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*IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 4997/2011**

% **Date of decision : 10th July, 2013**

BINOD SINGH AND ORS ..... Petitioners
Through: Ms. Jyoti Singh, Sr. Adv. with Mr. Tinu Bajwa & Mr. Amandeep Joshi, Advs.

versus

UNION OF INDIA AND ORS ..... Respondents
Through: Mr. Rajeeve Mehra, ASG with Mr. Himanshu Bajaj, Adv. for R-1 to 4.
Mr. Naresh Kaushik with Ms. Amita Kalkal Chaudhary & Mr. Vardhman Kaushik, Adv. for R-5.

+ **W.P.(C) 5457/2011**

RAVI SHANKAR SINGH AND ORS ..... Petitioners
Through: Ms. Jyoti Singh, Sr. Adv. with Mr. Tinu Bajwa & Mr. Amandeep Joshi, Advs.

versus

UNION OF INDIA AND ORS ..... Respondents
Through: Mr. Rajeeve Mehra, ASG, Ms. Barkha Babbar, Advs. for R-1 to 4.
Mr. Naresh Kaushik with Ms. Amita Kalkal Chaudhary & Mr. Vardhman Kaushik, Adv. for R-5.
Mr. Saqib, Adv.

+ **W.P.(C) 6403/2011**

BANWARI LAL MEENA AND ANR ..... Petitioners
Through: Ms. Jyoti Singh, Sr. Adv. with Mr. Tinu Bajwa & Mr. Amandeep Joshi, Advs.

versus

UNION OF INDIA AND ORS ..... Respondents
Through: Mr. Rajeeve Mehra, ASG with Mr. Himanshu Bajaj, Adv. for R-1 to 4.
Mr. Naresh Kaushik with Ms. Amita Kalkal Chaudhary & Mr. Vardhman Kaushik, Advs. for R-5.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MS. JUSTICE DEEPA SHARMA

GITA MITTAL, J (Oral)

1. The instant case relate to appointments to 31 posts of Administrative Officers (Group 'A' post) in the Border Road Organization which were requisitioned by the Border Roads Development Board (herein referred to as 'BRDB') by its letter of 15th May, 2007 addressed to the UPSC towards these appointments. The UPSC published and circulated an advertisement bearing No. 06 dated 28 March, 2009 (WP(C) No.5457/2011). As per this advertisement, applications were invited for 31 posts, out of which 5 were reserved for scheduled castes category candidates; 2 for schedules tribes category candidates; 8 for other backward classes and 1 post was reserved for physically handicapped candidate. As a result 15 posts remained available for the unreserved category. In

addition to the stipulated educational qualifications, the candidates were required to possess five years experience in a supervisory capacity in General Administration, Establishment, Finance & Accounts. It is noteworthy that by a corrigendum dated 28th April, 2010, the UPSC wrote to the BRDB that the qualifying experience for appointment to the said post of Administrative Officer to be increased from 5 years to 7 years in supervisory capacity for purposes of short-listing as there were large number of applicants.

2. Based on this short-listing criteria, the UPSC short-listed 178 candidates for interview.

3. It is undisputed that all the petitioners in W.P. Nos.4997/2011; 5457/2011 as well as in the third petition No.6403/2011 were short-listed for interview. The writ petitioners are persons who are serving in different capacities with the Border Roads Organization. As they met the eligibility criteria, they applied for appointment to the BRDB pursuant to the advertisement dated 28th March, 2009. The applications were supported by the experience certificates issued by the concerned authorities with the different units of the Border Roads Organization (which included General Reserve Engineering Force).

4. We may note that in the communication dated 28th April, 2010, the UPSC had sought comments of the BRDB on the suggested short-listing criterion and the 178 candidates who had been short-listed. In the response dated 6th May, 2010, the BRDP confirmed that they had no comments on the issue.

5. It is undisputed that the petitioners were short-listed and had participated in the interview process conducted between 17th to 21st and 24th to 26th May, 2010.

6. The UPSC forwarded its recommendation regarding selection of the 38 candidates in June, 2010 and results thereof were published in the Employment News.

7. Vide a letter dated 28th June, 2010, the respondents informed the Administrative Medical Officers to conduct the medical examination of the petitioner as they had been recommended in June, 2010 for appointment by the UPSC.

8. In view of the communication dated 30th August, 2010 the BRDB requested the UPSC to re-consider the decision, and on 12th December, 2010, the UPSC advised the BRDB to re-examine the decision and look into the suitability of the candidates who had applied.

9. At that stage some disgruntled unsuccessful candidates sent notice to the respondents alleging defects in the selection process. As a result, the BRDB constituted a three member Committee by an order dated 27th December, 2010 to examine the experience certificate of the selected candidates.

