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

+ **W.P.(C) 5777/2019**

TARUN TOMAR

..... Petitioner

Through: Mr. Shahir Shabir with Mr. A.F. Faizi
and Mr. Tushar Gupta, Advs.

versus

UNION OF INDIA AND ANR.

..... Respondent

Through: Mrs. Avnish Ahlawat, St. Counsel,
GNCTD (Services) with Mr. n.K.
Singh and Ms. Sakshi Shairwal,
Advs.
Ms. Shubhra Parashar with Mr. Amit
Sharma, Advs. for R-1.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

ORDER
24.05.2019

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C.M. No. 25182/2019

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

W.P.(C) 5777/2019

The petitioner assails the order dated 12.03.2019 passed by the

Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 769/2019. The Tribunal has rejected the said Original Application preferred by the petitioner. The petitioner applied for the post of Constable (Executive) Female in Delhi Police pursuant to public notice issued on 10.09.2016 as a General category candidate. When the result was declared, she was not selected in that Category. At that stage, she claimed that she was an OBC Category candidate and that her candidature should be considered as a reserved category candidate and, if so considered, she would qualify since she had secured 65 marks, which was higher than the last selected OBC Category candidate who had secured 62 marks.

The Tribunal has rejected the Original Application on the premise that since the petitioner had not applied as an OBC category candidate, her candidature cannot be considered in that Category.

The Tribunal has placed reliance on the decision of the Supreme Court in ***Union of India and Others v. Dalbir Singh and another***, Civil Appeal No. 3409/2009, dated 09.05.2009, wherein the Supreme Court, inter alia, observed:

“10....In our opinion, having opted to consider his case only under OBC category, he cannot thereafter claim that his case requires to be considered in the general merit, only because, he has scored better percentage of marks than the last selected candidate in the general merit. In our considered view, the Administrative Tribunal having found that the appellants were justified in not considering the respondent's case for appointment under OBC category, ought not to have directed the appellants to consider his claim under general category.”

The submission of learned counsel for the petitioner is that the petitioner could not apply as an OBC category candidate since she was not

possessed of the certificate till the cut off date. The further submission is that there are still a large number of vacancies existing in the OBC Category and no prejudice would be caused to any person or the respondents if the petitioner's candidature is considered as an OBC category candidate.

We do not find any merit in this submission of learned counsel for the petitioner. The petitioner not having applied as an OBC Category candidate could not be considered falling in that category when her candidature was assessed. We have already rendered a decision in similar circumstances in *Pooja Sehrawat v. Govt. of NCT of Delhi and Ors.*, W.P. (C.) No. 12563/2018, decided on 26.11.2018.

Following the decision of the Supreme Court in *Dalbir Singh* (supra) and our decision in *Pooja Sehrawat* (supra), the petition is dismissed.

Dismissed.

VIPIN SANGHI, J

REKHA PALLI, J

MAY 24, 2019

N.Khanna