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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10003 OF 2018

Sumit Jayram Kode

..Petitioner

vs.

Union of India & ors.

..Respondents

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Mr. Rahul Walia a/w. Mr. Brijesh Nittekar for petitioner.

Mr. R.R.Shetty a/w. Mr.Ashutosh Gole for respondent Nos. 1 to 4.

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**CORAM : NITIN JAMDAR &
M.S.KARNIK, JJ.**

DATE : 20 JANUARY 2020

P.C.:-

Heard learned counsel for the parties.

2. By this Petition, the Petitioner has sought to challenge the order dated 27 July 2018 in Original Application No.720 of 2017 passed by the Central Administrative Tribunal dismissing the application.

3. The Petitioner filed a Original Application No. 720 of 2017 before the Central Administrative Tribunal, Mumbai, wherein the Petitioner sought to question the advertisements dated 29 April, 2017 - 5 May, 2017, reply of the Respondent –

authorities dated 31 October 2017 and result dated 15 November 2017. The Petitioner also sought directions to the Respondents to issue fresh advertisement as per statutory Rules and Orders. These reliefs have been rejected by the Tribunal by the impugned order.

4. The Petitioner contended that the recruitment in question to the post of Tradesman Mate (TMM) should have been conducted in accordance with revised Recruitment Rules SRO (Statutory Rules and Orders) No.31/2017 which was applicable on the date of advertisement. The primary contention being that the advertisement not being issued in accordance with the Recruitment Rules in force on the date, the proceedings taken in pursuant to such advertisement must be quashed and set aside. The Respondents took a stand that the Petitioner never objected to advertisement on the grounds which are now sought to be argued. The Petitioner never made any representation and has simply relied upon the representation of other candidates. It was contended that only when the Petitioner found himself not included in the short list, that challenge was raised to the advertisement.

5. The Tribunal accepted the contention of the Respondents that the Petitioner acquiesced the process by never taking objection regarding validity of the advertisement, filled in the form and only when it was found in the short list and was not

called for the written test sought to challenge the process. The Tribunal also held that the Petitioner did not join any of the candidates who had called for the written examination and accordingly dismissed the application.

6. As on date, the recruitment process have gone through and candidates have been appointed.

7. The learned counsel for the petitioner submitted that simply by filling a form, it cannot be said that the Petitioner participated in the process and a common representation was made which was referred to by the Respondents – Authorities and the Petitioner did not make a separate Representation since this Representation covered the grievance of the Petitioner and therefore, it cannot be said that there was any acquiescence. So also contended that merely by short listing the candidate no vested right is created and therefore it was not necessary to join any such short list candidates.

8. We have considered the rival contentions. The Tribunal has followed a settled law that having participated in the selection process and not questioning the criterion, the candidate cannot turn around and raise a challenge simply because he is not selected. In this case, the Respondents – Department in question had sent a communication to the Directorate of Advertisement

and Visual Publicity on 11 April 2017. A Gazette was published according to the Respondents sometime around 29 April – 5 May 2017 and the Petitioner when filled in the form was aware of the SSC qualification criteria. Nowhere we find the assertion that a common representation on behalf of all the candidates was made. It appears that the Petitioner is simply taking advantage of the representation made by some other candidate. The short list was published on 15 September 2017 and the Respondents – Authorities, in view of the large response, decided to provide for cut off marks obtained in SSC Examination. After this, when the Petitioner was not called for written examination that the Petitioner moved the Tribunal. Considering the nature of jurisdiction that we would exercise over the decision of the Administrative Tribunal, we do not find that the view taken by the Tribunal is either illegal or perverse so as to warrant interference in the writ jurisdiction. The Writ Petition is, accordingly, rejected.

(M.S.KARNIK, J.)

(NITIN JAMDAR, J.)

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