

\$~9

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 494/2016**

PRABIR PAL

..... Petitioner

Through: Mr. Anil Kumar Tiwari, Advocate
with Petitioner in person.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Sanjeev Uniyal with Mr. Vinod
Tiwari, Advocates.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

% **12.12.2019**

1. The present petition is the second round of litigation concerning the Petitioner's prayer challenging a letter dated 30th November, 2015 of the Directorate General, Indo-Tibetan Border Police ('ITBP') rejecting his application for appointment to the post of Inspector (Accountant), the Petitioner having successfully completed the Cash & Accounts course from Institute of Secretariat Training and Management, Delhi ('ISTM').

2. In the earlier round, on 12th July, 2016, this Court had dismissed the writ petition on the ground that the rule of seniority could not be overlooked and that Inspectors (Combatant Ministerial) had been absorbed as Inspectors (Accountant) "strictly according to their seniority position." The Petitioner

filed Review Petition No. 371/2017 which was dismissed on 23rd August, 2016.

3. Thereafter, challenging both the aforesaid orders dated 12th July, 2016 and 23rd August, 2016, the Petitioner filed S.L.P(C) 1926-27/2017. The Supreme Court allowed the Civil Appeals 817 and 818 of 2019 arising from the said SLPs by its order dated 15th January 2019 in which it referred to para 5 of the writ petition, the reply of the Respondents thereto and the rejoinder affidavit. The operative portion of the Supreme Court's order reads as under:

“We find that these factual aspects have not been analyzed at all by the High Court in the impugned judgment. We are conscious of the fact that the High Court in paragraph 4 of the impugned judgment, has noted that in the rejoinder the petitioner has himself given the names of: Ram Singh, Manmohan Singh and Vimlesh Kumar Tiwari. However, the High Court has not fully addressed the issue raised by both parties. Therefore, we are inclined to relegate the parties to the High Court for reconsideration of the Writ Petition on the aforementioned limited grievance of the appellants.”

4. It is consequent upon this order dated 15th January, 2019 that the present writ petition has been revived. It must be noted here that on 31st May, 2019, while no stay was granted in favour of the Petitioner, it was clarified that the doctrine of *lis pendens* would apply, meaning thereby that any action taken by the Respondents in the meanwhile to fill up the post of Inspector (Accountant) would be subject to the outcome of the petition.

5. This Court has heard learned counsel for the parties and also perused the pleadings.

6. The positive case of the Petitioner is that at the relevant point in time when he underwent the ISTM course, while on deputation to the National Disaster Response Force ('NDRF'), there was no senior candidate with the requisite qualification for appointment to the post of Inspector (Accountant) in the ITBP. Paragraph 5 of the writ petition reads as under:

"5. That it is pertinent to mention that admittedly the Petitioner has the seniority among the eligible and interested candidates who have passed the cash and accounts course from ISTM Delhi, but the Respondent No.2 is illegally and whimsically comparing the seniority of the petitioner from those candidates who are not eligible and not interested for appointment in the post of Inspector (Accounts) which is in gross violation of the ITBP service rules as it provides for appointment to the post of Inspector (Accountant) not only from within the eligible ITBP cadres but also through absorption from NDRF. Relevant as it is to mention that Petitioner is currently working in NDRF through deputation and he was nominated for "Cash & Accounts" course from ISTM with the approval of NDRF head quarters."

7. The Respondents in their reply to paragraph 5 of the writ petition, averred in their counter-affidavit as under:

"5. That the contents of para 5 of the petition, it is submitted that the respondent No.2 is not illegally whimsically comparing the seniority of the petitioner from those candidates who are not eligible and not interested for the appointment in the post of Inspector (Accounts). The petitioner has completed respective posts in the working period in NDRF through deputation and he was nominated for cash and accounts course from ISTM."

8. In reply to ground A in the writ petition, it is stated thus:

"A. The contention of the petitioner is not correct. That he has not been compared with unqualified and uninterested candidate with the ITBP Care. In fact Senior Inspector/CM did not qualify

the said course as they were not nominated by ISTM. However, after concerted efforts ISTM is going to run a special batch of cash and account course of 25 senior/willing inspectors/CM of ITBP which is scheduled from 21.03.2016 presently at least 170 Senior Inspector (CM) to petitioner are awaiting for cash and account course. Hence, the claim of petitioner for absorption to the post of Inspector (Accountant) in ITBP is totally baseless and unjustified and again the prevalent procedure.”