10. At this stage, the petitioners in WP(C)No.4997/2011, Binod Singh & Ors. v. Union of India & Ors. filed a writ petition being WP(C) No.2308/2011 praying for directions to appoint them in terms of the declared result. This writ petition was disposed of by an order dated 26th April, 2011 with the direction to the Ministry (Road Transport and Highways) to take a final decision in the matter of the selection of the petitioners.

11. The three member Screening Committee gave its report on the 28th February, 2011 recommending cancellation of the entire selection process. As a result the BRDB issued cancellation letters on 1st June, 2011 to the selected candidates.

Aggrieved by the cancellation of the selection process, the petitioners assail the same by way of the present writ petitions.

12. The only factual question which arises before us and is pressed for adjudication, is the validity of the experience certificates which were relied upon by the petitioners. This is the only ground on which the petitioners' eligibility is being assailed

13. So far as WP(C)No.4997/2011, Binod Singh & Ors. v. Union of India & Ors. is concerned, Ms. Jyoti Singh have drawn our attention to a report dated 28th February, 2011. This report dated 28th February, 2011 was given by the three member Committee after examining the experience certificates of all candidates for the post of Administrative Officers in the Border Roads Organization. More important, this report is relied upon by the respondents as well.

14. So far as WP(C)No.6403/201, Banwari Lal Meena & Anr. vs. Union of India & Ors. is concerned, it is pointed out that the candidature of Sh. Indresh Kumar-petitioner No.2 was cancelled as it was found that his experience certificate was incorrect and he was therefore not issued an offer of appointment. So far as Banwari Lal Meena's selection is concerned, inasmuch as the respondents cancelled the entire selection process, he could not be appointed. The petitioners have challenged the failure of the respondents to make their appointments.

15. So far as WP(C)No.4997/2011, Binod Singh & Ors. v. Union of India & Ors. is concerned, the candidature of the 16 petitioners (Virendra Kumar Banerjee, Gurvinder Singh Khanna, Binod Singh, Rakesh Pratap Singh, Ram Sewak, Potanna Chinanna Abulkod, Sanjeev Kumar, Laxman Singh Rawat, K Vardan Chari, Rakesh Sopori, Pradeep Kumar Namdeo Gaikwad, Ashok Kumar, Tulasi Ram, Takhellambam Kunjakeshwar, Mahesh Singh Tanwar and Kiran Kumar Dasari) were not rejected by the Committee which had commented about them as follows:-

> "The Committee further opined that the experience certificates of the remaining 21 candidates whose names are given below may be considered valid for their appointment to the post of Administrative Officer in BRO:

S.No.	Roll No.	Name
1.	856/844	Virendra Kumar Banerjee
2.	xxx	xxx
3.	83	Gurvinder Singh Khanna
4.	156	Binod Singh
5.	596	Rakesh Pratap Singh
6.	367	Ram Sewak
7	157	Potanna Chinanna Abulkod
8.	758	Sanjeev Kumar
9.	564	Laxman Singh Rawat
10.	763	K Vardan Chari
11.	309/414	Rakesh Sopori
12.	xxx	Xxx
13.	647/733	Pradeep Kumar Namdeo Gaikwad
14.	103	Ashok Kumar
15.	Xxx	xxx
16.	Xxx	xxx
17.	885	Tulasi Ram

18.	350	Takhellambam Kunjakeshwar
19.	xxx	Xxx
20.	603	Mahesh Singh Tanwar
21.	417	Kiran Kumar Dasari

16. Even the experience certificates of these 16 petitioners were found in order, they were also not issued the appointment letters for the reason that the respondents had scraped the entire selection process. We may first examine the issue with regard to the validity of the experience certificate.

17. We therefore find that there is no issue with regard to the experience certificate of the writ petitioners in WP(C)No.4997/2011 and Banwari Lal Meena- writ petitioner No.1 in WP(C)No.6403/2011.

18. So far as the petitioners in WP (C) No. 5457/2011, Ravi Shankar Singh and Others Vs. Union of India & Others is concerned, the question which arises for consideration is as to whether the eligibility certificate produced by the petitioners met the prescribed requirements of the respondents?

