

\$~20

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION (CIVIL) No. 3016/2017**

Date of decision: 13th July, 2017

RAJESH KUMAR Petitioner
Through Mr. Alakh Alok Srivastava and Ms.
Deepti Bhargava, Advocates.

versus

UNION OF INDIA & ORS. Respondents
Through Mr. Chiranjeev Kumar and Mr. Mukesh
Sachdeva, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (ORAL):

The petitioner-Rajesh Kumar was appointed as a Constable (General Duty) after selection and had joined Central Reserve Police Force (CRPF) on 23rd July, 2012.

2. The petitioner underwent training of 5 weeks up to 30th August, 2012 at CRPF Group Centre, Lucknow, Uttar Pradesh. Thereafter, the petitioner underwent further training for 44 weeks at CRPF Regional Training Centre, Neemuch, Madhya Pradesh up to 30th August, 2013.

3. The petitioner thereafter had waited for instructions for posting and had remained at the Regional Training Centre till 4th September, 2013. He was posted at and asked to join Group Centre, Kootha, Jammu and Kashmir. The petitioner joined the said Centre on 5th September, 2013 and

remained posted there up to 23rd October, 2013.

4. The petitioner on 25th October, 2013, as per the directions, was posted at 163rd Battalion, CRPF, Verinag, Anantnag, Jammu and Kashmir. He has remained posted there since then.

5. By Notification No. R-II-8/2016-CS-EC-VII (SI/LDCE-16) dated 15th September, 2016, applications were invited from eligible Constables and Head Constables working in the CRPF for selection to the post of Sub Inspectors (SI/GD) through Limited Departmental Examination (LDCE)-2016. The petitioner was issued "No Objection Certificate" for selection as SI/GD dated 25th October, 2016 by the Commandant of 163rd Battalion to appear in the said examination. The petitioner submitted his application and was issued an admit card. The petitioner appeared in the said LDCE on 5th February, 2017 and it is an accepted and admitted case that he had qualified the written examination. He was placed at Sr. No.76 in the list of qualified candidates of Sub Inspector (GD) LDCE-2016. The petitioner subsequently appeared for the physical test and as he had qualified the same, his case was recommended for medical test, which was held.

6. The petitioner vide letter dated 6th March, 2017 was informed that he was not eligible and was not qualified to appear in the aforesaid LDCE as his Annual Confidential Report for the year 2013 was not recorded.

7. The stand of the respondent in the counter affidavit is that the petitioner had undergone basic training of 44 weeks from 3rd September,

2012 to 30th August, 2013 and was posted at Group Centre at Kootha Jammu from 5th September, 2013 to 23rd October, 2013. For the period between 25th October, 2013 to 31st December, 2013, the petitioner had joined and reported to 163rd Battalion, CRPF, Verinag, Anantnag, Jammu and Kashmir. Annual Confidential Report (ACR) could not be written for the year 2013 in view of paragraph 8.14.7 of the Establishment Manual, which stipulates that Reporting/Reviewing Officers and final authorities should be familiar with the work of the official reported upon for a period of at least three months before offering their remarks. Accordingly, the petitioner was not eligible to “earn” ACR for the year 2013 separately. Reliance is also placed upon paragraph 8.14.1 of the Establishment Manual, which stipulates that ACRs of Constables/GD are to be written at the end of the calendar year, i.e., for the period from January to December.

8. We have considered the said contention, but do not find any merit in the same for the stand is completely untenable, unjust and unfair. The petitioner had earned ‘Good’ grading in the ACR for the training period between 30th August, 2012/3rd September, 2012 to 30th August, 2013 at the Regional Training Centre, Neemuch, Madhya Pradesh. The training was spread over two calendar years. Thereafter, the petitioner’s posting was decided by the respondents. The petitioner was given posting order and had joined Group Centre, Kootha, Jammu and Kashmir on 5th September, 2013. He remained at the said Centre till 23rd October, 2013. On the

directions of the respondents, the petitioner was then posted and asked to join 163rd Battalion, Verinag, Anantnag, Jammu and Kashmir, which he had joined on 25th October, 2013. It was the duty and responsibility of the respondents to ensure that the petitioner does not suffer on account of transfer and posting. Had the petitioner been posted immediately on completion of his training and not transferred, his ACR for the period between 1st September, 2013 till 31st December, 2013 would have been written. It would be unfair and unjust if the petitioner is made to suffer for the acts and “faults” of the respondents. Moreover, ACRs are to be written year-wise, the ACRs for the period ending 31st December, 2012 and 31st December, 2013 should have been written separately and treated as two ACRs. During this period, the petitioner was undergoing training at the Regional Training Centre, Neemuch. ‘Good’ grading given for this period should be, therefore, counted. Admittedly, the petitioner was graded ‘Good’ for the year 2014.

9. If we do not adopt the said approach, the petitioner would be denied benefit of promotion which he has earned and is entitled to after appearing in the LDCE, which is a competitive examination. The petitioner, as recorded above, has secured 76th position in the merit list. Secondly, we do not think that it will be appropriate and proper for the respondents to take the stand which they have taken, for that would amount to the respondents taking advantage of their own wrong.

10. The petitioner in the writ petition has stated that candidates, who were selected as Constables and had undertaken training with him, having cleared LDCE-2016 have been granted promotion as Sub Inspectors. He has given a list of 18 such Constables. Counsel for the respondents accepts and admits that 18 such Constables have been appointed as Sub-Inspectors upon selection in the LDCE. However, it is stated that some of them had joined the training programme earlier and, therefore, they had four ACRs. It is, however, accepted that some others so promoted had joined the training after 23rd July, 2012. We have highlighted the aforesaid position to show that the candidates who were appointed as Constables (General Duty) along with the petitioner have been promoted as Sub Inspectors having participated in the same LDCE. The petitioner would lose on his seniority in case he is not promoted for the inaction, lapse and fault of the respondents.

11. In terms of the last order, the respondents have produced the medical examination result of the petitioner in the sealed cover. The sealed cover has been opened. The petitioner was found fit in the medical examination. The sealed cover has been returned.

12. In view of the aforesaid position, we allow the writ petition and issue a Mandamus to the respondents to consider the petitioner's case for appointment to the post of Sub Inspector (General Duty). Necessary and consequential orders would be passed within two months from today.

Immediate action would be taken by the respondents to permit the petitioner to join training. The petitioner would be granted seniority as per the merit list. Arrears and back wages will be also paid within two months. In case there is delay, interest @ 8 % per annum would be payable to the petitioner. The writ petition is disposed of, with no order as to costs.

Dasti.

SANJIV KHANNA, J.

JULY 13, 2017
NA/VKR

NAVIN CHAWLA, J.

