

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

% *Judgment Reserved on : April 07, 2015*
Judgment Delivered on : April 20, 2015

+ **W.P.(C) 2512/2011**

AGAM DAYALPetitioner

Represented by: Mr.Ankur Chhibber, Advocate

versus

UOI & ORS.Respondents

Represented by: Dr.Ashwani Bhardwaj, Advocate
for R-1 to R-3
Mr.Naresh Kaushik, Advocate
with Ms.Aditi Gupta, Advocate for
UPSC
Mr.S.S.Sejwal, Law Officer, CRPF

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. At the very outset, we note that the present writ petition has resulted in a series of long and protracted litigation for the reason that the respondents have been taking varying stands before this Court and without rendering any explanation as to why on the previous occasions different stands were taken, have sought to put forth a new reason for their action.

2. The present writ petition has been filed seeking issuance of a writ of mandamus to appoint the petitioner to the post of Assistant Commandant in Central Police Forces (CPF), if certain vacancies have

not been filled and the petitioner was within the zone of consideration after operating the consolidated reserved list.

3. The facts germane for adjudication of the present petition are that as part of the recruitment drive for the year 2008, the Union Public Services Commission vide advertisement dated May 10, 2008 notified the vacancies to be filled up for the post of Assistant Commandant in the Central Police Forces (CPF).

4. Pursuant to the said advertisement the petitioner applied for the said post and was issued an admit card to appear in the written examination held on October 05, 2008. He successfully cleared the written examination and was thereafter called to appear for the Physical Efficiency Test (PET) as well as for medical examination in the month of May 2009, and the petitioner was declared fit, in both, the Physical Education Test as well as the medical examination. Consequently, the petitioner was called to appear for the personality test/interview, which was held on August 26, 2009.

5. The result of the said examination was declared by the Union Public Services Commission vide a press note dated September 24, 2009. In the said list the names of 325 successful candidates were declared. The name of the petitioner was not in the said list. As per para 3 of the press note, it was indicated that 376 vacancies were to be filled up. The list contained names of 325 persons. A second list was also simultaneously published in which the names of 50 more successful candidates were shown. The name of the petitioner did not figure in the second list as well.

6. The case of the petitioner was that all the vacancies had not been filled up because many candidates had not accepted the letter offering appointment or had not reported for pre-induction training.

7. When the writ petition was listed for hearing at the admission stage learned counsel for the petitioner drew the attention of this court to the fact that all the vacancies had not been filled up and out of 225 persons forwarded for appointment as Assistant Commandant in CRPF, 43 persons did not join at all and another 30 left during training. It was highlighted by the petitioner that in respect of those who left during training it had to be treated that the vacancies were not filled up. Thus, according to the petitioner, 73 vacancies remained to be filled.

8. For the stand taken as aforementioned the petitioner had relied upon an office memorandum dated June 13, 2000 wherein the respondents had categorically stated as under:-

“UPSC wherever possible maintains a reserve panel of candidates found suitable on, the basis of selection made by them for appointment on Direct Recruitment, transfer on deputation, transfer basis and the reserve panel is operated by the UPSC on a request received from the Ministry/Department concerned when the candidate recommended by UPSC either does not join, thereby causing a replacement vacancy or he joins but resigns or dies within six months of his joining. Ministries/Departments were advised that whenever such a contingency arises they should first approach the UPSC for nomination of a candidate from the reserve panel if any. The recruitment process be treated as complete only after hearing from UPSC and the Ministry/Department concerned may resort to any alternative method of recruitment to fill-up the vacancy thereafter.”

9. It was also argued that the notification dated May 10, 2008 i.e. the advertisement issued inviting applications also envisaged the same under Rule 16(4) of the applicable rules. Accordingly, this Court had directed the learned counsel appearing for the respondents to inform this Court as to how many vacancies were unfilled in the said examination.

10. On May 11, 2011, the learned counsel appearing on behalf of Respondent No.1 to 3 produced a letter dated May 09, 2011 addressed by the DIG (Recruitment), CRPF, as per which it was communicated that pertaining to the examination in question i.e. CPFs (AC) Examination – 2008, the total unfilled vacancies in BSF as on that date were 7, total unfilled vacancies in CRPF were 39 and total unfilled vacancies in SSB were 4. Thus, as per the stand initially taken by the respondents 50 vacancies in the three Central Paramilitary Forces were unfilled.

11. In view of the aforesaid communication dated May 09, 2011 which was produced in Court on May 11, 2011, the Division Bench of this court passed an order disposing of the writ petition issuing a direction that the aforesaid information would be communicated to the Union Public Services Commission which would issue further directions to fill up the existing vacancies from amongst the waitlisted candidates.

