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

% *Judgment Reserved on: 19.12.2018*
Judgment Pronounced on: 10.01.2019

+ W.P.(C) 7804/2018 & CM No. 29914/2018

RAHUL KUMAR MEENA Petitioner
Through: Mr. M.D. Jangra, Advocate.

versus

UNION OF INDIA AND ORS. Respondents
Through: Mr. Amit Mahajan, CGSC for UOI
with Mr. Madhav Chitale, Advocate,
Mr. R.N. Pareek, DSC and Mr. Vivek
Kumar Singh, CRPF Law Officer.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J.

1. The present writ petition has been filed under Article 226/227 of the Constitution of India seeking to quash and set aside the order dated 23.05.2018 passed by Directorate General, Central Reserve Police Force (hereinafter referred to as 'DG, CRPF') (respondent No.5) whereby the candidature of the petitioner as Scheduled Tribes (ST) candidate has been cancelled for appointment to the post of Constable (GD) in CAPFs. The petition also seeks a direction for appointment of the petitioner to the post of Constable (GD) in CISF with all consequential benefits.

2. The cause for the grievance of the petitioner arose when despite having cleared the various examinations, his name did not feature in the

merit list with 61 marks although another candidate in the ST category with 58 marks found his name in the merit list.

3. The brief and relevant facts necessary for adjudication of the present petition are as under:-

- a) An advertisement was issued by the Staff Selection Commission (SSC) on 24.01.2015 for recruitment to the post of Constable (GD) in BSF, CRPF, CISF, ITBP, SSB, NIA and SSF and Rifleman in Assam Rifles. The total number of vacancies for the post of Constable (GD) in the 2015 examination were 53857 in the male category. Out of these 27604 vacancies were for the unreserved category, 12204 were for OBC category, 5161 for ST category and 8888 for SC category. The age limits were 18 to 23 years as on 01.08.2015 and under the physical standards the requirement of minimum height for unreserved category was 170 cms, for males. However, for candidates belonging to ST category, there was a relaxation in the height standards and the minimum height required was 162.5 cms for males.
- b) Pursuant to the said advertisement, the petitioner applied in the ST category in January/February, 2015. On being declared qualified in the physical standard test (PST)/ physical efficiency test (PET), the petitioner was issued an admit card for written examination on 04.10.2015. The petitioner was declared qualified in the written test as he scored 61 marks and was thereafter called for a medical examination on 28.05.2016 and 29.05.2016, which also he successfully passed. On 02.02.2017, the Staff Selection Commission declared the merit list. The name of the petitioner did not figure in the said merit list. Subsequent thereto, the respondents issued a list of

allocation of the Constables to the various CAPFs and Assam Rifles. The petitioner had applied for Delhi region and had given his order of preference as NIA, SSF, ITBP, SSB, CISF, CRPF, BSF and Assam Rifles. Naturally, the petitioner did not figure in the list of allocation to the forces as he was not in the earlier merit list. However, he found that the name of one Krishan Meena was appearing as having been selected in the ST category although he had 58 marks which were lower than that of the petitioner.

- c) Since a person with lower marks in the same category had been selected, the petitioner approached the respondents to find out as to why he, with higher marks, had not found place in the merit list. The petitioner claims to have approached the respondents several times for this query but there was no response from their side. The petitioner then approached the National Commission for Scheduled Tribes through a representation dated 13.12.2017 for the redressal of his grievance. The National Commission issued notice to the respondents on 27.12.2017 and sought their response.
- d) Having received no positive response from the respondents, the petitioner filed a writ petition bearing no. W.P. (C) 975/2018 in this Court in which notice was issued to the respondents on 02.02.2018. When the said petition was listed for hearing on 28.02.2018, the respondents produced a letter dated 09.01.2018, addressed to the National Commission for Scheduled Tribes stating that the petitioner belonged to the 'Meena' caste which was not notified in the central list of Delhi under the ST category and, therefore, his candidature was considered in the unreserved category. It was also stated therein that

in the unreserved category the requirement of height under the physical standards was 170 cms and the petitioner was only 169 cms and, therefore, he did not fulfil the eligibility criteria for selection. This Court then passed an order on 28.02.2018, granting liberty to the petitioner to make representation to the respondents with regard to his eligibility for the said selection.

