

**(2021) 02 DEL CK 0322**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 3805 Of 2018

Ravinder Chauhan

APPELLANT

Vs

Union Public Service Commission And Anr

RESPONDENT

**Date of Decision :** 25-02-2021

**Acts Referred:**

Constitution Of India, 1950 — Article 226, 227

**Citation :** (2021) 02 DEL CK 0322

**Hon'ble Judges :** Siddharth Mridul, J; Talwant Singh, J

**Bench :** Division Bench

**Advocate :** J.P Sengh, Suman Chauhan, Naresh Kaushik, Vijay Joshi, Piyush Gaur

**Final Decision :** Dismissed

## Judgement

Siddharth Mridul, J

1. The present writ petition under Articles 226 and 227 of the Constitution of India has been instituted by Shri Ravinder Chauhan, the petitioner herein,

assailing the order dated 01.06.2016 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi, (hereinafter referred to as

the "learned Tribunal"), dismissing O.A. No. 1088/2015 titled as "Ravinder Chauhan vs. UPSC & Anr.", preferred by the petitioner

against the Union Public Service Commission (hereinafter referred as "respondent No.1") and the Central Forensic Science Laboratory

(hereinafter referred as "respondent No.2") praying as follows-

"Direct Respondent No. 1 to recommend/release the name of the Petitioner, for the post of SSO- II Ballistic Division, CFSL, CBI, from the

reserve panel as conveyed through letter dated 11/05/2010, for the post of SSO- II Ballistic Division, CFSL, CBI effective from May 2010 with all the

consequent benefits till date.

AND quash the Impugned letters dated 28/05/2012, 15/07/2013, 19/12/2013, 5/03/2015 of Respondent No.1 and set aside the order dated 1/06/2016

passed in the OA No. 1088/2015

Any other order which this Hon'ble Court may deem fit may also be passed in favour of the Petitioner.â??

2. The factual matrix as is relevant and germane for the adjudication of the present proceeding, is briefly stated as hereunder: -

i. Respondent No.1 had issued an advertisement No.12/2009 dated 03.07.2009 inviting applications for the two posts of Sr. Scientific Officer Gr.-II

(Ballistic) (hereinafter referred to as â??subject postâ??), that were vacant in the office of respondent No.2 (CFSL/CBI), New Delhi. Out of the said

two posts, one post was reserved for OBC candidate and the other post was for the unreserved category. The requisite qualification for the said posts

was a Master's degree in Mathematics or Physics or Chemistry, from a recognized university or equivalent, along with 03 years laboratory experience

in Fire Arms and Explosives.

ii. Furthermore, a Reserve Panel was provided for, to reserve the name of one candidate; in the event of any of the selected candidates failing to join

the subject posts within one year.

iii. Upon examination of the applicants for the subject posts, 17 candidates were prima facie found suitable and were consequently called for

interviews; and out of those candidates â?" 12 candidates were finally interviewed on 19.04.2010 and 20.04.2010, while the others failed to appear.

iv. On 11.05.2010, respondent No.1 recommended the names of two candidates, viz Ms. Babita Gulia in the general category and Mr. R. Suresh in the

OBC category, for the subject posts of Sr. Scientific Officer Gr II (Ballistic) CFSL/CBI, Ministry of Home Affairs. Simultaneously, a Reserve Panel

of one candidate, valid for a period of 18 months from date of finalization of the recommendation of Commission by its Interview Board Report

(hereinafter referred to as â??IBRâ??), was earmarked, which could be extended upto two years, in case where the chosen candidate joined, but

resigned or died within one year of joining.

v. Offer of appointment was made vide Office memorandum dated 04.10.2011, 29.12.2011 and 08.02.2012 to two selected candidates, amongst whom

only one candidate namely, Ms. Babita Gulia joined as SSO-II Ballistic whereas, other selected candidate for the said post, namely, Mr. R. Suresh

failed to join. Subsequently, a representation was made by Sh. R. Suresh, on 14.02.2012, expressing his inability to join the said post of Sr. Scientific

Officer Gr-II (Ballistic). In response to the said representation, the respondent No.2 officially and formally cancelled the candidature of Sh. R. Suresh

for the said post, vide office order dated 11.05.2012.

vi. In the meantime, Petitioner filed an application under the Right to Information Act on 29.07.2011 enquiring about the vacancy qua the said post and

was informed that his name was present in the Reserve Panel for the said post of Sr. Scientific officer Gr.II (Ballistic).

vii. Owing to the non-joining of Sh. R. Suresh as aforesaid and subsequent cancellation of his candidature; in order to fill the post of Sr. Scientific

Officer Gr-II (Ballistic) with respondent No.2; respondent No.1 was requested that the candidate from the Reserve Panel may be recommended.

