

\$~9

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

% **Date of Decision: 14.02.2019**

+ **W.P.(C) 3566/2017**

HIRA LAL

..... Petitioner

Through: Mr. Naresh Kaushik and Mr. Devik Singh, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Monika Arora, CGSC with Mr.Kushal Kumar and Mr. Harsh Ahuja, Advocates for R-1, 2 and 4.

Mr. Shadan Farasat, ASC with Ms.Rudrakshi Dev and Ms. Hafsa Khan, Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred the present writ petition to assail the order dated 17.01.2012 passed by the Central Administrative Tribunal ('Tribunal') in OA Nos.2207/2009 and 2631/2010. The petitioner's Review

Petition No. 64/2012 in OA No. 2207/2009 was rejected by the Tribunal on 16.07.2016, which too is under challenge.

2. The petitioner was the applicant in OA No.2207/2009. He joined Delhi Police as a constable in the year 1982 through an open competitive examination. The Staff Selection Commission ('SSC') issued an advertisement on 05.11.1994 for holding of a competitive examination for recruitment to the post of Sub-Inspector in Delhi Police, CBI and other police organizations, such as BSF, ITBP, CRPF and CISF. Out of the total of 300 vacancies of Sub-Inspector (Executive) in Delhi Police, 30 seats were reserved for departmental candidates. Out of the said 30 vacancies, 15 were selected from departmental candidates in open category. The petitioner was one of the candidates for appointment as Sub-Inspector (Executive) in Delhi Police. The examination was held on 03.07.1994 by the SSC. The petitioner qualified in the said examination as a General Category departmental candidate. He was interviewed on 19.07.1995 and was included in the gradation list. However, he was not finally selected.

3. It appears that the reason for the petitioner and several other meritorious candidates not being selected, was that the petitioner and other

similarly placed candidates were shown to have not secured the minimum qualifying marks prescribed for Hindi in Paper-III. This test for Hindi paper was held after the Personality Test had been conducted. Some of those not selected were aggrieved by them being declared unsuccessful on account of not qualifying in the Hindi paper-III. This issue went up to the Supreme Court in ***Vijay Pal and others vs. Union of India & others***, SLP(C) 16356-16358/1996. The said SLP was disposed of by the Supreme Court on 14.08.1997. The Supreme Court found that the Hindi paper-III could not be considered as a qualifying examination. The petitioners were found to be better placed than the candidates who were selected by the SSC. The Supreme Court directed as follows:

*“In the circumstances, it is directed that **in case vacancies are available for appointment on the posts of sub Inspector (Executive) in Delhi Police for which the impugned selection was made**, the respondents may consider for appointment against these vacancies the petitioners and other similarly situated candidates the basis of merit as per the aggregate of the marks obtained by them in all the papers and if on the basis of such consideration it is found that the petitioners can be so appointed the respondents shall appoint them against the existing vacancies by relaxing the requirement of minimum qualifying marks prescribed for Hindi in Paper-III.....”*

(emphasis supplied)

4. From the above extract, it would be seen that the direction issued by

the Supreme Court was conditional, upon the availability of vacancies in the posts for which the selection was made.

5. The petitioner then moved an Original Application bearing No.650/1997, and the same was disposed of on 02.09.1997 taking note of the aforesaid judgment of the Supreme Court with the following directions:

“We, therefore, direct the respondents to consider the case of the petitioner not on the basis of the bench mark subsequently prescribed for the language test, but on the basis of overall grade, that he obtained along with all other candidates who have been declared successful in the year 1994 examination, if additional vacancies are available to accommodate the petitioner. The respondents shall pass appropriate order within four weeks from the receipt of this order. We would like to observe, before parting with this case, that the respondents shall on their own consider the case of similarly placed other persons if any further additional vacancies are available for the same year, that still remains unfilled, without letting each of those candidates to come to this court. We would appreciate if the respondents do this exercise on their own, to the extent possible.”

6. After the said order was passed, the petitioner again approached the Tribunal by preferring Original Application No. 1191/1999. It appears that the petitioner staked his claim in respect of vacancies which arose subsequently. This plea of the petitioner was, however, rejected by the Tribunal vide order dated 22.11.2000.

7. It further appears from a reading of the order dated 22.11.2000 that the Tribunal was informed that the petitioner could not be accommodated, since no vacancy was available for the relevant period, and this position had also been informed to the Supreme Court in the contempt proceedings initiated by the petitioner before the Supreme Court and, consequently, the contempt proceedings were also dropped. The operative part of the order dated 22.11.2000 is extracted hereunder:-

“11. Thus we find that in the earlier OA Nos 650/97 and 2625/97 the court had also restricted the right of the applicant to be considered for the additional vacancies which could be available for the same years (emphasis supplied). So by now present OAs, the applicants cannot take up the issue again and ask for preferential right of appointment for vacancies for the future years because to that extent the filing of the present OAs are barred by principles of res judicata as well.

12. As regard the vacancies available for the same years is concerned, the respondents have already pointed out that after the judgment given by the Hon’ble Supreme Court the Applicants had also filed CP as the applicant could not be accommodated in any vacancy and in the SP reply was also filed that no vacancies are available and the CP was dropped and no action was taken and the department had already carefully considered about the number of vacancies and since no vacancy is available for the same year, so the applicants were considered but could not be appointed and that is why the impugned orders had been passed rejecting their representatives.

13. In view of the above, we find that these OAs have no merits and the same are rejected. No costs.” (emphasis supplied)

8. The order dated 22.11.2000 attained finality and the petitioner evidently was satisfied in the matter. Only after this Court rendered its decision in '*Narendra Kumar & ors. vs. Union of India & Anr.*', W.P.(C) 7591/1999 on 22.09.2008, and the petitioner woke up and again became active. On the basis of the said decision, he again sought to assert his claim and preferred the Original Application in question, which has been rejected by the Tribunal.

9. The submission of Mr. Kaushik—learned counsel for the petitioner, is that since the petitioner was more meritorious than the last candidate selected in the selection process in question, Article 14 of the Constitution of India stands breached, and he ought to be accommodated just like the six petitioners—who were before the High Court in W.P. (C) 7591/1999, were accommodated.

10. Mr. Kaushik further submits that the distinction sought to be drawn in the case of the petitioner, from the case of *Narendra Kumar & Ors.* (supra) was that—in the case of the petitioner, no interim protection had been granted by the Tribunal while entertaining his earlier Original Application, to the

effect that appointments will be subject to orders passed in the Original Application. However, such directions were issued in the case of **Narendra Kumar & Ors.** (supra) and, consequently they were directed to be accommodated by the High Court. He submits that this distinction/classification is not reasonable because it was not in the petitioner's control whether, or not, an interim order was passed in his Original Application, and the act of Court in not granting interim protection, cannot prejudice the petitioner.

11. The Tribunal has not found merits in the petitioner's Original Application and has rejected the same by placing reliance on the decision of this Court in the case of **Virender Singh Panwar vs. Union of India and others** passed in W.P.(C) 3281/2003. The relevant extract from the decision in **Virender Singh Panwar** (supra) has been set out in the impugned order. The same is relevant and reads as under:

14. On examination of the matter, we find the case of the petitioner meritless. It is no doubt true that the petitioner was initially sought to be denied recruitment on the basis of his having failed in the physical test. His prayer for a second chance in the physical test was accepted by the CAT and the petitioner was successful in the physical test. This does not amount to a waiver of fulfilling the other requirements which had to be so fulfilled.

15. The manner and sequence of conduct of examination and the persons being asked to come for interviews has already been explained in the impugned order as extracted aforesaid. It is not as if the petitioner has been singled out on the ground of his failure to qualify in the written examination for Hindi in paper III. There were other similarly situated persons who approached CAT unsuccessfully in *Vijay Pal Singh and Ors. V. UOI and Ors.*'s case (*supra*).

16. A further challenge laid before the Supreme Court was dealt with in the order dated 14.08.1997 which itself makes it clear that the criteria of minimum marks was not set aside but in view of the existing vacancies observations were made that the respondents may 'consider' filling up all those posts by relaxing the criteria for minimum marks on the basis of aggregate marks obtained by the petitioners therein and other similarly situated candidates like the petitioner. The petitioner, in fact, sought to take advantage of this direction and rightly so. However, the stand of the respondents of absence of vacancies for 1994 was accepted by the Supreme Court when the contempt petition was dismissed and nothing survived thereafter. The petitioner again claimed recruitment for vacancies if any arising subsequently even in respect of candidates who were originally recruited in 1994 when those vacancies had been included (*sic*) for purposes of recruitment for subsequent years. The select list cannot have an indefinite period of validity.

