

GAHC010126872017



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

Case No. : WP(C)/2219/2017

MANIK CHANDRA RABHA
S/O TARUN RABHA, R/O VILL. PIRAKATA, NATUN SIRAJULI, P.O.
DHEKIAJULI, SONITPUR, ASSAM, PIN-784110

VERSUS

THE UNION OF INDIA and 5 ORS.
REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, NEW
DELHI-110001

2:STAFF SELECTION 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-781006

4:THE DIRECTOR GENERAL
BORDER SECURITY FORCE
CGO COMPLEX
LODHI ROAD
NEW DELHI-110003

5:THE DIRECTOR GENERAL

CENTRAL RESERVE POLICE FORCE
CGO COMPLEX
LODHI ROAD
NEW DELHI-110003

6:THE DIRECTOR GENERAL
INDO TIBETAN BORDER POLICE FORCE
CGO COMPLEX
LODHI ROAD
NEW DELHI-11000

Advocate for the Petitioner : MRSP RAI

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

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 06-06-2023

Heard Mr. H. Bezbaruah, learned counsel for the writ petitioner. Also heard Ms. R. Devi, learned CGC appearing for the respondents.

2. The respondent No. 2, i.e. the Staff Selection Commission (SSC) had issued an advertisement notice dated 30-12-2011 for filling up a number of posts of Constable (GD) under the different Central Armed Police Forces (CAPF). In response to the said advertisement notice, the petitioner had submitted his application. The writ petitioner had opted for appointment only in the Assam Rifles. As per the case projected in the writ petition, the petitioner had qualified in all the mandatory tests conducted by the respondents and thereafter, he was also asked to appear before the Medical Board. However, in the Medical Board he was declared unfit. The petitioner had preferred an appeal against the decision of the Medical Board, which was answered on 11-06-2013 by declaring him medically fit. However, in the meantime, the final select list was published on 17-10-2012 but his name did

not find place in the said list. According to the writ petitioner, he belongs to the ST category and had scored 41 marks in the written test. Notwithstanding the same and despite the fact that the candidate from ST category who had scored 40 marks was appointed, the case of the petitioner was not considered for appointment. Hence, this writ petition.

3. Mr. Bezbaruah has relied upon the judgment and order dated 04-01-2016 passed by the learned Single Judge passed in W.P.(C) No. 5520/2012 filed by as many as 26 candidates, disposing of the writ petition with a direction upon the respondents to consider the case of the aggrieved persons based on their merit rank. Mr. Bezbaruah submits that the case of his client is covered under the said order and therefore, has prayed for a similar order in the present case as well.

4. By referring to the counter affidavit filed by the respondent No. 2, Ms. Devi submits that the last reserve category candidate who was appointed in the Assam Rifles had scored 58 marks, i.e. much more than the marks scored by the writ petitioner. She further submits that the writ petitioner had opted only for Assam Rifles, but his case was also considered for appointment in the Indo-Tibetan Border Police (ITBP)/ Border Security Force (BSF) and Central Reserve Police Force (CRPF). However, since all the candidates who were appointed in those forces had scored higher marks than the petitioner, he could not be appointed. Contending that the judgment and order dated 04-01-2016 was passed in the facts of that case, the learned CGC submits that since the petitioner did not secure the cutoff marks, the decision rendered in that case would not have any relevance in the facts of the present case.

5. I find that the stand of the SSC insofar as the claim of the petitioner of having scored higher marks than the last selected candidate, has been countered by the respondent No. 2

in the counter-affidavit by making the following statements in paragraph 5(III), which is extracted here-in-below for ready reference:

5(III) That based on their merit and Force preference, the candidate who were declared Fit in the Review Medical Examination and who have obtained marks equal to or more than the lowest marks obtained by the candidate already selected in Select List/ Reserve List and Reserve List-2 for each CAPF and each category, were also considered for inclusion in Select List/ Reserve List and Reserve List-2 and accordingly, a Revised List was published on 30.01.2014. Since the mark obtained by the petitioner is lower than the mark obtained by the last selected ST candidate in Assam Rifles, his preferred Force, he is not considered for inclusion in the Select List. Thereafter, since the Petitioner had exercised limited option, he was again considered for inclusion in Reserve List-2 by substituting his preference to ABCDEF. In Assam, the State of domicile of the Petitioner, there were unfilled vacancies in the Select List in BSF for ST category candidates belonging to Border District with Code 01. Since the Petitioner does not belong to the Border District with Code01, he was not considered for inclusion in BSF. Moreover, the Petitioner was also not considered for the unfilled non-border Unreserved vacancies in the Select List for ITBP and CRPF as the marks obtained by the last selected unreserved candidates in ITBP and CRPF in Reserve List-2 were 46 and 52 respectively, which are higher than the marks obtained by the Petitioner."

6. The aforesaid statements of the respondent No. 2 have not been denied or disputed by the petitioner by filing rejoinder affidavit. As such, the stand of the respondent No. 2 would have to be considered as correct on facts. If that be so, regardless of the opinion of the Medical Board, the petitioner could not have been appointed in any of the forces including, Assam Rifles/ ITBP/ BSF or CRPF. Situated thus, I do not find any justifiable ground for this Court to interfere in the matter, more so, since the selection process is of the year 2011.

This writ petition is, therefore, held to be devoid of any merit and the same is accordingly dismissed.

JUDGE

GS

Comparing Assistant