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

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Date of Decision: 30.07.2019

% **W.P.(C) 5690/2015**

CT/GD ANGAD KUMAR AND ORS. Petitioners

Through: Mr. N.L. Bareja, Adv.

versus

UNION OF INDIA AND ORS. Respondents

Through: Ms. Shubhra Parashar, Mr. Virender
Pratap Singh Charak and
Mr. Pushpender Singh Charak, Adv.
for respondent Nos. 1 to 4.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

VIPIN SANGHI, J. (ORAL)

1. The three petitioners have preferred the present writ petition to assail the communications dated 30.01.2014, 15.04.2014 and 10.09.2014 issued by respondent No. 2 rejecting their claim for appointment to the post of Head Constable (Ministerial), in short HC (M) through Limited Departmental Competitive Examination (LDCE). The petitioners also seek a mandamus to the respondents to consider them for appointment to the said post of HC (M) on the basis of their participation in the LDCE recruitment process 2012-13.

2. The case of the petitioners is that at the relevant time the petitioners were serving the CRPF as Constable (GD). The Government notified the *Central Reserve Police Force (Combatised Group-C the Ministerial Posts), Recruitment Rules (RRs)-2010* on 27.01.2011. These rules, inter alia, provided the method of recruitment for the post of HC (M). Under these rules, 70% posts of HC (M) were to be filled through direct recruitment, and the remaining 30% by departmental examination from amongst officers of Central Reserve Police Force having three years regular service in the grade of Constable of all categories including tradesmen/ technician and Ministerial. Thereafter, the Government framed the *Central Reserve Police Force, Assistant Sub-Inspector (Steno) and HC (M) Recruitment Rules, 2012* on 19.10.2012. Under these Rules, the posts of HC (M) were to be filled 85% by direct recruitment and 15% by LDCE, failing which by direct recruitment. The 15% of the LDCE vacancies were to be filled from amongst Constable (General Duty), Head Constable (General Duty), Constable (Daftary) and Constable (Tradesmen) with five years total regular service in Constable and/ or Head Constable Grade(s) and possessing qualifications prescribed for direct recruits under Column (7) of the schedule to the aforesaid rules.

3. The respondents issued an advertisement to fill up the vacancies, inter alia, in the post of HC (M) in CRPF on 09.11.2012. In so far as the posts of HC (M) are concerned, the vacancies advertised by the respondents were the following:

HC (Min)				
<i>Category</i>	<i>Open Market</i>	<i>Deptl</i>	<i>Ex-Servicemen</i>	<i>Total</i>
<i>Genl</i>	<i>206</i>	<i>89</i>	<i>23</i>	<i>318</i>
<i>OBC</i>	<i>134</i>	<i>114</i>	<i>15</i>	<i>263</i>
<i>SC</i>	<i>77</i>	<i>26</i>	<i>8</i>	<i>111</i>
<i>ST</i>	<i>152</i>	<i>34</i>	<i>17</i>	<i>203</i>
<i>Total</i>	<i>569</i>	<i>263</i>	<i>63</i>	<i>895</i>

4. From the above, it would be seen that the LDCE vacancies advertised were 263 in the aggregate, which included 89 General category (Unreserved) vacancies and 114 vacancies reserved for the OBC category. The advertisement contained a note that the vacancies were subject to variation and the department had the right to make any change in the advertisement or cancel it without assigning any reason. The petitioners, who are departmental candidates belonging to general category participated in the LDCE. On 07.10.2013, the results were declared in respect of 734 vacancies, even though 895 vacancies had been advertised. The petitioners were not declared successful in the process since they ranked lower in merit.

5. In the aforesaid background, the petitioner represented that the reservation granted to the OBC category in respect of the LDCE quota was illegal, since appointment through the LDCE is promotion, and no reservation could be granted to the OBC category candidates in the matter of promotions. The representations made by the petitioners, however, did not

yield any positive result, leading to filing of this petition.

6. Mr. Bareja, learned counsel for the petitioners submits that under the constitutional scheme, no reservation could be granted in respect of the OBC category candidates in the matter of promotion. He has drawn the attention of the Court, firstly, to the Office Memorandum dated 22.10.1993 issued by the DOP&T. The relevant extract of the said Office Memorandum reads as follows:

***“Department of Personnel and O.M. No.36012/22/93-
Estt.(SCT), dated the 22nd October, 1993, to all
Ministries/Departments etc.***

*Subject:- Reservation for Other Backward Classes in Civil
Posts and Services under the Government of India-Regarding.*

The undersigned is directed to refer to this Department's O.M. of even number dated the 8th September, 1993 on the above subject and to stay that in accordance with the Supreme Court Judgement in the Indira Sawhney case, the reservations contemplated in clause 4 of Article 16 should not exceed 50%. For the purpose of applying the rule of 50%, any cadre should be taken as the unit and not the entire strength of the cadre, service or the, unit as the case may be. This position would also apply in the case of carry forward vacancies. Therefore, the Ministries/Departments are requested to ensure that the reservations provided to SC/ST/OBCs put together do not exceed 50% of vacancies arising in a year.

