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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-7168-2017

Date of Decision : Sept. 25 , 2018

Shivani

.... Petitioner.

Versus

Union of India and others.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. B.S.Rathee, Advocate
for the petitioner.

Mr. R.S.Malik, Advocate,
for respondents No. 2 and 4.

Mr. Karan Singh, Advocate,
for respondent No.3.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for quashing the action of the respondent-authorities by not granting appointment to the petitioner to the post of Constable/General Duty in CAPFs, NIA and SSF and Riflemen (GD) in Assam Rifles as advertised vide advertisement dated 24.1.2015 (Annexure P/1) since the candidates with less marks than the petitioner have been selected and allocated the Force.

2. As per the petitioner, in response to advertisement issued by Government of India, Staff Selection Commission dated 24.1.2015, the

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petitioner herein, applied for the post of Constable as she is resident of Himachal Pradesh and belongs to OBC Category (Code – 6, Caste Bahti) and her caste comes under the OBC Category (Code No. 6) in Himachal Pradesh (Code No.14). The petitioner is otherwise qualified as she is having the educational qualification of Matric and 10+2 from Himachal Pradesh Board of School Education and Graduation from Himachal Pradesh University, Shimla. She is also having 'C' Certificate of NCC. As per the petitioner, in the advertisement, Annexure P/1, there was a condition that the candidate can choose their order of preference as per the Force (i.e. BSF, CRPF, CISF, ITBP, SSB) NIA and SSF and Riflemen (GD) in Assam Rifles etc. The petitioner applied for Physical Standard Test and qualified the same. For the State of Himachal Pradesh (Code No. 14), the cut-off marks for Female candidates for OBC category (Code No.6) was fixed as 57 and there are tentative six vacancies for Himachal Pradesh (Code No. 14) OBC Category (Code No.6). The petitioner also qualified the written test held on 04.10.2015 and secured 61 marks against the cut-off marks of 57 for Himachal Pradesh (Code No. 14) OBC Category (Code No.6). The petitioner appeared in the Detailed Medical Examination held on 13.5.2016, but her name was not in the select list, though she had passed the medical examination.

3. As per the petitioner, against Himachal Pradesh quota, only four female candidates have been allocated the Force. The respondent authorities have selected candidates having less marks i.e. 33 marks, and even who scored upto 9 marks in Part I having OBC category have been selected. The petitioner made representations qua her grievance on

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15.3.2017 and 31.03.2017 that as there were six vacancies for Himachal Pradesh and out of those, only four have been filled up, but no action has been taken and as such present writ petition.

4. On being given notice, the respondents filed reply with the plea that the petitioner is a female candidate for the recruitment of Constable/General Duty and belongs to OBC category. She is domicile of Himachal Pradesh (State Code – 14) (General Area). The vacancies in the recruitment process were calculated as per ratio of population in respective States and conveyed by the Ministry of Home Affairs/CAPFs. It was clarified in the Notice itself that State-wise vacancies are available for the candidates, who are having domicile of the State with further break up of reservations to various categories and candidates of Naxal, Militancy affected and Border Areas. The case of the petitioner was considered against the vacancies for female candidates in OBC category for General Area of Himachal Pradesh, but the petitioner is claiming that her case was to be considered against OBC category which is otherwise reserved for female OBC candidates of Border Guarding District of Himachal Pradesh. As per the Notice of Examination itself, the candidate belonging to General Area cannot be considered against the vacancy earmarked for candidates of Border Guarding District.

5. As per the respondents, the final selection was made on the basis of merit of written examination subject to availability of vacancies State-wise and category-wise and also considering the vacancies earmarked for Naxal, Militancy affected Areas or Border Guarding Districts within the State-wise vacancies. The cut-off marks for female OBC

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candidate domicile of Himachal Pradesh (General Area) is given hereunder:-

- | | | | |
|-------|------|---|----|
| i). | BSF | - | 64 |
| ii) | CISF | - | 63 |
| iii). | CRPF | - | 61 |

6. At the time of arguments, learned counsel for the petitioner mainly contended that since all the posts advertised for vide Advertisement, Annexure P/1, i.e. Constable/General Duty, i.e., six in numbers, have not been filled up and the petitioner having the qualification for the said post and having qualified all other examinations, is entitled for her appointment against the said post. Reliance was placed upon the judgment of the Coordinate Bench of this Court in **Sarabdeep Kaur Vs. State of Punjab and another, 2016 (1) SCT 83.**

7. Learned counsel for the respondents contended that the appointments are to be made strictly in terms of the notice which are applicable to one and all and since the petitioner had not applied for the post against Border Guarding District of Himachal Pradesh, she cannot be considered and offered appointment against the said post. As regards to the post applied for by the petitioner, her case was considered but she being lower in merit, was not given appointment.

8. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that there is no dispute on the fact that the petitioner had applied for the post of Constable as OBC category candidate (State Code-14) for

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General Area of Himachal Pradesh against six vacancies. However, the terms and conditions of the Notice were clear that the select list was to be made State-wise and category wise. The petitioner has not applied for the post of Constable under Border Guarding District/Area and now she is making her claim against the said vacancy, which has been rightly denied by the respondents as the same is contrary to the Notice for appointment. The Notice itself indicates that vacancies are State-wise with further break-up of reservations to various categories and candidates of Naxal, Militancy affected and Border Areas in each CAPF and the respondents have rightly denied the relief on the ground that the petitioner being not eligible for the Border Guarding post, was not considered against the said post.

9. The petitioner had secured 61 marks which are equivalent to marks of last selected candidate in CRPF. The instant case is Tie case and the method to resolve Tie cases has clearly been mentioned in the Notice of Examination which is as under:-

- “(a). The tie is resolved by the Commission by referring to the total marks in the written examination i.e., a candidate having more marks in the written examination gets preference over the candidate(s) with less marks.
- (b). If the tie still persists then the marks in Part A are referred to i.e., a candidate having more marks in Part A is given preference.
- (c). If the tie still persists, the candidate older in age gets preference.
- (d). If the tie still persists, it is finally resolved by referring to the alphabetical order of names i.e., a candidate whose name begins with the alphabet which comes first in the alphabetical order gets preference.”

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10. The last candidate selected in CRPF having total 61 marks had scored 20 marks in Part-A but the petitioner had scored only 16 marks in Part-A. She was not selected being lower in merit in Part-A. As per the respondents, the Commission functions within the ambit of the Notice of Examination and provisions of Notice of Examination are binding on one and all. However, the petitioner has tried to mislead this Court by stating that the respondents have selected candidates with less marks though the petitioner could be considered against the vacancies for female OBC category candidates belonging to General Area of domicile of Himachal Pradesh as per provisions of the Notice and there is no violation of the Notice of examination. Otherwise, the writ petition filed by the petitioner deserves to be dismissed being covered as per view taken by this Court in **Rahul Kaushik Vs. UOI and Ors, CWP No. 3209 of 2013**, decided on 4.2.2016 and prayed that the present writ petition be also dismissed.

11. In view of the above, there is no merit in the present writ petition and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

September 25, 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes