

\$~12 & 13

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 27th September, 2011

+ W.P.(C) 7151/2011

NAMRATA SINGH Petitioner
Through: Mr.Anshum Jain, Advocate.

versus

UNION OF INDIA AND ORS Respondents
Through: Mr.Rajeeve Mehra, Senior Advocate
with Mr.Asit Tiwari, Advocate for R-1 & 2.

W.P.(C) 7152/2011

MAMTA CHAUDHARY Petitioner
Through: Mr.Anshum Jain, Advocate.

versus

UNION OF INDIA AND ORS Respondents
Through: Mr.Rajeeve Mehra, Senior Advocate
with Mr.Asit Tiwari, Advocate for R-1 & 2.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

**CM No.16290/2011 in WP(C) 7151/2011 &
CM No.16292/2011 in WP(C) 7152/2011**

Allowed subject to just exceptions.

WP(C) No.7151/2011 & WP(C) 7152/2011

1. We are pained to note the merry-go-round, cat and mouse game, played at the instance of learned counsel for the petitioners and for which, as would be noted herein after, the petitioners would have to pay some price.

2. Seeking public employment as a Lady Sub-Inspector under CISF, learned counsel for the petitioners drafted and filed a writ petition in this Court only impleading the Staff Selection Commission as a party and since CISF was not impleaded as a respondent, on the basis of learned counsel for the petitioners assigning a code to the writ petitions which required the same to be treated as raising a Civil Service related dispute under the Union, the Registry listed the writ petitions filed before a learned Single Judge where a stand was taken by the Staff Selection Commission that service disputes pertaining to the Union have to be adjudicated before the Central Administrative Tribunal and very gullibly the counsel for the petitioners withdrew the writ petitions stating that he would approach the Central Administrative Tribunal.

3. The Original Applications filed by the petitioners before the Central Administrative Tribunal had to be, and were rejected as not maintainable for the reason, Section 2 of the Administrative Tribunal's Act 1985 clearly states that the provisions of the Act did not apply to any Armed Force of the Union.

4. The petitioners challenged the decision of the Central Administrative Tribunal by filing writ petitions in this Court which were dismissed as withdrawn observing that the remedy of the petitioners is to file a proper writ petition with a proper code number assigned and thus instant writ petitions, being the third in the series, have been filed by the petitioners and we would regretfully note that in all the proceedings the same counsel has appeared for the petitioners. A thorough unprofessional job we must say.

5. Even in the instant writ petitions, the Central Industrial Security has not been impleaded as a respondent and except for saying sorry and pleading before us that litigants should not suffer due to negligence or inefficiency of the counsel, learned counsel is able to render no better service.

6. We are disposing of the writ petitions today in the absence of CISF, whose presence would otherwise be as a proper party and not a necessary party, for the reason the Staff Selection Commission has not forwarded names of the petitioners to CISF and thus the stand of CISF would be known. They are bound to say that since Staff Selection Commission has not forwarded names of the petitioners, it could not subject the petitioners to any medical examination and issue letters offering appointment.

7. Relevant facts are that pertaining to the 'Central Police Organization (Examination) 2008' the Staff Selection Commission published an advertisement in the Employment News on 7.6.2008 indicating the number of posts intended to be filled up in BSF, CRPF, CISF, ITBP and SSB (all Central Police Organizations) as under:-

Name of Force		UR	OBC	SC	ST	Total	EXS*
BSF	Male	204	109	61	30	404	40
CRPF	Male	32	17	10	05	64	06
CISF	Male	110	58	32	16	216	27
	Female	29	14	08	03	54	
ITBP		52	09	27	09	97	09
SSB		14	04	04	01	23	02

8. 5 notes were thereafter printed beneath the posts notified to be filled up as under:-

“NOTE-I: Candidates selected for appointment are liable to serve anywhere in India.

NOTE-II: Female candidates are eligible for recruitment to CISF & CRPF only.

NOTE-III: Reservations exist for SC, ST, OBC and ExS candidates as per extant Govt. orders.

NOTE-IV: Vacancies are liable to increase or decrease without any further notice.

