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In the Gauhati High Court

Case No : WP(C) No. 861 of 2014

Gajiur Rahman — APPELLANT

Vs

The Union of India and Others — RESPONDENT

Date of Decision : 25-06-2015

Acts Referred:
Constitution of India, 1950 — Article 14, 226

Citation : (2015) 3 GLT 655

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : R. Mazumdar, Learned Counsel, for the Appellant; D. Saikia, Learned Central Govt. Counsel, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ujjal Bhuyan, J—Heard Mr. R. Mazumdar, learned counsel for the petitioner and Mr. D. Saikia, learned Central Govt. Counsel.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks a direction to the respondents to recommend his name for appointment as Constable (GD) either in the Central Reserve Police Force (CRPF) or in the Indo Tibetan Border Police (ITBP) against the vacancies which have remained unfilled from out of the vacancies allotted to the State of Assam for the year 2012 on the basis of his qualification and medical fitness.

3. Case of the petitioner is that on 03.12.2011, Staff Selection Commission (SSC) issued an advertisement for recruitment to the post of Constable (GD) in Border Security Force (BSF), Central Industrial Security Force (CISF), CRPF, ITBP, Sashastra Seema Bal (SSB) as well as for Rifleman (GD) in Assam Rifles. Each State was allotted specified number of vacancies. In respect of the State of Assam, the total number of vacancies (Male) allotted was 2146, the breakup of which was as follows:-

4. Petitioner being a resident of Assam, offered his candidature against vacancies

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allotted to the State of Assam. Admit card was issued to him bearing Roll No. 5105500891. Petitioner participated in the physical tests and became eligible to participate in the written examination. Thereafter, petitioner participated in the written examination, where also he qualified.

5. On 08.06.2012, a list of candidates who had secured marks above the cut off marks was published. Name of the petitioner appeared in the said list. Thereafter petitioner was subjected to medical test whereafter a list of candidates was published on 12.06.2012. In the said list, it was mentioned that petitioner has secured 44 marks, but was shown to be medically unfit. Final selection list was published on 17.10.2012, but the name of the petitioner did not find place in the said list.

6. However, it was notified that unfilled vacancies should not be filled up by candidates from surplus States/Union Territories. On 19.11.2012 SSC published Reserve List-2 of 615 candidates recommended for appointment against such unfilled vacancies. SSC explained that Reserve List-2 was published in consultation with Ministry of Home Affairs to select those candidates who did not indicate options showing their preference in respect of different Central Armed Police Forces for which the advertisement was issued and to fill up those vacancies in the respective States/Border districts/Naxal and Militancy affected districts.

7. Petitioner applied for review medical as he was found to be medically unfit. Petitioner appeared before the Review Medical Board on 19.06.2013, whereafter, he was declared to be medically fit for recruitment. Inspite of being declared medically fit by the Review Medical Board, petitioner has not been provided with appointment. According to the petitioner, while he has secured 44 marks in the written test both the last selected candidates under the general category in the CRPF and the ITBP have secured 43 marks i.e., less than him. Therefore, denial of appointment to the petitioner following declaration of his medical fitness by the Review Medical Board is illegal and arbitrary since candidates securing lesser marks than him have been selected.

8. With the above grievance, present writ petition has been filed seeking the relief as indicated above.

9. This Court vide order dated 19.02.2014 while issuing notice, directed in the interim that to protect the interest of the petitioner, one post of Constable (GD) in the CRPF or in the ITBP should be kept vacant.

10. Respondent Nos. 2 to 5 have filed a common affidavit. It is stated that petitioner belongs to the general category. He was not included in the select list since he had not exercised any option indicating his preference for the different Central Armed Police Forces. Such candidates were subsequently considered for inclusion in Reserve List-2 based on merit and subject to availability of vacancies in their respective categories. The last selected general category candidate in Reserve List-2 in CRPF and ITBP for the State of Assam have secured 52 and 46

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marks respectively, higher than the marks secured by the petitioner. It is stated that petitioner did not indicate any preference, rather he left the required column in the application form blank.

11. Learned counsel for the petitioner submits that admittedly, petitioner has secured 44 marks in the written test. He has been found to be medically fit in review medical. The last selected candidates in the select list under general category in the CRPF and ITBP have secured 43 marks. Therefore, non-inclusion of the petitioner in the Reserve List-2 and, consequently, not appointing him would be arbitrary and illegal inasmuch as candidates securing lesser marks than him have been selected and appointed. Such a position is wholly untenable and must be remedied. He submits that the stand taken by the respondents in the affidavit is wholly untenable, particularly in the light of judgments of the Delhi High Court and Allahabad High Court, which he has placed before the Court for consideration.

