



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

% *Reserved on: August 29, 2024*

Pronounced on: September 05, 2024

+ W.P.(C) 7241/2020

VIJAY KAUSHIKPetitioner

Through: Mr. Ankur Chhibber, Advocate

Versus

COMMISSIONER OF POLICERespondent

Through: Mr. Vineet Dhanda, CGSC with
Mr. Abhishrut Singh & Ms. Aishani
Mohan, Advocates

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

JUDGMENT

SURESH KUMAR KAIT, J

1. The present petition has been filed seeking issuance of a writ of certiorari for quashing the judgment and order dated 23.05.2011 and 07.09.2020 passed by the learned Central Administrative Tribunal (the 'Tribunal') in OA No.2322/2009 and Review Application No.01/2019, respectively, which were preferred by the petitioner.

2. In addition, a direction is sought to the respondent to give petitioner notional appointment to the post of Sub Inspector (Male) (Exe.) for the recruitment examination held in the year 2007, with consequential benefits.



3. The facts in brief of the present petition are that pursuant to an advertisement/notification made by the respondent for recruitment to the post of Sub Inspector (Male) in Delhi Police, the petitioner applied under Unreserved (UR) category. He participated in the selection process, however, did not find his name in the select list. He sought information under Right to Information Act, 2005 whereby he got to know that he had scored 127 marks and cut off in respect of UR category was 128 marks.

4. Having regard to the fact that in the said examination, 692 posts were sought to be filled out of which 281 posts were under UR category and only 616 posts were filled; petitioner preferred OA No.543/2009 before the learned Tribunal on the ground that all 692 vacancies should have been filled from the eligible candidates. The grievance of petitioner was that four candidates, who had obtained less cut off marks determined in the said category, were appointed even after declaration of result and conclusion of selection process.

5. The respondent, in its response, pleaded before the learned Tribunal that the unfilled vacancies were carried forward to the next recruitment and stands notified. The petitioner thus withdrew OA No.543/2009 with liberty to challenge the notification of the year 2009 processing fresh selection for the post of SI (Executive).

6. Accordingly, the petitioner preferred OA No.2322/2009 before learned Tribunal challenging the notification of the year 2009 to the extent that the said notification carried forward unfilled vacancies pertaining to the year 2007 and seeking that he should be appointed to the post of Sub Inspector (Exe.) in respect of the notification of the year 2007.



7. The petitioner pleaded before the learned Tribunal in OA No.2322/2009 that against 281 notified vacancies only 267 candidates had joined and the last candidate had obtained 128 marks, whereas the petitioner had obtained 127 marks. The petitioner also pleaded that 14 posts were left unfilled and 17 candidates had left the job within one year of their joining and thereby there were 31 unfilled vacancies which could have been filled up from the eligible candidates, as such, the petitioner, who was at No.17 in the waiting list. The petitioner also pleaded before the learned Tribunal that he should have been considered as a “Departmental Candidate” as out of 36 posts reserved for departmental candidates, 6 were unfilled.

8. The learned Tribunal vide order dated 23.05.2011, dismissed petitioner’s OA No.2322/2009, holding that four candidates appointed in the departmental quota were on different factual circumstances.

9. During adjudication of OA No.321/2007, the petitioner participated in the selection process pertaining to the year 2009 and got selected and appointed to the post of Sub Inspector (Exe.) on 30.09.2009 and thus, in the said OA, he confined his relief for the purpose of fixation of his seniority. The learned Tribunal vide impugned judgment dated 23.05.2011 dismissed the OA preferred by the petitioner.

10. Thereafter, the petitioner preferred a Review Application dated 04.07.2011 seeking review of judgment dated 23.05.2011, however, still as the same was pending till November, 2018; petitioner preferred W.P.(C) 12429/2018 before this Court seeking a direction to the learned Tribunal to decide his review application.



11. This Court vide order dated 20.11.2018 disposed of the said petition with direction to the learned Tribunal to decide petitioner's review application within three months.

12. Pursuant to aforesaid order dated 20.11.2018, the Registry of learned Tribunal informed the petitioner that his review application was untraceable and he should file a fresh review application.

13. In response to the review application, the respondent admitted that next four departmental candidates were appointed in respect of four unfilled departmental posts.

14. Learned Tribunal vide order dated 07.09.2020 dismissed the review application filed by the petitioner by imposing a cost of Rs.10,000/-. Petitioner has, thus, preferred the present petition seeking setting aside of impugned judgment dated 23.05.2011 and order dated 07.09.2020 passed by the learned Tribunal on the ground that 36 posts were reserved for departmental candidates, and 6 post out of said 36 posts, were unfilled at the time of declaration of select list. Much after declaration of select list, all aforesaid 6 posts were filled up by the department by declaring the next 6 departmental candidates (in order of merit) as selected candidates and by even lowering the so-called cut off marks prescribed for their respective category.

15. The grievance of petitioner is that the same relief is being denied to him which is highly discriminatory, arbitrary and falls foul of Article 14 of Constitution of India. The petitioner is, thus, seeking parity with six departmental candidates who got appointed as against the unfilled vacancies, which had arisen due to either resigning of candidates, not joining training,



or by lowering the so-called cut off marks prescribed for their category etc. after two-three years of selection process, whereas similar relief was denied to the petitioner.

16. During the course of hearing, learned counsel appearing on behalf of petitioner submitted the learned Tribunal has fallen in error in observing that the petitioner filled OA No.2322/2009 after getting selected as Sub Inspector (Exe.) on 30.09.2009 under notification of the year 2009. Learned counsel submitted that in the subsequent recruitments, including the recruitment of the year 2009, the respondent had made a provision of waiting list to the extent of 10% of the candidates whereas for the year 2007, there was no waiting list. The petitioner by way of present petition is only seeking seniority in terms of notification issued in the year 2007.

17. The respondent on the other hand, has averred that learned Tribunal has rightly dismissed the OA and RA preferred by the petitioner being devoid of merits. The respondent averred that direct recruitments to the post of Sub Inspector (Exe.) Male in Delhi Police is made under Rule 7 of Delhi Police (Appointment & Recruitment) Rules, 1980 on the basis of exam conducted by the Staff Selection Commission on yearly basis. In all recruitments, reservation to SC/ST/OBC and Ex-servicemen is made as per Government of India's instructions on the subject. In addition, 10% vacancies are reserved for departmental candidates amongst serving Constables, Head Constables and Assistant Sub Inspectors with minimum service, as per norms.

18. As per advertisement of the year 2007, 692 posts were advertised out of which 554 pertain to open examination and 69 pertained to departmental



examination and again 69 pertained to Ex-servicemen. In the open examination, 281 seats of UR category were filled, however, 17 were meant for Ex-servicemen SC/ST could not be filled. The final result of the recruitment was declared on 09.05.2008. The petitioner had secured 118 marks in written test, 9 marks in interview and so the total 127 marks he obtained, whereas the minimum cut off of UR category was 128 marks and thus, he was not selected for the post of Sub Inspector (Male) (Exe.) in Delhi Police Examination, 2007.

19. The respondent has averred in the counter-affidavit that results for SI (Exe.) Exam, pertaining to Notification of 2004 and Notification of 2007 for the post of SI (Exe.) Exam, were declared simultaneously. Four candidates had qualified 2004 exam as well as 2007 exam, who opted to join under 2004 Notification and thus, were granted seniority. Thereafter, four departmental candidates from the examination 2007 were selected on merit basis, against which a few departmental candidates preferred OAs, which were allowed by the learned Tribunal granting appointment to six more departmental candidates. However, no additional candidate except departmental category candidate was selected. The unfilled vacancies of the year 2007 were included in the next recruitment examination of the year 2009. Petitioner had himself opted as a beneficiary to subsequent recruitment cycle, i.e. examination of 2009. Even OA No.543/2009 challenging the notification of the year 2009 was withdrawn by the petitioner, thereafter, he preferred another OA No.2322/2009 challenging the notification of the year 2009 claiming that as against 281 vacancies of



UR category only 267 had joined which was dismissed by the learned Tribunal.