12. Since the directions issued by this Court were not complied with, in July 2011 the petitioner approached this Court by way of Contempt Petition No.468/2011. It was alleged that the order dated May 11, 2011 had not been complied with. On notice being issued the respondents entered appearance and were granted time to comply with the order dated May 11, 2011, noting that the respondents had not challenged the order dated May 11, 2011.

13. In the meanwhile, Union Public Services Commission filed a petition seeking review/correction of the words '*wait listed candidates*' to read as '*reserve list candidates*'.

14. Though labeled as an application seeking review, the application was wanting a change of an expression used by the Court. The wait list was wanted to be read as the reserve list. It hardly matters what the expression was. It was the list of candidates drawn up as per merit

position beyond the serial number of the notified vacancies by way of contingency on some candidates not accepting letters offering appointment or some not joining for training or some leaving during training so that during the life of the panel candidates whose names were mentioned in the wait/reserve list could be offered appointment.

15. Relevant would it be to highlight that Union Public Services Commission, as review is understood in law, did not seek review of the decision dated May 11, 2011 on merits, but only wanted the above clarification.

16. Vide order dated October 21, 2011, said clarification was given by the Division Bench which had authored the decision dated May 11, 2011.

17. Thereafter, almost after six months of the decision dated May 11, 2011, the respondent Nos.1 and 2 filed a review petition seeking review of the order dated May 11, 2011 on the ground that the vacancies in question had been carried forward to the next year.

18. Believing the statement made by the respondents on oath to be true, the Division Bench recalled its order dated May 11, 2011 and directed the respondents to file a counter affidavit and the petitioner to file a rejoinder thereto.

19. In the counter affidavit filed the respondents reiterated the stand taken in the application seeking review that the unfilled vacancies pertaining to the 2008 examination had been carried forward to the next vacancy year i.e. 2009.

20. In response to the counter affidavit filed by respondents No.1 and 2, in the rejoinder filed the petitioner demonstrated that the stand taken was incorrect. It was specifically pleaded '*that the averment made by the respondents that the unfilled vacancies of CPF (Assistant Commandant) examination 2008 have been carried forward to the next year exam 2009*

is not correct for the reason that on May 11, 2011 the respondents had informed this Court that 50 vacancies (SSB-4, BSF-7 and CRPF-39) arose due to non-joining and resignation from CPF (AC) exam 2008. By the advertisement of CPF (AC) exam 2009 dated May 9, 2009 and result of CPF (AC) Exam 2009 dated October 13, 2010 clearly shows number of vacancies in SSB in CPF (AC) Exam 2009 is only one, however, if the averment of the respondents was correct, the 4 vacancies of 2008 examination ought to have been carried forward to the examination 2009. The above clearly showed that the statement made by the respondents were not correct.

21. Once it was brought to the notice of this Court that the stand taken by the respondents No.1 and 2 was not correct, this Court directed the respondent No.1 and 2 to clarify the position as recorded in the order dated May 16, 2012.

22. Pursuant to the order dated May 16, 2012, the respondents filed an additional affidavit, which is at page No.296 of the paper book and in the said affidavit a new stand was taken, wherein at page No.298 at Para 12, it was stated that by reference to the word '*Next Recruitment Year*' the respondents meant that the 4 vacancies of SSB had been carried forward to the recruitment year of 2010. It was further averred that the vacancies had been carried forward for the examination of 2010 and had been completely exhausted.

23. In response to the said additional affidavit, the petitioner filed a rejoinder to the said additional affidavit, which is at page No.301 of the paper book. In the said affidavit, it has been specifically pleaded that the averments made in the additional affidavit that the unfilled vacancies of 2008 examination have been carried forward to the examination of 2010 is incorrect, for the reason the respondents in their additional affidavit, in

para 12, had stated that the unfilled vacancies of 2008 examination came to light after expiry of reporting date of training that was June 2010. If this statement was correct, then the respondents could not have included the unfilled vacancies in the advertisement for the examination of 2010 since the advertisement was issued in May, 2010; whereas as per the admission made by respondents No.1 and 2 they came to know of the unfilled vacancies in June, 2010. Even otherwise the advertisement and the result of the 2010 examination showed 284 vacancies for BSF and thus, the 7 carry forwarded vacancies were not apparently included in the final result, and least bit in the advertisement.

24. Once again, the petitioner demonstrated that the stand of the respondent Nos.1 and 2 was not correct. Thus, vide order dated March 07, 2013, the Division Bench directed the respondents to file another affidavit and clearly state their stand, failing which adverse orders would be passed against the officers for filing false affidavits in this Court.

