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

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Date of decision: 16.07.2021

+ **W.P.(C) 6611/2021 & CM Nos.20763-64/2021**

GOVT OF NCT OF DELHI AND ANR Petitioners

Through : Ms. Avnish Ahlawat, Adv.

versus

SH PAWAN

..... Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J.: (ORAL)

CM No.20764/2021

1. Allowed, subject to just exceptions.

W.P.(C) 6611/2021 & CM No.20763/2021 [*Application filed on behalf of the petitioners seeking stay on the operation of the impugned order*]

2. This is a writ petition directed against the order dated 20.01.2021, passed by the Central Administrative Tribunal, Principal Bench, New Delhi (in short 'the Tribunal') in O.A. No. 4312/2016.

3. The only issue, which arose for consideration, before the Tribunal was as to: whether the respondent should be denied his right of appointment for the post of Assistant Superintendent, Delhi Prisons (Post Code 38/13) as he had not participated in the Physical Education Test (PET) on the assigned date?

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3.1. The Tribunal has returned a finding of fact that a postal notice dated 11.07.2016, with regard to the date on which the test was to be held, was sent to the respondent. The said notice had set out that the PET was scheduled to be held on 12.07.2016. For the sake of convenience, the said notice is extracted hereafter (See: page 70 of the paper book):

*“No.F.55(21)/Exam-II/DSSSB/2016/18503 Date :
11/07/2016*

*Sub : INTIMATION REGARDING PET FOR THE POST OF
ASSISTANT SUPERINTENDENT IN PRISON DEPARTMENT,
GOVT. OF NCT OF DELHI POST CODE NO.38/13.*

*Physical Endurance Test for the post of Assistant
Superintend, in Prison Department, Govt. of NCT of Delhi is
scheduled to be held on 12.07.2016. Admit Card and detailed
instructions may be down loaded from the official website of
DSSSB i.e. <http://dsssonline.nic.in>.*

*s/d
Office Superintendent (Exam-II) DSSSB*

*PAWAN S/O RAMESH KUMAR
H[dot]NO 441VPO
AUCHANDI DELHI”*

[Emphasis supplied]

3.2. The record shows that, according to the respondent, the aforementioned notice was received by him only on 16.07.2016, that is, after the assigned date for PET had already passed. (See pages 71 and 72 of the paper book). It would be relevant to note that, in this behalf, the Tribunal has returned a finding to the effect that the said assertion, made by the respondent, was not rebutted in the counter-affidavit filed on behalf of the petitioners.

3.3. Despite the aforesaid position obtaining, the petitioners, went ahead and defended their position by arguing that, there were other means *via* which, the respondent was informed as to when PET was to held.

3.4. In this context, Ms. Avnish Ahlawat, who appears on behalf of the petitioners i.e. the original respondents, has drawn our attention to the advertisements taken out in the English and Hindi newspapers. The copies of these advertisements are appended on pages 102 and 103 of the paper book. A perusal of the said advertisements would show that they, generally, adverted to the fact that PET would be held from the “**3rd week of June 2016 onwards**”. Illustratively, the relevant part of an advertisement published, on 27.05.2016, in the Times of India newspaper is extracted hereafter:

“No.F.55(21)/Exam-II/DSSSB/2016/

Dated :

NOTICE

*Physical Endurance Test (PET)/Physical Standards Essential for the post of Fire Operator (71/14), Head Constable (43/13), Forest Guard (68/14), Warder (37/13), Matron (36/13) & Assistant Superintend (38/13) is **scheduled from 3rd week of June, 2016 onwards**. The detailed information and schedule of PET/Physical Standards Essential will be notified soon on official website of DSSSB i.e. www.dsssb.delhigovt.nic.in.*

Sd/-

Dy. Controller of Exam”

[Emphasis supplied]

3.5. Ms. Ahlawat has also taken us through the counter-affidavit filed before the Tribunal. Interestingly, the counter-affidavit, in respect of the post in issue, sets out that the PET was to be held on 13.07.2016. A similar position emerges upon perusal of the notice, which is appended on page 106

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of the paper book. For the sake of convenience, the relevant part of that notice is extracted hereafter:

“No.F.55(21)/DSSSB/Exam-II/2016/

Dated :

NOTICE

In continuation of earlier notice dated 25.05.2016 regarding conduction of PET's for the various posts it is hereby informed that PET's for post of Matron (37/13), Warder (36/13), Assistant Superintendent (38/13) in Delhi Prison Department and Forest Guard (68/14) in Forest & Wild Life Department of Govt. of NCT of Delhi will be held as per following schedule.

