

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.22819 of 2015

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking a writ of mandamus to declare the action of the respondents in not considering his legitimate claim for appointment to the post of Constable, even though he is the meritorious candidate without giving any reasonable cause, as is evident from the reply notice, dated 09.04.2015, as illegal, arbitrary, discriminatory and violative of Articles 14, 16 & 21 of the Constitution of India and consequently direct the respondents to appoint the petitioner forthwith as constable (GD) in CAPFs and Rifleman (GD) in 2013 recruitment from the date of appointment of his counterparts, with all consequential benefits.

2. Heard Sri T.G.S.Srivatsav, Counsel for the petitioner and the Assistant Solicitor General of India for the respondents.

3. It has been contended by the petitioner that he is fully eligible and qualified to be appointed to the post of constable and the respondents have issued a notification on 09.01.2013 to fill up the constable posts. The petitioner has responded to the said notification and has participated in the selection process.

4. The grievance of the petitioner is that he belongs to OBC category and has secured 34 marks, but his case was not considered for appointment to the post of constable in the OBC category.

5. Counsel for the petitioner submits that appropriate orders be passed in the writ petition directing the respondents to consider the case of the petitioner for appointment to the post of constable in terms of the notification issued by the respondents by duly taking into account the merit of the petitioner in the said selection process.

6. Assistant Solicitor General of India filed a counter contending that the last selected OBC candidate has secured 34 marks and the petitioner has also secured 34 marks. Whenever there is a tie, the person who has secured more marks in Part A will be appointed. The last selected OBC candidate has secured 11 marks in Part A, whereas, the petitioner has secured only 8 marks. Hence, the case of the petitioner was not considered, as the petitioner has secured less marks in Part A than the last selected OBC candidate. As the petitioner did not come within the zone of consideration, the respondents have not considered his case for appointment to the post of constable. Hence, there are no merits in the writ petition and it is liable to be dismissed.

7. This Court, having considered the rival submissions made by both the parties, is of the considered view that though the petitioner and the last selected OBC candidate have secured 34 marks in total, when there is a tie, the person who secures more marks in Part A shall be given appointment. In the present case, the petitioner has secured less marks in Part A than the last selected OBC candidate. Hence, the case of the petitioner was not considered by the respondents. Therefore, there are no merits in the writ petition and the same is liable to be dismissed.

8. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Date: 17th July, 2019

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