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

+ **W.P.(C) 9723/2019**

VIKRAM SINGH AND ORS. Petitioners

Through: Mr. Ankur Chhibber, Advocate

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Apar Chopra, Government
Pleader for R-1
Mr. Vivek Goyal, CGSC with Mr.
Ram Krishan Kumar, Advocates

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
% **24.10.2019**

CM APPL. 47008/2019 (delay)

1. For the reasons explained in the applications, the delay in filing the counter affidavit is condoned. The application is allowed.

W.P.(C) 9723/2019 & CM No.40109/2019

2. Despite an Office Memorandum dated 13.06.2000 issued by the Department of Personnel & Training (DoPT), Government of India and despite the judgments of this Court dated 5th March, 2013 in W.P.(C)

2552/2012 (*Chairman Delhi Subordinate Service Selection Board v. Rajni*), the order dated 16th December, 2016 in W.P.(C) 11739/2016 (*Union of India v. Shrey Bajaj and Ors.*), the Respondents i.e. Central Industrial Security Force (CISF) which issued a notice on 19th March, 2018 for recruitment of Constable/Drive-cum-pump Operator in the CISF is reluctant to prepare a reserve list of select candidates to fill up all the vacancies.

3. In all 447 vacancies were notified for being filled up by above advertisement. A written examination was conducted on 17th February, 2019. The result of 447 provisionally selected candidates for medical examination was uploaded on the CISF recruitment website on 16th April, 2019. A detailed medical examination was conducted in May, 2019 and a review medical examination in June, 2019.

4. Five persons who appeared in the above exam approached the Allahabad High Court with Writ Petition (Civil) 7335/2019 complaining of the correctness of some of the answer keys. As a result of the orders passed by the Allahabad High Court, the OMR answer sheets of all the candidates were rescanned and one mark was allocated for the question having a wrong answer. The revised result of 447 candidates was uploaded on CISF recruitment website on 29th August, 2019.

5. According to the Respondents, ten candidates who had secured a place in the first merit list were eliminated in the revised list. Ten new candidates who replaced them appeared for the medical examination. Seven of these qualified.

6. According to the Respondents the offer of appointment was extended to 365 plus 7 i.e. 372 medically fit candidates. The admitted position is that there was no reserve list of candidates to fill up the 75 unfilled vacancies that is 447- (365+7).

7. A grievance of the present Petitioners is on the issue of a failure by the Respondents to prepare a waiting/reserve list. Petitioners 1 to 5 figured in the provisional list at the serial Nos. 392, 94, 185, 328 and 80 respectively. They also successfully qualified the medical examination. It was contended by the Petitioners that although they were qualified they were not given offers of appointment.

8. At the first hearing on 6th September 2019, the Court was informed that the final list of candidates had yet not been published and that the fate of the Petitioners will be known only when such final list was prepared. At the next hearing on 19th September 2019, the Respondents maintained that they had gone strictly by the law. An interim order was passed to the effect that till the next date of hearing no further appointment letters shall be issued.

9. In the reply filed in the present petition, the stand of the Respondent is that the aforementioned OM dated 13th June, 2000 does not apply to recruitment to the Central Armed Police Forces (CAPFs), including the CISF where the recruitment is undertaken by the concerned CAPF itself. Specific reference is drawn to Note No. 4 in the advertisement which stated that that 'no waiting list will kept/maintained'.

10. The Respondents state that they stopped at Sl. No. 447 of the merit list and anyone who figured below that was not sent an offer of appointment. Of the 447, 372 were medically fit. The balance 75 were medically unfit and, therefore, not sent offers of appointment. Also since there is no waiting list, the Respondents did not go to the candidates appearing below sl. No. 447 in the merit list even though they may have been medically fit.

11. As regards the aforementioned judgments of this Court, the stand taken in the counter affidavit that the said judgments “are not absolute rules but have been issued to two different recruiting agencies”.

12. Having heard the submissions of the learned counsel for the parties, the Court is of the view that the stand taken by the Respondents is untenable for the reasons that follow. The OM dated 13th June 2000 states clearly in para 3 that where ‘a selection for a post under the Central Government’ is made either through the agencies such as Staff Selection Commission (SSC) or by the Ministries/Departments ‘directly’ and where reserved panels as envisaged in para 2 of the OM are prepared, the procedure outlined in para 2 would be applicable to the reserved panels. Para 2 of the OM states that if a person selected either resigns or dies within one year of appointment, then the vacancy resulting will not be treated as a fresh vacancy and a candidate in the reserve list will be given the offer of appointment. This is clear from the sentence ‘vacancies resulting from resignation or death of an incumbent within one year of his appointment should be filled immediately by the candidate from the reserved panel, if a fresh panel is not available with

them.’

13. Learned counsel for the Respondent sought to contend that the expression ‘ministries/departments’ would not cover the CAPFs. This contention stands negatived by the judgment dated 16th December, 2016 of this Court in Writ Petition (Civil) 11739/2016 (*Union of India v. Shrey Bajaj*) which concerned recruitment *inter alia* to the posts of Sub-Inspectors in the Delhi Police and the CAPFs etc. In fact, the Respondent Shrey Bajaj was selected for appointment as SI in the CISF in the open OBC category but could not ultimately make the cut for the Delhi Police because there was no reserve list. This Court in the said judgment discussed the earlier decision in *The Chairman, Delhi Subordinate Services Selection Board v. Ms. Rajni* as well as the OM dated 13th June, 2000 and concluded that it is obligatory on the Respondents to have prepared a reserve list. In para 16 and 17 it was observed as under:

“16. With the aforesaid observation and directions, we dismiss the present writ petition. We clarify that the respondent No.1 would be eligible for consideration, if there were unfilled OBC category Sub Inspector (Executive) posts in the Delhi Police and on the basis of marks obtained by him, as per merit, he was entitled to consideration. The discretion whether or not to appoint, is with the Delhi Police, which we accept and believe would be exercised as per, and in accordance with, law.

17. The Staff Selection Commission must take into notice the ratio and directions of the Division Bench of the Delhi High Court in the case of *M. S. Rajni (Supra)*, which are salutary and merited. Had due notice and consideration to the ratio been given, this controversy and litigation would have been avoided.”

14. Therefore, the stand taken by the Respondents in the present case that the aforementioned judgment involved directions to various agencies and would not apply to the CISF is erroneous and accordingly stands rejected.

15. Even otherwise with the Respondents having advertised 447 vacancies, there appears to be no logical reason for not preparing a reserve list. The contention of learned counsel for the Respondents, on the basis of averment in the counter affidavit, that candidates from the reserved list may miss out on the training already being imparted to the 372 selected candidates overlooks the fact that there have been numerous instances where there is a large batch of candidates qualifying in a selection, all of them may not be able to be sent for training at the same time but are further split into groups and sent for training in batches. In any event of the present case, the fault entirely lies with the Respondents for not adhering to the settled legal position explained in the above decisions of the Court interpreting OM dated 13th June, 2000 and underscoring the need to prepare the reserve list of candidates.

16. Consequently, the Court directs that the Respondents will now prepare a reserve list of candidates pursuant to the result already declared on 29th August, 2019 taking into account the reservations provided in terms of the advertisement. Those figuring in the reserve list, including the Petitioners if they do figure in such reserved list, will be sent offers of appointment. This exercise be completed not later than 8 weeks from today. The petition is allowed to the above terms. The pending applicaiton is also disposed of. No order as to costs.

17. A copy of this order be given *dasti* under the signatures of the Court Master.

S. MURALIDHAR, J.

TALWANT SINGH, J.

OCTOBER 24, 2019/rhc