Sr. No.	Post & Post code	Schedule	Venue
1.	xxx		
2.	xxx		
3.	<u>Asstt. Supdt. (38/13)</u>	<u>13/07/2016</u>	<u>Chhatrasal Stadium, Moder Town, Delhi-9 (Entry from Gate No.-2)</u>
4.	xxx		

Admit card and detailed instruction can be downloaded from official website of DSSSB i.e. www.dsssb.delhigovt.nic.in.

*Sd/-
Deputy Controller of Exam”*

[Emphasis supplied]

3.6. Besides this, a perusal of the counter-affidavit, filed by the petitioners i.e. the original respondents, before the Tribunal would show that SMS were sent on the registered mobile numbers of the candidates, indicating therein, the date of the PET. Concededly, these messages as well, gave 13.07.2016 as the date on which the PET was to be held. For the sake of convenience, paragraph E of the counter-affidavit is extracted hereafter (See: page 92 of the paper book):

*“E. Individual candidates were once again reminded before the date of their PET, through SMS on their mobile Nos. registered with DSSSB. PET for the candidates for the post of Assistant Superintendent (38/13) **having been scheduled for 13th July, 2016** were sent to these candidates a day before i.e. on 12th July, 2016.....”*

[Emphasis supplied]

3.7. Pertinently, Ms. Ahlawat has not been able to provide a cogent explanation qua the inconsistencies in the dates, with regard when PET was to be held for the subject post code. As noticed above, in the notice sent via post to the respondent, the date for convening the PET was indicated as 12.07.2016, whereas, a perusal of the counter-affidavit, filed by the petitioners before the Tribunal, and the document appended on page 106 of the paper book would show that it was to be held on 13.07.2016. Importantly, the assertion of the respondent that the postal notice dated 11.07.2016 [indicating the date of PET as 12.07.2016], was received by him only on 16.07.2016, has not been rebutted by the petitioners.

4. A reading of the impugned order would show that the Tribunal has allowed the original application preferred by the respondent based on the reasoning contained in paragraph 7 of the said order. The same is extracted hereafter:

“7. The selection undertaken by the DSSSB in the year 2013, remained incomplete by the year 2014. As against the 82 vacancies, only 35 candidates were shortlisted, but many of them did not come up to selection. Several vacancies remained unfilled. Obviously with a view to speed up the process, they have fallen back upon the candidates who have already cleared the written test held on 09.03.2014. Adequate number of candidates were issued the intimation to take part in the PET and the applicant was one of them. The plea of the applicant that he received letter dated 11.07.2016 intimating that the test would be conducted on the next date i.e. 12.07.2016; only on 16.07.2016, remains un rebutted. Even otherwise, it is just unthinkable as to how the written intimation through post can be given for an event which is to take place on the next day. The mere fact that press notes were issued earlier, hardly makes any difference in this behalf. No candidate can take part in a test on the basis of press note or general instructions. One post was already kept vacant on the basis of the interim order. No prejudice would be caused to anyone, if the applicant is subjected to PET even at this stage also.”

[Emphasis supplied]

5. As is demonstrated hereinabove, the petitioners had no clarity as to when the PET was to be conducted for the subject post code. Thus, given the inconsistency in the dates and the view taken by the Tribunal, we are not inclined to interfere with the impugned order.

6. The writ petition is, accordingly, dismissed. Consequently, the interlocutory application shall stand closed. The case papers will be consigned to the record.

RAJIV SHAKDHER, J

TALWANT SINGH, J

JULY 16, 2021

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[Click here to check corrigendum, if any](#)

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