19. These writ petitions had come up for consideration before this court on the 14th of December, 2012. The petitioners had contended that they were actually functioning in supervisory capacity to the post and, therefore, were entitled to be considered eligible for appointment to the post of Administrative Officer as they possess the prescribed experience in such posts. In this regard, our attention has been drawn to the following categorical averment made by the petitioner in ground 'C' of WP(C)No.5457/2011:-

"C. ...It is brought out that the Gazette of India Notification dated 24.11.1962, lists out the civilian officers and supervisory staff in GREF and also stipulates the wearing of their Rank Badges. The list provided therein includes the designation of the petitioners herein like Clerk, UDC, Stenographers, Supervisor NT Grd.-II and others under the heading of Supervisory Staff. Copy of the Gazette notification dated 24.11.1962 is annexed herein as Annexure P-8. Regulation 32 of the Border Roads Regulations brings the GREF personnel within the ambit of Army Act, 1950 for purpose of disciplinary matters. Regulation 33 of the same BR Regulations includes Annexure-6 stipulating equivalent ranks of Army and GREF also lists out the petitioners under the heading of Junior Commissioned Officers including Supervisor NT Grade-1, Superintendent Clerical, Assistant, PA, Stenographer, UDC etc. and are hence to be reckoned as Supervisors, as JCOs in Army are held as Supervisors. Copy of Regulation 32 and 33 of BR Regulations, alongwith the said Annexure-6 of BR Regulations is attached as Annexure P-9 (Colly). Besides, the Convening Orders for the composition of various Departmental Boards also makes it mandatory for one of the Board Member detailed to be a JCO/Supervisor. A perusal of various convening orders for the various Departmental Boards reveals that the petitioners herein have been detailed in the capacity of Members of such Board thereby signifying their supervisory status. Copies of such convening orders for the mentioned Boards are annexed herein as Annexure P-10 (Colly). Further, Para 33 of the policy letter on `Instructions for Maintenance of Cash and Funds', issued by the Headquarters DGBR, on maintenance of cash books categorically stipulates that

the duty of writing of the cash book is the responsibility of Subordinate Commissioned Officer or Junior Commissioned Officer/Supervisors. Herein again, the petitioners have been performing the duty of writing and maintenance of cash book signifying their status as Supervisors. Copy of HQ DGBR policy letter on `Instructions for Maintenance of Cash and Funds' is annexed herein as Annexure P-11. Additionally, the supervisory status of the petitions is also certified as the petitioners herein are declared members of 'Supervisors Mess'. Copy of Mess Bill in respect of one of the petitioners to this effect is annexed herein as Annexure P-12. The Supervisory status of the petitioners is also brought out by the fact that they have been authorized to wear leather belt on the uniform which is authorized only to the supervisors in terms of HQ DGBR letter dated 11.10.2010. Copy of HQ DGBR letter dated 11.10.2010 is annexed herein as Annexure P-13. Furthermore, GOI letter dated 20.10.2010 lists out the payment of High Altitude Allowance (HAA) to member of GREF in which Supervisors have also been listed for payment of Rs.960/- and Rs.1440/- depending on the altitude. The petitioners herein are also in receipt of the mentioned HAA which again signifies their status as Supervisors. Copy of Govt. of India letter dated 20.10.2009 is annexed herein as Annexure P-14 and copy of the pay slip of one of the petitioners showing receipt of high altitude allowance is annexed herein as Annexure P-15. It is also pertinent to mention that the list of Sr. Administrative Officers in BRO as on date has serving Administrative Officers who had the same designations as LDC, UDC, NT Supervisor capacity, similar to the ones held by petitioners herein. Hence, it is not understood as to how the petitioners herein cannot

> qualify as supervisors based on their present designation whereas in the past, the same designations have led to the appointment of present Administrative Officers. In one case these designations qualify as supervisor while in another similar case the same designations are not considered as qualifying the criteria leading to arbitrary discrimination. Copy of the list of latest Administrative Officers is annexed herein as Annexure P-16. In view of the foregoing, and in light of statutory provisions mentioned above, it is amply clear that the designations of the petitioners herein have been established beyond doubt as fulfilling the role of Supervisors and hence, they have met the essential requirement of their experience in supervisory capacity. As such, the findings of the Committee on the subject were erroneous and wrong in law.

20. A perusal of the counter affidavit filed by the respondents would show that the above of the petitioner have not been disputed by the respondents.

21. The petitioners have also placed before us an additional affidavit dated 29th November, 2012 making detailed assertions about the duties of the petitioners in supervisory capacity and enclosing documents in support along with. In addition, the petitioners have placed on record the following documentary material in support of their contention:-

> (i) Starred question in the Parliament as to whether the Border Roads Organization has recruited a large number of Administrative Officers between 1983-96 based on wrong experience certificates as pointed out by BRDB by the letter dated 25th July, 2011? If so, as

to how many officers have been recruited during the period and what action has been taken on the issue.

(ii) The reply dated 13th December, 2012 sent by the DGBR to the effect that recruitment in the past by the UPSC must have been done with due diligence as per the rules and regulations in vogue and that the issuance of experience certificates by the employer to the employees for the works done by them is within the ambit of office procedure and ethics and that in the present case no situation of blame or error has been established at any level of scrutiny.