- e) The petitioner thereafter made a representation dated 19.04.2018 to the respondents, bringing to their notice the judgment of the Full Bench of this Court in the case of *Deepak Kumar & Ors. v. District and Sessions Judge, Delhi & Ors.*, in *W.P. (C) No. 5390/2010*, decided on 12.09.2012 wherein the Full Bench has held that the members of the Scheduled Castes and Scheduled Tribes on migration from the State to the Union Territory would carry their reservation. He, therefore, requested the respondents to re-examine his case in the light of this judgment, as the CAPFs are central establishments and the Ministry of Home Affairs is the cadre controlling authority. The respondents then passed an order dated 23.05.2018 on the representation of the petitioner and rejected the same on the ground that the 'Meena' caste is not notified in the central list of NCT of Delhi in Scheduled Tribes. Since, the petitioner belongs to 'Meena' caste which is notified as a Scheduled Tribe of Rajasthan he would not be entitled to the concessions/benefits admissible to the ST from Delhi and he could only claim this benefit of reservation from the State of his origin and not from the State to which he had migrated. It was further stated in the order that the standards of height required for selection in the unreserved category was a minimum of 170 cms and

since the petitioner was 169 cms in height, he did not fulfil the eligibility criteria of physical standards in that category and, therefore, he could not be selected. The present petition has been filed challenging this order dated 23.05.2018.

4. Learned counsel for the petitioner has contended that it is now settled law that a person belonging to a Scheduled Tribe or Scheduled Caste on migration from a State to a Union Territory would carry with him his reservation. He further submitted that his case is squarely covered by a judgment of the Full Bench of this Court in the case of *Deepak Kumar & Others* (supra) wherein this Court relying upon the judgment in the case of *S. Pushpa & Ors. v. Sivachanmugavelu & Ors.*, 2005 (3) SCC 1, has held that if a resident of a State whose caste is notified as a Scheduled Caste or Scheduled Tribe, moves to a Union Territory, he carries with him the right to claim that benefit, in relation to the said Union Territory.

5. He further contends that recently the same issue was considered by the Apex court in the case of *Bir Singh v. Delhi Jal Board in Civil Appeal No. 1085/2013*, decided on 30.08.2018, and the Apex Court has endorsed the same position. For this reliance was placed on paras 34 and 61 of the said judgment.

6. When the matter was heard on 13.11.2018 by this Court, the learned counsel for the petitioner had vehemently argued that since his case is now clearly covered by two judgments, there was no reason why his writ petition should not be allowed. Mr. Amit Mahajan, Standing counsel for respondent has sought adjournment for ten days for obtaining appropriate instructions in this regard. When the matter came for hearing on 19.12.2018, Mr. Amit Mahajan was unable to show that the case of the petitioner was not covered

by the judgment relied upon by the petitioner. The learned counsel for the petitioner on the other hand fairly stated that his client would not press the relief of seniority from the date the others have been appointed, pursuant to the advertisement in question and nor would he seek back wages.

7. Having heard the learned counsels for the parties, we find that the case of the petitioner is indeed covered by the judgment of the Full Bench in the case of *Deepak Kumar & Others* (supra) as endorsed by the Apex Court in the case of *Bir Singh* (supra). The petitioner's caste 'Meena' has been notified as Scheduled Tribe in the State of Rajasthan and there is no dispute on this fact. It is also not disputed that the advertisement in question related to recruitment for the post of constables in the CAPFs and Assam Rifles for which the Ministry of Home Affairs i.e., the Central Government is the Cadre Controlling Ministry. The petitioner had applied for selection in the Delhi region and it is again undisputed that Delhi is a Union Territory. The petitioner is, thus, clearly entitled to the benefit of these judgments and, therefore, he would be entitled to be treated in the reserved category of Scheduled Tribe for the present selection. Thus the petitioner would be entitled to the benefit of relaxation in the physical standards and in which case the minimum height required by him would only be 162.5 cms. The petitioner, thus, fulfils the eligibility criteria of the physical standards as admittedly his height is 169 cms.

8. In the given facts of the case, the petitioner is, therefore, entitled to be appointed as a Constable (GD) in CISF which would be the Force allocated to him as per his merit position in the ST category as informed to us by the petitioner.

9. In view of the above, we set aside the order dated 23.05.2018 and

direct the respondents to issue an offer of appointment to the petitioner for the post of Constable (GD) in CISF within a period of two weeks from the date of receipt of this order. As the learned counsel for the petitioner has fairly given up the claim of seniority and back wages, no further orders are required in the present writ petition.

10. The writ petition is accordingly allowed in the above terms with no order as to costs.

JYOTI SINGH, J.

G.S. SISTANI, J.

JANUARY 10, 2019

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