25. Pursuant to the order dated March 07, 2013, the respondents No.1 and 2 filed another additional affidavit, which is at page No.320 of the paper book. In the said additional affidavit the respondents No.1 and 2 took a total a complete somersault vis-à-vis their earlier stand and pleaded, in paragraph 10 of the said affidavit at page 323, that *‘since reserve list is not being maintain and candidate selected in Select List after joining service quit or resign due to adverse service conditions, hence 20% vacancies on account of anticipated shortfall was accounted for in the force. In 2009, 100% vacancies including 20% anticipating vacancies were filled up, thus there was no need to fill up the unfilled vacancies from 2008 selection.’*

26. In the said affidavit, in paragraph 11, the respondents No.1 and 2 tendered their unconditional apology for filing false affidavits in this Court on the earlier occasions.

27. Relevant would it be to highlight that in the said affidavit, in paragraph 17, the respondents No.1 and 2 admitted the existence of OM dated June 13, 2000 and stated that in future the same would be followed in letter and spirit.

28. In response to the last affidavit filed by the respondents No.1 and 2 the petitioner filed synopsis in which he has successfully once again demonstrated that even the said stand taken by the respondents No. 1 and 2 is not correct, for the reason if the averment made by the respondents No.1 and 2 is to be taken to be true : that they took into account 20% anticipated vacancies, then as a matter of fact in the examination of 2008, in CRPF total reported vacancies being 224, in relation whereto 20% anticipated shortfall vacancies would be 45, whereas in actual vacancies which were created due to non joining and resignation in CRPF was only 39. Thus, by no means the respondents could have recruited persons with respect to anticipated vacancies factored in.

29. The above factual narration clearly shows that the respondents No.1 and 2 have not come clean before this Court and have been changing their stand whenever it is pointed out and demonstrated that the stand taken by the said respondents is not correct. Even the last stand taken by the said respondents cannot be accepted, as demonstrated by the petitioner in the synopsis filed by him.

30. Instant case is one where the respondents No.1 and 2 have been taking false stands, one after the other, to cover up their mistakes. This cannot be allowed by this Court. It is not expected of the Government and its department to mislead the Court.

31. This Court had allowed the writ petition way back on May 11, 2011, but recalled the order believing respondents No.1 and 2 to be correct when in the review petition they pleaded that the unfilled vacancies had been carried forward to the next year.

32. The petitioner has been made to suffer by the respondents No.1 and 2 on account of false affidavits filed in this Court, falsity of contents whereof the respondents No.1 and 2 have been admitting in the subsequent affidavits filed, and that too repeatedly. Due to the above changing stands, all of which are found to be incorrect, this Court has no option but to allow the writ petition.

33. All this while, when respondents No.1 and 2 were playing a cat and mouse game with this Court, the petitioner appeared in the 2010 CPF (AC) Examination and was successful. He has been appointed as an Assistant Commandant in SSB in September, 2012. Since the petitioner has already undergone the training in SSB and has been working with it since 2012, it would be in the fitness of thing to declare that the petitioner would be treated as having been appointed pursuant to the 2008 CPF (AC) Examination for the reason but for said event a mandamus would be issued by this Court directing the respondents to offer appointment to the petitioner to the post of Assistant Commandant in a Central Para Military Force for the reason the merit position of the petitioner would entitle him to be offered the appointment because vacancies for the said year were not filled up and it is not the stand of the respondents that they did not intend to fill up the vacancies. Whilst it may be true that no right vests in a successful candidate to be offered appointment merely on the strength of merit and it would be open to a department not to fill up the vacancies, but for which the department would have to give a plausible explanation as to why the vacancies were not being filled up. In the instant case what

has happened is obvious. The respondents ignored the office memorandum dated June 13, 2000 and rather than take corrective action when the writ petitioner filed the writ petition, all and sundry false stands were taken and when demonstrated to be so, another stand was taken, which was demonstrably shown to be false. Yet another false stand was taken. This has happened five times.

34. We dispose of the writ petition issuing a mandamus that the petitioner would be treated as appointed to the post of Assistant Commandant in the SSB pursuant to 2008 CPF (AC) Examination and his seniority would be fixed along with his batchmates who were appointed as Assistant Commandant pursuant to the said examination. Notional benefit of being put in the pay scale from the date the batchmates joined would be given to the petitioner and increased salary would be paid to the post of Assistant Commandant from the date the petitioner actually joined as an Assistant Commandant in SSB. For purposes of senior time scale it would be treated that the petitioner joined along with his batchmates of 2008 CPF (AC) Examination.

35. Petitioner is held entitled to cost from respondents No.1 and 2.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

APRIL 20, 2015
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