However, on 28.05.2012, respondent No.1 opined that the validity period of the Reserve Panel had since expired and consequently turned down the

aforesaid request.

viii. The office of Director CBI, thereafter issued a communication dated 03.03.2015 addressed to respondent No.1, requesting the latter to operate

the Reserve Panel and recommend another candidate for appointment to the said post; considering it as a special case in the public interest, which

requisition was also declined by the respondent No.1 vide letter dated 05.03.2015; simultaneously issuing directions to initiate the recruitment process

for the said vacant post, afresh. The extract of the said communication has been reproduced for the sake of facility, hereunder: -

â?? Kindly refer to your D.O. letter No.9-2/2009-CFSL/712 dated 03.03.2015 addressed to Hon'ble Chairman, UPSC regarding operating the

Reserve Panel for the post of Senior Scientific Officer Gr.II (Ballistics), in CFSL, CBI, New Delhi.

2. There are certain accepted guidelines regarding operation of Reserve Panels. Under normal circumstances, a Reserve Panel is valid upto 18

months from the date of finalization of Interview Board Report (IBR). This can, however, be extended upto 2 years in exceptional circumstances such

as the resignation or death of; the recommended candidates within one year of

his/her joining. In the instant case IBR was finalized on 26.04.2010 and, thus, the normal validity period of the Reserve Panel expired way back on 25.10.2011. This was well before the CFSL, CBI, after cancelling the candidature of Shri Suresh, one of the recommended candidates, approached UPSC vide their communication dated 11.05.2012 requesting for recommending another candidate from the Reserve Panel in his place. CFSL, CBI as informed of the position vide our letter dated 28.05.2012. Their further communications dated 20.06.2013 and 23.10.2013 on the same subject were also duly replied to vide our letters dated 15. 07.2013 and 19.12.2013 respectively, clarifying the 'position in the matter. PM Division of Ministry of Home Affairs which also took up the matter with us vide their note dated 11.11.2014 were also apprised of the position vide our letter dated 19.12.2014. In all these correspondences, only the issue of reserve panel was taken up, although it would have been desirable to review the Recruitment Rules because of evident problems.

3. In view of the above, you will appreciate that since the Reserve Panel expired on 25.10.2011 and is no longer valid, it will not be possible for the Commission to release name of a candidate therefrom. It would be desirable if fresh RRs are prepared. UPSC will clear them within a fortnight.

Thereafter, a fast-track recruitment process can be initiated. Alternatively, CBI may consider sending a fresh requisition to the Commission to advertise the post afresh and to initiate the recruitment process.

3. Mr. J. P. Sengh, learned Senior Advocate appearing on behalf of the petitioner submits that the learned Tribunal erred in not appreciating the

circumstances antecedent and attendant to the present case, wherein respondent No.1 had arbitrarily withheld release of the name of the petitioner

enlisted in Reserve Panel, when the erstwhile recommended candidate Shri R. Suresh did not join the service even after being afforded reasonable

opportunity so to do. It was further submitted that a Reserve Panel of one candidate has to be kept in normal circumstances for a period of 18 months

from the date of finalization of the recommendation of IBR but can be further extended for a period up-to two years, thereafter and that the petitioner

ought to have been appointed from the Reserve Panel. In order to buttress his submission, reliance was placed on the decision of the Honâ??ble

Supreme Court in Manoj Manu and Anr vs Union of India and Anr, reported as

(2013) 12 SCC 171.

4. Per Contra, Mr. Naresh Kaushik, learned counsel appearing on behalf of the respondent -1 submits that the normal validity period of 18 months of

Reserve Panel evidently expired on 25.10.2011, being reckoned from the date of interview 19th â? 20th April 2010 and finalized as per Interview

Board Report dated 26.04.2010, which had duly recommended the names of the two selected candidates to respondent No.2.

