

CWP No. 12040 of 2013 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No. 12040 of 2013 (O&M)
Date of Decision : 02.08.2016**

Rohtash Kumar

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Mahabir Singh Sindhu, Advocate for the petitioner.

Mr. P.S. Sidhu, Advocate and
Mr. Indresh Goyal, Senior Panel Counsel for UOI.

P.B. Bajanthri, J.(Oral)

In the instant writ petition, the petitioner has questioned the communication dated 17.04.2013 (Annexure P-12) passed by respondents, by which, offer of appointment made by the petitioner to the post of Constable (General Duty) in BSF had been cancelled.

The petitioner is one of the candidate for recruitment to the post of Constable (GD) pursuant to the advertisement dated 05.02.2011 (Annexure P-4) in General Category. Perusal of the various selection process, communications made to the petitioner in each and every document indicates that petitioner's candidature is under General Category including

the appointment order dated 28.03.2013 (Annexure P-11). Pursuant to the petitioner's appointment under General Category, he was sent for training on 12.04.2013. Thereafter the respondents have noticed that petitioner's name has been incorporated in the result declared with reference to the marks secured by the petitioner in the order of appointment. The respondents are under the impression that petitioner's claim is under OBC and selection and appointment has been made with reference to the cut off marks under OBC Category. The petitioner has secured 61 marks. The last candidate secured marks under General Category in BSF 73, CISF 83, CRPF 75 and SSB 70, which is higher than the petitioner's marks.

In view of the above facts and circumstances, the respondents have recalled the appointment order (cancellation of offer of appointment) for the post of Constable (General Duty) for recruitment for the year 2011 vide Annexure P-12 dated 17.04.2013.

Learned counsel for the petitioner submitted that the petitioner's candidature is under General Category as is evident from each and every documents including appointment order, therefore, Annexure P-12 cancelling the appointment order is without notice, the same is required to be set-aside for violation of Articles 14 and 16 of the Constitution of India. It was further contended that the petitioner was unnecessarily made to join the Constable post and he was sent to District Jodhpur, State of Rajasthan for training, whereas he is a resident of Village Dhand, Tehsil Fatehabad, District Fatehabad. Thereafter petitioner has been put into inconvenience due to cancellation of appointment.

Per contra, learned counsel for the respondents admitted that there is an error committed by the authorities in not noticing that the petitioner's candidature was required to be considered in General Category with reference to the marks obtained by him. In other words petitioner's marks should have been compared with the General Category instead of OBC Category. If General Category is taken into consideration, the petitioner is not eligible since the cut off percentage is more than 70 marks. In view of these factual aspects are concerned, even petitioner is given opportunity of hearing by issuing show cause notice. He cannot improve the things like marks, therefore, question of issuance of show cause notice may not arise.

Heard learned counsel for the parties.

The respondents have committed mistake/error while selecting and appointing the petitioner as a Constable (General Duty) and sending him for training to District Jodhpur, State of Rajasthan has caused inconvenience to him, both the mentally as well as monetarily. No doubt, petitioner is not entitled for notice for the reasons that he cannot improve things like marks awarded to him from 61 to 70 plus. In such circumstances, notice may not be required and the same can be dispensed. Therefore, the petitioner is not entitled for show cause notice having regard to the above facts.

The respondents have sent the petitioner to undergo training and compel him to approach this Court unnecessarily. Because of serious lapse on the part of recruiting authority in not noticing that the petitioner's

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candidature is under General Category. Even while issuing appointment order, it has been shown that he was selected under General Category. For having caused inconvenience to the petitioner both mentally and monetarily, the petitioner is entitled to cost. Cost is quantified ₹20,000/-. The respondents are directed to pay cost of ₹20,000/- to the petitioner within a period of two months from today.

Petition stands dismissed.

August 02, 2016.
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(P.B. BAJANTHRI)
JUDGE

Whether speaking/reasoned? Yes

Whether reportable? No