

GAHC010282502023



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

Case No. : WA/456/2023

SKT SANJAI KUMAR SHAW,
S/O- ACCHCHHE LAL SHAW,
R/O- (P) VARTAK, DIST.- SONITPUR, ASSAM.

-VERSUS-

1. UNION OF INDIA AND 3 ORS.,
REP. BY THE SECRETARY TO THE GOVT. OF INDIA,
MINISTRY OF DEFENCE,
SOUTH BLOCK,
NEW DELHI- 110001.

2:THE SECRETARY DEPARTMENT OF PERSONNEL AND TRAINING,
MINISTRY OF PERSONNEL PG AND PENSION,
NEW DELHI- 110001.

3:THE JOINT SECRETARY (BORDER ROADS),
B WING, 4TH FLOOR, SENA BHAWAN,
NEW DELHI- 110001.

4:THE DIRECTOR GENERAL OF BORDER ROADS,
SEEMA SADAK BHAWAN,
RING ROAD, DELHI CANT.,
NEW DELHI- 110001

Advocate for the Petitioner : MR TAPAS DAS

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

-B E F O R E -

HON'BLE THE CHIEF JUSTICE (ACTING) MR. LANUSUNGKUM JAMIR

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

:: O R D E R ::

11.01.2024

[Kaushik Goswami, J]

- 1.** This writ appeal is preferred against the judgment and order dated 23.11.2023 passed by the learned Single Judge in WP(C) No.6127/2019, whereby the writ petition filed by the appellant was dismissed.
- 2.** Heard Mr. T. Das, learned counsel for appellant. Also heard Mr. K.K. Parashar, learned Central Government Counsel (C.G.C.) for the respondents.
- 3.** The appellant/writ petitioner, who was then serving as Store Keeper Technical (SKT) in Border Roads Organization (B.R.O.), General Reserve Engineering Force (GREF) has filed the captioned writ petition, being WP(C) No.6127/2019 challenging his non-selection/non-appointment in the post of "Supervisor Store" pursuant to the advertisement Notice No.01/2013.
- 4.** The brief facts of the case are that in the year 2013, the Border Roads Organization had issued advertisement Notice No.01/2023 inviting applications, *inter-alia*, for filling one post of "Supervisor Store" under Scheduled Tribes (ST) Category. The appellant/writ petitioner, belonging to the ST Category, who was serving in the Store Keeper Technical (SKT) under BRO at that relevant time, applied for the said post.
- 5.** On conclusion of the selection process, a list of provisionally selected

candidate was published by the authority, wherein, out of 06(six) candidates, one Shri Kishore Akhtar, being topper in the merit list, was provisionally selected in the said post and the names of the appellant/writ petitioner and one Shri Makhan Lal Meena were shown as wait list candidates at Serial Nos.1 and 2 respectively of the waiting list.

6. The selection to the said post being subjected to medical test, Shri Kishore Akhtar, who was provisionally selected, was declared medically unfit and as such, no order of appointment was passed in his favour.

7. In the meantime, certain developments took place which had necessitated change in the holding strength of "Supervisor Store" in the Department and therefore, a decision was taken not to fill up the post of "Supervisor Store" by direct recruitment but to include the said post, in the DPC category to be filled by way of promotion.

8. Aggrieved by the said decision, the petitioner had approached this Court by filing the captioned writ petition seeking writ of mandamus, *inter-alia*, directing the authorities to issue appointment letter to him for the post of "Supervisor Store".

9. During the pendency of the said writ petition, by notification dated 20.06.2023, the appellant/writ petitioner had been promoted to the post of "Supervisor Store" with effect from 07.12.2022 from the post of Store Keeper Technical through DPC.

10. The learned Single Judge vide judgment and order dated 23.11.2023 dismissed the writ petition on the ground, *inter-alia*, that the petitioner having been promoted to the post of "Supervisor Store" on being recommended by the DPC which is distinct and different from the recruitment process initiated by the

advertisement Notice No.01/2013 in the year 2013 and that the petitioner having no right of appointment, merely because his name was included in the wait list, is not entitled to any relief with reference to the direct recruitment process.

11. The appellant has now filed the instant writ appeal challenging the judgment and order dated 23.11.2023 passed by the learned Single Judge.

12. Mr. T. Das, learned counsel for the appellant submits that although the appellant/writ petitioner had subsequently been promoted, yet, his seniority in the rank of "Supervisor Store" ought to have been reckoned with effect from the year 2013 when the advertised post of "Supervisor Store" had fallen vacant since the appellant/petitioner had a legitimate right to be appointed in the said post after the provisionally selected candidate had failed to clear the medical test.

