

(2013) 03 DEL CK 0309

In the Delhi High Court

Case No : Writ Petition (C) 1786 of 2013

Shailesh Kumar Verma

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-03-2013

Acts Referred:

Citation : (2013) 03 DEL CK 0309

Hon'ble Judges : Sudershan Kumar Misra, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Anuj Aggarwal, for the Appellant; Ravinder Aggarwal, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.

CM No. 3401/2013 (Exemption)

Allowed, subject to all just exceptions.

W.P. (C) 1786/2013

1. Issue notice. Mr. Ravinder Aggarwal, Advocate, accepts notice and states that the petition may be heard and disposed off finally.

2. Brief facts are that the writ petitioner participated in a selection process for the recruitment of Constables (GD) in the Border Security Force (BSF) conducted by the second respondent/SSC. The petitioner secured 54 marks but was denied a place in the list of selected candidates on the ground that he belonged to a medical category lower than what was prescribed. The petitioner's application for review of his medical category was accepted and eventually he was re-categorized as "fit".

3. The grievance projected by the petitioner in these proceedings is that despite his securing 54 marks, and being declared fit, the respondents are not

processing his case and issuing him appointment letter. The petitioner highlighted that the last individual in the OBC category from Gujarat State-against which he had applied, obtained 33 marks whereas the petitioner has secured 54 marks. He relies upon the judgment and order of this Court in *Vinay Kumar v. UOI & Ors.*, WP (C) No. 7651/2012, decided on 14th December, 2012.

4. The respondents do not dispute the submissions of the petitioner that his case is covered by the directions issued in *Vinay Kumar's* case (*supra*). In that case, this Court pertinently observed the following in regard to process of recruitment:

15. Now, Courts have insisted on cut off dates to be notified because this ensures no manipulation in a selection process. Otherwise, to favour candidates the cut off dates can be manipulated. Similar would be the position with respect to date when a result is to be notified. All procedures as per the advertisement relating to the selection process have to be completed before the said date. If the respondents gave a right to the candidates to question the decision taken by the Medical Board qua their fitness, the final declaration of the result had to await the decision of the Review Medical Board.

16. The facts of the instant case bring out the manner in which the system is being manipulated.

17. We dispose of the writ petition directing the respondents to revise the list dated November 28, 2011 and include in the said list the names of all candidates, in order of merit obtained, who were initially declared unfit but were later on declared fit at the Review Medical Board. All those who have qualified for selection in order of merit, which of necessity would include the petitioner would be issued letters offering appointment keeping in view their merit position and the force opted for. This would mean that the letter offering appointment would take into account the merit position and the option by a candidate.

18. We are issuing a general mandamus because experience have shown to us that whenever in the past a correction has been directed to be made good with respect to one person, the Court is flooded with a spate of writ petitions. Not that our only desire is to save precious judicial time, but even on principles of law we would be justified in issuing a general mandamus.

19. Where a wrong is found to be in rem by a public authority, it would be expected that the authority would take remedial action in rem and not with respect to a single individual. If a selection procedure is found to be contaminated, the benefit of decontamination must enure to all.

20. Compliance be made with the mandamus issued within eight weeks from today and needless to state all those who would be issued letters offering appointment would be entitle to their seniority as per their merit positions and all consequential benefits save and except wages, which need not be paid till they join service.

5. In the light of the above order - applicability of it to the facts of this case have

not been disputed by learned counsel for the respondents; a direction, in terms of what was ordered by this Court in the case of Vinay Kumar's case, WP(C) No. 7651/2012, decided on 14th December, 2012, is issued in the present case too. The petitioner shall now be included, after due review, in the selection list and an offer of appointment made to him within six weeks from today. The writ petition is allowed in the above terms.