2. In the light of the reservations provided to other backward classes, it is necessary to revise the existing reservation rosters. In respect of direct recruitment on All India basis by open competition where there is a reservation for 15% for SC and 7-1 V2% for ST, the existing 40 point-roster has been revised into a 200 point-roster as in the model

indicated to Annexure-A. The revised roster will come into effect immediately. Vacancies filled on or after 8-9-1993 should be shown in the new roster now prescribed in Annexure-A the old roster should be deemed to have been closed from this date. The Reservations which had to be carried forward in the previous roster shall now be carried forward to the new roster.

3. *There is no change in the existing reservation roster in so far as promotion is concerned, as there is no reservation for OBCs in promotion.*” (emphasis supplied)

7. Mr. Bareja further relies upon the decision of this Court in ***Sandeep Kumar Dubey Vs. Union of India & Ors.***, W.P.(C.) No. 5460/2011 and other connected petitions decided by a Division Bench of this Court on 01.09.2011. In this decision, this Court observed that the process of making appointments through LDCE is promotion. In paragraph 11 of this decision, this Court observed that no reservation could be provided to the OBC category candidates while undertaking promotion through LDCE. Consequently, the posts earmarked for the OBC category candidates in the LDCE i.e. 120 posts were directed to be treated as unreserved, to be filled on the basis of the merit. He also places reliance on another decision of a Division Bench of this Court in ***Dharam Pal Vs. Union of India and Ors.***, W.P.(C.) No. 6703/2012, decided on 05.12.2012. In this decision as well, the Division Bench held that no reservation could be provided for the OBC category candidates in the matter of appointment through LDCE, which tantamounts to promotion. Mr. Bareja submits that contrary to the stand taken in ***HC/RO Kajal Mahanta Vs. Union of India & Ors.***, W.P.(C.) No. 2638/2014, decided on 21.07.2015, in their counter-affidavit, the respondents have stated that the process of filling up the vacancies in the

present case is not an LDCE.

8. On the other hand, learned counsel for the respondents has submitted that the petitioners participated in the LDCE with open eyes after perusing the advertisement in question which earmarked 114 vacancies for OBC category in the LDCE. He submits that having participated in the LDCE examination, it is not open to them to now assail the reservation granted to the OBC category in the LDCE examination, after the petitioners have not succeeded in the said process.

9. We have heard the submissions of learned counsels and perused the record. That appointments through LDCE is promotion, is a well-settled legal proposition in *UOI Vs. Ravi Kant Sharma & Others*, 2017 SCC OnLine Del 8563, followed recently in *Union of India & Another Vs. Himanshu Prabhakar & Others*, W.P.(C.) No. 1738/2017 decided by this Court on 01.07.2019. So far as the aforesaid objection raised by the counsel for the respondents is concerned, we do not find any merit therein for two reasons. Firstly, the petitioners are not assailing any condition relating to qualification or eligibility which concerns them and, therefore, there is no question of the petitioners being estopped from challenging the grant of reservation for OBC category reservation in the matter of making appointments through LDCE, which is promotion. The petitioners are entitled to question the said reservation granted to the OBC category candidates in the matter of making appointments through LDCE, since their challenge is premised on a breach of the constitutional scheme relating to grant of reservations. They are vitally affected, as vacancies which could

not have been reserved, and should have been filled on merit, have been illegally reserved for the OBC category. Moreover, the advertisement itself stated that the vacancies are subject to variation and that the department has the right to make any changes in the advertisement or cancel it without assigning any reason. Thus, the petitioners were entitled to point out to the respondents the legal infirmity in their advertisement – in so far as it provided for reservation for OBC category candidates in the process of making appointments through LDCE to fill up the post of HC (M), and to expect the respondents to make amends on their own.

10. From a perusal of the OM dated 22.10.1993 and the decisions of this Court in *Sandeep Kumar Dubey* (supra) & *Dharam Pal* (supra), it is abundantly clear that no reservation could be provided in the matter of promotion (through conduct of LDCE) to the OBC category candidates. Reservation for the said category is available only at the induction/ direct recruitment stage.

11. Thus, the grievance of the petitioner with regard to grant of reservation to the OBC category in the matter of appointments through LDCE to fill up the posts of HC (M) to the extent of 114 vacancies is justified, and the said reservation could not have been accorded by the respondents.

12. We, accordingly, hold that no reservation could have been accorded for the OBC category in the matter of making appointment through LDCE to the post of HC (M) by the respondents. We direct the respondents to fill up the 114 vacancies reserved for the OBC category in the LDCE in question,

for filling up posts of HC (M), purely on the basis of merit. In case, the petitioners qualify for appointment on the basis of their marks in the LDCE, they should be granted appointment to the post of HC (M) according to their merit and from the dates on which the said posts were filled up by the respondents. In that eventuality, the petitioners would be entitled to grant of notional seniority in the grade of HC (M) and consequent fixation of their pay and increments. However, they would not be entitled to any arrears, since they have not served in the said post.

13. The respondents are directed to ensure compliance of our judgment in the next 8 weeks.

14. The petition is allowed in the aforesaid terms.

VIPIN SANGHI, J.

RAJNISH BHATNAGAR, J.

JULY 30, 2019

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