20. It is also averred in the counter affidavit filed by the respondent that review application filed vide diary No.6638 by the petitioner got lying under objections and petitioner did not bother to rectify the same and until and unless the objections were removed, the said application could not have been listed for adjudication. However, the petitioner preferred W.P.(C) 12429/2018 before this Court alleging that the his review application was pending for a long time before the learned Tribunal. According to respondent, on the basis of his misrepresentation of fact, the said writ petition was decided by this Court on 20.11.2018. However, when the Review Application No.01/2019 got listed after a delay of 8 years, the learned Tribunal categorically observed that petitioner had lackadaisical approach and dismissed it with cost of Rs.10,000/-. Thus, learned CGSC appearing on behalf of respondent submitted before this Court that the present petition, lacks merit and it deserves to be dismissed with heavy costs.

21. Having heard learned counsel for the parties and on perusal of impugned orders as well as other material placed on record, we find that the relief sought by petitioner in the present petition is confined to only seeking seniority in terms of Notification of the year 2007, though he has been appointed in the recruitment process pertaining to the year 2009. In his petition, petitioner has also claimed parity with six departmental candidates who were given appointment and seniority against the unfilled vacancies of the year 2007.



22. The undisputed facts of the present case are that petitioner had participated in the examination process held for recruitment to the post of Sub Inspector (Male) in Delhi Police in respect of Notification of the year 2007. However, he was not selected, having obtained 127 marks as against 128 marks in respect of UR category. The petitioner challenged his non selection by filing OA No.543/2009 before the learned Tribunal on the ground that respondent should have prepared a wait list and for the unfilled vacancies, the candidates from the wait list should have been offered appointment.

23. The grievance of petitioner is that all 692 vacancies should have been filled from the eligible candidates or from the wait list. On perusal of the record, this Court finds that 692 vacancies notified in the year 2007, were divided in following categories:-

	UR	SC	ST	OBC	TOTAL
Open	281	141	76	56	554
Departmental	36	16	10	07	69
Ex-Servicemen	36	16	10	07	69

24. Out of 692 posts advertised vide Notification of 2007, 554 vacancies pertained to open examination; 69 pertained to departmental examination and other 69 pertained to Ex-servicemen. In the open examination, 281 seats of UR category were filled, however, 17 vacancies meant for Ex-servicemen SC/ST could not be filled. The petitioner sought his appointment from the said unfilled vacancies.



25. The Hon'ble Supreme Court in *Shankarsan Dash Vs. Union of India*, (1991) 3 SCC 47 has held as under:-

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. .

26. The petitioner having appeared in Open UR category, had competed against 281 posts. Merely by appearing in the selection process, the applicants/candidates such like petitioner, do not get indefeasible right to get appointment and respondent, having invited applications, is under no obligation to offer appointment especially when a candidate has not even been able to make place in the merit list. The petitioner having secured 127 marks against 128 cut off marks, cannot claim appointment.



27. Furthermore, out of 281 vacancies under UR category, 267 candidates had joined and remaining vacancies were carried forward to the future vacancies. The petitioner, thus, preferred OA No.543/2009 challenging his non-selection despite unfilled vacancies and no wait list notified by the respondent. However, on coming to know that the unfilled vacancies were carried forward for future vacancies, he withdrew the said OA with liberty to challenge the notification of the year 2009, processing fresh selection for the post of SI (Executive). By withdrawing the said OA, the petitioner in fact gave up his claim of seeking selection and challenging non-preparation of wait list by the respondent.

28. There is no dispute to the settled position, as has been held in a catena of decisions, that if vacancies remain unfilled due to non-appointment or non-joining of candidates, those who are in wait list, be offered appointment in terms of their merit. However, such a candidate shall come within the range of merit and only then, should be offered selection and appointment; and not otherwise. The fact remains, no wait list was prepared and notified by the respondent pertaining to the 2007 Notification and thus, he was not offered appointment.

