

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.308 of 2016

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1. Mayank Kumar Son of Late Satish Sharma, Resident of village Kandaul, P.S.-
Hulasganj, District- Jehanabad

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Home, North Block, New Delhi
2. The Secretary, Ministry of Home, North Block, New Delhi
3. The Staff Selection Commission (C.R.), Allahabad, through its Secretary, 8AB, Bailey Road, Allahabad
4. The Deputy Director, Staff Selection Commission (C.R.), Allahabad, 8AB, Bailey Road, Allahabad
5. Centre In-charge, Sashastra Seema Bal, Office of the Commandant, 12 BN S.S.B., Kishanganj

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 1417 of 2016

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1. Md. Altaf Alam Son of Md. Sami Ahmad Resident of Mohalla - Sherpur behind
SS English School, P.O. and P.S. Biharsharif, District - Nalanda

.... Petitioner/s

Versus

1. The Union of India through Secretary, Ministry of Home Affairs, Indo Tibbatian Boarder Police, New Delhi - 1
2. The Commandant, 12 Batalian SSB, Kishanganj, Bihar
3. Medical Board No. 05, 12 Batalian SSB, Kishanganj, Bihar
4. Chairman, Staff Selection Commission, Government of India, New Delhi

.... Respondent/s

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Appearance :

(In CWJC No. 308 of 2016)

For the Petitioner/s : Mr. Sanjay Kumar, Adv.

For the Respondent/s : Mr. Anshay Bahadur Mathur, CGC

Mr. Tuhin Shankar, CGC

For the SSC : Mr. Anjani Kumar Sharan, Adv.

(In CWJC No. 1417 of 2016)

For the Petitioner/s : Mr. Md. Imteyaz Ahmad, Adv.

For the Respondent/s : Mr. Tuhin Shankar, CGC

For SCC Mr. Rajesh Kumar Verma, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 06-07-2017



Heard Mr. Sanjay Kumar learned counsel for the petitioner in C.W.J.C.No.308 of 2016 and Mr. Avinash Kumar learned counsel for the petitioner in C.W.J.C.No.1417 of 2016, Mr. Tuhin Shankar learned counsel appears for the Union of India in C.W.J.C.No.308 of 2016 while Mr. Anshay Bahadur Mathur, learned Central Government Counsel appears in 308 of 2016. The Staff Selection Commission in the two writ petitions are represented by Mr. Anjani Kumar Sharan and Mr. Rajesh Kumar Verma in the respective writ petitions.

Since the two writ petitions raise similar issues and pray for similar relief that the two have been heard analogous and are being disposed of by a common judgment at the stage of admission itself.

Each of the two writ petitioners complain denial of appointment in the selection process initiated for appointment of Constable (GD) in CISF, CRPF, BSF, Sashastra Seema Bal (SSB) and Rifleman (GD) in Assam Rifles in the year 2012 by a publication of an advertisement notification in the Rozgar Samachar on 3.12.2011 inviting application from intending candidates. While the petitioner in C.W.J.C.No.308 of 2016 had expressed option for appointment in CISF, exclusively, the petitioner in the second writ petition had exercised all four options for appointment in CISF, SSB, CRPF and BSF in that order of preference. Again while the petitioner Mayank Kumar comes from a general category, the petitioner Md. Altaf Alam comes from the



OBC category and has been categorized as resident of general area but he claims to belong to Naxal area. The two petitioners succeeded in the written examination as well as in the medical examination but have been unsuited for appointment because the last candidate appointed under their choice category, have secured better marks. The final result was published as back as on 30.10.2012 the copy of which has been placed on record vide Annexure-7 to the rejoinder filed in C.W.J.C.No.308 of 2016. These petitioners have moved this Court after almost 2 years since publication of the result and each one has a different reason to assign.

The petitioner in C.W.J.C.No.308 of 2016 while admitting that he had exercised his option for appointment in the CISF exclusively, relies upon a judgment of the Delhi High Court, a copy of which has been placed on record vide Annexure-8 to the writ petition to submit that the Delhi High Court while examining the case of some of the applicants who had given no option at all, had directed the Staff Selection Commission to consider their cases on the basis of the marks secured and whether they would be found eligible for appointment against any category. According to Mr. Sanjay Kumar appearing in support of the petitioner Mayank Kumar, even if the petitioner had exercised a single option, in view of the judgment of the Delhi High Court, he should have been accordingly considered



against other services as well.