12. On the other hand, Mr. Saikia, learned Central Govt. Counsel relies upon a write up furnished to him by the Regional Director, SSC, North Eastern Region. He has referred to the procedure adopted for preparation of Reserve List-2. All the undiverted unfilled vacancies after declaration of select list were considered for Reserve List-2. Candidates who were not selected due to blank/invalid/limited options were considered for placement in Reserve List-2 after substituting their preference as A (BSF), B (CISF), C (CRPF), D (SSB), E (ITBP) and F (Assam Rifles), that is the default preference order. In the Reserve List-2, the last selected candidates in CRPF and ITBP under the general category have secured 52 and 46 marks respectively which are higher than the marks secured by the petitioner that is 44; thus he could not be selected. Accordingly, he submits that writ petition is devoid of merit and should be dismissed.

13. Submissions made have been considered.

14. At the outset, it would be apposite to refer to the scheme of examination as provided in the advertisement. As per the scheme of examination, all candidates were required to appear in physical standard test and physical efficiency test. How the two tests were to be conducted were mentioned in detail in the advertisement. Candidates qualifying in physical standard test and physical efficiency test were called for written examination consisting of one objective type paper containing 100 marks. Only those candidates who scored above the cut off marks fixed by the SSC in the written examination were eligible to appear in the medical examination. The selected candidates were to be medically examined to assess their physical and mental fitness, whereafter it was provided that final selection of candidates would be made in order of merit in each category for each State. It was further provided that the minimum cut off percentage of marks for selection for the general category was 35%.

15. Having noticed the relevant provisions of the advertisement, the undisputed facts may now be set out.

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16. Petitioner qualified upto written examination, where he has secured 44 marks. Initially he was found to be medically unfit, but on review medical, he has been found to be medically fit. Last selected candidate in the select list under general category for CRPF and ITBP have secured 43 marks, which is less than the marks secured by the petitioner. While submitting application, petitioner did not indicate his preference for the Central Armed Police Forces.

17. After the select list was published, respondents published Reserve List-2 to fill up the unfilled vacancies by candidates who were not selected on the ground of non-disclosure of preference in the application form in the ABCDEF format. However, in the Reserve List-2 of general candidates in respect of CRPF and ITBP, the last selected candidates have secured 52 and 46 marks respectively, which are higher than the marks secured by the petitioner. Therefore, name of the petitioner could not be included in Reserve List-2.

18. In Vinay Kumar vs. Union of India & Ors., WP(C) No. 7651/2012 (disposed of on 14.12.2012), a Division Bench of the Delhi High Court while dealing with a grievance identical to that of the present petitioner held that non-inclusion of such candidate in the Reserve List resulted in persons lower in merit being empanelled in the merit list, whereas candidates who had secured more marks than the last empanelled candidate were not included. End result was that at the end of the recruitment process, people lower in merit were empanelled and those higher in merit stood outside the door. It was held that if the respondents gave a right to the candidates to question the decision taken by the medical board on their fitness, the final declaration of result should await the decision of the Review Medical Board. Accordingly, direction was issued to revise the original select list and to include in the said list names of all those candidates in order of merit who were initially declared medically unfit, but were later on declared fit by Review Medical Board. Thus it was directed that all those who would be issued letters of appointment would be entitled to their seniority as per their merit positions.

19. In the case of Allahabad High Court in WP(C) No. 3283/2012 (Bidhyachal Kumar Singh Vs. Union of India & ors.), it was held that there was no condition or instruction in the advertisement to the effect that any column in the application form, if left blank or not correctly filled in, that by itself would be a sufficient error or mistake resulting in rejection of application form. Since respondents decided to publish Reserve List, which has the same status as select list, it would not be justified to deny selection and appointment to a candidate who did not fill in the relevant column in the application form giving his preference for the various Central Armed Police Forces when admittedly he had secured more marks than the last elected candidate in the select list. Otherwise, it would amount to violation of Article 14 of the Constitution of India.

20. I am in respectful agreement with the views expressed by the Delhi High Court and by the Allahabad High Court. Since respondents themselves have, admittedly, not treated non-furnishing or non-disclosure of preference in the

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application form to be a fatal omission by treating such candidates afresh and including them in Reserve List-2, case of the petitioner is, therefore, required to be considered in the said Reserve List-2. This is because while petitioner has secured 44 marks, the last selected candidate in the general category for CRPF and ITBP in the final select list have secured 43 marks i.e., less than him. It would be wholly untenable to select candidates securing 43 marks and not select a candidate securing 44 marks under the same category.

21. Therefore, such a situation needs to be remedied. Accordingly and in the light of the above, respondents are directed to recommend the petitioner for appointment as Constable (GD) either in the CRPF or in the ITBP. As noticed above, this Court on 19.02.2014 had directed that one post of Constable (GD) in the CRPF or in the ITBP should be kept vacant. Petitioner''s appointment shall be considered against the said vacancy.

22. Writ petition is accordingly allowed. No costs.

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