

GAHC010018642017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2038/2017

SUJIT KURMI
ROLL NO. 5111502146 S/O SHANKAR KURMI R/O PANIBHARA P.O. CLEVAR
HOUSE, DIST. CACHAR, ASSAM, PIN - 788112.

VERSUS

THE UNION OF INDIA and 2 ORS.
REP. BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, NEW DELHI -
110001.

2:STAFF SELECTIN COMMISSION

THROUGH SECRETARY
STAFF SELECTION COMMISSION
BLOCK NO. 12
CGO COMPLEX
LODHI ROAD
NEW DELHI - 110003.

3:THE REGIONAL DIRECTOR NER
STAFF SELECTION COMMISSION
RUKMINI NAGAR
P.O. ASSAM SACHIVALAYA
GUWAHATI
ASSAM- 78100

Advocate for the Petitioner : MR.H BEZBARUAH

Advocate for the Respondent : ASSTT.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 30/11/2023

Heard Mr. R. Mazumdar, learned counsel for the writ petitioner. I have also heard Mr. H. Gupta, learned CGC, appearing for the respondents.

In response to the advertisement notice dated 15/12/2012 issued by the Staff Selection Commission (SSC) inviting applications for recruitment of Constables(GD) in the Central Armed Police Forces (CAPFs) and Riflemen (GD) in the Assam Rifles, the petitioner, who belongs to the OBC category, had submitted his application and thereafter, participated in the selection process. The petitioner had secured 43 marks but was not selected. Aggrieved thereby, the petitioner has approached this Court by filing the instant writ petition.

The basic case of the petitioner is that those candidates belonging to the reserved category, who were otherwise eligible for being appointed on their merit position, were required to be migrated to the Un-reserved (UR) category, in which event, the writ petitioner, even with 43 marks, could have made it as a selected candidate by virtue of his entitlement as a OBC category candidate. Such argument has been made by the petitioner by relying upon the decision rendered by the Hon'ble Supreme Court in the case of ***Post Graduate Institute of Medical Education & Research Vs. K.L. Narasimhan*** reported in ***(1997) 6 SCC 283*** and in the case of ***Jitendra Kumar Singh Vs. State of Uttar Pradesh*** reported in ***(2010) 3 SCC 119***.

By taking note of the petitioner's case, the learned Single Judge had passed order dated 06/04/2017 issuing notice upon the respondents and in the interim, it was ordered that one post of Constable (GD) be kept vacant in the CAPF.

On receipt of the notice, the respondents have appeared and filed their counter affidavit.

It appears that the writ petitioner had opted for BSF, CISF and CRPF.

From the averments made in the counter affidavit, it appears that the petitioner had indeed scored 43 marks. However, the last selected OBC category candidates, who were appointed in the BSF, CISF and CRPF, had secured 52, 49 and 50 marks respectively, thus, scoring higher marks than the writ petitioner. As such, in so far as the OBC category is concerned, it is evident that the last selected candidate appointed in all the 3 (three) Police Forces, for which the petitioner had applied, had secured higher marks than him.

In so far as the arguments of migrating the reserved category candidate to the UR list for adjusting the resultant vacancies is concerned, it appears that clause-10 of the advertisement notice dated 15/12/2012 would not permit such adjustment. The relevant portion of clause-10 is reproduced herein below for ready reference:-

“MODE OF SELECTION

- (i) *The final selection of the candidates will be made in order of merit each category in each state.*
- (ii) *The minimum cut off percentage of marks for selection will normally as under :*

General and Ex-servicemen : 35%

SC/ST/OBC : 33%

The cut off is relaxable at the discretion of the Commission.

Provided that SC, ST and OBC, who are selected on their own merit without relaxed standards, along with candidates belonging to other communities will

not be adjusted against the reserved share of vacancies. Such SC, ST and OBC will be accommodated against the general/unreserved vacancies as per their position in the overall Merit List. The reserved vacancies will be filled separately from amongst the eligible SCs, STs and OBCs, candidates which ..sic... thus, comprise of SC, ST and OBC candidates who are lower in merit than the last general candidate on merit list of unreserved category but otherwise found suitable for appointment by relaxed standard."

The petitioner has not challenged the aforesaid clause-10 of the advertisement notice. Therefore, the decision in the case of ***Jitendra Singh (Supra)*** relied upon by the petitioner, would not have any relevance in the facts and circumstances of the case. Mr. Mazumdar, learned counsel for the writ petitioner has also fairly accepted the said position.

If that be so, nothing further survives for adjudication in this writ petition. Consequently, the writ petition stands disposed of as not maintainable in the eyes of law.

Interim order passed earlier stands vacated.

There shall be no order as to costs.

JUDGE

sukhamay

Comparing Assistant