

\$~11

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

+ **W.P.(C) 12487/2018**

MD. SONU

..... Petitioner

Through: Mr. Ankur Chhibber with Mr. Bhanu
Gupta, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Sanjeev Sabharwal, Senior
Government Counsel with Ms.
Bushra Waseem, Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

%

06.12.2019

Dr. S. Muralidhar, J.:

1. The Petitioner, who is serving in the Sashastra Seema Bal ('SSB'), has filed this petition challenging orders dated 23rd April, 2018 and 30th August, 2018, as well as a Show Cause Notice ('SCN') dated 20th October, 2018 issued to him terminating his services as Constable (GD).

2. The background facts are that Respondent No. 4 Staff Selection Commission ('SSC') issued an advertisement dated 15th December, 2012 for filling up the post of Constable (GD) in the CAPF and Rifle Man (GD) in Assam Rifles, 2013. The Petitioner applied for the posts as an OBC candidate enclosing his OBC certificate issued from the state of Bihar. He also enclosed a certificate dated 9th February, 2012 issued by the Assistant

Commandant, CISF Unit, RSR Rourkela certifying that the Petitioner is the son of Tailor Mohd. Sahid who was posted in the said unit and that the Petitioner, his son, was residing with him, and therefore was applying from the State of Odisha in terms of Note IV of page 3 of the advertisement.

3. Based on the selection process, the Respondents issued a final select list where the name of the Petitioner is shown at Page 829. He was declared as fit under the OBC category and was allotted SSB.

4. By a memorandum dated 28th November, 2014, the SSB informed the Petitioner that he had been appointed as Constable (GD) and he was directed to report at RTC, Bhopal, Madhya Pradesh on 27th December, 2014.

5. After he reported at the RTC, Bhopal, the Petitioner was detailed to undergo the basic training course with effect from 1st January, 2015. He successfully completed the said training by 1st January, 2016. Thereafter, he was posted with the 5th Battalion, SSB at Champawat, Uttarakhand.

6. Nearly three and a half years later, on 23rd April 2018, the Petitioner received the impugned memorandum issued by the SSC informing him that his candidature in the 2013 examination stood cancelled. The reason given was that he was declared qualified under the OBC category for Odisha, whereas in terms of the domicile certificate submitted by him, he belonged to Bihar.

7. On 30th August, 2018 an order was issued from the Directorate General

(DG), SSB stating that pursuant to an order dated 11th July, 2016 passed by this Court in W.P.(C) 5995/2015 (*Vijay Kumar Soni v. Staff Selection Commission*), dossiers of all candidates who availed reservation benefit had been scrutinised, and on that basis it was found that 9 domicile certificates submitted by the candidates did not match with the State against which they had been selected. Out of the 9, 3 candidates were found to have not qualified, and directions were issued to the relevant Commandants of the Units to take administrative action against the said individuals.

8. Consequent thereupon, the Commandant of the 5th Battalion issued an SCN to the Petitioner on 20th October, 2018, asking him to show cause why his services should not be terminated pursuant to Rule 26 of the SSB Rules, 2009. The Petitioner submitted a reply dated 1st November, 2018, stating that the advertisement pursuant to which he had applied specified in Note IV on Page 3 that:

"Wards of serving personnel of Central Police Organisations, who are residing with her/him may apply either from their home state or from the state in which the serving person is posted/deployed at the time of recruitment. To avail this concession, they have to submit photocopy of certificate from the unit Commander as per format annexed to this notification (Annexure IX). However, they will not be entitled to reservation for Naxal and Militancy affected districts if they are not actually domiciled in such districts."

9. The Petitioner's case is that it is only pursuant to the above Note IV that he applied from the State of Odisha since his father was posted at the Rourkela Steel Plant.

10. The Petitioner also refers to the case of one Sumit Kumar Singh who had been allotted to 'D' (SSB) by reviewing his candidature under the OBC category for the Naxal vacancy in Bihar since he belonged to the Naxal/militancy-affected district of Bhojpur, Bihar. As far as the present case is concerned, with the Petitioner having completed his basic training with flying colours and successfully performing his duties thereafter, there was no ground to treat the Petitioner as unsuitable. According to him, the SCN was based on the wrong provision of law and required to be quashed.