NOTE-V: Physically Handicapped candidates are not eligible for these posts.”

9. Undisputably, both petitioners scored marks above the female candidate lowest in the merit to whom appointment has been offered in CISF. It dawned upon the petitioners as aforesaid when the results were declared in February 2010 followed by letters of offer of appointment being issued to the lady candidates who had secured marks lower than the marks obtained by the petitioners.

10. They filed, as noted herein above, writ petitions in this Court
WP(C) Nos.7151/2011 & 7152/2011

as if petitioners were seeking a civil employment under the Union, in which the counter affidavit filed, apart from raising an issue of subject matter jurisdiction, stated that vide Note-II it was made clear that female candidates were eligible for recruitment only under CISF and CRPF and thus it was pleaded that the writ petitioners having not given an option, whether they wanted employment under CISF or CRPF as also never indicated an option in the alternative, the Staff Selection Commission did not forward their names to CISF.

11. Thus, the stand of Staff Selection Commission as per earlier counter affidavit filed, copy whereof has been annexed with the writ petition, is agreed to be treated as the response of the Staff Selection Commission.

12. Now, the logic of the stand taken by Staff Selection Commission would be that depending upon the marks obtained by a candidate, option would determine where the candidate would go. For example, if there are 10 posts in CISF and 10 in CRPF, in all, 20 candidates can be adjusted. It may happen that the candidates who have attained highest marks and are at serial No.1 to 10 of the merit position may all opt for CISF and thus at the 10th merit position, all posts in CISF would be filled up. The candidate at Sl.No.11 of the merit position has also opted for service under CISF and has given no option in the alternative. Thus, this candidate would obviously not be offered appointment in CRPF because the candidate, having only opted for employment under CISF, would convey to the Staff Selection Commission that the candidate is only interested in employment under CISF and thus notwithstanding merit position of such a candidate being at Sl.No.11, this candidate cannot make any

grievance of people with lesser marks and placed in a lower merit position being offered appointment in CRPF.

13. But, the stand of the Staff Selection Commission ignores that obligation to exercise an option is contingent upon a plural choice being made available. If the offer is in the singular or the invitation to offer is for an acceptance in the singular, where is the scope to argue that the candidate must opt.

14. The advertisement clearly informs that for female candidates, only posts available were under CISF and thus we see no reason for the petitioners to have given an option, for the reason there was no place or a scope for an option to be exercised. Note-II has to be understood in the context of the preceding tabulation where number of posts and category thereof was listed.

15. Thus, we declare that petitioners could not be denied the fruits of their hard labour on the premise that they did not exercise an option. We declare that no option need to have been exercised for the reason for female candidates posts available were only under CISF. Had there been posts notified for female candidates under CRPF, only then had an option to be exercised.

16. We direct Staff Selection Commission to immediately forward the names of the petitioners, who admittedly have obtained marks more than the last candidate to whom CISF has issued letters of appointment.

17. CISF would take necessary action, if need be, after subjecting the petitioners to a medical examination, if Staff Selection Commission has not subjected them to a medical examination as per parameters specified by CISF. Upon petitioners being found to be medically fit, CISF would issue

appointment letters and since CISF is not in fault and learned counsel for the petitioners is responsible for the mess, for purposes of date of joining and seniority in CISF, the petitioners would be placed at the bottom of the seniority list and not with reference to their merit position pertaining to the batch which was successful in the Central Police Organization (Examination) 2008. We are holding so for the reason the selection process was over by February 2010. Candidates joined and have undergone the mandatory training during probation period. They have completed one year service and in the next five months would be completing the second year of service. The petitioners would have to await the mandatory training when the next batch joins and this is the reason why we require them to be placed at the bottom of the existing batch and above the next batch. Needless to state, the date of induction in service would be the date when, pursuant to letters of offer issued the petitioners would join.

18. No costs.

CM No.16289/2011 in WP(C) 7151/2011 &
CM No.16291/2011 in WP(C) 7152/2011

Applications stand disposed of as infructuous.

PRADEEP NANDRAJOG, J.

SUNIL GAUR, J.

SEPTEMBER 27, 2011
dk