5. Learned counsel for the respondent No.1 further submitted that the communication dated 11.05.2012, requesting respondent No.1 to recommend

another candidate in place of Sh. R. Suresh was on ex facie beyond the period of 02 years of the prescribed validity period of the Reserve Panel,

which had expired due to efflux of time in the interregnum on 25.10.2011. As a result, the belated request could not be acceded to, in view of the legal

position that the statutory validity period of Reserve Panel had long since expired.

6. Having heard learned counsel appearing on behalf of parties and upon perusal of material on record, it is observed that respondent No.1

recommended two candidates for the post of Sr. Scientific Gr-II (Ballistic); premised on Interview Board Report and offered Letter of Appointment

dated 11.05.2010, wherein it was categorically mentioned that Reserve Panel of one candidate will be valid for period of 18-months in normal

circumstances. It would be pertinent to extract the relevant part of the said Recommendation letter:

â??UNION PUBLIC SERVICE COMMISSION (SANGH LOK SEVA AYO)

DHOLPUR HOUSES, SHAHJAHAN ROAD

To,

11/05/2010

The Director,

Central Forensic Science Laboratory,

CBI, Kendriya Karyalaya Parisar,

Block No.4, COO Complex,

Lodhi Road, New Delhi.

(Kind Attention: Dr. Rajinder Singh, Director, CFSL/CBI)

Subject: Recruitment to two years of Senior Scientific Officer Gr.II (Ballistics) in

the Central Forensic laboratory , Under CBI, Ministry of Home Affairs

Sir,

I am directed to refer to the CBIs letter No. 9-2/2009-CFSL/1759 dated 01.04,2010 and the Union Public Service Commission letter of even number dated the 22nd March 2010 on the above mentioned subject.

2. Of the two posts of Senior Scientific Officer Gr.II (Ballistics) in the Central Forensic laboratory, Under CBI, Ministry of Home Affairs advertised,

01 post was reserved. for other Backward Class Candidates and remaining- 01 post was unreserved. As per Advertisement, there were 78 applicants

in all, of whom 01 Belonged to Scheduled Tribe,

4 belonged to Scheduled Caste, 32 belonged to OBC communities. The Commission considered the applications of all the candidates, and summoned

17 Candidates (including 04 OBC) for interview on 19th &20th April 2010. Of them 04 Candidates (one OBC and three General) failed to appear

before the interview Board, Dr. Rajinder Singh, Director, Central Forensic Science Laboratory /CBI/New Delhi Represented the Department at the

Interview Board about the requirements of the Post: service conditions; career prospects and possible' places of posting etc.

3. The Commission recommend two candidates as per. Annexure to this letter on an initial pay as indicated therein for appointment to, the two posts

of Senior Scientific Officers Gr.II (Ballistics) in the Central Forensic Science laboratory, under CBI, Ministry of Home Affairs. The recommended

candidates have also been informed about their selection.

4. The commission also recommends that nine months Training in-service period to Roll No.03 (OBC), (S.No.2 of Annexure) may be given.

5. Reserve Panel, of one candidate has been kept in this case which normal circumstances is valid for a period of 18 months from the

date of finalization of the Recommendation of the Commission and can be extended up-to two years (Among other reasons, one of the

grounds for such extension could be, where the candidate Joins but resigns or dies within one year of his joining). In case the selected candidate, after

being given a reasonable time to join against the selected post does not join, the Ministry may request the Commission for release of a name from the

Reserve Panel after cancellation of the offer appointment of the selected candidate.

Note-1 The Ministry/Department may also request the Commission for release of another name from the Reserve Panel, in case, the vacancy is

caused within one year of the joining of the recommended candidate by way of either resigning the post., or in the event of death of the candidate.

Note-2: This Reserve Panel will become null and void on finalization of selection for filling up subsequent vacancies in the same grade.

6. The Candidates called for interview were required to bring along with the originals of (i) the Degree/Diploma/Experience certificate or other

certificate in support of their qualifications and experience (ii) Matriculation or equivalent certificate in support of the date of Birth. The original

Certificates were checked on the day of interview and were returned to the candidates. The original Degree/Diploma/Experience etc. Certificate may

kindly be verified by the Ministry before appointment.

