
(2015) 01 CAL CK 0044
In the Calcutta High Court
Case No : W.P. No. 31185(W) of 2014

Pratap Das

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 13-01-2015

Acts Referred:

Citation : (2015) 3 CHN 337

Hon'ble Judges : Sanjib Banerjee, J.

Bench : Single Bench

Advocate : Arpa Chakraborty, for the Appellant; B.P. Vaisya, for the Respondent

Final Decision : Disposed Off

Judgement

Sanjib Banerjee, J.—The petitioners applied in the year 2012 for the posts of constable and rifleman in the Central Armed Police Forces and the Assam Rifles. The petitioners question the basis for excluding the petitioners by considering the petitioners' cases on a regional or Statewise basis and not on the national basis. The petitioners say that it is possible that a candidate from Chhattisgarh may obtain lower marks than the petitioners in the same test taken by the petitioners and such other candidate, but the other candidate may get appointed and the petitioners may not since every candidature is considered with reference to the marks obtained by applicants in a particular State. The further grievance of the petitioners is that the respondent authorities have confused the expression "cut-off marks" with the expression "lowest marks obtained by any successful candidate".

2. Advertisements were invited for posts in six several wings of the central armed police forces. Each applicant was advised to indicate his preference. The first petitioner indicated his order of preference among the six wings and the second petitioner indicated three of them as being his preferred units.

3. The first petitioner, who applied in the scheduled castes category, secured 35.00 marks; the second petitioner, who applied in the unreserved category,

secured 47.00 marks. The petitioners have taken great pains to demonstrate that persons with lower marks than the petitioners have qualified for appointments in other States. The petitioners say that since the process is for recruitment of central armed police forces engaged all over India, the petitioners' case should be sympathetically considered.

4. The relevant notification of the 2012 recruitment process issued by the Staff Selection Committee indicates, in clause 10 thereof, that the minimum cut-off percentage of marks for selection would normally be 35% for unreserved category and ex-servicemen and 33% for the reserved category candidates. The relevant clause also indicates that the cut-off marks would be relaxable at the discretion of the Staff Selection Commission.

5. The expression "cut-off marks" in the context of clause 10 of the notification published on December 3, 2011 in respect of the 2012 process implies the pass marks: that the candidature of an applicant in the general category would not be considered unless he secures 35% or more marks and an applicant in the reserved category will not be considered unless he obtains 33% marks. The provision for relaxation implies that if the posts are not filled up from the pools of candidates who have obtained the cut-off marks, the Commission would be entitled to reduce the cut-off marks to fill up the vacancies.

6. The respondent authorities have filed a report in the form of unsigned instructions issued to counsel. Such report, inter alia, indicates what are described as the cut-off marks in the various units for both the reserved and unreserved categories of applicants. To understand the chart at paragraph 2 of the said report filed on behalf of the respondents, it will first be necessary to appreciate that post codes A, B, C, D, E and F indicate the Border Security Force, the Central Industrial Security Force, the Central Reserve Police Force, the Sashastra Seema Bal, the Indo-Tibetan Border Police Force and the Assam Rifles, respectively. The option as to the unit that is afforded to an applicant entails that the applicant's candidature would be considered in the order of preference indicated, subject to the marks obtained by him. In other words, if an applicant has indicated Assam Rifles as his first choice and BSF as his second choice and has not indicated any other unit and such candidate has secured more than the applicable cut-off marks, his candidature will be considered first in Assam Rifles; and, if the marks obtained by him are not good enough to get him a post in Assam Rifles, his candidature would be considered in BSF but his candidature will not be considered in respect of any other unit. The table indicating the so-called cut-off marks as furnished by the respondents in the said report reveals as follows:--

7. There appears to be an obvious error in the use of the-expression "cut-off marks" in the table above. The error is evident since cut-off marks indicated in the notification published by the Commission and it is possible to relax the cut-off marks but it is difficult to imagine how the cut-off marks can be raised from the levels indicated in the notification. In fact, the above table indicates the

lowest marks obtained by the last-placed candidates selected in the several units.

8. In the year 2012, there were about 49,000 vacancies all over India including the vacancies in West Bengal. The table above indicates the lowest marks of the successful candidates for posts in the different units which fell vacant in West Bengal in the year 2012 and for which applications were received in the reserved and unreserved categories.

9. It is, however, possible that several of the applicants would not opt for the job despite likely selection. In such circumstances, the lowest marks obtained by successful candidates in respect of the various units would travel south, in the sense that candidates with lower marks than as indicated in the table would be eligible to be appointed upon the better placed candidates declining the appointments.

10. Since the first petitioner had applied for all the units and had indicated an order of preference, the only right that the first petitioner has is that no candidate who has obtained lower marks than the first petitioner for the first choice unit as indicated by the first petitioner is selected ahead of the first petitioner. Similarly the second petitioner is entitled to the same benefit. The petitioners are also entitled to have their candidature for the subsequent units indicated in the order of preference considered such that no candidate in the least preferred unit as indicated by either petitioner is given the appointment despite having secured lower marks than the petitioners in the two categories.

11. As regards the lukewarm argument made that the selection should be made on a national basis rather than regional or State ranks, there appears to be considerable merit in dividing the selection process on the basis of the States, particularly since candidates from the more developed States in the country would stand a better chance of overwhelming the candidates from the lesser States. Further, the lack of employment avenues in the lesser States can never be addressed if national merit is taken into account without keeping local merit in mind.

12. Since neither petitioner has secured marks better than the marks indicated in the table in their respective categories, W.P. 31185 (W) of 2014 is disposed of without interfering with the selection process; but with the observation that in the event there are any vacancies in the posts advertised in the year 2012 for any of the units for which the petitioners have applied, no candidate who has obtained marks lower than either petitioner in the relevant category should be given appointment ahead of them.

13. There will be no order as to costs. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.