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

+ **W.P.(C) 380/2017**

Date of decision: 17<sup>th</sup> October, 2017

SOM DUTT

..... Petitioner

Through: Mr. A.K. Trivedi, Adv.

versus

UNION OF INDIA AND ANR

..... Respondents

Through: Mr. Gigi C. George, Adv. for UOI

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**SANJIV KHANNA, J.** (ORAL)

This is the second round of litigation by the petitioner, Som Dutt, who had applied for selection as Constable (General Duty) in Central Armed Police Forces (CAPF) Examination, 2012 as other backward class (OBC) candidate belonging to the State of Delhi.

2. The petitioner having cleared physical examination test, had appeared in written examination in which he had secured 64 marks. However, letter of appointment was not issued to the petitioner as, while filling up the application form, he had not indicated and specified his preference for the police force he would like to join, i.e. Central Reserve Police Force, Assam Rifles, Boarder Security Force, etc. The petitioner's name/candidature was included in the Reserve List to be considered for appointment only if candidates who had given their options and were issued letters of appointment would not join, resulting in vacancies.

3. Contesting the said position and stand, the petitioner had filed writ petition W.P.(C) No.336/2013 which was allowed vide judgment dated 7<sup>th</sup> March, 2013 rejecting the stand of the respondents on the ground that it violates Articles 14 and 16 of the Constitution of India. Reference was made to Rules 2 and 3, Note II of Paragraph 10 and Column 16 of the Brochure containing instructions for filling up of the application. The Division Bench allowing the writ petition, had held as under:

“10. This judgment relied upon by the learned counsel for the respondents is not applicable in the instant matter as the factual scheme around which the aforesaid ratio has been propounded by the Court is different from the one in the case at hand. In that case, the matter related to the admission of the petitioner into a medical college under the reservation for “rural area” where the respondents contended that she was not eligible to fall within such category at all. However, in the case at hand, it is not the contention of the respondents that the petitioner is not eligible for the OBC Category or the job but is merely a contention that the preference for posts criteria has been left blank. Thus, the judgment relied upon by the learned counsel for the respondents is not determinative of the controversy in this case.

11. The ground for rejection of the petitioner’s candidature, as is evident from the above discussion, is that he failed to indicate his choice or preference for one or the other service. It is contended that as against the available vacancies in the OBC category for Delhi for the post, the other candidate, Vicky Yadav, had an entitlement to be considered, even though he scored less marks and was less meritorious than the petitioner, since his application was valid and complete in all particulars. It was argued, more specifically, that the scheme devised was such that instead of rejecting the applications of those who did not fill all particulars, the recruiting agency devised a method of postponing the consideration of the merits of such

candidates, after considering the claims of those who had filled all the particulars. Till then, the names of candidates like the petitioners were kept in a waiting list.

12. The question which this Court has to address is whether the procedure adopted by the respondents in selecting candidates for the post of Constable is valid. Their contention is that in terms of the method and conditions stipulated in the recruitment process, if a candidate defaults in indicating the choice of his service (CRPF, Assam Rifles, BSF, etc.) his application would be considered after those of candidates whose applications are complete in particulars are dealt with. Such incomplete applications form the basis of a waiting list; if any vacancies exist after the selection list is prepared from amongst candidates whose applications are complete, those are filled, according to merit, from this waiting list.

13. There can be no doubt that a candidate who is desirous of participating in a selection process leading to appointment to a public position has to be diligent in his disclosures and should fill all the relevant particulars required in the application form issued by the recruiting agency. Equally, however, omission from disclosure of essential matters should be distinguished from failure to indicate choice of options for a particular service, when the recruitment process envisions filling of posts in different organizations. Thus, omission or withholding of information relating to age, date of birth, educational qualification, address for communication, may be fatal to the candidature. However, failure to indicate the choice should not lead to such drastic consequences. In an analogous situation, while dealing with the validity of a rule, which enabled reserved category candidates to be given a better choice of service, in the event they secured a place in the general merit list, on the basis of their being reserved candidates, the Supreme Court observed, in *Union of India v. Ramesh Ram & Ors.* (AIR 2010 SC 2691) that:

*“We must also remember that affirmative action measures should be scrutinized as per the standard of proportionality. This means that the criteria for any form of differential treatment should bear a rational correlation with a legitimate governmental objective. In this case a distinction has been made between Meritorious Reserved Category candidates and relatively lower ranked Reserved Category candidates. The amended Rule 16(2) only seeks to recognize the inter-se merit between these two classes of candidates for the purpose of allocation to the various civil services with due regard for the preferences indicated by the candidates...”*

