossiers of eligible and qualified candidate from the wait list.

Sir,

I am directed to refer to your letter no.F.1/148(38)/2013 R.1 dated 05/02/2015 wherein it was informed that there was no candidate available in the reserve panel, the UPSC therefore was not able to release any name in place of Dr. Surabhi Sinha, Roll No.27(General).

In this regard, a representation is received in the department from Dr. Vineet Relhan wherein he has informed that he has been placed 3rd in the General Category list (Reserve Panel) and UPSC has kept only two candidates of General Category in the reserve panel and both of them have already been recommended to the Govt. of NCT of Delhi for appointment in place of the candidates who have not joined. His name appears next to Dr. Deepshikha Khanna whose dossier has already been sent to Govt. of NCT Delhi. He has therefore requested for extension of reserve panel.

The competent authority has considered his representation and considering the fact that he has been working as medical officer for the last thirteen year in Govt. of NCT Delhi and his keenness to join as specialist in Govt. of NCT of Delhi, it has been decided to request you for extension of reserve panel in skin (Dermatology specialty) from the eligible and qualified candidates.

In view of above and also considering the fact that a few post in skin specialty are lying vacant in the department I am directed to request you for considering extension of reserve panel in skin (Dermatology specialty) from the eligible and qualified candidates in the larger public interest of health care delivery in Govt. of NCT Delhi and to release a candidate in place of Dr. Surabhi Sinha, Roll no.27(General).

This issues with the approval of the Secretary(Health and Family Welfare Department (Govt. of NCT of Delhi.).

Yours faithfully,

Sd/-
(ASHOK KUMAR)
Dy. Secretary(H&FW)”

(emphasis added)

12. A reading of para 3(c) of the guidelines as reproduced in the paragraph quoted above would show that the word ‘may’ has been used; however Mr. Kaushik has labored hard to contend before us that the petitioner must read ‘may’ as ‘shall’.
13. Reading of the order of the Tribunal, including the order in the review petition would show that the Tribunal was persuaded to allow the OA primarily in view of the above mentioned communication received from the Delhi Government, wherein the Delhi Government stated that there are only few posts in Skin Specialty and one such post is lying vacant and expressed the need to fill such post. The Delhi Government has also noted the larger public interest of health care delivery in Delhi.
14. Since the order of the Tribunal has been passed in the peculiar facts and the Tribunal has observed that extension of size of the Reserve panel should not be treated as a matter of judicial precedent; and moreover it would serve the public interest to extend the panel in this case, we find no infirmity in the order passed by the Tribunal. The writ petition is accordingly dismissed.

15. It is made clear that the order passed in the present writ petition should not be treated as a precedent for future reference.

CM.APPL 7633/2017(stay)

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

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 19, 2019

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