

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1285 of 2015

IN

Civil Writ Jurisdiction Case No. 12656 of 2013

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Lay Prakash Sharma, son of Sri Ramsigasan Sharma, Resident of village- Tetardih,
P.S.- Piro, District- Bhojpur

.... Petitioner/Appellant

Versus

1. The Union of India through the Director General of Police, Central Reserve Police Force, New Delhi
2. The Director General of Police, Central Reserve Police Force, New Delhi
3. The Inspector General of Police, Central Reserve Police Force, Bihar Sector, Patna
4. The Deputy Inspector General of Police, Central Reserve Police Force, Group Centre, Muzaffarpur
5. Dr. Srot Gupta, M.C. Medical Member, T.W.C., Recruitment Board, C.T. (Technical/tradesman), At G.C. (C.R.P.F.), Muzaffarpur

.... Respondents

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Appearance :

For the Appellant/s : Mr. Shabbir Ahmad with Mr.
Shambhu Sharan Singh, Advocates

For the Respondent/s : Mr. Sanjay Kumar(ASG) with Mr. Manoj
Kumar Singh, CGC

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 21-12-2016

I.A.No.5551 of 2015

The interlocutory application has been filed for
condonation of the delay of 40 days in filing the appeal.

On a consideration of the facts and circumstances and
upon hearing learned counsels for the appellant and for the
respondents, the delay in filing the appeal is condoned.



I.A.No. 5551 of 2015 is, accordingly, disposed of.

Heard learned counsel for the appellant and the learned Assistant Solicitor General.

The appeal is directed against the order dated 21.1.2015 passed by a learned Single Judge of this Court in CWJC No.12656 of 2013. By the aforesaid judgment and order the writ petition was disposed of after holding that there was sufficient material for arriving at the conclusion that the petitioner on account of his position in the merit list could not be accommodated, which cannot be said to be illegal. It was further observed that if any person does not join against the vacant post, if any, and if such application is filed by the petitioner, the respondents were directed to consider his case in accordance with law.

The writ petitioner along with others had applied for appointment on the post of Constable (Technical/Tradesman) pursuant to an advertisement dated 13.11.2012. In all 11 vacancies were notified, out of which two belonged to the Scheduled Caste category and one to the Scheduled Tribe, one vacancy was backlog for OBC, two vacancies were for OBC category, five vacancies for General category. Pursuant to the selection process, which included an examination, a merit list was prepared in which the name of the writ petitioner-appellant stood at Serial No.11. The candidate at Serial



No.1, being an OBC, was appointed against the backlog vacancy and, accordingly, candidates from Serial Nos. 2 to 6 which included three candidates belonging to the OBC category, had been selected against General category posts.

The stand of learned counsel for the writ petitioner-appellant is that there being reservation only for two posts for OBC category, the petitioner being No.5 candidate, among General Category candidates, he ought to have been selected for appointment and that was not done.

However, the stand of learned counsel for the appellant is totally contrary to the law with regard to reservation for appointment laid down by the Apex Court in the celebrated case of Indra Sawhney vs. Union of India & Ors. : AIR 1993 SC 477, under which a candidate, though belonging to a reserved category, if he secures high position in the merit list so as to be within the top 50% then he will be appointed under the General Category. This is precisely what the respondents have done. The writ petitioner-appellant thus cannot make any grievance out of the same.

Another point raised by learned counsel for the appellant is that there was a direction to consider the case of the writ petitioner-appellant against non-joining vacancy. It is asserted that a vacancy has generated due to non-joining of one Amit Kumar, who was a General



category candidate, but placed at Serial No.8 in the merit list. It is evident that the said Amit Kumar was not at all selected for appointment in view of his lower position in the merit list although above the writ petitioner, hence there is no question of his non-joining in the matter.

It is also the categorical stand of the respondents that the appellant did not file any application for being considered against a non-joining post at any time before the respondents, which fact has not been denied by the appellant. However, despite the same an order was passed by the concerned authority in the matter stating that the appellant could not be appointed even with regard to the said direction.

On a consideration of the facts and circumstances of the case, we see no reason to interfere with the order of the learned Single Judge. The appeal being devoid of merit is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

spal/-

(Arun Kumar, J)

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CAV DATE	
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