
(2022) 12 DEL CK 0110

In the Delhi High Court

Case No : Civil Writ Petition No. 60, 9323 Of 2020, 2599, 2911, 2599, 13083 Of 2021, 2772, 5211, 6700, 8263, 11510 Of 2022, Civil Miscellaneous Application No. 30037 Of 2020, 7708, 25616, 34468-34469, 41272, 53903 Of 2021, 7954-7955, 15475, 20340-20341, 24898-24899

Subhash Chhilar And Others

APPELLANT

Vs

Union Of India & Anr

RESPONDENT

Date of Decision : 21-12-2022

Acts Referred:

Citation : (2022) 12 DEL CK 0110

Hon'ble Judges : Suresh Kumar Kait, J; Neena Bansal Krishna, J

Bench : Division Bench

Advocate : Neetu Kumari, Anil Singal, Ramesh Shukla, R.A. Ansari, Farman Ali, vshreya Rudy, Usha Jamnal, Krishan Kumar, Nirvikar Verma, Raj Kumar Yadav, Vedansh Anand, Preeti Sharma, Ashu Sharma, Amit Tiwari, Vedansh Anand, Ajay Digpaul, Kamal R. Digpaul, Swati Kwatra, Apoorv Kurup, Aparna Arun, Damini Garg, Rahul Sharma, C. K. Bhatt, Shubhra Parashar, Virender Pratap Singh Charak, Pushpender Singh Charak, Kapil Gaur, Vaishnav Kirti Singh, Shubham Ahuja, Pinky Yadav, Harish Vaidyanathan Shankar, Srish Kumar Mishra, Sagar Mehlawat, Alexander Mathai Paikaday, Ruchir Mishra, R.M. Tiwari, Mukesh Kumar Tiwari, Mansi Verma, Reba Jena Mishra, Anurag Ahluwalia

Final Decision : Disposed Of

Judgement

Suresh Kumar Kait, J

1. In the year 2016, applications to fill up 872 posts of Sub-Inspector, Assistant Sub-Inspector and Head Constable in Sashatra Seema Bal, Ministry of Home Affairs, Government of India were invited through an advertisement. The process of selection comprised three stages i.e. physical test, document verification and written examination, wherein the minimum qualifying marks were 50%. The result of the examination was declared after three years in the year 2019 and due to inordinate delay in completing the recruitment process, many candidates could not join the department. Those petitioners, who had scored above the

qualifying marks of 50% but were not appointed [W.P.(C) 60/2020; W.P.(C) 9323/2020 and W.P.(C) 2911/2021], have approached this Court seeking a direction to the respondents to fill up the leftover or unfilled vacancies, in order of their merit.

2. Similarly, an advertisement to conduct open examination to the post of "Constables (GD) in Central Armed Police Forces (CAPFs), NIA & SSF and Rifleman (GD) in Assam Rifles (AR) Examination, 2018" to fill up 54,953 vacancies was published on 21.07.2018 by respondent No.1. On 16.12.2019 consolidated revised vacancies for the post of Constable (GD) was released increasing the vacancies from 54,953 to 60,210. On 17.12.2019 and 04.03.2020 the result of PET/PST was declared wherein a total of 1,52,226 candidates (female 20,750 and male 1,31,476) including the petitioners, qualified for the Detailed Medical Examination(DME). On 09.01.2020 to 10.11.2020 the Medical Examination and the Review Medical Examination was conducted by the CAPFs (Central Armed Police Forces) wherein 1,09,552 candidates, including the petitioners, qualified. The final result was declared on 21.01.2020 and 54,411 candidates were provisionally declared selected for appointment.

3. A few of the candidates, who could not make through their appointments in the result declared on 21.01.2020 pertaining to the examination of the year 2018, filed petition [W.P.(C) 2599/2021] before this Court in February, 2021 stating that respondents will release fresh advertisement to conduct the similar examination, which would cause serious prejudice to these petitioners if the leftover vacancies are advertised afresh. Subsequently, a few more petitions [W.P.(C) 5211/2022; W.P.(C) 6700/2022; W.P.(C) 8263/2022; W.P.(C) 11510/2022; W.P.(C) 8247/2021; W.P.(C) 13083/2021 and W.P.(C) 2772/2022] seeking the similar relief were filed in this Court pertaining to the said examination.

4. Though the subject matter of the above captioned eleven petitions pertains to two different advertisements for appointment i.e. one by Sashatra Seema Bal, Ministry of Home Affairs, Government of India and the other by Central Armed Police Forces, however, since the relief sought in these petitions is similar and also represented by one Counsel, with the consent of the parties, these petitions were heard together and are being disposed of by this common judgment. For the sake of arguments and convenience, learned counsel for the parties submitted that W.P.(C) No. 60/2020 be treated as the lead matter in these batch of petitions.

5. With regard to the petitions [in W.P.(C) 60/2020; 9323/2020 & 2911/2021] pertaining to the advertisement of the year 2016, learned counsel for petitioners submitted that these petitioners had applied for the post of Head Constable (Communication) and they have patiently waited for three years for the result, which was declared in 2019. The petitioners have scored marks equivalent to the qualifying score of the last selected candidate in the General Category and out of 746 vacancies, 674 vacancies were filled and 72 vacancies were pending against the post of Head Constable. However, no waitlist was issued in respect of said

selection in contravention to the Office Memorandum dated 13.06.2000 issued by Ministry of Personnel, Public Grievance & Pensions, Department of Personnel & Training (DoPT), which stipulates that the vacancies advertised will not be carried forward to next year and if any post remains vacant, the same shall be filled from the reserved list and further clarifies that all the other recruiting agencies shall follow the same procedure.

6. Reliance was also placed upon decision of Hon'ble Supreme Court in CA No. 1130- 363 of 2018, dated 27.11.2018 titled as Dinesh Kumar Kashyap & Ors. Vs. South East Central Railways and Ors. as well as decisions of this Court dated 05.03.2013 in W.P. (C) No. 2552/2012, titled as The Chairman, Delhi Subordinate Services Selection Board & Anr. Vs. Ms. Rajni & Ors.; dated 16.12.2016 in W.P. (C) No. 11739/2016 titled as Union of India Vs. Shrey Bajaj & Anr.; dated 24.10.2019 in W.P. (C) No. 9723/2019, titled as Vikram Singh & Ors. Vs. Union of India and dated 02.05.2022 in W.P. (C) No. 3408/2019 titled as Ravi Raj & Ors. Vs. Union of India to submit that this issue is no longer res integra that the unfilled vacancies have to be filled from the reserved list.

7. It was next submitted by learned counsel for petitioners that respondents have failed to appreciate that there are large number of vacancies in the Central Armed Police Forces and it is the legitimate expectation of the petitioners to get offer of appointment who have scored marks in terms of merit determined by the competent authority.

8. With regard to petitioners in W.P.(C) 2599/2021; W.P.(C) 5211/2022; W.P.(C) 6700/2022; W.P.(C) 8263/2022; W.P.(C) 11510/2022; W.P.(C) 8247/2021; W.P. (C) 13083/2021 and W.P.(C) 2772/2022, learned counsel for the petitioners submitted that the petitioners had qualified the examination of the year 2018 but had missed the cut-off for selection with fraction of marks. In the result declared, only 172 candidates out of 5981 vacancies under the Ex-Servicemen category were selected and in respect of 260 candidates (female-23 male 237) results were withheld for want of verification. It is asserted that result/ notification was declared after an inordinate delay of two and a half years and is completely silent on the aspect of leftover vacancies in the event of non-joining of selected candidates as well as leftover vacancies under ex-servicemen category and also the respondents did not notify any waitlist or procedure to fill up those unfilled vacancies. It was submitted that petitioners' score is very close to the merit list and if the leftover vacancies are filled, the petitioners have every chance of being appointed, for which they have been waiting.

9. To the contrary, learned Senior Panel Counsel/ Central Government Standing Counsel appearing on behalf of respondents, submitted that the advertisement to fill up 746 post of Head Constable in Sashatra Seema Bal was published in employment news dated 31.12.2016 and 06.01.2017 and the closing date of receipt of application was 30.01.2017. Total 1,18,948 applications were received and 75,233 candidates were shortlisted for the recruitment process. The five stage of recruitment process included Physical Efficiency Test (PET)/ Physical

Standard Test (PST) and documentation; written Examination; Detailed Medical Examination, Review Medical Examination; Final Merit Generation, for which funds were received in the year 2018-19. To accommodate large number of candidates, examinations were conducted in five different locations in various schools. The written examination was conducted on 23.09.2018 and its result was declared on 04.04.2019. Total 1977 candidates were shortlisted for Detailed Medical Examination from 10.06.2019 to 03.07.2019 and the medically unfit candidates were granted time to make appeal till 30.07.2019. The Review Medical Board was conducted from 24.09.2019 to 11.10.2019. After completion of assessment, the final result was declared on 10.12.2019 and the offered candidates were required to join place of posting on or before 20.02.2020. Learned counsel strenuously submitted that in the process of recruitment, a large number of candidates were required to be shortlisted for appointment and the process was therefore time consuming and so, it is wrong to allege that the respondents carried out their process at a snail's pace.

10. It was further submitted by learned Senior Panel Counsel/ Central Government Standing Counsel appearing on behalf of respondents that in the advertisement itself it was mentioned as under:-

"The final selection list will be prepared in order of merit, category wise, after completion of Review Medical Examination. It is hereby emphasized that the candidates who merely secure the qualifying marks and found medically fit, may not be considered for final selection since the cut off marks will be determined based on number of vacancies after the completion of whole recruitment process....."

11. It was emphasized by learned Senior Panel Counsel/ Central Government Standing Counsel that the candidates who qualified all the stages of recruitment process and found place in the merits, have been appointed and the entire selection process has been conducted in a transparent manner.

12. With regard to 2018 examination, learned Senior Panel Counsel/ Central Government Standing Counsel, appearing on behalf of respondents submitted that total 30,41,284 candidates had appeared in the Computer Based Examination and 5,54,903 candidates were shortlisted for appearing in the Physical Efficiency Test (PET)/ Physical Standard Test (PST). A total of 1,52,226 candidates were qualified for the Detailed Medical Examination (DME) and 39 more candidates got permission for DME under various court orders. In the Medical Examination, total 1,09,552 candidates qualified and final selection was made on the basis of merit in Computer Based Examination -cum-preference of CAPFs/ Organization exercised by the candidate in the online applications submitted by them. He further submitted that the relief sought in these petitions cannot be granted as there was no provision for wait list for Constable (GD) Examination, 2018. Further the vacancies are related to domicile status and vacancies reserved for a particular domicile cannot be filled up by a candidate in another domiciled State even if he/ she has higher score than the marks

obtained by the last selected candidate for that State in the CBE. Furthermore, the persons selected against the quota of persons selected against the quota of ex-servicemen have to be placed in the appropriate category viz. SC/ST/OBC/UR, depending upon the category to which they belong.

13. On the claim of petitioners that if suitable ex-servicemen are not available, then the vacancies for ex-servicemen will be filled by non Ex-Servicemen candidates of respective categories, it was submitted that the aforesaid position is correct. However, additionally out of 60210 vacancies, 10% vacancies are earmarked for ESM category and if the ESM category vacancies are left unfilled then the remaining vacancies would be filled by non-ex servicemen from the SC, ST, OBC and UR categories belonging to the area and State. It was submitted that keeping the aforesaid formula in mind, the unfilled vacancies of ex-servicemen have already been filled up by non- ex-servicemen in the final results declared on 21.01.2021 and 28.01.2021.

14. On the aspect of unfilled vacancies due to non-joining of candidates, learned Senior Panel Counsel/ Central Government Standing Counsel submitted that in terms of provisions of MHA, the percentage of not reported candidates was already taken care of while calculating the vacancies of the next recruitment cycle i.e. CT (GD) Examination, 2021. Next submitted that there is no Wait List as per Result Write Up and as per Court order, 27 vacancies for male candidates and 02 vacancies for female candidates were kept unfilled and 15 vacancies were kept unfilled against temporary unfit candidates. It was also submitted that against the mandate of conducting recruitment for 60,210 candidates, selection of 55,912 candidates was made and the final result was declared on 21.10.2021 and 28.01.202; some posts were kept vacant under various Court orders and about 4000 posts could not be filled due to non-availability of the eligible candidates.

15. Learned Senior Panel Counsel/ Central Government Standing Counsel submitted further submitted that the Office Memorandum dated 13.06.2000 relied upon by the petitioner is not applicable to the fresh selection of the candidates and it is only applicable to the promotions. Since the petitioners before this Court could not make a place in the merit, therefore, they have not been offered appointment. Reliance was placed upon decision of Hon'ble Supreme Court in Manish Kumar Shai-Ii Vs. State Of Bihar And Others (2010) 12 Supreme Court Cases 576 as well as decision of this Court in Shashi Kant Singh Vs. Union of India & Ors. 2014 SCC OnLine Del 1696 to submit that after taking part in an examination and declaration of the final results, challenge to the recruitment process cannot be accepted if the name of candidate has not figured in the final list. Lastly, it was submitted that these petitions lack merit and deserve to be dismissed.

16. In rebuttal, learned counsel appearing on behalf of petitioners submitted that out of 746 vacancies pending against the post of Head Constable, 674 vacancies were filled, leaving behind 72 pending vacancies and DoPT OM dated 13.06.2000

clearly lays down that vacancy advertised for a selection process will not be carried forward to the next year if the successful incumbents do not join the said posts and these will be filled up from the reserved list. In support of above submission, reliance was placed upon the afore-noted decisions of Supreme Court and this Court.

17. Upon intricate hearing learned counsel for the parties and careful perusal of averments made in these petitions as well as decisions relied upon by both the sides, we find that the issue for determination before this Court pertaining to the examination of the year 2016 as well as 2018 is analogous to the extent whether the unfilled vacancies out of the notified vacancies, may be due to non-joining of the candidates or leftover in the process, can be filled from the reserve list or in terms of merit in the light of DoPT's OM dated 13.06.2000.

18. The first and foremost contention raised by the petitioners in the above captioned two petitions is that the process of appointment in the advertisements notified in respect of examination for the year 2016 as well as 2018 went of a snail's pace. Though we do not dispute to the aforesaid contention, however, keeping in view that for filling up 746 post of Head Constable in Sashatra Seema Bal and for filling up 30,41,284 posts in CAPF, multiple rounds of selection had to be undertaken by the respondents which is no doubt a time taking process and, therefore, this objection deserves to be rejected.

19. Further, with regard to examination of the year 2016, the petitioners have pleaded that out of 746 vacancies, 674 vacancies were filled and thereby, 72 vacancies were pending against the post of Head Constable; and for the examination of the year 2018, the petitioners have pleaded that out of 60,210 posts of Constable (GD) in CAPF; 54,411 candidates were provisionally selected and rest of the posts were left vacant. Let us first examine the advertisement vide which these vacancies were notified to find out how the leftover vacant posts as well as vacant posts due to non-joining of candidates were to be filled.

20. A perusal of advertisement inviting applications for the post of Head Constable in Sashatra Seema Bal shows as under:-

"2. VACANCIES

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Note:-

(i) Vacancies reserved for Ex-Servicemen will be filled by the candidate of open category within the respective quota, if suitable candidates of Ex-Servicemen are not available.

XXXXX"

21. A scrutiny of Notice issued by the BSF to conduct an open examination for the post of Constables (GD) in Central Armed Police Forces (CAPFs), NIA & SSF and Rifleman (GD) in Assam Rifles (AR) Examination, 2018 shows as under:-

"2. Note-II

10% vacancies are earmarked for Ex-Servicemen (ExS). If suitable Ex-servicemen candidates are not available, vacancies reserved for Ex-servicemen will be filled by non-Ex-servicemen candidates of respective categories.

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Note-IV: The appointment of candidates after selection is subject to availability of seats in training facilities of various CAPFs. As such, candidates may be appointed in phases in accordance with availability of training space. The Joining and in-service issues, seniority, training, etc will be regulated in accordance with the rules and regulations of various organizations.

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11. (xi) Candidates will be considered for the vacancies of a State/UT and further for the vacancies of Border Guarding Districts, Militancy/ Naxal affected District based on the information provided by them in the online Application Form and subsequent submission of relevant Domicile Certificate at the time of DME/ Document Verification. CANDIDATES ARE ADVISED TO BE VERY CAREFUL AND SHOULD EXERCISE DUE DILIGENCE WHILE PROVIDING INFORMATION ABOUT DOMICILE STATE AND DISTRICT IN THE ONLINE APPLICATION FORM. NO REQUEST FOR CHANGE OF DOMICILE STATE AND DISTRICT WILL BE ENTERTAINED BY THE COMMISSION AFTER SUBMISSION OF APPLICATION FORM UNDER ANY CIRCUMSTANCES. IF THERE IS ANY VARIATION OF DISTRICT AND/OR STATE MENTIONED BY THE CANDIDATE IN THE ONLINE APPLICATION FORM AND THE DOMICILE CERTIFICATE SUBMITTED BY THEM AT THE TIME OF DME/ DOCUMENT VERIFICATION, THEIR CANDIDATURE WILL BE CANCELLED FORTHWITH AND THEY WILL NOT BE ALLOWED TO PARTICIPATE IN DETAILED MEDICAL EXAMINATION."

22. A perusal of above-noted advertisements shows that it is quite descriptive about the vacancies and process of selection, however, it is silent on the aspect of leftover vacancies in the event of non-joining of the candidates as well as unfilled vacancies. These advertisements/Notice nowhere mention that in the eventuality of non-filling of vacancies; whether any wait list/ select list of the candidates on the basis of their merit will be prepared and considered.

23. The petitioners have relied upon DoPT's OM dated 13.06.2000 to submit that directions have been given to form reserve panel of candidates for appointment in the eventuality a candidate does not join. The OM dated 13.06.2000 reads as under:-

No.41019/18/97-Estt(B)

Government of India

Ministry of Personnel, Public Grievances & Pensions

New Delhi, dated 13th June, 2000

OFFICE MEMORANDUM

Sub: Operation of reserve panels prepared on the basis of selections made by UPSC, Staff Selection Commission, other recruiting agencies and where selections are made by Ministries/Department etc. – acceptance of recommendations of Fifth Central Pay Commission – regarding.

.....

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 reserve 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.

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.”

24. With regard to the aforesaid OM dated 13.06.2000, the respondents submitted before this Court that it is not applicable to the fresh selection of candidates and is applicable only to the promotions. A scrutiny of the OM dated 13.06.2000 clearly shows that it is applicable on appointment on direct recruitment and transfer on deputation basis and also that to reduce the delay in filling up of the posts resulting from resignation or death of an incumbent within one year of his appointment and in the event of a vacancy caused by non-joining of the candidate, the vacancy should be filled immediately by the candidate from the reserve panel and such a vacancy should not be treated as fresh vacancy. No document has been placed on record on behalf of the respondents and neither it is pleaded in their counter affidavit nor submitted at the time of final hearing that there was no provision for drawing up of a wait list/ reserve panel.

25. This Court has also gone through decisions relied upon by learned counsel for respondents in Shashi Kant Singh (Supra). In the said case, the petitioner, who had appeared in CAPF (ACs) Examination, 2011 as a General Category candidate, could not be appointed but his name figured in consolidated reserve list, had sought appointment in lieu of one of the four vacancies in the General Category who had not joined the service. This court had dismissed his petition on the ground that since the Rules do not permit filling up of posts falling vacant due to the non-joining of selected candidates or on account of their resignation, therefore, there can be no occasion for recommendation of a person on the reserve list for appointment.

26. In our considered opinion in Shashi Kant Singh (Supra) this Court had refused to grant appointment as the Rules do not permit to fill up the vacancies within a period of one year from the date of notification and the appointment sought by petitioner in the said case was against the unfilled vacancy due to non-joining of candidates. In the present case, there are not only vacancies due to non-joining of the candidates under different categories but also few seats were left to be filled at the time of selection process. Moreover, the decision in Shashi Kant Singh (Supra) rendered by the learned Single Judge has no binding effect on this Court.

27. In Manish Kumar Shai-Ii Vs. State Of Bihar And Others (2010) 12 Supreme Court Cases 576 relied upon by respondents, the petitioner had applied for appointment to the post of Civil Judge under Bihar Public Service Commission and he though had qualified till the stage of interview but did not find his name in the final list and so, challenged the procedure for interview/ viva voce. The Supreme Court affirmed the decision of the High Court dismissing his petition while holding that after the selection process was over, candidate cannot be permitted to challenge the criteria or selection process. However, in the present case, the petitioners have not challenged the selection criteria but have sought their appointment in terms of their falling merit on unfilled/ leftover vacancies.

28. This Court in *The Chairman, Delhi Subordinate Service Selection Board & Anr. Vs. Ms. Rajni & Ors.* 2013 SCC OnLine Del 903 observed and held as under:-

"3. It is settled law that no candidate has a vested right to ensure that all vacant posts are filled up, whether advertised or not; but not to fill up the posts has to be justified by a good reason. It does not subserve public interest that sanctioned posts are not filled up.

6. The problem can be overcome by a simple application of mind. Experience shows that between 5% to up to 20% posts remain vacant at each selection process. Experience shows that where number of posts advertised are less, the posts which remain vacant are proportionately less and the proportion in terms of percentage increases with the number of posts increasing. Thus, apart from the select panel having names equivalent to the number of vacancies, in order of merit entered, a reserve list of between 5% to up to 20% of the posts notified could be maintained and used as a reservoir.

7. Since every endeavour has to be made to fill up vacant posts and not filling vacant posts being an exception, to be justified on a reason, we quash the directive dated July 04, 2008 and direct that henceforward the Delhi Subordinate Services Selection Board shall, apart from drawing a select panel would draw a reserve list with the life of the reserve panel being six months and within the said time, upon such empanelled candidates as per the select list who ultimately are either not issued letter offering appointment or do not accept the same, the candidates from the reserve list, in order of descending merit, would be issued letters offering appointment."

29. This Court is in consensus with the view expressed by the Coordinate Bench of this Court in *The Chairman, Delhi Subordinate Service Selection Board & Anr.* (Supra) that when respondents commence the process of selection for different posts on large scale, as to why provisions are not being made to draw wait list/ select panel to fill up the unfilled vacancies. We are also in agreement with the plea of respondents that appointment process consists of multiple rounds of selection which is a time taking process. While accepting this plea, it would not be misplaced to state that reserve panel/ wait lists are drawn by the respondents to fill the unfilled vacancies, so that rollover of unfilled vacancies to the next appointment circle saves the time and money spent by the Government agencies. In the eventuality of there-being no wait list/ reserve panel, the appointment should be made from the pending list on the basis of merit and category.

30. In *Ravi Raj and Ors. Vs. Union of India and Anr.* 2022 SCC OnLine Del 1849 a Coordinate Bench of this Court dealt with a case wherein petitioners had applied for recruitment in Combine Higher Secondary Level Examination conducted by the Staff Selection Commission and had approached this Court with direction to respondents to prepare a reserve panel, had directed the respondents to maintain a reserve panel in terms of OM dated 13.06.2000 besides other

memorandums of preceding dates.

31. Another Coordinate Bench of this Court in Union Public Service Commission Versus Grishma Goyal and Another 2021 SCC OnLine Del 3193 had dealt with a case where a candidate, who had tie-breaking marks with the last candidate, had sought appointment against a vacancy which had arisen due to non-joining of a candidate, this Court while rejecting the petition filed by the Union of India had observed and held as under:-

"17. In the present case, as in the case of Manoj Manu (supra), when the Department of Economic Affairs had written to the UPSC that the case of Ms. Grishma Goyal be examined in the light of the refusal to join by another successful candidate, the UPSC ought to have, without hesitation, recommended the name of the respondent No. 1. Instead, by taking shelter in the phrase "as per the relevant rules by the Commission" and claiming that because they do not have a wait-list, the rules do not permit the appointment of the respondent, they unjustly rejected her claim. This stand of the UPSC is unacceptable, particularly when a candidate with the same marks had been appointed on the basis of their own rule of "tie-breaking" and the notified vacancies would not have been exceeded by appointment of the respondent as a vacancy had arisen due to non-joining of another successful candidate, and there was no-one else over whom the respondent would have stolen a march as admittedly, she is as meritorious as the last person selected.

