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HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2446 of 2015**

Sumit Kumar Gupta, S/o Prem Lal Gupta, aged about 32 years, R/o Katulboard, Post 1st Battalion, C.A.F. Bhilai, District Durg (CG)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Home Department, Office situated at Mahanadi Bhawan, New Raipur, District Raipur (CG)
2. Director General of Police, Office at Police Head Quarters, Mahanadi Bhavan, New Raipur, District Raipur (CG)
3. Additional Director General of Police (Chhattisgarh Armed Force), Office at Police Head Quarters, Civil Lines, District Raipur (CG)

---- Respondents

For Petitioner	:	Mr. Praveen Dhurandhar, Advocate
For Respondents	:	Mr. Yashwant Singh Thakur, Dy. Advocate General

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****28/10/2015**

1. The respondent/State advertised the post of Constable including the post of Constable (Trade Man) (Water Carrier). In the select list and waiting list published by the respondent No.3 herein on 17.7.2014, name of the petitioner stood in waiting list as Serial No.1. Life of waiting list as per rule 13 (2) of the Chhattisgarh Armed Executive Force (CAF), Constable

(General Duty) and Trade Constable (Trained/Untrained) (Recruitment and Conditions of Service) Rules, 2008 (hereinafter referred to as "the Rules of 2008") one year from the date of issuance of select list. According to the petitioner, one post could not be filled and as such, he is entitled for consideration for appointment on the said post being wait listed candidate No.1, but his case was not considered leading to filing of the instant writ petition.

2. Mr.Praveen Dhurandhar, learned counsel appearing for the petitioner would submit that as per rule 13(2) of the Rules of 2008, life of waiting list is one year. Select list/waiting list was published on 17.7.2014, though one post was available, but the petitioner was not considered against that post. He filed the present writ petition on 7.7.2015 i.e. before expiry of one year and as such, writ be issued for consideration of his case in accordance with law.

3. Mr.Y.S.Thakur, learned Deputy Advocate General for the respondents/State would submit that though the petitioner was placed at Serial No.1 in select/waiting list of Constable (Trade Man) (Water Carrier) under OBC category, but during pendency of the writ petition, life of waiting list was expired and therefore, no appointment can be granted to the petitioner as

per provisions contained in rule 13(2) of the Rules of 2008 despite there being vacancy in the department.

4. I have heard learned counsel for the parties and perused the documents annexed with the petition with utmost circumspection.

5. It is not in dispute that the petitioner appeared and was placed in waiting list No.1 in select list against the post of Constable (Trade Man) (Water Carrier) under OBC category.

6. Rule 13(2) of the Rules 2008 states as under:-

“13. List of candidates, as recommended by Committee-(1) xxx xxx xxx xxx

(2) Subject to the provisions of these rules, and of the Chhattisgarh Civil Services (General Conditions of Service) Rules, 1961, candidates will be considered for appointment to the available vacancies in the order in which their names appear in the list. A waiting list of 25% of total posts shall also be prepared apart from the real vacancies by following the Rules of Reservation, which shall be effective from the date of publication till the commencement of next selection procedure or for one year or whichever is earlier. During this period, the recruitment permission on the sanction of new posts or the posts fallen vacant due to promotion, retirement, death or cadre change, termination or due to other reasons, will be fulfilled from waiting list.

(3) xxx xxx xxx xxx.”

7. From perusal of the aforesaid rule, it would be quite

vivid that validity of waiting list is one year effective from the date of publication of select list/waiting list till the commencement of next selection procedure, whichever is earlier.

8. In the matter of **State of U.P. vs. Ram Swarup Saroj**¹, their Lordships of the Supreme Court have held that claim of a candidate included in the panel was not defeated because currency of panel expired during pendency of litigation, when the candidate had staked his claim during the currency of the panel.

9. In the matter of **Virender S. Hooda and others v. State of Haryana and another**², their Lordships of the Supreme Court has held with regard to waiting list candidate within the validity of select list and observed in paragraphs 3 and 4 as under:-

“3.....Thus when these vacancies arise within the period of six months from the date of previous selection the circulars are attracted and hence the view of the High Court that vacancies arose after selection process commenced has no relevance and is contrary to the declared policy of the Government in the matter to fill up such

1(2000) 3 SCC 699

2(1999) 3 SCC 696

posts from the waiting list.

4. The view taken by the High Court that the administrative instructions cannot be enforced by the appellant and that vacancies became available after the initiation of the process of recruitment would be looking at the matter from a narrow and wrong angle. When a policy has been declared by the State as to the manner of filling up the post and that policy is declared in terms of rules and instructions issued to the Public Service Commission from time to time and so long as these instructions are not contrary to the rules, the respondents ought to follow the same.”

10. The aforesaid law laid-down in the matter of **Virender S. Hooda and others** (supra) has been followed with approval in the matter of **A.P. Aggarwal v. Govt. of NCT of Delhi and another**³.

11. In the matter of **Sheo Shyam and others v. State of U.P. and others**⁴ their Lordship of the Supreme Court have held that in absence of any statutory rules, the period of validity to be reckoned from the date on which last recommendation was made by UPSC.

12. Going by the afore-stated statement of law and

³ (2000) 1 SCC 600

⁴ (2005) 10 SCC 314

applying to the facts of the case, it is quite vivid that one post of Constable (Trade Man) (Water Carrier) could not be filled from amongst the selected candidate within the period of one year from the date of publication of select list i.e. 17.7.2014. The petitioner within the period of one year staked his claim for consideration and when his case was not considered, filed this writ petition on 7.7.2015. The official respondent was obliged to consider the case of the petitioner for appointment within the period of one year as the one post is vacant and life of the select list expired during the pendency of the writ petition.

13. Accordingly, the respondent No.3 is directed to consider the case of the petitioner against the vacant post of Constable (Trade Man) (Water Carrier) under OBC category expeditiously in accordance with law.

14. With the aforesaid observation, the writ petition is allowed to the extent indicated above. No order as to cost (s).

Sd/-

(Sanjay K. Agrawal)

JUDGE

B/-