

(2022) 11 DEL CK 0118

In the Delhi High Court

Case No : Civil Writ Petition No. 9341, 9368, 12528 Of 2018, Civil Miscellaneous Application No. 36319, 48632 Of 2018, 20282 Of 2019, 14737, 14741 Of 2020, 29839 Of 2022

Alok Kumar Yadav And Ors

APPELLANT

Vs

Union Of India And Ors.

RESPONDENT

Date of Decision : 15-11-2022

Acts Referred:

Citation : (2022) 11 DEL CK 0118

Hon'ble Judges : Suresh Kumar Kait, J;Saurabh Banerjee, J

Bench : Division Bench

Advocate : Ankur Chhibber, Anshuman Mehrotra, Nikunj Arora, Naresh Kaushik, Shubham Dwivedi, Shiva Lakshmi, R.M. Tripathi

Final Decision : Disposed Of

Judgement

1. The above captioned three petitions have been filed by the petitioners seeking directions to the respondents to prepare, maintain and operate a Reserve Panel/ Wait List with regard to the recruitment process conducted by way of Sub-Inspector, CAPFs & Assistant Sub-Inspector in CISF Examination-2017 as well as by considering the names of such candidates who were declared qualified and called for documents verification and further direction to offer appointment to the petitioners against the seats which have fallen vacant upon non-joining of successful candidates.

2. Since the facts and issues raised, and the prayers sought, in all the writ petitions are very similar, these petitions have been heard together and are being disposed of by this common judgment.

3. The facts leading to the present petitions are that, the petitioners had applied for recruitment of BSF, CRPF, ITBP and SSB in CAPF (AC) Examination, 2016 in W.P.(C) 9341/2018 and W.P.(C) 9368/2018 and recruitment of Sub-Inspector, CAPFs & Assistant Sub-Inspector in CISF Examination, 2017 in W.P.(C)

12528/2018 conducted by the respondents. After applying for the aforesaid services, petitioners qualified the Physical Efficiency Test and the Medical Examination Test. Consequently, petitioners of W.P.(C) 9341/2018 & W.P.(C) 9368/2018 were invited by respondent no.2 for a Personality Test and a final list of 170 successful candidates out of 179 posts was issued by respondent no.2 on 29.06.2018, however, did not issue any wait list thereafter.

4. Learned counsel for the petitioners submitted that in W.P.(C) 12528/2018, petitioners were declared selected by the respondents vide notification dated 31.10.2018 and were required to be issued appointment letters within reasonable time, however, instead of issuing the appointment letters, respondents revised impugned select list on 03.11.2018 on receipt of some representations from Ex-Servicemen candidates wherein 63 candidates of Ex-Servicemen category have been declared selected by replacing the petitioners, who belong to General and to OBC category. Being aggrieved, petitioners submitted representations on 05.11.2018 and 12.11.2018 but of no avail.

5. It is pertinent to note that such non-compliance by the respondents has continued despite specific instructions issued by this court in Union of India v. Shrey Bajaj & Anr, W.P.(C) No. 11739/2016 for the Department of Personnel & Training to maintain a Reserve Panel/Wait List by the recruitment agencies towards the recruitment process, (vide several Office Memorandums dated 10/06/1959, 18/01/1990 and 13/06/2000).

6. The learned counsel for the petitioners submits that the petitioners have a right of legitimate expectation in terms of DoPT Memorandum No.41 019/18/97 - Estt.(B) dated 13.06.2000, which directs inter-alia as under:

"....

2. The Fifth Central Pay Commission, in para 17.11 of its Report, has recommended that with a view to reduce delay in filling up of the posts, vacancies resulting from resignation or death of an incumbent within one year of his appointment should be filled immediately by the candidate from the reserve panel, if a fresh panel is not available by then. Such a vacancy should not be treated as afresh vacancy. This recommendation has been examined in consultation with the UPSC and it has been decided that in future, where a selection has been made through UPSC, a request for nomination from the reserve list, if any, may be made to the UPSC in the event of occurrence of a vacancy caused by non-joining of the candidate within the stipulated time allowed for joining the post or where a candidate joins but he resigns or dies within a period of one year from the date of his joining, if a fresh panel is not available by then. Such a vacancy should not be treated as fresh vacancy.

3. It has also been decided that where selections for posts under the Central Government are made through other recruiting agencies such as Staff Selection Commission or by the Ministries/Departments directly and the reserve panels are similarly prepared, the procedure for operation of reserve panels maintained by

UPSC as described in para 2 above will also be applicable for the reserve panels maintained by the other recruiting agencies/ authorities.

...."

7. Also, the learned counsel for the petitioners, emphasizing on the ratio and decisions of this court as held in the case of Chairman D.S.S.B and Ors v. Miss Rajni and Ors (WP(C) No.2552/2012) and Shrey Bajaj (supra) wherein the Commission/recruiting agency was directed maintenance of a Reserve Panel, submits that the said directions have not been implemented till date. It is not in dispute that vacancies, which could be filled up by appointing the petitioners, were available for one year from the creation of the reserve panel/waiting list. The learned counsel for the petitioners further submits that within the year of publication of the Reserve Panel/Wait List, there were 185 vacancies which were available to be filled up, which should have been filled-up through the Reserve Panel/Wait List by the respondents. Having not done so, the respondents are guilty of acting in contravention of the aforesaid OM.

8. Lastly, learned counsel for the petitioners has submitted that case of the petitioners is fully covered by the judgment passed by a coordinate bench of this Court in a batch of petitions being lead matter W.P.(C) No.3999/2019 titled as "Sujal Guatam & Anr. vs. Union of India & Ors.", in which taking into account the various cases viz. Vikram Singh & Ors. vs. Union of India & Ors. being W.P.(C) 9723/2019 dated 24.10.2019; Dinesh Kumar Kashyap & Ors. vs. South East Central Railway & Ors: (2019) 12 SCC 798 decided on 27.11.2019; and R.S. Mittal vs. Union of India: (1995) Supplement (2) SCC 230, has held as under:

15.Nothing more is required to be clarified. As discussed above, the petitioners and others similarly situated, who are/would be in the Reserve Panel/Wait List, would be entitled to offer of appointment against vacancies that may have arisen in the one year for which the said List was valid. Consequently, this court directs the respondents to prepare a Reserve Panel/Wait List of candidates taking into consideration the result already declared on 03.11.2018 in W.P.(C) 3999/2019 & W.P.(C) 8111/2019 and 02.08.2019 in W.P.(C) 12682/2019.

16.For the foregoing reasons, those figuring in the Reserve Panel/Wait List, including the petitioners, shall be sent offers of appointment within six weeks of receipt of this order.

9. The said position has not been and in fact cannot be disputed by learned counsel for the respondents, who, however, submitted that the respondents are in process to challenge the same judgment before the Hon'ble Supreme Court.

10. Be that as it may, since the present case is fully covered by the said judgment passed by this Court in the case of Sujal Guatam (supra), this Court is of the view that petitioners would be entitled to offer of appointment against the vacancies that may have arisen in the one year for which the said list was valid.

11. Accordingly, this Court directs the respondents to prepare a Reserve Panel/

Wait List of the candidates taking into consideration the result already declared on 29.06.2018 in W.P.(C) 9341/2018 & W.P.(C) 9368/2018 and 31.10.2018 in W.P.(C) 12528/2018 and offers of appointment shall be sent within six weeks of receipt of this order.

12. In view of aforesaid, petitions along with pending applications, are disposed of.