18. We find no cause to interfere with decision of the learned Tribunal directing the UPSC to forward the profile of the applicant to the Ministry. The appeal is accordingly dismissed with further direction to the petitioner/UPSC to ensure that all formalities for the appointment of the respondent No. 1 are completed within two weeks from the date of this judgment."

32. While relying upon the decision of this Court in Union Public Service Commission Versus Grishma Goyal and Another (Supra), the Single Judge of Punjab and Haryana High Court in a decision dated 08.03.2022, titled as Anshul Vs. State of Haryana And Another, held as under:-

"7. The facts of the case in hand are pari materia with the ones in the aforesaid two judgments rendered by the Apex Court and by Delhi High Court. Therefore, I see no reason why the ratio rendered therein be not applied to the case in hand. I am of the view that the concept of waiting list as defined under the Act cannot be interpreted so as to mean that it is to be confused and/or misconstrued as not maintaining list of the candidates as per their merit. To that extent, merit list is not a waiting list. Merit list is not to be treated as waiting list for defeating the legitimate rights of a candidate next in merit against the unfilled post as has been unequivocally held by the Apex Court in judgment dated 26.07.2013 *ibid*.

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15. Accordingly, the writ petition is partly allowed with a direction to the

respondents to ascertain and determine the claim of the petitioner that he is actually the candidate next in merit after the last selected candidate in the General Category and if found so, thereafter proceed to consider his claim to be appointed on the post of Naib Tehsildar in accordance with law.”

33. On application of the afore-noted decisions to the facts of the petitions in hand, we find that it would not only be in favour of meritorious candidates to get appointments against the unfilled seats, due to non-joining of candidates as well as left-over vacancies; but also in the interest of respondents to prevent them to undergo an exhausting and laborious recruitment process of vacancies pertaining to the year 2016 and 2018. It has already been held that mere selection does not give an indefeasible right to a candidate for appointment; however, it has also been held that if the posts advertised are lying vacant, appointments can be made through wait/panel list and in the absence of panel list/ wait list, any seat lying vacant due to non-joining of a candidate or leftover vacancy, can also be filled from candidates who meet the selection criteria.

34. Relevantly, in these petitions, the advertisements inviting applications for appointment in Seema Sashatra Bal, it has been notified as under:-

“(vii) FINAL SELECTION:-

The final selection list will be prepared in order of merit, category wise, after completion of Review Medical Examination. It is hereby emphasized that the candidates who merely secure the qualifying marks and found medically fit, may not be considered for final selection since the cut off marks will be determined based on number of vacancies after the completion of whole recruitment process.”

35. Also, the Notice of conducting open examination for recruitment in CAPFs, notified as under:-

“11. MODE OF SELECTION:

(ix) On the basis of aggregate marks scored by the candidates in Computer Based Examination, the final selection of candidates, along with force allocation, in each category namely, Un-Reserved, SC, ST, OBC and ex-servicemen will be made separately for male and female candidates in respect of each State/ UT and further earmarked category of Border Guarding and Militancy/ Naxal affected Districts wherever applicable. Selection of the candidates for NIA and SSF will be made on All India basis.

(x) Allotment of CAPFs/ Organizations to finally selected candidates will be made on the basis of ‘merit in Computer Based Examination-‘cum’-preference of CAPFs/ Organization’ exercised by the candidates in the online Applications submitted by them.”

36. A read-through of the afore-noted extracts of the advertisements pertaining to the examination of the years 2016 as well as 2018 in Sashstra Seema Bal as well as CAPF shows that specific criteria for selection and appointment has been

laid down. In the peculiar facts of these petitions, keeping in view that in both the advertisements, respondents had not mentioned with regard to panel list/wait list in the event of seats lying vacant; but had clearly mentioned the criteria for selection and appointment, we direct the respondents to fill the unfilled vacancies having arisen due to non-joining of candidates as well as left over seats for the examination of the year 2016 conducted by the Sashatra Seema Bal and examination of the year 2018 conducted by the CAPF; in order of merit, category and domicile of the candidates; who meet the criteria mentioned in the respective advertisements, if not already filled. The respondents shall ascertain such candidates and offer them appointment within four weeks of passing this judgment with notional seniority but without back wages.

37. With aforesaid directions, these petitions and pending applications are accordingly disposed of.