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

+ W.P.(C) 1063/2023

+ W.P.(C) 1064/2023

KAUSHAL SANGWAN

..... Petitioner

Through: Mr.Ashok Kr.Soni with Ms.Priyanka
Soni, Adv.
Petitioner in person.

versus

DIRECTOR GENERAL OF AUDIT (INFRASTRUCTURE), DELHI
AND ANR.

COMPTROLLER AND AUDITOR GENERAL OF INDIA AND
ORS. Respondents

Through: Dr.S.S.Hooda, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

28.03.2024

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CM APPL. 18775/2024 -E-hearing (Petr.). in W.P.(C) 1063/2023

CM APPL. 18750/2024 -E-hearing (Petr.). in W.P.(C) 1064/2023

1. These are applications filed by the petitioner seeking early hearing of the writ petitions.
2. Learned counsel for the petitioner submits that on 26.02.2024, this Court had, after hearing the parties at some length, opined that the petitioner deserved to be reinstated in service with notional seniority



along with pay protection, subject to his filing an undertaking that he will appear in the DCT examination as and when next held by the respondents. However, at the request of learned counsel for the respondents, the matter was adjourned by granting him time to obtain instructions. He, therefore, prays that the petitions be taken up for consideration today itself and disposed of based on the findings recorded on 26.02.2024.

3. Issue notice. Learned counsel for the respondents accepts notice and submits that he has no objection to the applications being allowed and the petitions being taken up for consideration.
4. Having perused the order dated 26.02.2024, we are of the view that the applications deserve to be allowed. The same are, accordingly, allowed and the writ petitions are taken up for disposal today itself. The next date fixed in the matters, accordingly, stand cancelled.
5. The applications stand disposed of.

W.P.(C) 1063/2023 & W.P.(C) 1064/2023

6. The present writ petitions under Article 226 & 227 of the Constitution of India seeks to assail the order dated 22.11.2022 passed by the learned Central Administrative Tribunal (Tribunal) in O.A. No.1627/2022. Vide the impugned order, the learned Tribunal has rejected the petitioner's challenge to the order dated 10.06.2022, vide which he was dismissed from service on account of his failure to appear in the Departmental Confirmatory Test (DCT) held by the respondent no.2.
7. On 26.02.2024, this Court after hearing the parties at length had come



to the conclusion that the petitioner had remained under a *bonafide* relief that he having cleared the DCT examination earlier, was not required to clear the same again, and therefore ought to be reinstated in service by granting him another opportunity to appear in the examination. The relevant findings as contained in para no. 4 of the order 26.02.204 reads as under:

“Having considered the submissions of learned counsel for the parties, we are of the view that even if the respondents’ plea that the petitioner was bound to again appear in the DCT after his mutual transfer, were to be accepted, the fact remains that the petitioner had cleared the said exam while working with the respondent no.3. It is, therefore, evident that the petitioner, all along, remained under a bonafide belief that he, having cleared the DCT exam, while working with respondent no.3, was not required to again appear in the said examination. We, are, therefore of the considered opinion that a compassionate view is required to be taken in the present matter as the petitioner, who remained under a bonafide belief that he will not be required to appear in the DCT exam merely because he was transferred from one department to another, should not be penalised. We, therefore, deem it appropriate to direct the respondents to reinstate the petitioner in service with notional seniority and pay protection subject to his filing an undertaking that he will appear in the DCT exam as and when, next held. This would however be subject to the respondent granting him three opportunities to clear the said examination within one year.”

8. Today, Dr.S.S.Hooda, learned counsel for the respondents submits that the respondents are neither willing to reinstate the petitioner nor inclined to grant him any further opportunity to clear the DCT examination as he had wilfully refused to appear in the examination when granted an opportunity, especially when the examination,



between 26.10.2021 and 28.10.2021, was fixed for him alone. He further submits that the petitioner having undertaken at the time of seeking mutual transfer from Goa to New Delhi that he will not be claiming any benefit of his past service in the office of the Accountant General, Goa, he could not have urged that he having cleared the DCT examination while working as an Auditor in Goa, should in violation of the Circular dated 06.06.2013 be exempted from appearing in the said examination after his transfer to New Delhi.

9. Having considered the submissions of learned counsel for the parties, even though we are inclined to agree with the respondents that in view of the specific provision of the Circular dated 06.06.2013, clearly prescribing that in the case of mutual transfer, the transferred employee will have to appear in the requisite departmental examination in the new office, the petitioner was required to appear in the DCT examination again after his transfer to New Delhi. This, however, does not change the position that the petitioner's belief that he having cleared the DCT examination once, would not be required to appear in the said exam again at the transferred place was *bonafide*. Furthermore, the petitioner has, before us, undertaken to now appear in the said examination without any demur and has also stated that in case he is not able to qualify the same despite three opportunities, he will have no objection to his services being terminated without any notice.

10. In the light of the aforesaid, as already held on 26.02.2024, while we are in agreement with learned counsel for the respondents that the petitioner was required to once again clear the DCT examination after



his transfer to New Delhi, taking into account the peculiar facts of the present case, we are of the opinion that a compassionate view ought to be taken and the petitioner should be granted further opportunities to appear in the said examination after being reinstated in service. Taking into account, the respondents own stand that every employee is granted multiple opportunities to clear the DCT examination, we are of the view that the petitioner should be granted three chances to clear the said examination within a period of one year. We, accordingly, set aside the impugned order dated 03.06.2022 and direct the respondents to reinstate the petitioner in service within six weeks whereafter, he will be granted three opportunities to clear the DCT examination as and when held by the respondents and if necessary by holding a special exam for him as is claimed to be held in the past as well.

11. However, taking into account the fact that the petitioner's refusal to appear in the DCT examination after his transfer to New Delhi was in violation of the circular dated 06.06.2013, we direct that the petitioner will not be entitled to any backwages for the period he has remained out of service. He will, therefore, be entitled to wages only from the date he rejoins service along with notional seniority and pay fixation at par with his batchmates. This would, however, be subject to the petitioner filing an undertaking within 2 weeks, that in case he is not able to qualify the DCT examination within the time granted by this Court, he will not have objection if his services are terminated without any notice.



12.The petitions are allowed in the aforesaid terms.

REKHA PALLI, J

RAVINDER DUDEJA, J

MARCH 28, 2024

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