

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

1. CWP No.2114 of 2012 (O&M)
Date of Decision: **March 01, 2016**

Kuldeep ...Petitioner

versus

Union of India and others ...Respondents

2. CWP No.11186 of 2012 (O&M)

Manesh Kumar ...Petitioner

versus

Union of India and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr.Ram Avtar Sheoran, Advocate
for the petitioners (both petitions).

Mr.Vivek Singla, Advocate for
the respondents.

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HARINDER SINGH SIDHU, J.

This order shall dispose of above said two writ petitions as the common questions of law and facts are involved therein.

However, for the sake of reference, the facts are being extracted from CWP No.2114 of 2012.

An advertisement was issued for filling up the posts of Constable/G.D. (Male/Female) in Central Reserve Police Force. Kuldeep, the petitioner applied for the post and was allotted Roll No.4110300137 (General Category). He appeared for Physical test on 20.09.2010 and written test on 28.11.2010. He qualified both, the physical as well as written examination. Thereafter, his medical

examination was held on 17.01.2011 at Kadarapur, Gurgaon which the petitioner claims to have qualified as well.

As he was not called for joining duty despite repeated representations, he filed an application under the RTI Act asking for details of the total posts and those filled up and vacant. Respondent No.3 in his reply dated 4.1.2012, mentioned that there were 194 posts of all categories, out of which 94 were for General Category. From the 94 posts, only 84 posts of General Category were filled up. It was stated that there is no provision to fill the vacant posts. It was also stated that there were no instructions from the Higher Authority regarding the appointment of candidates, who have passed the medical test.

The grievance of the petitioner is that despite availability of 10 vacant posts in General Category and the petitioner having qualified all the examinations and tests, he is not being considered for appointment.

Hence, the present writ petition.

Written statement has been filed on behalf of the respondents, wherein, it is admitted that the petitioner had passed the physical test on 20.9.2010 and written test on 28.11.2010. It is stated that the final select list was issued on 31.1.2011 and the petitioner could not find place in the merit list of selected candidates due to his low merit and limited number of vacancies in the General Category. The plea of delay and laches has also been raised by stating that the writ petition was filed on 2.2.2012 i.e, after a delay of one year of the selection. It is also stated that offers of appointment were issued to all selected candidates against the existing vacancies. Appointment letters of total

192 selected candidates (Genl.-105, OBC-50, SC-37, ST-Nil) were issued by Group Centre, CRPF, Gurgaon.

Reiterating his stand, the petitioner filed replication stating that he was not lower in merit and the respondents intentionally did not give his merit number. He asserted that he had secured 71 marks out of 100 and the respondents have got the medical test conducted of all candidates upto 63 marks in the General Category. The petitioner was not in the waiting list, rather he was selected in the main list.

With a view to have a clear picture with regard to the persons appointed, in the light of the petitioner's assertion that candidates lower in merit than him may have been appointed, the respondents were directed to file a specific affidavit as to how many candidates were above the petitioner in merit or at par with him.

In response thereto, affidavit of Sh. D.S. Negi, Dy. Inspector General (ADM), North West Sector, CRPF, Chandigarh has been filed on behalf of respondents stating as under:

“4. That the recruitment for the posts of Constable (General Duty) in CRPF was conducted at Group Centre, CRPF, Gurgaon during 2010. The petitioner participated in recruitment process in General category. He scored 71 marks only and stood at number 111 in merit list. 110 candidates were above the petitioner in merit and 16 candidates have scored 71 marks (from Sl. No.110 to 125) (including petitioner).

5. That the first candidate selected in General Category scored 84 marks and last candidate selected scored 72 marks. 104 candidates from the top of selection list were issued offer of appointment against the 104 vacancies in general category. The petitioner scored only 71 marks and was at Sr. No.111 in merit list, as such, he

could not be selected.

6. That offer of appointment was issued to 104 candidates, but out of which only 85 candidates reported. The remaining 19 unfilled vacancies could not be filled as para 16(g) (x) of recruitment rules of Constable (General Duty) prohibits maintaining any waiting list. The vacancies remained unfilled have been carried forwarded to the next fresh recruitment process carried out in subsequent year.”

From the above, it is clear that the merit position of the petitioner in the General Category was at Sr. No.111. Appointment letters were issued to first 104 candidates and their merit ranged from 84 marks of the first selected candidate to 72 marks for the last selected candidate. The petitioner who had secured 71 marks did not figure in the said select list.

To determine the petitioner's claim for appointment based on the ten vacancies which remained unfilled because of the selected candidates not joining, it would be necessary to refer to the instructions regarding recruitment.

At Sr. No.3 of the Table of Contents of 'The Information Booklet for Recruitment of Constable/GD (Male/Female)' is given the sequence of the recruitment process. It mentions ten stages starting from No.(i) Height Test to No.(x) Final selection. Stage (vii) is Written Examination followed by stage (viii) Merit list; stage (ix) Medical Examination and stage (x) Final selection.

Stages No.(vii) to (x) are as under:-

- “(vii) *Written Examination* 1. *Written test will consist of only OMR based objective type multiple choice question to be answered using blue or black pen. Candidate will be required to be answered in OMR sheet and candidate is allowed to take carbon copy of answer sheet. The written test will be of 100 marks. There will be 100 objective type questions to be answered in 120 minutes.*
2. *The question paper will be set to assess the general awareness/general knowledge, knowledge of elementary mathematics, analytical aptitude and ability to observe and distinguish patterns and to test the basic knowledge of the candidate in English/Hindi. The question paper will be bilingual in Hindi and English.*
- (viii) *Merit List* *Merit lists in each category (Gen/SC/ST/OBC) and Ex-Servicemen) will be drawn separately in respect of each State/UT on the basis of aggregate marks obtained in the written test. In case of tie in marks, the candidates with older age will be placed higher in the merit list. Further candidates having same date of birth and have obtained equal marks, will be placed in the merit list as per alphabetic order of their first name.*
- (ix) *Medical Examination* *Candidates who find a place in the select list as per the available vacancy in each category in the State will be called for medical examination. In examination candidates will be classified only as “FIT” or “UNFIT”*
- (x) *Final Selection* 1. *Merit List of selected candidates will be made based on the marks secured by them in written examination. There will be separate merit list for each category and as per the allotted vacancy to each State. Those who find place in the merit list will only be issued offer of appointment*
2. *The minimum cut off percentage of marks for appointment will be:-*
- | | | |
|------------------------------|----------|-------------|
| <i>General/Ex-servicemen</i> | <i>:</i> | <i>35%</i> |
| <i>SC/ST/OBC</i> | <i>:</i> | <i>33%”</i> |

As per the above, Merit list of selected candidates is to be made based on the marks secured by them in the written examination. There will be a separate merit list for each category and as per the allotted vacancies to each State. It is clearly specified that only those who find place in the merit list will be issued offer of appointment. This clearly indicates that the merit list will be as per the allotted vacancies and appointment letters will be offered only to those who find place in the merit list. There is no mention of maintaining any waiting list and offering appointment to candidates in the waiting list in the event of those finally selected not joining.

Learned counsel for the respondents has also referred to the 'Instructions on Recruitment Constable (GD) In Central Reserve Police Force' (Updated upto December, 2005) issued by the Ministry of Home Affairs.

Para XVI thereof details the Selection Process. Clause (g) (x) of this para specifically indicates that there is no provision for maintaining any waiting list. This Clause (g) (x) is as under:

“(x) There is no provision for maintaining any waiting list. However, approval of MHA is required for diversion of annual vacancies from one state to another State, and also for diversion of vacancies of new raising from one state to another in the same category or from one category to another category.”

Ld. Counsel for the petitioner has not be able to dispute or contradict the above provisions and nor has he been able to refer to any Rule or instruction which mandates the maintaining of a waiting list and appointment of candidates from the waiting List in the event of vacancies remaining unfilled for any reason.

It is settled legal position that in the absence of statutory recruitment rules which require the preparation of a waiting list in addition to the selection list/ panel, no right to be offered appointment against the posts that remain unfilled for failure of the selected candidates to join, can be claimed by candidates lower/next in merit.

The Hon'ble Supreme Court in **Bihar SEB v. Suresh Prasad**, (2004) 2 SCC 681, observed thus:

“6. We find merit in this appeal preferred by the Board. In the case of Shankarsan Dash v. Union of India it has been held by this Court that even if number of vacancies are notified for appointment and even if adequate number of candidates are found fit, the successful candidates do not acquire any indefeasible right to be appointed against existing vacancies. That ordinarily such notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. It was further held that the State is under no legal duty to fill up all or any of the vacancies unless the relevant recruitment rules indicate. In the present case we are not shown any such relevant recruitment rules. Moreover, there is no merit in the contention advanced on behalf of Respondents 1 to 7 that the appellant had violated the order of the High Court dated 23-3-1994 by preparing a list of only 22 candidates instead of filling up 50% of the alleged 161 vacancies. In this connection, the impugned judgment of the High Court has recorded a finding of fact that the Board has rightly reduced the number of vacancies to 50 and to that extent claim of the writ petitioners was rejected. In the impugned judgment, the High Court found that 50 vacancies were required to be filled up, 25 against the advertisement dated 15-12-1986 and 25 against advertisement dated 15-11-1992. However, according to the impugned judgment, the appellant ought to have made appointments by preparing a further panel for 18 vacant posts which became vacant when the earlier 18 selected candidates opted out. It is this part of the reasoning of the High Court, which is fallacious.

7. In the present case pursuant to the direction of the High Court dated 23-3-1994, the appellant took steps for filling up 25 vacancies in the post of Operators from Advertisement No. 3/86 and the remaining 25 vacancies from Advertisement No. 6/92. The results were notified on 29-4-1994 on the notice-board. The Board recommended names of successful candidates under Advertisement No. 3/86 and Advertisement No. 6/92. Out of 22 candidates

selected by the Board for appointment under Advertisement No. 3/86, 18 candidates did not turn up. At this stage it is important to note that Respondents 1 to 7 had applied for appointment under Advertisement No. 3/86 dated 15-12-1986 and they had qualified but they were placed at Serial No. 23 onwards in the descending order. As stated above, a panel of 22 candidates was prepared for appointment under Advertisement No.3/86 and Respondents 1 to 7 fell beyond the cut-off number. We are not shown any statutory recruitment rules which require the appellant Board to prepare a waiting list in addition to the panel. The argument advanced on behalf of Respondents 1 to 7 was in effect that when 18 candidates failed to turn up the appellant was bound to offer posts to candidates in the waiting list. No such rule has been shown to us in this regard. In our view, the judgment of this Court in the case of Shankarsan Dash v. Union of India squarely applies to the facts of this case. Further there was no infirmity in the judgment of this Court delivered on 4-12-1998 and in our view with respect there was no need to recall the said judgment.”

Accordingly, there is no merit in the petitions and the same are dismissed.

March 01, 2016

**(HARINDER SINGH SIDHU)
JUDGE**

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