17. The challenge laid by the petitioner was thus on the basis of having been called for interview and thus minimum marks not applying on the basis of *Vijay Pal Singh and Ors. V. UOI and Ors.*'s case (*supra*) have no basis.

18. Insofar as the last plea about the OA being first allowed and then dismissed is concerned, all that is apparent from the record is that originally some order was sought to be passed but the matter was listed for directions whereafter the finally signed order had been made available and thus the same cannot be faulted.

19. In the end, there was one further plea raised by the petitioner though not contended in the pleadings, arising from a judgment by a Division Bench of this Court in W.P.(C) No.7591/1999 Narendra Kumar & Ors. v. UOI & Anr. decided on 22.09.2008. The petitioners therein were identically situated as the petitioner herein and after the written test had taken the physical test, but were disqualified on the basis of lack of minimum marks in Hindi language test. In the said judgment, it has been pointed out that in the process of selection, out of 30 posts reserved for departmental candidates only 24 posts were filled up. Thereafter, Vijay Pal Singh and Ors. V. UOI and Ors.'s case (supra) has been discussed. **The distinguishing fact mentioned in Narendra Kumar & Ors. v. UOI & Anr.'s case (supra) is that not only was the original OA filed by the petitioner admitted but interim directions had been passed that the posts to be filled in were subject to final orders that may be passed in the OAs pending before the Tribunal.**

20. In terms of the judgment Vijay Pal Singh and Ors. V. UOI and Ors.'s case (supra), the petitioners were entitled to appointment as to availability of posts and those petitioners were declined appointment on the ground that posts were not available since all of them were filled up. It was, however, found that out of 30 posts reserved for departmental candidates, to be filled in by direct recruitment, only 24 posts were actually filled up and thus 6 posts in that category were available and there were 6 petitioners before the Court in that matter. **The vital difference noted in that judgment is that unlike Vijay Pal Singh and Ors. V. UOI and Ors.'s case (supra), there was an interim direction in that case.**

21. In our considered view, this judgment is of little assistance to the petitioner who is identically situated with petitioners in Vijay Pal Singh and Ors. V. UOI and Ors.'s case (supra) and not like the petitioners in Narendra Kumar & Ors. v. UOI & Anr.'s case (supra). **It is undisputed that there were no interim orders passed in the case of the petitioner before us while the Division Bench has noted this very fact as the distinguishing fact for**

issuance of directions for appointment as compared to Vijay Pal Singh and Ors. V. UOI and Ors.'s case (supra). Since appointments were made subject to final outcome in Narendra Kumar & Ors. v. UOI & Anr.'s case (supra), the relief was granted to 6 petitioners as there were 6 vacancies existing.

22. *We are thus clearly of the view that not only does the judgment in Narendra Kumar & Ors. v. UOI & Anr.'s case (supra) not support the case of the petitioner but goes against the case of the petitioner as it seeks to carve out a distinguishing feature from Vijay Pal Singh and Ors. V. UOI and Ors.'s case (supra) which is not present in the case of the petitioner herein who is actually similarly situated as the petitioners in Vijay Pal Singh and Ors. V. UOI and Ors.'s case (supra).*

23. *We are thus of the considered view that the petitioner is not entitled to be appointed against any vacancy of 1994 selection process as no such vacancy exists and thus dismiss the writ petition leaving the parties to bear their own costs."*

(emphasis supplied)

12. The Special Leave Petition from the decision in the case of **Virender Singh Panwar** (supra) has been rejected by the Supreme Court and the same has attained finality.

13. Having heard learned counsel for the petitioner and perused the record, we find no merit in the present petition. When the Supreme Court passed the direction in the case of **Vijay Pal** (supra), the Supreme Court consciously conditioned the relief granted to the petitioner before it, by observing that '*in case vacancies are available for appointment on the post*

of Sub Inspector (Executive) in Delhi Police for which the impugned selection was made, the respondent may consider for appointment against these vacancies....’. Sequitur of the aforesaid direction is that if vacancies were not available, the petitioner before the Supreme Court, and other similarly situated persons, were not required to be accommodated on account of their merit as per the aggregate of marks obtained by them in all the papers, and by relaxing the requirement of minimum qualifying marks in Hindi, Paper-III.

