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

Date of decision: 17th February 2020

+ W.P.(C) 1758/2020

SHRI SUMIT KUMAR Petitioner
Through: Mr. Sachin Chauhan, Advocate.

versus

STAFF SELECTION COMMISSION AND ORS. Respondents
Through: Mrs. Avnish Ahlawat, Standing
Counsel for GNCTD with Mr. Nitesh
Kumar Singh, Advocate for
respondent No.2.

CORAM:
HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S.SISTANI, J. (ORAL)

C.M. No.6139/2020

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) No.1758/2020

1. The present petition is directed against order dated 01.02.2019 passed in CP No.664/2017. The impugned order of the Tribunal reads as under:-

"The compliance affidavit has been filed on 30.01.2019. In view of the same, Contempt Petition is closed. Notices are discharged. No costs."

2. Counsel for the petitioner submits that the impugned order has been passed by the Tribunal without any application of mind since the parent order dated 12.09.2016 passed by the Tribunal has not been complied with by the respondent. Para 7 of the order dated 12.09.2016 is reproduced below:-

"7. Therefore, the OA is allowed and we direct the respondents to appoint the applicant against the post of Sub Inspector in Delhi Police or other Police organisation treating him medically fit as far as eye sight is concerned and if he is otherwise eligible for appointment. This order should be complied within 90 days from the receipt of a certified copy of this order. There shall be no order as to costs."

3. Notice to show cause as to why the petition be not admitted.

4. Counsel for the respondents accepts notice. He submits that the order dated 12.09.2016 passed by the Tribunal was assailed by filing W.P.(C) No.7775/2018, which was withdrawn on 15.01.2020 as the Ministry of Home Affairs was not a party. Paras 2 and 3 of order dated 15.01.2020 withdrawing W.P.(C) No.7775/2018 reads as under:-

"2. The Court notes that the Union of India through Ministry of Home Affairs was in fact not a party before the Central Administrative Tribunal ('CAT') against the order of which the present petition has been filed.

3. In that view of the matter, Mr. Bhardwaj, learned counsel for the Petitioner seeks leave to withdraw the present petition with liberty to initiate other appropriate proceedings in accordance with law, including approaching the CAT with a review petition."

5. Mr. Sachin Chauhan, learned counsel for the petitioner submits that the order of the Tribunal has not been complied with, which is evident upon reading of the compliance-affidavit filed before the Tribunal, paras 4, 5 and

6 of which we reproduce below:-

*"4. That further it is submitted that the dossier of the Applicant was also forwarded to his User Department concerned vide this Office letter no.7/1/2015-ND-II dated 20.02.2017 (Copy thereof enclosed herewith as **Annexure-R/2**). However, the User Department returned the dossier of the Applicant vide their letter dated 25.09.2017 (**Annexure-R/3**) stating that issuing offer of appointment to a candidate having corrected vision after Lasik Surgery is against MHA's medical guidelines circulated by ADG(Medical), CAPFs and would have wide ramifications in times to come. The matter was referred by them to CISF, Dte. (Nodal Force) vide their Letter No.I-14014/50/2016/Rectt. Cell (Vol-V)-727-29 dated 19.05.2017 for further directions.*

5. That the matter was examined by ADG(Medical), CAPFs & AR and it was clarified by ADG(Medical), vide their UO No.E-32012/ADG(Med)/Rectt/DA, 2/17-1048 dated 08.08.2017 that "if the applicant/candidate is within the merit of Delhi Police and there is provision in their medical guideline for Lasik Surgery, he can be considered for the said post, but not for the post of SI in CAPFs & AR". Thus, the Applicant was not found 'FIT' for duty as per Medical Guidelines of User Department Concerned.

*6. That the Applicant was not considered for the post of SI in Delhi Police as he has secured less marks than that of the last selected candidate of same category for the post of SI in Delhi Police. It is further mentioned that the Applicant had scored 290.75 marks (**Annexure R/4**). However, as per final Result Write-up dated 16.03.2016 (**Annexure R/5**) published by the Commission, the last selected candidate of same category to the post of SI in Delhi Police scored 329.5 marks."*

6. Having examined the stand taken by the respondents in paras 4, 5 and 6 we are unable to accept the view taken by the Tribunal that there is substantial compliance of order dated 12.09.2016, the operative portion of which is reproduced above. The Tribunal has categorically directed the

respondents to appoint the applicant (petitioner herein) to the post of Sub-Inspector in Delhi Police or other Police organization treating him medically fit as far as his eye sight is concerned and if he is otherwise eligible for appointment. No doubt that the petitioner is not eligible for appointment in Delhi Police but as far as other Police organizations are concerned, it appears they have rejected the petitioner's case on the same ground in respect of which the O.A. has been allowed, namely that the petitioner has undergone LASIK surgery.

7. Accordingly, the order of the Tribunal is set-aside. The contempt petition is restored to its original number. The matter will be listed before the Tribunal on 5th March 2020.

8. Petition is disposed of in the above terms.

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

FEBRUARY 17, 2020

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