14. The facts of this case bring out in stark relief a glaring defect in the recruitment conditions. The omission of an applicant to indicate his choice (which may not be respected at all, given the viccitudes of ranking that he may obtain in the selection process) virtually seals his fate, and he is denied appointment, despite his undoubted superior merit, whereas a relatively less merited candidate is preferred, only on the ground that he had given his choice of service. This, to the Court's mind, is the epitome of arbitrariness. Taken to the extreme, a candidate (who does not like the petitioner indicate the choice of option of service) but who secures ranking within the first three places in the merit list, on the basis of his performance, would, on the respondents' argument, be shoved aside, and the application of those lower down in the merit list would be processed, and appointment letters issued to them; the more meritorious candidate would have to wait for an outside chance of a "left over" vacancy. Though not to that exaggerated extent, a somewhat similar result has ensued; the petitioner had undeniably fared better in the recruitment process; yet a less merited candidate of the same reserved (OBC) category was given appointment.

15. In view of the above discussion, this Court entertains no doubt that the petition has to succeed. A direction is

accordingly given to process the petitioner's application to the post, and after completion of all formalities including verification of his particulars, issue an appointment letter to him, within ten weeks from today. In case all vacancies are filled up, the petitioner shall be given appointment in the next batch; his seniority shall, however, remain unaffected and shall be based on his ranking and performance in the selection test he undertook, and which is the subject of these proceedings. The writ petition is allowed in terms of these directions. No costs."

4. Arriving at the aforesaid findings, the Division Bench was conscious that another candidate Vicky Yadav who had secured 63 marks in the written test, less than the 64 marks secured by the petitioner, had been declared as selected. In these circumstances, specific direction was issued to the respondents to issue a letter of appointment in favour of the petitioner after completion of formalities, within ten weeks and in case all vacancies were already filled up, the petitioner would be given appointment with the next batch, but his seniority, based on his ranking and performance in the selection test, would remain unaffected.

5. It is apparent to us that the respondents have not complied with the said directions which were clear and categorical. The counter affidavit to the present writ petition filed by the respondents merely reiterates their earlier stand and refers to the purported rule position etc. Judgment dated 7<sup>th</sup> March, 2013 would operate as *res judicata* and bind the respondents. The respondents cannot re-agitate and raise the contentions which were earlier considered and rejected vide judgment dated 7<sup>th</sup> March, 2013. In case the respondents felt that the judgment was incorrect, they should have preferred a special leave petition and challenged and questioned the directions.

6. The respondents, in the counter affidavit, have reiterated that the petitioner was put in the Reserve List and having secured only 64 marks in the written examination could not be selected as the last candidate in the OBC category in the Reserve List for the State of Delhi had secured 80 marks.

7. The error in the argument and contention raised by the respondents is that they are again referring to the Reserve List by treating the petitioner as a candidate who could not be included in the Select List for he had not given his preference for the specific force in the application form. As noticed above, the said argument was considered and has been rejected vide the judgment dated 7<sup>th</sup> March, 2013. The candidature of the petitioner had to be considered in the OBC category in the Select List.

8. The respondents have filed before us a copy of the Select List for different forces which would indicate that the last selected candidate belonging to OBC category relating to the State of Delhi in Assam Rifles had secured 62 marks. Similarly, the last selected candidate for the State of Delhi in OBC category in the Select List for ITBP had secured 62 marks and last selected candidate in CRPF in the State of Delhi in OBC category had secured 64 marks. Obviously, the stand of the respondents is incorrect and does not notice the marks secured by the last selected candidates in the OBC category in the State of Delhi in the Select List for the said forces.

9. Counsel for the respondents has submitted that the petitioner should be denied relief for he has belatedly approached the Court. We have reservations on the stand and stance taken by the respondents for the reason that the respondents should have complied with the judgment dated 7<sup>th</sup> March, 2013 with earnestness and in letter and spirit. Possibly the

respondents are guilty for contempt for the non-compliance of the directions, compounded by reiteration and repetition of their rejected stand. It is not easy for candidates to spend money and engage in second round of litigation, which is the last option. In these circumstances, the respondents' contention has to be rejected.

10. The respondents would accordingly comply with the directions given in the judgment dated 7<sup>th</sup> March, 2013 within six weeks and the Regional Director of the Staff Selection Commission, Northern Region would file his personal affidavit, setting out steps taken for compliance. It will be the duty of the Regional Director to ensure compliance in letter and spirit of the judgment dated 7<sup>th</sup> March, 2013.

11. With the aforesaid directions, the writ petition is disposed of with costs of Rs.20,000/- which will be paid to the petitioner by the respondents within the period of six weeks.

**SANJIV KHANNA, J**

**NAVIN CHAWLA, J**

OCTOBER 17, 2017

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