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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) No.3847/2016**

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Date of Judgment: 18th May, 2017

PANKAJ KUMAR

..... Petitioner

Through

Mr.Anuj Aggarwal, Adv. with
Ms.Debashree Mukherjee, Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through

Mr.Arun Bhardwaj, CGSC with
Mr.Jitendra K. Tripathi, Adv. for
UOI.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE REKHA PALLI

SANJIV KHANNA, J (ORAL)

1. The petitioner-Pankaj Kumar, an OBC candidate and domicile of the state of Bihar, had participated in the selection process conducted by Staff Selection Commission in 2012 for appointment to the post of Constable (General Duty) in Central Armed Police Forces and Rifleman (General Duty) in Assam Rifles.
2. The petitioner had, admittedly, not given option in his application form as to which Central Armed Police Force i.e. Border Security Force; Central Industrial Security Force; Central Reserve

Police Force; Sashastra Seema Bal or alternatively the Assam Rifles, he would opt to join.

3. The petitioner having secured 61 marks, was not appointed. He has preferred this petition, inter alia, on the ground that some of the selected candidates had secured less marks.

4. In the present case, the petitioner had left the option column blank and not indicated preference for any of the Central Police Organisations. His case, therefore, was to be considered in the Reserve List-I after accommodating the candidates who had opted for the specified Forces. The selection was made on a 'merit-cum-option' basis separately for each State, based on the domicile of the candidate, and was contingent upon vacancies existing in each of the Armed Police Forces within the said State.

5. The petitioner cannot, in the aforesaid circumstances, claim right to be considered for appointment in the Select List which is the first list. However, as some vacancies in different States in the Central Armed Police Forces were not filled up, the Reserve List- I was published. The respondents on the said aspect, have clarified the position in paragraphs 19 to 23 of the counter affidavit which are

reproduced as under:-

(19) That after finalizing the Select List on the basis of vacancies allotted to different States and merit-cum-option of the candidates, it was found that some vacancies were left unfilled in some States due to non-availability of suitable candidates within the State (Deficit States/UTs) and it was also found that there were some other States where candidates, securing marks above the highest cut off marks fixed in the written part of the Examination, but failed to find place in the Select list of their respective States due to high cut off fixed for final selection on the basis of vacancies allotted to that State (Surplus Candidates).

20) Therefore, as per the provision of the Notice of the Examination, contained in Para 10(iv) and in Para 14 of Notice of the Examination, the Commission, in consultation with the Ministry of Home Affairs (Who is the user department), prepared a **Reserve List** by diverting the candidates from surplus State (where the candidate with higher cut off marks could not be accommodated in Select list due to non-availability of vacancies in their domiciled State) to deficit State (where vacancies could not be filled due to non-availability of suitable candidates even at minimum qualifying marks i.e., 35% for UR & Ex-Servicemen and 33% for candidates of SC, ST & OBC categories in written part of Examination). For this purpose, all the vacancies of deficit State was pooled in single vacancy (all India basis) called **Reserve List** and the surplus candidates were allotted CPO on the basis of **merit-cum-option** irrespective of their domicile status subject to certain conditions. Therefore, there was a single cut off mark of each category (UR/OBC/SC/ST) for all the candidates in **Reserve List**.

21) However, as per advice of the Ministry of Home Affairs (the nodal/user department) unfilled vacancies in Jammu & Kashmir, North Eastern States (Assam, Arunachal Pradesh, Manipur, Mizoram, Meghalaya, Nagaland, Sikkim, Tripura), Naxal and Militancy affected states (Andhra Pradesh, Bihar, Orissa, Jharkhand, Chhattisgarh, Madhya Pradesh, Maharashtra, Uttar Pradesh, West Bengal) were not filled with candidates from surplus State/UTs in reserve list.

22) It is further submitted that while preparing **Reserve List**, a policy decision was taken by giving special concession, as per the provisions contained in Para 14 of Notice of the Examination, to consider candidates who did not submit their option for allotment of CPOs or submitted invalid preference other than the prescribed (i.e. 'A'-BSF, 'B'-CISF, 'C'-CRPF, 'D'-SSB, 'E'-ITBP & 'F'-Assam Rifles) in Reserve List by substituting their preferences as A, B, C, D, E & F by default as given in Notice of the Examination only for consideration in Reserve List. It is submitted that the candidates who have submitted CPOs preference/wrongly coded preferences were given special consideration for preparation of reserve list and the preferences of the candidates were substituted only for considering in **Reserve List (prepared by unfilled vacancies of deficit States on All India basis)**. The methodology was used for all the candidates, who have failed to submit their option or submitted invalid preferences, uniformly and therefore, no discrimination was made with the Petitioner. It is the responsibility of the Petitioner to act as per provisions of Notice of the Examination and if he fails in doing so, he himself is responsible for non compliance of provisions of Notice of the Examination for which Respondents

cannot be held responsible. The marks list clearly reflects that his preference(s) of post is blank for allotment of CAPF and a true copy of the mark list is annexed herein and marked as **Annexure-R 6**.