(iii) A communication dated 6th December, 2012 sent by DGBR referring to the disciplinary action initiated against the GREF officers with regard to the experience certificates (as relied upon by the petitioners) issued by them who stood discharged in the disciplinary proceedings.

22. In order to completely and effectively adjudicate on the subject matter, the respondents were granted leave to respond to the specific averments made in ground 'C' of the writ petition as well as to deal with the aforenoticed documentary evidence placed before this court. In the response, the respondents have filed an affidavit dated 22nd January, 2013 enclosing as Annexure 'B' a copy of a document purporting to be a duty chart in respect of different posts in the DGBR. However, perusal of the document does not show what the document is a part of and the particulars of the authority which has issued the said chart. The respondents were given liberty

to place complete document on record which has not been done even in their additional affidavit. Obviously this incomplete document cannot be looked at for any purpose.

23. However, this aspect of the matter does not need to detain us any further. In consonance with response of the respondents to the parliamentary question, the respondents have filed an affidavit dated 1st July, 2013 in WP(C)No.4997/2011 (page 281). The para 4 of this affidavit deserves to be considered in extensor and reads thus:-

> "4. That it is submitted that the supervisory experience certificates have been issued by officers of BRO following the practice and precedence hitherto existing in the matter of issuing certificate for the similar posts in the absence of any guidelines on the subject matter."
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> *(Emphasis supplied)*

24. It is clearly evident from the above that respondents have affirmed the authenticity as well as correctness of the certificates on which the petitioners were placing reliance. It is also clearly stated that such certificates were being issued in due course and as prescribed by the Border Roads Organization.

25. In this background, the issue as to the validity of the certificates on which the petitioners place reliance and the question as to whether they were performing duties in a supervisory capacity or not finds finally settled and needs no adjudication.

28. The candidature of the writ petitioners in WP(C)Nos.5457/2011 and 6403/2011 was rejected on the sole ground that their aforenoticed certificates were not with the prescribed procedure. This objection does not subsist any further.

29. The experience certificates relied upon by the petitioners have to be thus considered as valid and proper. No issue at all remains with regard to the experience possessed by the petitioners before this court and as such the service of the petitioners in WP(C)Nos.6403/2011 as well as 5457/2011 are required to be considered as meeting the requirements of the eligibility conditions notified by the UPSC are valid.

30. In view of the above discussion, there remains no reason for denying appointment to the petitioners.

31. So far as writ petitioners in WP(C)No.4997/2011 are concerned, the respondents scrapped the selection process even though there was no reason at all for rejection of their candidature.

32. It is necessary to point out that even the Committee in its report dated 28th February, 2011 had recommended the selection of these petitioners in para 4 and 5 of its report. The respondents therefore had before them the list of candidates whose candidature was recommended and those whose candidature were not being recommended by the committee or faulted on the ground of the experience certificate. It is trite that once the selection can be segregated and chaff separated from grain, the candidates whose appointment is not tainted or illegal have to be given appointments

(Ref. ***(2003) 7 SCC 285, Union of India & Ors vs. Rajesh P.U. Puthuvalnikathu & Anr.*** and ***(2010) 7 SCC 678, East Coast Railway & Anr. vs. Mahadev Appa Rao & Ors.*** and connected case). There was therefore no reason for not issuing the appointments to these 21 candidates.

33. Ms. Jyoti Singh, learned Senior counsel appearing for the petitioner has also drawn our attention to the principle laid down in ***(2010) 10 SCC 707 Girjesh Shrivastava & Ors. vs. State of Madhya Pradesh & Ors***. Wherein it has been held that UPSC can validly shortlist when applications are large in number and this does not amount to change or altering the criteria in the Recruitment Rules or advertisement. No such issue has been raised before us.

34. In view of the above, these writ petitions have to be allowed and we direct as follows:-

(i) The rejection of the candidature of writ petitioners in WP(C) Nos.5457/2011 and 6403/2011 is held to be illegal and is hereby set aside and quashed.

(ii) We also hold that the cancellation of the selection process held pursuant to advertisement No.6 dated 28th March, 2009 – 3rd April, 2009 of Employment Newspaper to the post of Administrative Officers for the General Reserve Engineer Force of the Border Roads Organization to be illegal, unjustified, arbitrary and is hereby set aside and quashed.

(iii) The respondents shall, as a result of the above, issue offer of appointment to the petitioners in these three writ petitions in

accordance with prescribed procedure within eight weeks from today.

35. Needless to say that the appointments would be subject to petitioners fulfilling all prescribed requirements which would include the requisite medical examination.

36. These writ petitions are allowed in the above terms.

(GITA MITTAL)
JUDGE

(DEEPA SHARMA)
JUDGE

JULY 10, 2013
ak/mk