In so far as the petitioner Md. Altaf Alam in the second case is concerned, it is the contention of Mr. Avinash Kumar learned counsel for the petitioner in reference to a result placed on record vide rejoinder filed in the second writ petition that no less than 5 persons who secured less marks than the petitioner, have been appointed. He further endeavours to argue that the petitioner was not clear that he had to specifically mention that he was a resident of naxal area. It is vehemently argued by Mr. Avinash Kumar that since there was no option as regarding resident of Naxal area, the petitioner mentioned his residence as falling as in the General area.

The arguments have been contested by learned counsel representing the Union of India and the Staff Selection Commission in the respective writ petition to submit that none below the petitioners have been appointed. It is contended that since the petitioner Mayank Kumar had exercised a single option, his candidature was considered against that category but he failed to make the grade. It is argued that the issue before the Delhi High Court was distinct from the issue at hand.

Mr. Sharan learned counsel appearing on behalf of the Commission in C.W.J.C.No.1417 of 2016 in reference to the counter affidavit filed on behalf of the Commission in the said case with



particular reference to statements present at paragraphs 6 to 9 has submitted that undoubtedly the last appointed candidate in the CISF, SSB and BSF secured higher marks than the petitioner Md. Altaf Alam and in so far as the last appointed candidate in CRPF is concerned, he had secured 61 marks equal to the petitioner and thus it was a case of tie. In reference to the statement so made in paragraphs 6 to 9 of the counter affidavit and relying upon the stipulations present in the advertisement, it is submitted that in case of a tie the merit has to be tested on the basis of the marks obtained by the candidate(s) in Paper A and since the last appointed candidate in CRPF had higher marks than the petitioner in paper A that he has been selected for appointment. Again in reference to the result relied upon by Mr. Avinash Kumar at Annexure-11 to the rejoinder he submits that, whereas the petitioner comes from the general area, the instances relied upon are of candidates coming from the naxal area who have a different cut of marks and thus their cases cannot be equated. Learned counsel further in reference to the copy of the application form placed on record by Mr. Sanjay Kumar at Annexure-6 of the rejoinder in C.W.J.C. No. 308 of 2016 in reference to column 15 submits that each of the candidate had to say whether he belonged to the general area or a naxal area and since the petitioner Md. Altaf Alam had defaulted in mentioning the correct region that he has been treated as coming from



general region, for which the petitioner himself has to stand the blame.

I have heard learned counsel for the parties and I have perused records. Prima facie these writ petitions are fit to be dismissed on grounds of delay and laches but since the attention of this Court was drawn towards the view expressed by the Division Bench of the Delhi High Court that indulgence was granted to place on record the judgment which have been placed by way of rejoinder but does not come to the aid of the petitioners. The issues deliberated by the Division Bench of the Delhi High Court was in relation to such of the candidates who had exercised no option and it is in consideration of such a situation that the Delhi High Court issued directions for consideration which order was to the benefit of all those candidate who had exercised no option. The case of the petitioner Mayank Kumar is not identical rather he had exercised option for one service only i.e. for CISF and his candidature was tested against the said category and since the last appointed candidate in CISF had higher marks than the petitioner Mayank Kumar, obviously he could not succeed.

In such circumstances it is on complete misconception of legal position on the part of the learned counsel for the petitioner to rely upon the Division Bench judgment for equitable relief from this Court



and that also after a lapse of two years, since the final result was published on 30.10.2012.

Reverting to the second case of Md. Altaf Alam it is noticed that this petitioner had exercised all 4 options for appointment in CISF, SSB, CRPF and BSF in order of priority. Now while the last appointed candidate in CISF secured 77 marks, the last candidate in SSB secured 80 marks, the last candidate in BSF had secured 69 marks and the last candidate in CRPF had 61 marks. While the petitioner could not compete with the last appointed candidate in other categories, he had tied with the last appointed candidate in CRPF. The issue of tie has been explained by the Staff Selection Commission in their counter affidavit filed in C.W.J.C.No.1417 of 2016 in reference to the advertisement as to why the petitioner could not succeed. The explanation is sufficient enough to demonstrate as to why the petitioner, Md. Altaf Alam could not succeed on merits. The reliance by Mr. Avinash Kumar to the result enclosed at Annexure-11 to the rejoinder again is of no help to him because the instances given by him are candidates coming from the naxal region while the petitioner is coming from the general area. There being different cut of marks for the two regions obviously he can not equate his case with the candidates coming from naxal area.



For the discussions above, it stands confirmed that the cases of the two petitioners either on delay or laches or on merits, is not worthy of indulgence. The writ petitions are accordingly dismissed.

Bibhash/-

(Jyoti Saran, J)

AFR/NAFR	
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