

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

Judgment reserved on : 17th April, 2017
% Judgment pronounced on: 19th May, 2017

+ **Writ Petition (C) 7700/2015**

DIN DAYAL GUPTA Petitioner
Through : Mr. Arun Kumar Singh, Advocate

versus

UNION OF INDIA & ORS. Respondents
Through : Mr. Rajan Sabharwal, Advocate

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

J U D G M E N T

A. K. CHAWLA, J.

Invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner-Din Dayal Gupta, seeks issuance of a writ of mandamus for being appointed Inspector (Prosecution) in pursuance of the employment notification no. 1/2009 dated 14.11.2009 in short 'the subject notification'.

2. It is the case of the petitioner that vide 'the subject notification', the respondents had invited applications for filling up the posts of Inspector (Prosecution) and Sub-Inspector (Prosecution) from male, female and ex-servicemen as against Unreserved/General, Other Backward Classes, Scheduled Castes, Scheduled Tribes categories (OBC, SC and ST) as per the criterion prescribed therein, and, the total number of vacancies prescribed was 58, which vacancies were provisional and were subject to increase or decrease at the time of recruitment, depending upon the requirement of the railway administration. It was also stipulated that the candidates would be liable to serve anywhere in India in Railway Protection Force and may be allocated to any Zonal Railway after selection. Petitioner, who was an OBC candidate, and, met the eligibility criterion, appeared for the written examination after qualifying the physical test. Having been declared successful in the written examination, he also appeared for the viva-voce examination. The final result was published in the third week of August, 2011. It is stated that though the final result came to be published, but, it came to be published suppressing the merit list. WP(C) 1769/2012 titled Anil Kumar Patel & Ors. vs. Union of India & Anr. was filed by few of the candidates including the petitioner,

seeking issuance of a writ of mandamus to the respondents to consider the case of the petitioners, if, it was found that the petitioners were not selected due to a fault in the selection process etc. In the counter affidavit filed, the respondents stated that though the said petitioners had secured the mandatory requirement of 60% marks in the written test and viva-voce, but, could not qualify in the final list, as the candidates securing marks over and above them, were selected. Details of the marks secured by the said petitioners was disclosed in the said counter affidavit. The counter affidavit also stated that the vacancies notified for the females could only be filled up as under :

Females	Vacancies	Recruited	Short fall
UR	02	01	01
OBC	02	Vacant	02
SC	01	01	-
ST	01	-	01
Total	06	02	04

3. This common writ petition came to be disposed of vide order dated 30.10.2014, with the liberty to the petitioners to file separate petitions, if they so chose. This resulted into filing of a separate writ petition by the

petitioner being WP(C) No. 407/2015 titled Din Dayal Gupta vs. Union of India & Anr. This writ petition came to be disposed of by the Division Bench of this Court vide order dated 5.12.2015 advertng to (2010) 3 SCC 119, *Jitender Kumar Singh and Another v. State of U.P. and Others*, with the direction to the respondents to take a fresh decision, keeping in view the aspect of vertical and horizontal reservations and the concept of inter-locking. It was also observed that while taking fresh decision, the respondents would take into account whether the vacancies reserved for women (OBC) had been carried forward to the next selection process or not, and, whether or not, a fresh selection process had been initiated. The respondents however, declined the representation made by the petitioner, observing that all the 16 vacancies reserved for OBC category had been filled up by male (OBC) candidates and the life of panel had already expired on 02.12.2012 and therefore, the petitioner, at this point of time, could not be appointed against employment notice no.1/2009. This has resulted into filing of the instant writ petition.

4. In the counter affidavit, the respondents have stated that after getting the zone-wise details, the modified vacancy of Inspector (prosecution) (male) including ex-servicemen, was 52, as under :

Males	Vacancies
UR	22
OBC	16
SC	06
ST	08
Total	52

It is also stated that the two vacancies reserved for women (OBC) were not carried forward and that, two posts of Inspector (Prosecution) of OBC category (1 each in MWR & SR) empanelled on the said recruitment, had not joined till date.

5. It thus transpires that the respondents have not only ignored the ratio of the judgment of the Hon'ble Supreme Court in *Jitender Kumar's* case (supra), which clarifies the concept and the application of vertical and horizontal reservations, which entitled the petitioner to one of the posts remaining unfilled by a suitable woman candidate, but, also refused to fill the vacancy, when two vacancies were remaining vacant, on the mere premise that the life of the panel had already expired on 2.12.2012. Could the petitioner be refused appointment being at serial no. 1 of the

panel, for no lapse attributable to him, the answer, certainly would be in negative in the present factual matrix.

6. On his part, the petitioner, getting to know of his merit position in the results declared sometime by the end of the year 2011, had filed a writ petition in March, 2012. The said writ petition came to be dismissed or rather disposed of without a firm decision on merits with liberty to file individual or separate petitions. This resulted in filing of W.P. (C) No. 407/2015 shortly thereafter, for the same relief. W.P. (C) No. 407/2015 came to be disposed of vide order dated 5.2.2015. The said order adverts to the ratio in ***Jitender Kumar's*** case (supra) that where adequate number of women candidates were not available under the vertical reservation category, the said posts were to be filled up from among male candidates as per the category of vertical reservation and were not to be carried forward. In the face of the law so laid down in ***Jitender Kumar's*** case (supra), it was incumbent upon the respondents at the very threshold of drawing the merit list in the year 2011 itself to do so. In paragraph 13 of the counter affidavit filed by the respondents to the present Writ Petition in which it was stated that two Inspectors (Prosecution) of OBC category (one each in NWR and SR) empanelled on the said recruitment had not

joined. The petitioner was therefore, under law, entitled to be accommodated against the posts which had remained vacant, but this was not done. This lapse was squarely attributable to the respondents and none else. The rejection of the representation of the petitioner vide communication of June, 2015, was wholly erroneous. This is a case of lapse and fault of the respondents in not filling up the vacancies as advertised inspite of the selected candidates on the waiting panel. There is no justification and reason given why the selected wait listed petitioner was not considered and offered appointment within the time limit prescribed for the panel. Wrong and faulty decision by the respondents time and again would not justify rejection on the ground of time taken in litigation, earnestly pursued by the petitioner. The petitioner could not be accused or faulted for any delay(s).

7. In view of the foregoing, the writ petition is allowed and the respondents are directed to consider the case of the petitioner for issuance of an appointment letter to the petitioner, subject to fulfillment of the other terms and conditions of appointment in consonance with the employment notification no. 1/2009 dated 14.11.2009, to the post of Inspector (Prosecution) within six weeks from receipt of the copy of this order,.

Petitioner shall be entitled to the emoluments from the date of his joining, but, notionally, his seniority shall be reckoned as per the merit list. The pay would be fixed by granting notional increments when the petitioner would have joined in the normal course. Writ petition is disposed of accordingly, with no order as to costs.

ANIL KUMAR CHAWLA, J.

SANJIV KHANNA, J.

MAY 19, 2017/rc

