

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

% *Date of decision: May 09, 2023*

+ **W.P.(C) 6085/2023, CM APPLs. 23889-23890/2023**

VISHESH

..... Petitioner

Through: Ms. Esha Mazumdar, Mr. S. Niket and
Ms. Josmy John, Advocates.

versus

THE COMMISSIONER OF POLICE & ORS. Respondents

Through: Mrs. Avnish Ahlawat, SC GNCTD
(Services) with Ms. Tania Ahlawat,
Mr. Nitesh Kumar Singh, Ms. Palak
Rohmetra, Ms. Laavanya Kaushik and
Ms. Aliza Alam, Advocates

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO,J (ORAL)

1. This petition has been listed before the Court in terms of a supplementary list circulated in the post lunch session.
2. The challenge in this Petition is to an order passed by the Central Administrative Tribunal (in short 'Tribunal') dated May 04, 2023 in O.A. 1331/2023, whereby the Tribunal has stated as under:

1. Learned counsel for the applicant states that the applicant would suffer irreparable loss in case he is not allowed to appear for the Physical Endurance Test (PET) as his request has been rejected by the respondents vide impugned order dated 28.04.2023.

2. Learned counsel for the respondents states that the PET

for the post of Head Constable (Ministerial) are already over and the current round of PET is for departmental candidates and the criteria for examination of this test is different from that for direct recruitment.

3. After hearing learned counsel for both the parties, we find that the main prayer as well as the interim relief are almost the same. Learned counsel for the respondents states that if the interim protection is allowed it will tantamount to allowing the O.A.

4. At this stage, it is seen that the applicant has already completed certain rounds of the selection process and only the PET followed by a typing test remain to be cleared.

5. Issue notice. Mr. Amit Yadav, learned counsel, who appears on advance service, accepts notice on behalf of the respondents. He seeks and is granted two weeks' time to file reply. Applicant may file rejoinder, if any, within a week thereafter.

6. As an interim measure, selection process for the post of Head Constable (Ministerial) shall be subject to outcome to this O.A. At this stage, this is the only interim relief that is feasible.

7. List on 29.05.2023."

3. The grievance of the petitioner before the Tribunal is in respect of the petitioner not being allowed to participate in a Physical Endurance Test (PET). In terms of order dated May 04, 2023, the Tribunal has only issued notice to the respondent in the O.A. and stated that the selection process shall be subject to the outcome of the O.A.
4. The challenge in the Original Application is to an order dated April 28, 2023, whereby the respondents have, pursuant to the directions given by

the Tribunal in earlier round of litigation, decided the request of the petitioner for allowing him to participate in the Physical Endurance Test (PET) to be held on April 28, 2023 by rejecting the request on the ground that the date and time of Physical Endurance Test (PET) is final and no request for a change shall be entertained.

5. The said order has been challenged by the petitioner in a fresh O.A. being O.A. 1331/2023, wherein this impugned order has been passed.
6. The grievance of the petitioner as urged by his counsel is that the Tribunal has only stated that the selection process to the post of Head Constable Ministerial shall be subject to the outcome of the O.A., but it had not considered the prayer of the petitioner to allow him to participate in the Physical Endurance Test (PET) as such a direction would meet the ends of justice inasmuch as in the eventuality the petitioner clears the same, he would go to the next round of selection. It is also her submission that the first round of Physical Endurance Test (PET) was held on March 15, 2023, on which date the petitioner had suffered an injury because of which his mother had sent a communication to the concerned authority requesting him to provide him a further opportunity to appear in the Physical Endurance Test (PET). She had enclosed therewith the medical prescriptions with regard to the medical advice rendered by the Doctor. Her submission is when after March 15, 2023, a further date of April 28, 2023 was fixed for the Physical Endurance Test (PET), the respondents could not have rejected the request of the petitioner for his participation in the Physical Endurance Test (PET). She also submits that the petitioner be granted one opportunity to appear in the Physical Endurance Test (PET), so as

to enable him to seek an appointment with the respondents.

7. The case has been contested by Mr. N.K. Singh by stating that the Physical Endurance Test (PET) with regard to this particular category of post Head Constable (Ministerial) has been completed and no further date has been fixed.
8. He do concede to the submission made by the learned counsel for the petitioner that a further Physical Endurance Test (PET) has been fixed, but for a different category of post, that is for departmental candidates to be held on 9th, 10th and 11th May, 2023.
9. Having heard the learned counsel for the parties and perusing the medical prescriptions enclosed alongwith the Writ Petition, we find that the petitioner could not appear in the Physical Endurance Test (PET) on March 15, 2023 because of the injury. Immediately on the same day, a request has been made by the mother of the petitioner. It is not disputed that a further date of April 28, 2023, was also fixed, for PET, but the petitioner could not appear as his request was not acceded to by the respondents, for the reasons already stated above. According to us, the Tribunal should have in the earlier round of litigation, knowing well that the next date of Physical Endurance Test (PET) is April 28, 2023, allowed the petitioner to participate in the same. Having not done that and the order which has been passed by the respondents rejecting the request of the petitioner to participate in the Physical Endurance Test (PET) on the ground that the date is final is *prima facie* not appealing. In the facts of this case, the respondents do not deny that the petitioner has suffered an injury. They also do not contest the medical prescriptions attached alongwith the Writ Petition. This Court is of the

view that the respondents should be directed to allow the petitioner to participate in the Physical Endurance Test (PET) on the date when the Physical Endurance Test (PET) is to be held for departmental candidates, but in the manner required under the rules for the post to which the petitioner had applied, to enable the petitioner participate in the Physical Endurance Test (PET). This we say so, any delay may cause prejudice to the petitioner. We are told the dates are 9th, 10th and 11th of May, 2023. We accordingly, fix the date for participation of the petitioner in PET as May 11, 2023 at 6:00 am. The said Physical Endurance Test (PET) shall be supervised by the same Medical Board as is entitled to be supervised for the post concerned. The petitioner shall report to the concerned officer at 6:00 AM on May 11, 2023.

10. Further action shall be taken by the respondents as per the result of the Physical Endurance Test (PET).
11. It is made clear that this order is passed in the facts of this case.
12. With the above, the petition is disposed of.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

MAY 9, 2023/akc