29. The Hon'ble Supreme Court in *Vallampati Sathish Babu Vs. State of A.P. (2022) 13 SCC 193*, wherein upon completion of recruitment process, out of 34 notified vacancies for the post of Teacher, one vacancy remained unfilled due to one candidate not appearing in counselling, the Supreme Court held that once final select list was prepared and wait list was not contemplated and the posts vacant were carried forward for whatsoever reason for future recruitment; the candidate next in merit cannot claim W.P.(C) 7241/2020



appointment as his name neither figured in the select list nor in the wait list.

30. The plea of the petitioner herein is that he deserves to be appointed from the unfilled vacancies pertaining to the year 2007 and also such vacancies which got vacant due to non-joining of successful candidates.

31. Admittedly, the petitioner did not get 128 cut off marks and was thus, declared unsuccessful. Also, 17 posts under Ex Servicemen SC/ST category were left vacant due to non-availability of candidates and thus, could not be filled and petitioner cannot claim his selection under the said category. In respect of vacancies having arisen due to join-joining of candidates, death or unsuccessful in training within a span of one year, this Court finds that such vacancies cannot be foreseen or anticipated and thus, preparation of wait list for such vacancies could not have been possible for respondent and as such, those vacancies were rightly carried forward for the next recruitment cycle.

32. Thereafter, petitioner preferred OA No.2322/2009, challenging the notification of the year 2009 only to the limited extent that he should be offered appointed to the post of Sub Inspector (Exe.) from the carried forward unfilled vacancies of the year 2007 or considering him as a departmental candidate.

33. It is relevant to note here, during pendency of the aforesaid OA, the petitioner himself appeared in the selection process of Notification of 2009 and joined on the post of Sub Inspector (Exe.) on 30.09.2009.

34. The OA No.2322/2009 was, thus, dismissed by the learned Tribunal vide order dated 23.05.2011 holding as under:-



“7. Certain facts in this case are undisputed. The applicant had not been empanelled in the list of selected candidates; nor did his name figure in any waiting panel, as no such panel had at all been prepared. There is no averment either of anyone, lower to the applicant in the merit list having been appointed. The claim being raised is against the vacancies caused by non-joining of certain selected candidates. Additionally, the claims are against the vacancies resultant to resignations after the joining. As per the applicant 14 vacancies were in the former category and 17 in the latter. The basis of the same is certain information provided under the RTI and enclosed vide Annexure A/9 and A/10 of the OA. We note that the RTI information about those leaving their jobs after joining covers a span of one year period from July 2008 to July 2009. However, as per the respondents, it is not binding to have a wait-listed panel and the number of persons who did not join, on cancellation of their candidature, the resultant vacancies had been forward and included in the next recruitment cycle which also has been finalized and acted upon. Not to miss the point, the applicant himself is a beneficiary of the subsequent recruitment cycle.”

35. In our opinion, the Tribunal has rightly observed that there-being no waitlist panel, the petitioner had no vested right to claim appointment for the recruitment process of 2007 especially in view of the fact that he was already appointed in the year 2009.

36. On the aspect of petitioner seeking parity with four candidates having



appointed under departmental category, the learned Tribunal vide aforesaid order dated 23.05.2011 observed as under:-

“Departmental candidate is stated to be on an entirely different basis. It has been submitted that these candidates had been selected to the post of Sub Inspector (Executive) on the basis of the examination 2004 conducted by the Staff Selection Commission and also in the examination-2007 conducted by Delhi Police. On their request treating them as selected through the examination of 2004, their candidature for 2007 examination had been cancelled and in their place 4 candidates in their respective category on merit have been selected.”

37. It is not in dispute that the result for 2004 and 2007 Notification was declared on the same day and the four candidates, with whom petitioner is seeking parity, had qualified in both the examinations. Those four candidates had opted to have appointment under 2004 notification and their candidature for the year 2007 was cancelled and in their place four other candidates were selected. Thus, the grievance of petitioner that four candidates were given seniority from 2004, had actually joined under 2004 Notification and besides other four, who were appointed even after declaration of result and conclusion of selection process; were appointed against four unfilled departmental posts and thus, petitioner cannot claim seniority on parity with those candidates. Also, having appointed under the recruitment Notification of 2009 and having joined duties of respondent on 30.09.2009, petitioner cannot be given seniority from 2007.



