
(2014) 09 DEL CK 0466
In the Delhi High Court
Case No : W.P. (C) No. 7054/2013

Shashi Kant Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 09 DEL CK 0466

Hon'ble Judges : Najmi Waziri, J; Kailash Gambhir, J

Bench : Division Bench

Advocate : K. Venkatraman, Advocates for the Appellant; Manish Mohan, CGSC, Manisha Rana Singh and Gaurav Sharma, Advocates for the Respondent

Judgement

Najmi Waziri, J.—This writ petition filed under Article 226 of the Constitution of India impugns an order of 29th October, 2013 issued by the UPSC (Union Public Service Commission) whereby the petitioner's representation seeking appointment to the post of Assistant Commandant in Central Armed Police Forces (CAPF) was rejected. The petitioner's case is that he had appeared in CAPF (ACs) Examination, 2011 as a General Category candidate; that as per vacancy, 567 candidates were recommended for appointment to the para military forces such as BSF, CRPF, CISF, ITBP and SSB. A consolidated reserved list of 174 candidates, ranking in the order of merit was also prepared. The said list comprised of 87 candidates from the General Category and a corresponding number of candidates from the reserved category, in the following composition:

"63 - OBC,

16 - SC and

08 - ST."

2. It is submitted that four candidates who were selected in the General Category in the aforesaid examination, did not join the forces since they got selected in the Civil Services Examination of 2012. These four candidates were ranked at

serial Nos. 6, 24, 77 and 120 in the General Category Merit List of the CAPF. The petitioner seeks his appointment in lieu of one of the four vacancies in the General Category since he found his name mentioned at serial No. 17 of the consolidated reserved list of General Category candidates. He relies upon an Office Memorandum dated 13th June, 2000 which reads as under:

"The undersigned is directed to invite attention to this Department's Office Memorandum quoted in the margin and to say that in terms of these Office Memorandum, it was informed that the Union Public Service Commission, wherever possible, maintains a reserved panel of candidates found suitable on the basis of selections made by them for appointment on direct recruitment, transfer on deputation, transfer basis and the reserve panel is operated by the UPSC on a request received from the Ministry/Department concerned when the candidate recommended by the UPSC either does not join, thereby causing a replacement vacancy or he joins but resigns or dies within six months of his joining. Ministries/Departments were advised that whenever such a contingency arises, they should first approach the UPSC for nomination of a candidate from the reserve panel, if any. The recruitment process be treated as completed only after hearing from the UPSC and the Ministry/Department concerned may resort to any alternative method of recruitment to fill up the vacancy thereafter.

[O.M. No. 39021/18/84-Estt.(B) Dt. 20.11.85]

[O.M. No. 39021/18/84-Estt.(B) Dt. 14.5.87]

[O.M. No. 39036/6/88-Estt.(B) Dt. 18.1.90]

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 a fresh 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."

3. The petition has been strongly opposed by Mr. Naresh Kaushik, the learned counsel for the respondent No. 3/Union Public Service Commission. He submits that the said Office Memorandum is not applicable to the present case since it concerns promotion and otherwise also is merely recommendatory in nature because it is to be applicable "wherever possible"; that the examinations, declaration of results and the recommendation of successful candidates is to be governed by the recruitment advertisement dated 18.6.2011; that the UPSC is to comply strictly with the rules applicable to each examination and there is no provision in the rules of the examination, to maintain or operate a waiting list for filling up of vacancies arising in the year, because of such candidates who may not join or who tender their resignation after joining. He relies upon Rules 16 (4) & (5) of the Central Armed Police Forces (Asst. Commandant) Examination Rules, 2011 to contend that the Commission is required to maintain a Reserve List for the specific purpose of catering only to vacancies arising out of the reserved category candidates recommended, who had qualified as per the general qualifying standards, reverting back to their own categories for better service preference. He submits that the vacancies arising in the General Category because of such reversion would be filled up by the candidates from the General Category reserved list and there would be a corresponding effect in the merit list of reserved candidates. The said Rules read as under:--

"Rule 16(4): While recommending the candidates, the Commission shall, in the first instance, take into account the total number of vacancies in all categories. This total number of recommended candidates shall be reduced by the number of candidates belonging to the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes who acquire the merit at or above the fixed general qualifying standard without availing themselves of any concession or relaxation in the eligibility of selection criteria in terms of the proviso to Sub-rule(1). Along with this list of recommended candidates, the Commission shall also declare a consolidated reserve list of candidates, which will include candidates from general and reserve categories ranking in order of merit below the last recommended candidate under each category. The number of candidates in each of these categories will be equal to the number of reserved category candidates who were included in the first list without availing of any relaxation or concession in eligibility or selection criteria as per proviso to sub-rule (1). Amongst the reserved categories, the number of candidates from each of the Scheduled Castes, the Schedules Tribes and Other Backward Class categories in the reserve list will be equal to the respective number of vacancies reduced initially in each category.

Rule 16(5): The candidates recommended in terms of the provisions of Sub Rule(4), shall be allocated by the government to the services and where certain vacancies still remain to be filled up, the Government may forward a requisition to the Commission requiring it to recommend, in order of merit from the reserved list, the same number of candidates as requisitioned for the purpose of the unfilled vacancies in each category."

4. The learned counsel for the UPSC further submits that there is no provision in the Rules for maintenance of a Reserve List to cater to vacancies occasioned by candidates not joining or tendering resignation after joining. It is also submitted that the examination process for the year 2011 was long over. Subsequently, that the examination process for the year 2012 too has come to an end with the release of its Reserve List on 20.11.2013. He submits that the examination was held for 656 vacancies as intimated by the Ministry of Home Affairs and not for 569 vacancies and no additional vacancy of 87 candidates was intimated to the UPSC. The learned counsel submits that the Office Memorandum of 29.10.2013 would not be applicable in cases where recruitment to the posts are made through direct open competitive examinations held every year. In their counter affidavit, the UPSC has stated as under:

"No such provisions/guidelines have been incorporated in the rules for direct open competitions being conducted by the Commission every year. Commission is mandated to conduct the examinations strictly as per the provisions contained in the Examination Rules for such examinations framed and notified by the administrative Ministry/Department in the Government of India. Reserve Panels as enumerated in the DOPS's O.M. referred to above is maintained and operated only where recruitment is a long drawn process and it takes several years to complete one recruitment process. In the case of appointment through direct recruitment where examinations are held every year, there is no paucity of candidates to fill up the resultant vacancies timely. As such, there is no provision in the rules for CAPF (ACs) Examination or any other open competitive examination held annually, for maintenance and operation of a Reserve Panel/Waiting List. Instead, as per the provisions in the rules, a Reserved List under Rule 16(4) and 16(5) of the rules is maintained catering on only those vacancies arising due to reserved category candidates recommended against general vacancies, reverting back to their respective categories for better service preference. Based on the above proposition, all vacancies notified by the Govt. of India in the Ministry of Home Affairs have been filled up and there is no backlog of vacancies for that year."

5. The learned counsel for the respondent No. 3 submits that the vacancies arising due to persons not joining the forces is not to be filled up by the persons on the reserved list, since this list gets activated only in the event of reserved category candidates, who have qualified to the general list against general qualifying standards, opting for more preferable service/force.

6. Having considered the arguments of the learned counsel for the parties, this Court is of the view that insofar as the exams are to be conducted as per the applicable Rules and insofar as the Rules do not either permit or provide for filling up of posts falling vacant due to the non-joining of selected candidates or on account of their resignation within a period of one year from the date of notification of the "Reserve List", there can be no occasion for recommendation of a person on the Reserve List for appointment. The reserved list gets activated

only when meritorious reserved category candidates, who had qualified on general standards and had been appointed to different forces on the basis of merit or preference, choose to migrate to a better force of their preference - because of their better ranking apropos the reserved category candidates. Therefore, there would be no stirring in the general reserved list. Hence, the petitioner cannot derive any benefit from the non-joining of select list candidates. There is no merit in the petition. It is accordingly dismissed.