14. As noticed above, after the aforesaid decision was rendered by the Supreme Court in the case of **Vijay Pal** (Supra), the petitioner preferred Original Application No. 650/1997. A similar direction was issued in respect of the petitioner by the Tribunal. However, despite the said order being passed on 02.09.1997 in Original Application No. 650/1997, the petitioner was not accommodated for the post of Sub-Inspector (Executive). Pertinently, the petitioner did not agitate against the said non-accommodation and he sought extension of the relief by staking his claim to other vacancies, which arose in later years. That endeavour of the petitioner, however, failed with the dismissal of the second Original Application No. 1191/1999 on 22.11.2000. In those proceedings, it was also clarified that

there were no existing vacancies against which the petitioner and others, who were similarly situated, could be accommodated. Reference was also made to the dismissal of the contempt proceedings before the Supreme Court, upon the Supreme Court being informed about the non-existence of vacancies. Evidently, after the decision in the Original Application No. 1191/1999 rendered on 22.11.2000, the petitioner accepted his fate. It was only when W.P.(C)7591/1999 in the case of **Narendra Kumar** (Supra) came to be disposed of on 22.09.2008, i.e. 8 years later, that the petitioner again decided to take his chances by preferring the aforesaid Original Application. A perusal of the decision in WP(C) 7591/1999 in the case of **Narendra Kumar** (Supra) would show that the facts in that case were materially different inasmuch, as, in the case of those petitioners there were interim orders passed to protect their rights before all the vacancies for which the selection process was initiated vide advertisement dated 05.11.1994, were filled. It is in this background that the High Court observed in **Narendra Kumar** (Supra) as follows:

“We do not agree with this submission because the admitted position in Vijay Pal and others was that there was no interim order passed by the Tribunal or by the Supreme Court for keeping any post vacant or for filling up any of the posts

subject to the final outcome of the original application, or the SLP. However, in the case of the Six Petitioners that we are concerned with, interim orders were initially passed that posts should be kept available for them and if those posts are later to be filled up, it would be subject to the final outcome of the original applications. In that sense, posts were and are available for being occupied by the Petitioners.

This being the position, there is a vital difference between the case of Vijay Pal and the case of Petitioners. In case of Vijay Pal posts were not available, but in the case of Petitioners, posts are available subject to the final orders of the Tribunal.

On merits both the learned counsel were in agreement (before the Tribunal) and now us that the case of the Petitioner is covered by the case of Vijay Pal, Under the circumstances, we have no option but to agree with the contentions of learned counsel for the Petitioners and direct that in terms of the decision of the Supreme Court, the Petitioners should be accommodated in the post of Sub-Inspector (Executive) in the Delhi Police.

As we have noted above, learned counsel for the Petitioners has submitted that six posts are available. If that is so, these Petitioners can be accommodated against those posts. However, if learned counsel for the Petitioners is not correct and sic posts are not lying vacant, then the Respondents have no option but to accommodate the Petitioners in terms of the interim order passed by the Tribunal, which obviously merges with the final order in favour of the Petitioners. This mean that six of the existing; appointees will have to give way to the Petitioners.

The impugned order passed by the Tribunal denying appointment to the Petitioners to the post of Sub-Inspector (Executive) is quashed. Necessary steps be taken by the Respondents to accommodate the Petitioners on or before 31st December, 2008. We make it clear that the Petitioners will not be entitled to any back wages till the date of their appointment. The Petitioners will be accommodated in the batch of 1994 and will

be entitled to count their services for pensionary benefits and notional fixation of pay.” (emphasis supplied)

15. Thus, a perusal of the order passed by this Court itself would show that the Division Bench drew a distinction between two kinds of cases, viz. where interim protection has been granted by the Court/Tribunal before the filling up of the subject vacancies, and others where such interim protection had not been granted. Same appears to be the position in the case of **Virendra Singh Panwar** (supra).

16. In the aforesaid background, Mr. Kaushik has submitted that the petitioner cannot be made to suffer on account of the fact that no interim orders were passed in his Original Application, when similar relief was granted in other cases. If the petitioner was not granted interim protection by the Tribunal, it was for him to agitate his claim for such interim protection by approaching this Court, which he did not do. He must take the consequences for the same. He cannot put the blame on the Court or the Tribunal. He woke up to file his Original Application in question after accepting his fate, that too 8 years after the dismissal of his second Original Application. The same was, therefore, hit by delay, laches and limitation as well.

17. For all the aforesaid reasons, we find no merit in the writ petition.

Dismissed.

VIPIN SANGHI, J

SANGITA DHINGRA SEHGAL, J

FEBRUARY 14, 2019

nn



नित्यमेव जयते