38. It is relevant to note here that petitioner's Review Petition being RA 100/01/2019 in OA 2322/2009 was dismissed on 07.09.2020, when actually his review petition filed earlier kept lying under objection with the Registry of learned Tribunal for clearance on the part of petitioner and thus, his Review was rejected with cost of Rs.10,000/-.

39. It is worth to note the observations of the learned Tribunal, whereby petitioner's Review Petition [RA 100/01/2019 in OA 2322/2009] was dismissed vide impugned order dated 07.09.2020, which are as under:-

“8. As observed earlier, he was not successful in the selection for the post of Sub Inspector in the year 2007. Having filed an OA challenging his non selection, he withdrew the same and participated in the selection for the year 2009. Even after his selection, he continued his efforts for recruitment for the year 2007. It must be said to the credit of the Hon'ble Member who authored the judgment, that it was a beautiful exposition of facts and law. The judgments of the Hon'ble Supreme Court including that of Sankarshan Das (supra) were referred to and it was held that the applicant did not have any right to be considered for selection for the year 2007.

9. Had the applicant filed a review, it was numbered and was not disposed of by the Tribunal for a long time, he could have certainly made out a grievance before the Hon'ble High Court. However, without even ensuring that the Review Application was numbered, he filed Writ Petition 12429/2018 and complained before the Hon'ble High Court that the Review is not being disposed of. Naturally, the High Court felt that the Review

W.P.(C) 7241/2020

Page 14 of 16



filed in the year 2009 cannot be kept pending for such a long time and directed that the Review be disposed of within three weeks.

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10. What is required to be done by the Tribunal is, to comply with the directions issued by the Hon'ble High Court was to dispose of the review, if any, filed by the applicant. In case the applicant found that the review was not pending at all, necessary steps could have been taken to inform the Registry of the Tribunal as well as the Hon'ble High Court. He did not do that and instead he filed fresh review, without even seeking any modification of the order of the Hon'ble High Court. In a way, he wanted to skip off the provision relating to limitation, by taking shelter under the order of the Hon'ble High Court. We do not come across instances of misuse of the process of law, like the present one.

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12. We, therefore, dismiss the review by imposing costs of Rs.10,000/-, out of which Rs.5000/- shall be remitted to the CAT Bar Association, Delhi, and Rs.5000/- to the Delhi Police (Recruitment Cell) within four weeks. If the amount is not paid by the applicant, the same shall be deducted from his salary for the next month, and disbursed.”

40. The afore-noted extract of impugned order dated 07.09.2020 speaks a volume about the conduct of the petitioner. The petitioner preferred W.P.(C) No. 12429/2018 before this Court in the year 2018, pleading that his Review W.P.(C) 7241/2020

Page 15 of 16



Application was pending consideration before the learned Tribunal since its filing of 04.07.2011, even though his Review was not even listed for hearing. Thereby, petitioner misrepresented the facts before this Court and obtained favourable order.

41. We also find that petitioner, on one ground on the other, is trying to beat the drum even though there is no occasion for him. He has no right to either claim appointment from 2007 nor claim seniority and even after joining the services in 2009, he is trying to secure seniority, which cannot be permitted.

42. We do not find any fault or error in the judgment and order dated 23.05.2011 and 07.09.2020 passed by the learned Central Administrative Tribunal (the 'Tribunal') in OA No.2322/2009 and Review Application No.01/2019.

43. With aforesaid observations, the present petition is accordingly dismissed.

**(SURESH KUMAR KAIT)
JUDGE**

**(GIRISH KATHPALIA)
JUDGE**

SEPTEMBER 05, 2024

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W.P.(C) 7241/2020

Page 16 of 16