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

+ **W.P.(C) 3542/2013 & C.M.No.6669/2013**

% **Date of decision: 16.09.2015**

MUKESH KUMAR

..... Petitioner

Through: Mr.Manoj K.Mishra, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.S.D.Windlesh, Adv. with
Mr.Arvind Sharma, Dy.Cmdt., BSF

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

1. The petitioner is aggrieved by the exclusion of his name in the select list prepared by the respondents who had advertised for applications of the eligible individuals to various posts in the Border Security Force.

2. The brief facts are that in the Border Security Force sometime in 2011-12, 66 vacancies existed in respect of the various technical trades, in BSF Air Wing 66. There were three categories indicated i.e. Fixed Wing, Rotary Wing and ALH/Cheetah. It is not in dispute that in the first round of recruitment, 37 applicants were selected and subsequently appointed. Apparently, the petitioner had applied and participated in the recruitment process unsuccessfully; he was

declared medically unfit. The controversy here, however, does not pertain to that selection. The second advertisement was issued on 11-17.02.2012. Subsequently, an addendum appears to have been published in August, 2012. The vacancies ultimately, published and made known to the general public as follows:

- (a) Fixed wing -1 vacancy,
- (b) Rotary wing- 24 (including 4 SC vacancies) and
- (c) ALH/Cheetah – 4 vacancies.

3. The petitioner had applied to the position of AAM (ASI) in the trade/sub-specialization of Avionics. It is contended by the petitioner firstly that the select list drawn up was not operated transparently and that even though he stood first amongst even most meritorious candidates in the SC category, he was not appointed. It is submitted that the respondents instead appeared to have treated the petitioner's application as one of the general category candidate and considered him as against the last merited candidate in the OBC category and rejected the application. Learned counsel for the petitioner submitted that the procedure adopted is arbitrary. He has relied upon the terms of the advertisement which indicated that four Scheduled Caste vacancies existed in the BSF Air Wing – in the Rotary Sub Category. Contending that the petitioner could not have been turned away since his qualification was avionics, it was submitted that the stand of the BSF i.e. with respect to his ineligibility is untenable.

4. The BSF contends that even though the petitioner applied for AAM (Avionics), the records reveal that there was no SC vacancy. He does not dispute that he was found fit and to say so relies upon the

final result including the separate merit list of SC/ST candidates. At the same time it is stated that the petitioner could not be recommended because the vacancies in the respective trade i.e. electrical which he could have possibly been considered for had been filled up. Here it is highlighted that the electrical sub category for which he was considered had three vacancies all of them of which are earmarked for general category candidates and each of the candidates selected was more meritorious. Learned counsel for the petitioner emphasised that while applying for the post no indication was ever given that the petitioner could be treated as a general category candidate and in these circumstances, respondents' action is discriminatory and contrary to law.

5. In this case, it is evident that the petitioner had the requisite qualifications for applying to the post of AAM (ASI) in the avionics trade. Advertisement in August, 2012 clarifies that in the ALH/Cheetah, there was no avionics trade available. Likewise, there were no SC vacancies. However, apparently four SC vacancies existed in the rotary wing. The difficulty here was that these were distributed amongst several sub categories i.e. Airframe – 06 vacancies, Engine – 08 vacancies, Electrical – 03 vacancies, Instrument – 03 vacancies, Plant Maintenance Fitter (M) – 01 vacancy, Plant Maintenance Fitter (E) -01 vacancy, Radio – 02 vacancies. The electrical sub-category was considered most suitable having regard to his qualification and his candidature was considered as against it. However, there was no reserved vacancy in the Electrical trade. The last person selected as against the electrical trade vacancy secured 74 marks. The petitioner,

however, secured lower marks. Due to lack of vacancies the only chance for his selection would have been that he was sufficiently merited. Unfortunately, for him the latter did not prove to be true. There were no SC vacancies and he could not therefore be selected.

6. We are of the opinion that the complaint with respect to the lack of transparency and the inability of the respondents to prepare a separate merit list for SC/ST candidates is not accurate. The respondents' counter affidavit discloses that in fact separate merit list was prepared for consideration of applicants for specific reserved vacancies.

7. In view of the above conclusion, we are of the opinion that no relief can be granted. The writ petition and the pending application are accordingly dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

SEPTEMBER 16, 2015

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