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

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Date of decision: 23.08.2019

+ W.P.(C) 9103/2019

LALIT KALA AKADEMI

..... Petitioner

Through

Mr. Mahender Kr. Bhardwaj and
Mr. K.C. Dubey, Advs.

versus

SH. ANSHUL KUMAR

..... Respondent

Through

None.

CORAM:

HON'BLE MR. JUSTICE A.K.CHAWLA

A.K. CHAWLA, J. (ORAL)

CM APPL. 37607/2019

Delay condoned. Application stands disposed off.

W.P.(C) 9103/2019 AND CM APPL. 37606/2019

By the instant petition, the petitioner assails the order dated 29.11.2018 passed by the Court of Chief Commissioner for Persons with Disabilities (Divyangjan), whereby, respondent No.1 has been directed to be appointed against the post of MTS.

2. Concisely, the facts giving rise to the writ petition are that there was one post of MTS with the petitioner under PwD category in Group 'C' PB-I for hearing impaired persons. For the selection to such post, the petitioner

held a written examination besides skill test and drew a merit position. The merit position so drawn was, as under :

Sl.No.	Name of Candidate	Written Test	Computer Test	Position
1.	Shri Anshul Kumar	45	49.9	1 st position
2.	Ms. K.B. Vidya Subramanian	41	29.9	2 nd position
3.	Shri Kamal Hasija	30	34.9	3 rd position

3. There is no dispute to the fact that the respondent stood at serial No.1 in such merit list. The appointment to such post however came to be offered to the person at serial No.2 i.e. Ms. K.B. Vidya Subramanian. Ld. counsel for the petitioner contends that the petitioner was within its right to offer such post to the person appearing at serial No.2 as a Selection Committee formed thereafter, found the person at serial No.2 to be best suited for the subject post from amongst the merit list. Decision so taken on the basis of recommendations of the committee, came to be set aside by the Court of Chief Commissioner for Persons with Disabilities (Divyangjan) vide the impugned order with the observations, as follows :

“7. During the hearing, counsel of the complainant reiterated written submissions and representatives of the respondent has also reiterated his written submissions. After hearing both parties, it has been observed that DOP&T vide

OM No. 39020/01/2013-Estt (B) – Part dated 29.12.2015 has already decided to discontinue interview for recruitment at Jr. Level posts in Government of India and there is no provision for selection on interaction basis, complainant namely Shri Anshul Kumar was stood first in the merit after Written test, Computer test & Skill test, the case is disposed of with the direction to the respondent to appoint complainant and submit compliance report within 30 days from receipt of this Order.”

4. Ld. counsel for the petitioner faults the conclusion so drawn by the Court of Chief Commissioner for Persons with Disabilities (Divyangjan) adverting to sub-clause (f) of para 2 of OM dated 29.12.2015, which reads, as under :

“It is also clarified that as Skill Test or Physical Test is different from interview, and they may continue. However, these tests will only be of qualifying nature. Assessment will not be done on the basis of marks for such tests.

On a plain reading of the foregoing clause of OM dated 29.12.2015, this court does not see any perversity in the impugned order of the Chief Commissioner for Persons with Disabilities (Divyangjan), which would invite invocation of its jurisdiction under Article 226 of the Constitution of India. Suffice to observe, the OM dated 29.12.2015 is in the nature of clarifications to the policy decision of the Government of India to discontinue interview for recruitment for all Group 'C', Group 'D' (which are now re-classified as Group 'C') posts and for non-gazetted posts of Group 'B' category and all such equivalent posts. Even otherwise, on merits, sub-clause

(f) of para 2 of OM dated 29.12.2015 cannot be construed to mean that skill or physical test is to be treated to be at par with interview. Skill or physical test is conducted taking note of the specific requirement of duties to be discharged for the given post. In that view of the matter, the selection that came to be made by the petitioner and which has come to be set aside by the court of Chief Commissioner of Persons with Disabilities (Divyangjan) - this court has no hesitation to observe - was in utter violation of the decision to discontinue interview at junior level posts.

5. For the foregoing reasons, there is no merit in the petition. Dismissed.

AUGUST 23, 2019

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A. K. CHAWLA, J

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