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

Date of decision: 21.07.2025

+ LPA 458/2025

ASHISH KUMAR

.....Appellant

Through: Mr. Sarvesh Singh and
Ms.Rajeshwari Mitra, Advs.

versus

UNION OF INDIA & ANR.

.....Respondents

Through: Mr.Manoj and Ms.Aparna
Sinha, Advs. for R-2

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (ORAL)

CM APPL. 43173/2025 (Exemption)

1. Allowed, subject to all just exceptions.

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2. This appeal has been filed challenging the Judgment dated 16.04.2025 passed by the learned Single Judge of this Court in W.P.(C) 10630/2018, titled *Ashish Kumar v. Union of India & Anr.*, dismissing the Writ Petition filed by the appellant herein.

3. To give a brief background of the facts in which the present appeal arises, by an Advertisement/Notification issued in February 2015, the respondent no.2 had invited applications for various posts, including for the post of Assistant Grade-III (Depot). A total number of 331 vacancies were advertised in various categories and zones. The appellant was placed in the wait list, at Serial No. 184.

4. The appellant filed the above Writ Petition contending therein that the respondent no.2 had several vacancies for the concerned post



in the North-Zone but was not filling up the same. In support, the appellant placed reliance on the Quarterly Zonal Statement for March 2018, which shows that the respondent no.2 had 628 vacant positions for Assistant Grade-III, Depot Cadre for Punjab, 241 in Haryana, and 392 in Uttar Pradesh.

5. On the other hand, the learned counsel for the respondent no.2 contends that out of the total number of wait list candidates, 58 were appointed, whereafter the number of vacancies, as advertised, were completely filled up. The respondent no. 2 further contends that the Quarterly Zonal Statement for March 2018 shows the vacant positions on that date, and included the vacancies that had arisen post the subject Advertisement/Notification. He submits that these could not have been filled up from the wait list candidates. The respondent no.2 submits that, therefore, in 2019, a fresh selection process was initiated and the said posts were filled up.

6. We have considered the submissions made by the learned counsels for the parties.

7. The learned Single Judge, in the Impugned Judgment, has taken note of the fact that the future vacancies that arise cannot be filled up through the candidates in the reserve list/wait list as the wait list candidates can be only appointed against the vacancies for which they have applied, and the reserve list/wait list cannot have an endless life in this regard.

8. The learned Single Judge also explained the effect of the Office Memorandum dated 08.02.1982, and held that the same applies only to '*selected candidates*', that is, the candidates who are placed in the



select list and not to the candidates in the reserve list/wait list.

9. The learned Single Judge further placed reliance on the judgment of the Supreme Court in *Mukul Saikia & Ors. v. State of Assam & Ors.*, (2009) 1 SCC 386, and *State of Orissa & Anr. v. Rajkishore Nanda & Ors.*, (2010) 6 SCC 777, wherein it was held that filling up of vacancies over and above the number of vacancies advertised would, in fact, be a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution of India of those persons who acquired eligibility for the post in question in accordance with the statutory rules, subsequent to the date of notification of vacancies. The filling up of vacancies over and above the notified vacancies is, therefore, neither permissible nor desirable.

10. In the present case, as noted hereinabove, the respondent no.2 has contended that all the advertised vacancies stood filled, including from the 58 candidates in the reserve list/wait list. It has been contended that there were no posts from the advertised vacancies remaining to be filled up. The above statement could not be disputed by the appellant.

11. In view of the above, the learned Single Judge has rightly rejected the Writ Petition filed by the appellant.

12. We, therefore, find no merit in the present appeal. The same is, accordingly, dismissed.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

JULY 21, 2025/ns/SJ