7. Roll No.03 claimed to belong to OBC Community, His claim to belong to this Community and also Creamy Layers status of OBC has been

provisionally accepted on the basis of the original certificates submitted by him at the time of the interview. A copy of his certificates can be seen in

his application dossier. As instances have occurred where candidate(s) obtained and produced OBC certificate and also Creamy Layer status of

OBCs even though they did not really belong to this category, the Government may, verify further the veracity of these documents before issuing offer

of appointment provisionally pending verification of the veracity of these documents. The instructions contained in the Department of Personnel and

Training O.M. No.36012/6/88-Esst, (SCT) (SRDIII), and O.M. No. 36033/9/95-Esst (SCT) dated 24.04.90 and 10.5.1995 respectively should be

followed.

8. The candidates named in Annexure have not been medically examined for these posts and no special enquiry into their antecedents have been

made. I am to forward herewith their applications along with enclosures, which may kindly be retained by them on their appointment as part of their

personal file. I am also to forward herewith their attestation forms. Two copies of their photographs have been attached with the attestation form and

the third copy has been attached with their application. Third, copy of his

photograph may be retained by the Ministry as office copy, vide para 1(d) of the Ministry of Home Affairs! O.M. No. 3/3(8)/68-Estt(B), dated the 1st August 1969, copy of the offer of appointment letter to be issued to them maybe endorsed to the Commission. The Commission may also be informed as soon as the candidate joins duty. In this connection, I am to invite attention to the Ministry of Home Affairs O.M. No. 23/97/68-Estt-B, dated the 26th February, 1969 and DOP&T OM N0.39011(2)-Esst.(B), dated 05.11.2002 regarding elimination of delays in issuing offer of appointment to the candidates recommended by the Commission.

I am also to add that the number and date of this letter may invariably be quoted in all future correspondence especially while forwarding offer of appointment/while sending intimation regarding the candidate's joining the post in question.

9. The receipt of this letter may kindly be acknowledged.â??

7. Upon a plain reading of the afore-extracted communication and in particular, paragraph 5 thereof, it is amply clear that the Reserve Panel of one candidate which had been maintained, in the subject case was valid only for a period of 18 months from the date of finalization of the recommendation of commission in normal circumstance, but could however be extended for a total period of 02 years. Viewed in this backdrop, the decision of respondent No.1 not to recommend the name of petitioner from Reserve Panel cannot be faulted, since in the instant case IBR was finalized on 26.4.2010 and had become inoperable by the time his recommendation was sought vide communication dated 11.05.2012. Manoj Manu (supra) is not an authority for the proposition that, even when the validity period of Reserve Panel has expired and the same has been rendered inoperable by efflux of time and owing to the embargo so imposed by the terms of subject advertisement No.12/2009 dated 03.07.2009; a writ of mandamus can still be issued by this court to fill up the vacancy created by the non-joining of the selected candidate and the formal cancellation of his candidature vide office order dated 11.05.2012. Further, in Manoj Manu (supra) itself it was categorically observed that, in that case, the Reserve Panel was available and the DoP&T had approached the UPSC ""within a reasonable time"". On the contrary, in the instant case, respondent No.2 approached the respondent No.1 only after the expiry of the validity of the Reserve Panel, after which, the Reserve



Panel was rendered null and void and the only option available in law, to fill the vacancy, was through fresh recruitment process. The relevant extract of decision of the Apex Court in Manoj Manu (supra) has been reproduced hereinbelow:-

¶10. We are conscious of the legal position that merely because the name of a candidate finds place in the select list, it would not give him/her indefeasible right to get appointment as well . It is always open to the Government not to fill up all vacancies. However, there has to be a valid reason for adopting such a course of action. This legal position has been narrated by this Court in Neelima Shangla v. State of Haryana (1986) 4 SCC . In that case:

¶The appellant was the candidate for appointment to the post of Subordinate Judge in Haryana. Under the scheme of the Rules, the Public Service Commission was required to hold first a written test in subjects chosen by the High Court and next a viva voce test. Unless a candidate secures 45% of the marks in the written papers and 33% in the language paper, he will not be called for the viva voce test. All candidates securing 55% of the marks in the aggregate in the written and viva voce tests are considered as qualified for appointment. The appellant though secured 55% of the marks was not appointed as her name was not sent by the Public Service Commission to the Government The Supreme Court in such fact situation found that the Public Service Commission is not required to make any further selection from the qualified candidates and is, therefore, not expected to withhold the name of any qualified candidate. The duty of the Public Service Commission is to make available to the Government, a complete list of qualified candidates arranged in order of merit. How should the Government, act is stated by the Supreme Court in the following words: Neelima Shangla case, SCC pp. 271-72, para 2)