13. Mr. Das further submits that the respondent authorities could have appointed the appellant/writ petitioner as the candidature of the provisionally selected candidate was cancelled and the appellant/writ petitioner, being at Serial No.1 in the Waiting List, was eligible to be appointed in the said post.

14. Mr. Das further submits that the respondent authorities allowed the validity of the post to lapse and thereafter took a plan that there was a policy decision not to fill up the said post by direct recruitment. He further submits that the respondent authorities have offered appointment to Hindi Typists, out of the same advertisement, which is in violation of the Department of Personnel and Training (DoPT) Guidelines.

15. In support of the said submission, Mr. Das has relied on the decision of the Hon'ble Supreme Court rendered in the case of *Asha Kaul (Mrs.) and Anr. Vs.*

State of Jammu and Kashmir and Ors., reported in *1993 Supreme Court Cases (L&S) 637*, wherein the Hon'ble Supreme Court has held that the Government must act fairly and cannot pick and choose or approve a part of the select list and reject the other part.

16. Mr. K.K. Parashar, learned C.G.C. appearing for the respondents, on the other hand, has submitted that the appellant/writ petitioner has no right to be appointed merely on the basis that his name was included in the waiting list and that once the appellant/writ petitioner has been promoted as "Supervisor Store", the writ petition has become infructuous. He further submits that since the project itself was kept under suspended animation as there was change in the circumstances at the ground level, there was no need to appoint any "Supervisor Store" at that point of time. Hence, there was a policy decision not to fill the said post by direct recruitment. He accordingly submits that the appellant/writ petitioner has no right whatsoever to be appointed to the said post on the basis of selection.

17. We have heard the learned counsel for the parties and perused the materials available on record including the impugned judgment and order.

18. The only issue that arises for consideration in this appeal is whether the learned Single Judge erred in dismissing the writ petition on the ground that the appellant/writ petitioner has no right to be appointed to the subject post merely being included in the wait list, when such process of recruitment has been abandoned and that the appellant having been subsequently promoted to the subject post through DPC is not entitled to recount such promotion order from the date of the issuance of the advertisement which was already abandoned.

19. Pursuant to the advertisement Notice No.01/2013 for recruitment to the

post of "Supervisor Store" under ST category, out of 6(six) candidates, Shri Kishore Akhtar was provisionally selected for the said post and the appellant/writ petitioner along with another candidate were kept in wait list.

20. Though the provisionally selected candidate was declared medically unfit for which appointment could not be made, the process of recruitment was abandoned after a decision was taken by the authorities not to fill up the post by way of direct recruitment but to include the said post, in the DPC category to be filled by way of promotion. Accordingly, during the pendency of the writ petition, the appellant/writ petitioner got promoted to the post of "Supervisor Store" on being recommended by the DPC. The case of the appellant/writ petitioner is that the said promotion is to be given effect retrospectively from the date on which the post of "Supervisor Store" was advertised, i.e. November, 2013. The said submission of the appellant cannot be accepted.

21. It is well settled law that merely because the name of a person appears in the select list, that by itself, would be not a ground for offering him the order of appointment. It appears that the advertisement Notice No.01/2013 was a open advertisement issued for filling up the post of "Supervisor Store", which process had been abandoned by the authorities after a decision was taken not to fill up the said post by way of direct recruitment. The appellant/petitioner got promoted to the said post of "Supervisor Store" on being recommended by the DPC after the direct recruitment process to the said post through the aforesaid advertisement Notice was abandoned. The petitioner has accepted such promotion without any objection.

22. The case of ***Asha Kaul (Mrs.) and Anr.*** (supra) relied upon by the learned counsel for the appellant has no relevance in the facts of the instant case inasmuch as the respondent authorities had abandoned the recruitment

undertaken through advertisement Notice No.01/2013 to the said post of "Supervisor Store" in terms of the policy decision as stated above and therefore, is not a case of accepting a part of the select list or rejecting the other part of the select list. In fact, after the said recruitment process to the subject post, having been abandoned, the respondent authorities have promoted the appellant to the said post of "Supervisor Store" through DPC and therefore, the appellant cannot now seek to recount such promotion from date of the advertisement through direct recruitment to the subject post.

23. In that view of the matter, this Court is of the opinion that the learned Single Judge has not erred in dismissing the writ petition.

24. In the wake of the discussion made hereinabove, this Court is of the firm opinion that the impugned judgment and order dated 23.11.2023 passed by learned Single Judge in WP(C) No.6127/2019, does not suffer from any infirmity warranting interference from this Court and as such, the writ appeal fails and is dismissed, as being devoid of merit.

No order as to costs.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant