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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 12.02.2024*

+ W.P.(C) 7560/2018

SH. TARUN KATARIA

..... Petitioner

Through: Mr. Rajesh Chauhan, Advocate
(through video-conferencing)

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Dev. P.Bhardwaj, CGSC for UOI
with Ms. Anubha Bhardwaj,
Advocate.**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)**

1. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 06.04.2018 passed by the learned Central Administrative Tribunal in O.A No. 1664/2016. Vide the impugned order, the learned Tribunal has rejected the original application preferred by the petitioner wherein he had sought appointment to the post of Junior (ECG) Technician.
2. At the outset, the brief factual matrix as is necessary for adjudication of the present petition may be noted.
3. On 27.05.2013, the respondent no.3/Dr. RML Hospital issued an advertisement inviting applications for filling up 15 posts of Jr. (ECG) Technician out of which, 4 posts were reserved for OBC category candidates, to which category, the petitioner belongs. As per



the 'Scheme of Selection' referred in the aforesaid advertisement, the selection to the posts of Jr. (ECG) Technician was to be made only on the basis of an interview which was to be conducted by a 'Selection Committee' constituted by the respondent no. 3-hospital. It was further clarified in the 'Scheme of Selection' that in case the number of applications received for a particular post were very large, a shortlisting criteria for calling candidates for interview may be adopted.

4. It is the common case of the parties that instead of conducting the interviews, the respondents decided to hold a written examination for the aforesaid post, which exam was held on 14.11.2014 in which the petitioner duly appeared. After the written test, the petitioner was called for a skill test in which he appeared on 29.02.2016. When the results for this selection process were declared on 26.04.2016, the petitioner realized that he had not been selected and therefore approached the learned Tribunal in May 2016 by way of O.A No. 1664/2016 which has been dismissed under the impugned order.

5. Being aggrieved, the present petition has been filed.

6. In support of the petition, learned counsel for the petitioner submits that the impugned order is wholly perverse as the learned Tribunal has failed to appreciate that once the respondents had vide their advertisement dated 27.05.2013 notified that the selection would be made only the basis of the interview, they could not change the rules of the game and decide to hold the selection on the basis of the written examination and skill test. In support of this plea, he places reliance on the decision of the Apex Court in *K. Manjusree v. State of*



A.P., (2008) 3 SCC 512 and contends that a new selection criteria cannot be introduced midway. He, therefore, prays that the selection process be quashed and the respondents be directed to hold a fresh selection process based on interview alone.

7. On the other hand, learned counsel for the respondents vehemently opposes the petition and submits that the petitioner having without any reservation participated in the selection process by appearing not only in the written exam but also in the skill test, cannot now be permitted to challenge the same. He further submits that the decision of the respondents to discontinue the process of interviews for recruitment to junior level post is in consonance with the decision taken by the DoPT and subsequently, notified vide OM dated 29.12.2015.

8. In order to appreciate the rival submissions of the parties, it may be apposite to refer to para 11 of the impugned order from which it transpires that the learned Tribunal has rejected to the OA primarily on the ground that the petitioner had without any demur participated in the selection process and could not now be permitted to challenge the same. The same reads as under:

*“11. It is also well settled proposition of law that an unsuccessful candidate cannot challenge the advertisement and procedure of selection after participating in the same. In this regard, learned counsel for respondent no.4 relied on the judgment of Hon’ble Supreme Court in **Ramesh Chandra Shah vs. Anil Joshi, (2013) 11 SCC 309** wherein it is held as under:*

"18. It is settled law that a person who



consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome.

19. One of the earliest judgments on the subject is Manak Lai V. Dr. Prem Chand AIR 1957 SC 425. In that case, this Court considered the question whether the decision taken by the High Court on the allegation of professional misconduct leveled against the appellant was vitiated due

to bias of the Chairman of the Tribunal constituted for holding inquiry into the allegation. The appellant alleged that the Chairman had appeared for the complainant in an earlier proceeding and, thus, he was disqualified to judge his conduct. This Court held that by not having taken any objection against the participation of the Chairman of the Tribunal in the inquiry held against him, the appellant will be deemed to have waived his objection. Some of the observations made in the judgment are extracted below:

" If, in the present case, it appears that the appellant knew all the facts about the alleged disability of Shri Ghhangani and was also aware that he could effectively request the learned Chief Justice to nominate some other member instead of Shri Ghhangani and yet did not adopt that course, it may well be that he deliberately took a chance to obtain a report in his favour from the Tribunal and when he came to know that the report had gone against him he thought better of his rights and raised this point before the High Court for the first time.



From the record it is clear that the appellant never raised this point before the Tribunal and the manner in which this point was raised by him even before the High Court is somewhat significant. The first ground of objection filed by the appellant against the Tribunal's report was that Shri Chhangani had pecuniary and personal interest in the complainant Dr Prem Chand. The learned Judges of the High Court have found that the allegations about the pecuniary interest of Shri Chhangani in the present proceedings are wholly unfounded and this finding has not been challenged before us by Shri Daphtary. The learned Judges of the , High Court have also found that the objection was raised by the appellant before them only to obtain an order for a fresh enquiry and thus gain time.....

.....Since we have no doubt that the appellant knew the material facts and must be deemed to have been conscious of his legal rights in that matter, his failure to take the present plea at the earlier stage of the proceedings creates an effective bar of waiver against him. It seems clear that the appellant wanted to take a chance to secure a favourable report from the Tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point."

20. In Dr. G. Sama v. University of Lucknow (1976) 3 SCC 585, this Court held that the appellant who knew about the composition of the Selection Committee and took a chance to be selected cannot, thereafter, question the



constitution of the Committee.

21. In Om Prakash Shukla v. Akhilesh Kumar Shukla (1986) Supp. SCC 285, a three-Judge Bench ruled that when the petitioner appeared in the examination without protest, he was not entitled to challenge the result of the examination. The same view was reiterated in Madan Lai v. State of J & K(1995) 3 SCC 486 in the following words:

"The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla V. Akhilesh Kumar Shukla it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."



22. In *Manish Kumar Shahi v. State of Bihar* (2010) 12 SCC 576, this Court reiterated the principle laid down in the earlier judgments and observed:

"We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition."

23. The doctrine of waiver was also invoked in *Vijendra Kumar Verma v. Public Service Commission, Uttarakhand and others* (2011) 1 SCC 150 and it was held:

"When the list of successful candidates in the written examination was published in such notification itself, it was also made clear that the knowledge of the candidates with regard to basic knowledge of computer operation would be tested at the time of interview for which knowledge of Microsoft Operating System and Microsoft Office operation would be essential. In the call



letter also which was sent to the appellant at the time of calling him for interview, the aforesaid criteria was reiterated and spelt out. Therefore, no minimum benchmark or a new procedure was ever introduced during the midstream of the selection process. All the candidates knew the requirements of the selection process and were also fully aware that they must possess the basic knowledge of computer operation meaning thereby Microsoft Operating System and Microsoft Office operation. Knowing the said criteria, the appellant also appeared in the interview, faced the questions from the expert of computer application and has taken a chance and opportunity therein without any protest at any stage and now cannot turn back to state that the aforesaid procedure adopted was wrong and without jurisdiction."

24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents."

9. In the light of the aforesaid observations of the learned Tribunal, we have given our thoughtful consideration to the rival submissions of the parties but find absolutely no reason to interfere with the impugned order. In our view, the learned Tribunal was



justified in holding that the once the petitioner had voluntarily participated in the selection process, he could not be permitted to challenge the same after he emerged unsuccessful. If the petitioner had any grievance against the change of the selection criteria he should have raised a grievance at that stage itself. In this regard, reference may be made to a recent decision in **Tajvir Singh Sodhi vs. State of Jammu Kashmir, 2023 SCC OnLine SC 344** wherein the Apex Court in para 69 held 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.”

10. We have also considered the decision in **K. Manjusree (supra)** but find that the same would not be applicable to the facts of the present case. In the instant case, though appointments to the post of Junior EGC Technician, a Group C post, were initially envisaged to



be made through interview, taking into account the subsequent decision of the DoPT, it was decided to conduct selection by way of written test followed by a skill test, which criteria was given wide publicity. As noted above, the petitioner without any demur appeared not only in the written exam but also in the skill test. However, he obtained only 29 marks in the written test as against the cut off marks of 35 in the OBC category and was, therefore, not selected. Having taken his chance by appearing both in the written exam and skill test, the petitioner cannot now be heard to complain that the selection criteria was changed midway.

11. For the aforesaid reasons, we find no infirmity with the impugned order. The writ petition being meritless, is dismissed.

REKHA PALLI, J

RAJNISH BHATNAGAR, J

FEBRUARY 12, 2024/ib