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

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Judgment delivered on: 02.11.2022

+ W.P.(C) 4611/2019

BIMLA

..... Petitioner

versus

COMMISSIONER OF POLICE & ANR

.....Respondents

**Advocates who appeared in this case:**

For the Petitioner: Mr. M.K.Bhardwaj, Advocate.

For the Respondent: Mrs. Avnish Ahlawat, Standing Counsel, Commissioner of Police with Mr. Nitesh Kumar Singh, Mrs. Palak Rohmetra, Ms. Laavanya Kaushik and Ms. Aliza Alam, Advocates.

**CORAM:-**

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

**JUDGMENT**

**SANJEEV SACHDEVA, J. (ORAL)**

1. Petitioner impugns order dated 15.03.2019 whereby the Original Application filed by the petitioner has been dismissed.

2. In February, 2013 an advertisement was issued by the respondent for making appointment against the post of Constable (Executive) Female in Delhi Police. Petitioner applied for participation in the said selection process and took the written test. Petitioner belongs to the OBC category. The final result was declared on 07.08.2014 and petitioner was placed in the waiting list at serial

No.10. Thereafter provisionally petitioner underwent the medical examination for the same.

3. As per the petitioner there were 11 vacancies that remained unfilled due to non-joining of the selected candidates/rejection of candidature of some of the candidates in the select list. Petitioner gave a representation to the respondent dated 11.01.2016 for operating the waiting list and for the purposes of appointment. However, the representation of the petitioner was rejected by communication dated 21.07.2016.

4. Impugning the said rejection subject Original Application was filed.

5. Respondents filed a response in the Original Application stating that when the representation dated 11.01.2016 was received, there were 9 vacancies that had arisen on account of non joining/rejection of candidature of the candidates from the selected list. Since petitioner was at serial No.10 she was not offered the appointment. It was further stated that the respondents had decided not to operate the waiting list for the reason that in the meantime by letter dated 26.03.2015 Ministry of Home Affairs had sought for the vacancy position to be filled up in the selection process in 2016.

6. It was in that view of the matter that vacancies that had arisen as of that date were to be filled up by a fresh selection that the respondents decided not to operate the waiting list.

7. The Tribunal in the impugned order has noticed the stand of the respondent that the respondent decided not to operate the waiting list and the unfilled vacancies were carried forward to the next recruitment year of 2016 and even that process had been completed by time the Tribunal passed the impugned order and the selected candidates had also joined and had even undergone the training for the recruitment.

8. The Tribunal has noticed that there was no proposal on the part of the respondent to select any candidate from the waiting list and the vacancies had been carried forward.

9. An additional short affidavit dated 21.05.2019 has been filed by the respondent which states that a letter had been received from the MHA on 26.03.2015 seeking the information on further vacancies arising upto 20.07.2015 plus anticipated vacancies against retirements upto 31.12.2016. A total of 1195 vacancies were identified which included the 11 vacancies where candidature was cancelled from the subject 2013 selection process.

10. The contention of learned counsel for the petitioner that the waiting list had to be operated upon and the vacancies could not have been carried forward is controverted by learned counsel for the respondent by drawing an analogy from a notification issued by the Delhi Subordinate Services Selection Board dated 13.06.2013 which stipulates that the reserved panel/waiting list would be valid for a

period of one year from the date of declaration of result as also the circular of the services, Department of Government of NCT of Delhi dated 31.05.2013 to a similar extent.

11. We notice that the respondents had decided not to operate the waiting list. Petitioner was at serial No.10 in the waiting list and as on 21.07.2015 only 7 vacancies had arisen. Two vacancies arose on 26.11.2015.

12. Learned counsel for the petitioner relies on a decision of the Supreme Court in *Dinesh Kumar Kashyap & Ors vs South East Central Railway & Ors* in (2019) 12 SCC 798 to contend that the waiting list has to be operated and the vacancies cannot be carried forward to the next year.

13. Said judgment in our view does not support the case of the petitioner for the reason that the Supreme Court in *Dinesh Kumar Kashyap* (Supra) has held that mere selection does not give any vested right to the selected candidate to be appointed. In *Dinesh Kumar Kashyap* (Supra) the Supreme Court was considering the case of non filling up of the vacancies by the department from the select list.

14. Petitioner herein was placed at Serial No. 10 in the waiting list and is not part of the selected candidates in the first round. The Supreme Court held that it is not incumbent upon the employer to fill up all the posts but it must give reason and satisfy the Court that it had some ground for not appointing the candidate who found place in the

replacement panel.

15. In the instant case, in so far as the petitioner is concerned, she was at serial No.10 in the waiting list and as on 11.01.2016 when she had given a representation, only 9 vacancies had arisen as noticed hereinabove and petitioner being at serial No.10 could not have been offered the position even if the respondent had decided to operate the waiting list. It is also noticed that respondent had decided not to operate the waiting list at all and none of the persons in the waiting list have been offered any appointment. The rationale given by the respondent is that they had already intimated the vacancies that had arisen on account of non-joining or rejection of the candidature from the original select list to be included in the selection process for the next year.

16. Tribunal has accepted the explanation as a valid reason for not operating the waiting list. We also find no reason to take a different view. In that view of the matter, we find no merit in the petition or any ground to take a view different from the view taken by the Tribunal.

17. Accordingly, the petition is dismissed.

**SANJEEV SACHDEVA, J.**

**TUSHAR RAO GEDELA, J.**

**NOVEMBER 02, 2022**

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