¶2. ¶ Thereafter the Government is to make the selection strictly in the order in which they have been placed by the Commission as a result of the examination. The names of the selected candidates are then to be entered in the register maintained by the High Court strictly in that order and appointments made from the names entered in that Register also strictly in the same order. It is, of course, open to the Government not to fill up all the vacancies for a valid reason. The Government and the High Court may, for

example, decide that, though 55% is the minimum qualifying mark, in the interests of higher standards, they would not appoint anyone who has obtained less than 60% of the marks.â??â??

11. The Court after making reference to the decision of the Supreme Court in *State of Haryana v. Subash Chander Marwaha* (1974) 3 SCC 220

further observed as under: *Neelima Shangla case* [*Neelima Shangla v. State of Haryana*, (1986) 4 SCC 268 : 1986 SCC (L&S) 759 : (1986) 3 SCR 785] , SCC p. 272, para 2)

â??2. â?| However, as we said, the selection cannot arbitrarily be restricted to a few candidates, notwithstanding the number of vacancies

and the availability of qualified candidates. There must be a conscious application of the mind of the Government, and the High Court

before the number of persons selected for appointment is restricted. Any other interpretation would make Rule 8 of Part D meaningless.â??

12. It is, thus, manifest that a person whose name is included in the select list, does not acquire any right to be appointed. The Government may decide

not to fill up all the vacancies for valid reasons. Such a decision on the part of the Government not to fill up the required/advertised vacancies should

not be arbitrary or unreasonable but must be based on sound, rational and conscious application of mind. Once it is found that the decision of the

Government is based on some valid reason, the Court would not issue any mandamus to the Government to fill up the vacancies.

13. In the present case, however, we find that after UPSC sent the list of 184 persons/recommended by it to the Government for appointment, six

persons out of the said list did not join. It is not a case where the Government decided not to fill up further vacancies. On the contrary DoPT sent

requisition to UPSC to send six names so that the remaining vacancies are also filled up. This shows that insofar as the Government is concerned, it

wanted to fill up all the notified vacancies. The requisition dated 20-11-2009 in this behalf was in consonance with its Clause 4(c) of OM dated 14-7 -

1967. Even when the Government wanted to fill up the posts, UPSC chose to forward names of three candidates.â??

8. Having regard to the dictum of Apex Court in the catena of judgments as extracted hereinabove, it is axiomatic that the empanelment of a

candidate in Reserve panel confers no right upon the candidate to be appointed,

merely on account of being so empanelled. Further, in *Manoj Manu* (supra) the Apex court itself has held that merely mentioning of candidate in Reserve Panel doesn't confer upon him a right to appointment ex-debito justitiae, and the court may issue mandamus only when denial to the release of the name from the Reserve Panel is arbitrary, unreasonable and discriminatory, but not in circumstances when the decision has been taken rationally in accordance with the conditions stipulated for preserving the Reserve Panel, and based on conscious application of mind. It is thus manifest that respondent No.1's decision not to operate the Reserve Panel beyond the period of 02 years outer period prescribed, as reckoned from finalization of IBR on 26.04.2010, which ceased on 26.04.2012; cannot be said to be arbitrary or unreasonable, but is rather based on cogent, rational and conscious application of mind, as no recommendation of the name of petitioner could have been made as requested by the respondent No.2 for the first time only on 11.05.2012, admittedly beyond the validity period of the Reserve Panel.

9. Furthermore, a Reserve Panel once exhausted on completion of the stipulated time duration prescribed as per Letter of Recommendation and Offer of Appointment dated 11.05.2010, creates no legal or indefeasible right in the petitioner. In other words, it cannot be said that even once the life of a Reserve Panel is exhausted, the court may direct that such a Reserve Panel must be continued and appointment be justifiably made in law. Therefore, the candidate on the Reserve Panel, in the facts and circumstance aforementioned, has no indefeasible and absolute right to get appointed at such a belated stage.

10. In view of the foregoing discussion, we are of the considered view that the present writ petition is devoid of merit and the same is accordingly dismissed.

11. Copies of this judgment be provided to the learned counsel appearing on behalf of the parties electronically and be also uploaded on the website of this court forthwith.