

\$~14 & 15

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

+ W.P.(C) 1153/2016

SANJAY JOSHI

..... Petitioner

Through: Mr. B.C. Bhatt, Advocate.

versus

THE CHAIRMAN, STAFF SELECTION COMMISSION (N.R.) &
ORS

..... Respondents

Through: Ms. Ruch Jain, Advocate with
Ms. Namisha Gupta, Advocate

+ W.P.(C) 1155/2016

NARESH SINGH BISHT

..... Petitioner

Through: Mr. B.C. Bhatt, Advocate.

versus

THE UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Archana Gaur, Advocate with
Ms. Mansi Gupta, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

%

23.03.2016

1. The present petitions have been filed by the petitioners, who are residents of Uttarakhand, praying *inter alia* for directions to the respondent

No.1/Staff Selection Commission (in short ‘SSC’) to issue letters of selection in their favour for undergoing basic training for the post of Constable (GD) in CAPFs and Rifleman (GD) under the respondents No.2-5, in response to an advertisement published by the respondent no. 1 in the year 2011.

2. The grievance of the petitioners is that they had cleared the written examination held on 05.6.2011 and had appeared for their medical examination at Srinagar, Uttarakhand, where they were declared medically unfit. They had appeared for their review medical examination at Srinagar, Uttarakhand and were declared fit. It is submitted that having been declared successful, the petitioners are entitled for being selected in the list published on 02.06.2015.

3. Learned counsel for the respondent states that there were vacancies in the border areas in Uttarakhand in only one CAPF, i.e., the SSB for which the cut off was fixed at 57 marks, whereas the petitioner in W.P.(C) 1153/2016 had scored 53 marks and the petitioner in W.P.(C) 1155/2016 had scored 50 marks and as a result, they had both failed to make it on merit for selection in the recruitment of the border areas of Uttarakhand as well as in the general areas of the State. In this regard, reliance is placed on the

result write up issued by the respondent No.1/SSC with regard to recruitment of Constable (GD) in BSF, CISF, CRPF and SSB, Examination-2011 and counsel for the respondents states that insofar as Sashastra Seema Bal is concerned, the State of Uttarakhand features at serial No. 34 where, the marks of the last selected candidate in the unreserved category has been mentioned as 57. It is thus stated that petitioners having failed to secure the cut off marks as prescribed for the domicile State, they could not be selected. She adds that the cut off marks for each CAPF as declared on 28.11.2011, had remained unchanged in each State for each category.

4. Learned counsel for respondents further draws our attention to the order dated 04.09.2015, passed in **W.P (C) No. 8447/2015** entitled Shishram Muval & Ors. vs. Union of India & Ors. (Annexure R-1), which pertains to the very same selection, where the grievance of the petitioners therein was that their names were wrongly excluded though they had secured higher marks than one of the candidates, who had secured lower marks. The petitioners therein had referred to an earlier decision of the Division Bench of this Court in the case of Vinay Kumar vs. UOI and Ors. in **W.P.(C) 7651/2012** decided on 14.12.2012 and had prayed for directions to the respondents to issue letters of offering appointment to them in view of their

merits position, as per the force opted for. However, turning down their submission, it was observed by the Division Bench as follows: -

“4. Apart from the above, this Court is also of the opinion that two other important circumstances have to be kept in mind. As to whether a candidate who secures lower marks than the other claims to be aggrieved or not has to be examined not only in the light of the marks obtained but also in the context of other circumstances, i.e., the reservations claims of the successful candidates, the choice of the force and the regions preferred by him. The details and particulars disclosed in this case show that whilst four petitioners opted for Rajasthan and one for Delhi, at the same time, the selected candidates who they claim to be lower in merit appear to have opted for other States. This is evident from the averments made in paragraph 3 of the writ petition. Secondly, and more importantly, this Court was apprised during the hearing that after the selection process was completed in 2011, further selection process had been undertaken in 2012, 2013 and 2015 in respect of specific vacancies. Whilst, this Court’s general mandamus and the respondents’ obligations to give effect to it (refer to Vinay Kumar’s case) cannot be undermined, at the same time, there has to be awareness that a recruitment process has to attained closure at some point of time otherwise it would be administratively impossible for the concerned force to fix the vacancies in a given selection year. Also the question of fitness of the candidates whose review is sought or directed would have to be kept in mind at the time he is appointed pursuant to the Court’s directions.

5. For all the above reasons, we are of the opinion that the present petition cannot be entertained and has to be dismissed on the ground of delay and laches.”

5. Even in the instant cases, the petitioners have approached the Court after a lapse of five years reckoned from the date of the advertisement issued by the respondents in February, 2011 and four and a half year from the date of undergoing the Review Medical Board, without any plausible explanation offered by them to justify the delay in seeking legal recourse. In the meantime, three rounds of selection process have taken place in respect of vacancies that have arisen after 2011. The matter relating to selection for vacancies for the year 2011, cannot be left open for five years thereafter. It is high time that the curtains be drawn on the said process. Further, even on merits, it is apparent from the counter affidavit that the petitioners have not secured marks that are above the cut off marks, indicated in the list.

6. In these circumstances, the present petitions are dismissed not only on the ground of delay and laches, but also on merits.

HIMA KOHLI, J

SUNIL GAUR, J

MARCH 23, 2016

ap/mk