

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 3735/2014
MA 1852/2016

Reserved on 26.02.2019
Pronounced on 08.03.2019

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N.Terdal, Member (J)

Amulya (Roll No. 606093)
Recruit SI (Ex.) in Delhi Police-2009
Phase-II,
Constable (Exe) in Delhi Police
PIS No. 28030359, Aged about 32 years
S/o Sh. Ram Pal Singh
R/o D-23, First Floor, East Jyoti Nagar,
Shahdara, Delhi-93.

... Applicant

(By Advocate: Mr. Anil Singal)

VERSUS

1. Govt. of NCT of Delhi
Through Commissioner of Police,
PHQ, I.P. Estate, New Delhi.
2. Joint Commissioner of Police (HQ),
PHQ, I.P. Estate, New Delhi.

... Respondents

(By Advocate: Ms. Asiya Khan with Ms. Rashmi Chopra)

ORDER

Hon'ble Mr. S.N.Terdal, Member (J):

We have heard Mr. Anil Singal, counsel for applicant and Ms. Asiya Khan with Ms. Rashmi Chopra, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

"(1) To set aside and quash the Order dt. 18.9.2014 and direct the respondents to consider the applicant against "UR Category" 155 vacancies for the post of SI (Exe.) in the Recruitment-2009 (Phase-II) in which he has qualified and appoint him to the post of SI (Exe.) with all consequential benefits since he secured 158 marks more than last "UR Category" candidate who was selected particularly when Sh.Satish Kumar having 156 marks have been already appointed in Jun 2014.

- (3) To award costs in favour of the applicant and pass any order or orders which this Hon'ble Tribunal may deem just & equitable in the facts & circumstances of the case."

3. The relevant facts of the case are that in response to the recruitment advertisement of 2009 (phase-II) the applicant applied under the departmental general category for the post of S.I. (Exe.) in Delhi Police and secured 158 marks in the written test, but the minimum cut off marks for the departmental general category was 163 marks, as such he could not be selected. The case of the applicant is that for UR category, the cut off marks was 155 and as stated above he had secured 158 marks, as such he should have been selected under UR category. He had made representation to the respondents in the year 2010. His further case is that some similarly situated candidates had approached the Tribunal unsuccessfully and thereafter in R.P.No.379/2013 in W.P (C) 5220/2012, R.P. No. 353/2013 in W.P (C) 5033/2012, R.P. No. 354/2013 in W.P (C) 5084/2012 and R.P.No. 351/2013 in W.P (C) 5226/2012, the Hon'ble High Court vide its order dated 22.08.2013 allowed their Review petitions granting the reliefs prayed for in their WPs and as the said review petitions was disposed of on 22.08.2013, the applicant approached the Tribunal in 2014 seeking the same relief.

4. The counsel for the applicant vehemently and strenuously contended that the said order dated 22.08.2013 passed by the Hon'ble High Court is judgment in rem and had laid down the law and that the respondents should have selected and appointed the applicant against the post meant for UR category. The counsel for the respondents equally vehemently submitted that the recruitment is of the year 2009 and that the unfilled vacancies were carried forward to the next recruitment of

2012 and in so far as the applicants in the above stated review petitions before the Hon'ble High Court had filed their respective petitions before the unfilled vacancies were carried forward and that the order of the Hon'ble High Court dated 22.08.2013 is not a judgment in rem and it was confined only to the review applicants before the High Court and as such the applicant is a fence-sitters and he is not entitled for any relief. The counsel for the respondents further submitted that in an identical case of **Harion, Head Constable Vs. The Commissioner of Police and Ors** (Writ Petition (C) No. 10489/2015, this Tribunal dismissed the OA which has been upheld by the Hon'ble High Court vide order dated 18.05.2016, the operative portion of which is extracted below:-

"11.Law of limitation, sometimes perceived as technical and iniquitous, serves an important public purpose. It ensures certainty and negates ill effect when settled positions are sought to be altered. At the distinct point of time in 2014, about four years after the results of the 2009 examination were declared, the said exercise would create unforeseen complications and possibly litigation on issues like seniority. The open category candidates selected in the 2009 Examination have already joined. They are not impleaded. Question of seniority etc. with those selected in 2009 and 2012 would be an issue. This is not the case of an illiterate or denied person not aware of his rights, who for economic and social reasons possibly had limited resources or had hesitated in approaching courts/tribunals/authorities."

He further submitted that the law laid down by the Hon'ble Supreme Court in the case of **State of Uttar Pradesh and Others Vs. Arvind Kumar Srivastava and Others** (2015) 1 SCC 347) at para 22.2. and 22.3 is squarely applicable to the facts of this case. Para 22.2 and 22.3 of the judgment are extracted below:

"22.2.....However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had

approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

5. In view of the facts and circumstances of the case and the analysis made above and in view of the law laid down by the Hon’ble Supreme Court extracted above, this OA is dismissed. No order is required to be passed in MA 1852/2016. No order as to costs.

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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