23) Accordingly, the preference of the Petitioner was substituted by default and his case was considered in Reserve List but he failed to find place in Reserve List due to his low merit. The cut off fixed for Reserve List is as under:-

CPO	SC	ST	OBC	UR	Ex-s
BSF(A)	81	73	--	86	--
CISF(B)	--	--	85	88	--
CRPF(C)	77	76	81	84	48
SSB(D)	--	77	83	86	58
ITBP(E)	72	73	80	83	--
Assam Rifles(F)	71	73	--	82	--

As the Petitioner scored 61 marks and his category was OBC, he failed to find place in Reserve List as marks obtained by last selected candidate in different CPOs were more than the Petitioner.”

6. We find that he aforesaid exercise is in consonance with and in accord with paragraph 10 clause (iv). Para 10 reads as under:-

“10. **MODE OF SELECTION:**

(i) The final selection of the candidates will be

made in order of merit in each category in each state.

- (ii) The minimum cut off percentage of marks for selection will normally be as under:

General and Ex-servicemen	:	35%
SC/ST/OBC	:	33%

The cut off is relaxable at the discretion of the Commission.

Provided that SC, ST and OBC, who are selected on their own merit without relaxed standards, along with candidates belonging to other communities, will not be adjusted against the reserved share of vacancies. **Such SC, ST and OBC will be accommodated against the general/unreserved vacancies as per their position to the overall Merit List.** The reserved vacancies will be filled up separately from amongst the eligible SCs, STs and OBCs candidates which will, thus, comprise of SC, ST and OBC candidates who are lower in merit than the last general candidate on merit list of unreserved category but otherwise found suitable for appointment by relaxed standard.

An Ex-serviceman candidate who qualifies on the basis of relaxed standards viz. Age limit, experience or qualifications, extended zone of consideration, etc. will be counted against reserved vacancies and not against general vacancies subject to fitness of such candidates for selection. Such candidates will also be recommended at the relaxed standards. Deduction from the age of Ex-Servicemen is permissible against the reserved or unreserved posts and such exemption is not termed as relaxed standards in regard to age.

- (iii) Allotment of CPO to the candidates selected

from each state will be on merit-cum-option depending on availabilities of vacancies in each CPO for the State.

- (iv) The Commission, with the approval of the Ministry of Home Affairs, shall have the discretion to divert candidates from Surplus States to deficit States, after accommodating all available candidates in such deficit states, subject to category-wise reservation being maintained.”

Note-II : The candidates applying for the examination should **ensure that they fulfil all the eligibility conditions** for admission to the examination. Their admission at all the stages of examination will be **purely provisional**, subject to their satisfying the prescribed eligibility conditions. If, on verification, at any time before or after the written examination and interview, it is found that they do not fulfil any of the eligibility conditions, **their candidature for the examination will be cancelled by the Commission.**”

7. The respondents have followed the mode of selection by first publishing the Select List applying clauses (i) to (iii) of paragraph 10. The Select List of the candidates was published on the basis of order of merit in each category in each State by following the minimum cut off percentage of marks for Constable (General Duty) and Rifleman (General Duty) etc. They had followed the process of allotment of candidates to the Central Police Organization in each State based

upon the merit cum-option exercised by the said candidates in the application form and subject to the availability of vacancies in each Central Police Organization for the said State.

8. The petitioner having not opted for any of the Central Police Organization and was not considered as per mandate of Clause (iii). The petitioner was to be considered against the surplus vacancies which were not filled up after undertaking the exercise under Clause (iii). As there were some vacancies due to lack of selected candidates and some candidates had not been selected because of blank/invalid/limited option, they were to be considered for the unfilled vacancies in the Reserve List-I. For this purpose, the Commission had entered into consultation with the Ministry of Home Affairs in accordance with Clause (iv) of paragraph 10 and accordingly diverted candidates from surplus States to deficit States, while publishing Reserve List-I. This was just and fair as those who had secured higher marks but could not be selected because of lack of vacancies in the particular Central Police Organization in the specified State, were accommodated against unfilled vacancies in other states. On this basis, the Reserve List I was published. The cut-

off for the Reserve List 1 as stated in paragraph 23 of the counter affidavit, would indicate that the marks secured by the petitioner were less than the last selected candidate in the said Reserve List. The petitioner had secured 61 marks only and, therefore, did not figure in Reserve List-I.

9. The petitioner relies on instructions dated 19th November, 2012 issued by the Staff Selection Commission which reads as under:-

“2. In view of the fact that there are candidates who were not selected due to blank/invalid/limited options and at the same time some vacancies remained unfilled in their respective States/Border District/Naxal and Militancy affected Districts, Commission has decided in consultation with MHA, to issue Reserve List II allocate Forces to such candidates as per their merit treating their candidature under default option i.e. “ABCDEF”

Paragraph 2 states that when there are unfilled vacancies in various States/Border Districts/Naxal and Militancy affected districts, the Commission would decided in consultation with the Ministry of Home Affairs, to publish Reserve List-II. In the present case, the Reserve List-I was published but the petitioner did not qualify and make it to the merit list. Moreover, in the present case, the respondents had acted in accordance with Clause (iv) of paragraph 10.

10. The counsel for the respondents has also raised the plea of

delay and laches. There appears to be some merit in the said contention. However, since we find that the petitioner is not entitled to succeed on merits, we are not inclined to further elaborate the second aspect.

11. The writ petition is, accordingly, dismissed with no orders as to costs.

(SANJIV KHANNA)
JUDGE

(REKHA PALLI)
JUDGE

MAY 18, 2017
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