9. In his rejoinder, the Petitioner has contended as under:

“5. That the contents of para 5 of the reply are wrong and hence denied and the corresponding paras of the Writ Petition are reiterated and reaffirmed. It is further submitted that the absorption to the post of Inspector (Accounts) from Inspector (Combatant Ministerial) is not a departmental promotion but it is only an absorption from one department to another on the basis of special skill/knowledge possessed by the candidates in the same pay scale and therefore even the Administrative rule applicable for the post Inspector (Accountants) does not mention seniority as criteria for posting. The said administrative rules only mention that the candidates should possess the Cash & Accounts Course from any recognized institute and should be medically fit.

7. That the contents of para 7 of the Reply are wrong and hence denied and the corresponding para of the Writ Petition which contains the ground to the petition is reiterated and reaffirmed. It is further submitted even at the cost of repetition that the petitioner’s case was rejected by the Respondents even without referring the same to the Screening Committee. Further, the contention of the Respondents that the post of Inspector (Accountants are lying vacant due to non-allotment of seats in Cash and Accounts course by ISTM, New Delhi is highly misleading. The true fact is that even in the year 2015 certain seats were allotted by the ISTM, New Delhi to the Respondents but they failed to nominate any candidate for the said training. Further, again, the Respondent’s arguments that the petitioner was nominated for Cash and Accounts course by NDRF due to

their own administrative requirement is highly absurd and in reply thereto it is again submitted that when the Department (ITBP) is forced to take candidates from outside on deputation due to ineligibility of candidates within the department then there is no justification in ignoring the Petitioner's candidature who belongs to ITBP cadres and possess the necessary qualification, merely on the ground that he was not nominated for training course by ITBP."

10. The factual position that emerges is as under:

- i) The petitioner did get nominated to the course at ISTM while he was on deputation with the NDRF.
- ii) The post of Inspector (Accountant) requires that the candidate should have qualified in Cash and Accounts from a recognised institute and should be medically fit. The petitioner satisfies both these requirements.
- iii) The post of Inspector (Accountant) is not a promotional post vis-à-vis the post of Inspector (Combatant Ministerial). It is a post in the same cadre. Had he been appointed as such, all that would have happened is that the Petitioner would be shifted to a different wing, i.e. the Accounts wing.
- iv) There is a need for Inspector (Accountant) in the ITBP as vacancies have sought to be filled by taking persons on deputation, on the ground that enough eligible candidates are not available in the ITBP.
- v) The Petitioner has referred to the examples of Ram Singh, Manmohan Singh and Vimlesh Kumar Tiwari, to demonstrate that they had been

appointed Inspector (Accountant) even while those senior to them in the cadre were not, since they had not undertaken the ISTM course.

vi) ITBP nominated only one person, Mr. Naresh Kumar, in 2015 for the course in ISTM, which he successfully completed. Later he was appointed as Inspector (Accountant). The Petitioner is not questioning that appointment.

11. It appears to the Court from the reply of the Respondents that the main ground on which they are opposing the request of the Petitioner is that he underwent the ISTM course while on deputation with the NDRF. In other words, he has been nominated for the ISTM course by the NDRF and not by the ITBP. This should hardly matter because as long as the Petitioner fulfils the eligibility requirements and there is no change in the seniority position, there should be no difficulty in his being appointed to the post of Inspector (Accountant) in ITBP. Merely because it is not the ITBP that nominated him should not make a difference.

12. Consequently, the Court sets aside the impugned letter dated 30th November, 2015 issued by the Directorate General, ITBP rejecting the Petitioner's application for appointment to the post of Inspector (Accountant). The necessary orders appointing the Petitioner to the post of Inspector (Accountant) be issued not later than four weeks from today.

13. The nominal date for commencement of the Petitioner's appointment as Inspector (Accountant) will be 30th November, 2015 but without any back

wages. That will be the relevant date for all other purposes including seniority, future promotion, pay fixation etc. It is up to the Petitioner to be asked to be relieved from his deputation with the NDRF to join the above post at the earliest or to join after the deputation comes to an end.

14. The petition is allowed in the above terms. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 12, 2019

pa