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

+ W.P.(C) 5715/2022

SUNIL KUMAR AND ORS

.....Petitioners

Through: Mr.Amit Chawla, Adv.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr.Farman Ali, SPC with Ms.Usha
Jamnal, Adv. for UOI Mr.Devender Singh, Dy.
JAG & Mr.Manjeet Kumar Yadav, CT/GD.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

10.07.2024

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1. The petitioners, who were aspiring to join the Indo-Tibetan Border Police (ITBP) as Constable(Tradesmen) in response to the advertisement issued on 02.08.2017 for appointment against 303 posts of Constables (Tradesmen), have approached this Court seeking the following reliefs:-

“(a) To direct the Respondent to produce the original records of the case before this Hon'ble Court;

(b) To declare the list of selected candidates dated 30/06/2021, final list dated 21/10/2021 as null and void (to the extent of illegalities committed therein) and quash and set aside the same and to issue further directions to the respondents to issue a fresh list adhering to the conditions as laid down in the advertisement and exercising transparency and grant appointment to the Petitioners herein if they are otherwise found eligible;



(c) Pass any other order in favour of the Petitioners as deemed appropriate in the facts and circumstances of this case;

(d) Award cost of this writ petition”

2. Upon the respondents issuing an online advertisement on 02.08.2017 inviting applications for filling up 303 posts of Constable (Tradesmen), the petitioners applied for the same. After they were declared successful in the Physical Efficiency Test/ Physical Standard Test, PET/PST, the petitioners were directed to appear in the computer based test. However, when the list of shortlisted candidates was issued, the petitioners realised that they have not been selected and, therefore, not called for the next stage i.e. medical examination and verification of documents.
3. Being aggrieved, the petitioners approached this Court by way of W.P.(C)11817/2021 assailing the list of shortlisted candidates issued by the respondents on 30.06.2021. The petition was disposed of by this Court on 21.10.2021 with a direction to the respondent no.2 to treat the same as a representation and pass a reasoned order thereon within eight weeks. Pursuant to this order, the respondents passed an order rejecting the petitioner's representation on 08.12.2021 and thereafter issued a final list of selected candidates.
4. As the petitioners were still not satisfied they have approached this Court by way of the present petition with a grievance that the respondents have adopted different methodologies for selecting candidates for different trades, which they contend, is arbitrary. The petitioners further assert that though they had performed very well



both in the trade test as also in the written examination, they have been wrongly ousted as the respondents had deliberately awarded them lower marks in the trade test. They, therefore, pray that the select list be quashed and the respondents be directed to appoint the petitioners.

5. Per contra, learned counsel for the respondents seeks dismissal of the writ petition by contending that the petitioners have made absolutely baseless allegations of the respondents having deliberately awarded them lower marks in the trade test. He contends that the petitioners having participated in the selection process without any demur, cannot now be permitted to urge that the selection procedure followed by the respondents was incorrect or arbitrary. The very fact that the petitioners have approached this Court only after they realized that their name was not included in the selection list based on their performance in itself shows that they have no grievance against the procedure adopted by the respondents. 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 inclined to agree with the respondents that the petitioners having participated in the selection process without any demur cannot be permitted to now assail the procedure adopted by the respondents for the selection. If the petitioners had any grievance against the procedure being adopted by the respondents for selection or regarding non-disclosure of the marks obtained by them in the trade test, they should have raised the grievance at that stage itself. In this regard reference may be made



to a recent decision in ***Tajvir Singh Sodhi v. State of Jammu & Kashmir 2023 SCC OnLine SC 344*** ,wherein the Apex Court in para 69 observed as under:-

“69. It is therefore trite that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. In other words, simply because the result of the selection process is not palatable to a candidate, he cannot allege that the process of interview was unfair or that there was some lacuna in the process. Therefore, we find that the writ petitioners in these cases, could not have questioned before a Court of law, the rationale behind recasting the selection criteria, as they willingly took part in the selection process even after the criteria had been so recast. Their candidature was not withdrawn in light of the amended criteria. A challenge was thrown against the same only after they had been declared unsuccessful in the selection process, at which stage, the challenge ought not to have been entertained in light of the principle of waiver and acquiescence.”

7. We have also considered the plea of the petitioners that the respondents have deliberately granted them lower marks in the trade test, but find that this bald plea is not substantiated in any manner. It is evident that the petitioners after realizing that they were unsuccessful in the recruitment process, have sought to raise these grounds without any foundation being laid for the same. We, therefore, find no reason to accept this plea of the petitioners that they were deliberately awarded lower marks in the trade test.



8. For the aforesaid reasons, the writ petition being meritless is disposed of.

REKHA PALLI, J

SHALINDER KAUR, J

JULY 10, 2024

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