



\$~39

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) 3936/2024

ABHISHEK TIWARI

..... Petitioner

Through: Mr.Ranu Purohit & Ms.Aditi Anil
Dani, Advs.

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr.Ravi Sharma, SPP, CBI with
Mr.Anjani Kumar Rai, Mr.Praphull Kumar &
Ms.Madhulika Rai Sharma, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

%

15.03.2024

CM APPL. 16207/2024

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 3936/2024 & CM APPL. 16208/2024 (directions)

3. The present writ petition under Articles 226 & 227 of the Constitution of India has been filed seeking the following reliefs:-

- a. *“There arises a grave urgency in the matter and therefore the Petitioner undertakes to produce a copy of the said order dated 12.03.2024(The order not being uploaded yet) in O.A. No. 1056 of 2024 as and when it is uploaded by the Hon'ble Central Administrative Tribunal or as and when otherwise directed by this court.*
- b. *Issue appropriate writ/direction to the Respondents to permit the Petitioner to appear in the CBI (Deputy*



Superintendent Of Police), Limited Departmental Competitive Examination 2023 to be held by Respondent No.2 on 16th & 17th March, 2024 subject to final adjudication of the O.A. No. 1289/ 2022 before the Hon'ble Central Administrative Tribunal;

- c. Issue appropriate writ/directions to the Respondents to accept the application of the Petitioner to appear in the CBI (Deputy Superintendent Of Police), Limited Departmental Competitive Examination 2023 in such mode and manner (online and/or physical) as would be expedient;*
- d. Pass any such other order / directions as this Hon'ble Court deems fit and proper in the facts and circumstances of the case.”*

4. Learned counsel for the petitioner submits that even though the order dated 12.03.2024, vide which the petitioner's prayer seeking provisional permission to appear in the CBI (Deputy Superintendent of Police) Limited Departmental Competitive Examination has been rejected, a copy of the said order has not yet been uploaded and therefore, the same could not be filed. She, however, submits that since the Departmental Examination is slated to be held tomorrow, the petitioner has been compelled to approach this Court without a copy of the impugned order. She submits that the petitioner is hopeful that he will succeed in his pending O.A. No.1056/2024 wherein he has challenged his dismissal from service and therefore prays that he may be granted provisional permission to appear in the said examination
5. On the other hand, learned counsel for the respondent, who appears on advance notice, opposes the writ petition and contends that the petitioner being a dismissed employee, cannot at this stage, be granted permission to appear in the Departmental Promotional Examination,



which is meant only for serving employees. Furthermore, an FIR is pending against the petitioner and therefore even as per the applicable guidelines, he is not eligible to appear in the aforesaid Departmental Examination which provides that only an employee with a clean service record will be permitted to appear in the exam. He, therefore, prays that the writ petition be dismissed.

6. Having considered the submissions of learned counsel for the parties and perused the record, we are of the view that merely because the petitioner believes that he has a *prima facie* good case and is likely to succeed before the learned Tribunal in his pending challenge to the dismissal order, he cannot be extended the privileges which are available to the serving employees. It is an undisputed position before us that only serving employees are entitled to appear in the Departmental Examination for promotion and, therefore, we see no reason as to why the petitioner as a dismissed employee should be permitted to appear in the exam. Furthermore, learned counsel for the petitioner has also not denied that an FIR is still pending against the petitioner and therefore as on date he would not be eligible to appear in the Departmental Promotional Examination as per the applicable guidelines.
7. For the aforesaid reasons, we find no reason in the petitioner's prayer for provisional permission to appear in the Departmental Examination which is scheduled to be held tomorrow. We however clarify that in case the petitioner were to succeed in O.A. No.1056/2024, the respondent would consider permitting the petitioner to appear in the next Departmental Examination for promotion to the said post, subject



to his fulfilling the prescribed eligibility criteria.

8. The writ petition is, accordingly, disposed of in the aforesaid terms.

REKHA PALLI, J

RAJNISH BHATNAGAR, J

MARCH 15, 2024

kk