

\$~6

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) 1898/2017

KUSHAL PAL SINGH

..... Petitioner

Through: Mr.Ankur Chhibber, Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr.Rajan Sabharwal, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

%

18.09.2017

Having heard the learned counsel for the petitioner, we are not inclined to accept the prayer for quashing and setting aside appointments to the posts of Sub Inspector in Railway Protection Force against ex-servicemen vacancies.

This is the second round of litigation as the petitioner had earlier filed WP(C) no.7031/2013. After noticing the protected grievance, the Court had observed that only general averments without material particulars was made. The petitioner had failed to implead candidates whose appointment was challenged and were required to be boarded out in case the writ petition would succeed. As the order dated 20th July, 2016 disposing of WP(C) no.7031/2013 is a short and relevant, the same is reproduced below:-

“1) As we proceeded to hear arguments in the writ petition learned counsel for the petitioner concedes that general

averments sans material particulars would not entitle the petitioner to the relief prayed for.

2) *In essence the petitioner claims benefit of being Ex-Servicemen as also a member of Scheduled Castes. Petitioner wants employment on the strength of being a member of Scheduled Castes but within the quota prescribed for Ex-Servicemen.*

3) *The grievance appears to be that either all vacancies for Scheduled Castes and in particular reserved for Ex-Servicemen have not been filled up. The further grievance appears to be that said posts have been filled up by unreserved candidates.*

4) *The general averments are sans any particulars. The writ petition does not implead such general category candidates who would require to be boarded out if the writ petition succeeds.*

5) *Counsel prays that leave be granted to withdraw the writ petition with right of the petitioner reserved to file a fresh petition on the same cause.*

6) *Granting liberty as prayed for the writ petition is dismissed as not pressed.*

7) *No costs. ”*

It is correct that the petitioner was granted liberty to file a fresh writ petition but we find that the present petition suffers from the same flaws and lacks particulars and details noticed and recorded in the order dated 20th July, 2016. Further, the petitioner has not impleaded candidates appointed and whose appointment is under challenge. The prayer clause of the present petition reads:-

"For the facts and circumstances stated above, it is most respectfully prayed that the lordship of this Court would be pleased:

(i) To issue appropriate writ order direction in the nature of writ of mandamus by quashing and setting aside the appointment of non Ex- servicemen candidates appointed on

Ex-servicemen vacancies and to direct respondents to select the petitioner in Ex-Serviceman quota as the petitioner is meeting the criteria.

(ii) To pass any such order as this Hon'ble court may deem fit (sic) and proper in the facts and circumstances of the case."

The contention of the petitioner is that 10% of the posts were reserved for ex-servicemen. In the counter-affidavit filed by the respondents to WP(C)No.7031/2013 the total number of seats in the recruitment process reserved for ex-servicemen, as indicated, was 51. The petitioner submits that as per Note (i) to employment notification No.2/2011 dated 30th April, 2011 there should not have been any further category wise sub-division for Other Backward Class, Scheduled Caste and Scheduled Tribe under the ex-servicemen quota. However, contrary to the said stipulation 51 posts reserved for ex-servicemen were divided into unreserved, Other Backward Class, Scheduled Caste and Scheduled Tribe. This was done in terms of the Railway Board's letter dated 5th March, 2013, which could not be relied upon as it was issued post the employment notification No.2/2011 and because of the bifurcation, ex-servicemen could not be appointed to four (4) posts reserved for Other Backward Class and four (4) posts reserved for Scheduled Tribe. These posts have been filled up by open category candidates ignoring the claim of the ex-servicemen. Copy of the counter

affidavit, stated to have been filed by the respondents in WP(C)7031/2013, has not been filed on record of the present case, however, copy of the same has been shown to us in the court.

There would be several difficulties in accepting the said contention of the petitioner primarily because private respondents who would be adversely affected have not been impleaded as parties and Railway Board's letter dated 5th March, 2013 also had the effect of increasing the number of posts reserved for ex-servicemen. This letter, therefore, is partly in favour of and benefits the ex-servicemen. Lastly, the petitioner had obtained 58.75 marks in aggregate. There is huge difference between his marks and the marks of the last selected candidate in the unreserved category and the Other Backward Class category, 68.75 marks and 69 marks respectively. Even if the claim of the petitioner is to be accepted there would be several candidates over him between 69 marks and 68.75 marks who would have filled the four (4) unfilled posts under the Other Backward Class category and four (4) posts reserved for Scheduled Tribes. In view the wide disparity between the last selected candidate and the marks obtained by the petitioner his plea and prayer for appointment cannot be accepted.

In these circumstances, we do not see any reason to carry out the said exercise. Interference would obviously lead to chaos and problems as entire list of the ex-servicemen would have to be drawn possibly adversely affecting the ex-servicemen, who were appointed to seven (7) Scheduled Castes vacancies.

The petitioner had submitted that eight (8) unfilled posts in the Other Backward Class category and in the Scheduled Tribes category should have been carried forwards in the next selection process. We would not accept the said contention for if the plea of the petitioner is to be accepted the said posts would have been filled up by those who had obtained higher marks. This plea would not benefit the petitioner on the prayer seeking appointment.

With the aforesaid observations, the writ petition is dismissed. No costs.

SANJIV KHANNA, J

NAVIN CHAWLA, J

SEPTEMBER 18, 2017
RN