11. Further, the Petitioner submits that the order dated 30th August, 2018 issued by the Deputy Inspector-General ('DIG') declared him as disqualified with a direction to the Commandant to terminate his services. According to the Petitioner, this completely defeated the purpose of issuing the SCN dated 20th October, 2018. The Petitioner has also cited the instances of three others, who were also retained in similar circumstances.

12. When this petition was first heard on 22nd November, 2018 while directing notice to issue this Court passed the following order:

“2. Notice. Notice is accepted by learned counsel for the Respondents.

3. Learned counsel for the Petitioner points out that although the show cause notice ('SCN') was issued to the Petitioner on 20th October, 2018, asking him to explain why he should not be terminated from service on the ground of being 'not qualified' candidate, this appears to be a mere formality since nearly two months prior thereto on 30th August, 2018, a memorandum was issued by the Deputy Inspector General (Personnel), who is incidentally an officer superior to the

officer who has issued the SCN (i.e. Commandant), declaring the Petitioner to be already 'not qualified' and instructing that the administrative action "would not be less than termination of service".

4. In the circumstances, the further proceedings pursuant to the SCN dated 20th October, 2018 shall remain stayed till the next date.

5. Reply to writ petition and the application for stay be filed within three weeks. Rejoinder be filed before the next date.

6. List on 18th December, 2018.”

13. On 28th February, 2019, the Court in its order, after reproducing Note IV extracted hereinabove proceeded to note as under:

“3. The Petitioner's father was serving with the CISF in Orissa and, therefore, pursuant to the above note, the Petitioner applied to take the exam in Orissa. His candidature was processed on the basis of the cut-off marks for the persons appearing in the exam from Orissa and the Petitioner was accordingly appointed on 28th November, 2014. The Respondents knew at that time that the domicile of the Petitioner as well as of this father was in Bihar.

4. Subsequently, in view of the judgment dated 11th July, 2016 of this Court in 5995/2015 (*Vijay Kumar Soni v. Staff Selection Commission*), the Respondents have sought to cancel the Petitioner's candidature by issuing him a Show Cause Notice ('SCN') dated 20th October, 2018. This Court by its order dated 22nd November, 2018, stayed further proceedings pursuant to the said SCN after noting that the said SCN appeared to *prima facie* prejudice the Petitioner to be 'not qualified' and also prescribed a consequential administrative action which "would not be less than termination".

5. Learned counsel for the Petitioner has pointed out how in

the judgment dated 11th July, 2016 of this Court in *Vijay Kumar Soni v. Staff Selection Commission* (supra), the facts were different. As noted in paragraph 6 of the said order, in that case, it was conceded that "the policy does not envisage any relaxation in domicile". He points out that in *Vijay Kumar Soni v. Staff Selection Commission* (supra), there was no clause in the recruitment advertisement that permitted a candidate to take the exam at the place where his parent was already serving.

6. Learned counsel for the Respondents states that he will have to seek instructions on this aspect.”

14. Thereafter, on 19th March, 2019 the following order was passed:

“1. This order has to be read in continuation of the orders dated 22nd November 2018 and 28th February 2019 passed by this Court.

2. The Respondents have in their counter affidavit and in a 'brief synopsis' filed today claimed that the Petitioner cannot seek 'two different concessions simultaneously.' The first being his sitting for the exam for recruitment of Constables in the SSB from Odisha since his father served there although he and his father were domiciled in Bihar. The second is claiming reservation benefit of 'OBC' which according to the Respondents he should have claimed on the strength of the State of his domicile i.e. Bihar and not Odisha.

3. As far as the first 'concession' is concerned, the Petitioner refers to note-IV of para 2 of the advertisement which permits wards of serving personnel of Central Police Organisations to appear from the State where the parent served notwithstanding that the ward and his parent are domiciled in a different State. The Respondents do not dispute that the Petitioner's father was serving in the CISF in Odisha.

4. However, as regards the second 'concession' of claiming

reservation benefit as OBC, there is no clarity on the factual aspect. The Court considers it necessary to seek the views of the Staff Selection Commission (SSC), Respondent No.4.

5. Mr. Sanjeev Sabharwal is requested to accept notice on behalf of the SSC. He seeks time for instructions from the SSC.

6. List on 8th May, 2019.”

15. A counter affidavit has been filed by the Respondent SSC wherein the basic facts are not denied. It is stated that as a result of the CT/GD Exam-2013, a total of 1889 candidates were declared successful. The Petitioner was offered an appointment letter dated 28th November, 2014. Pursuant thereto the Petitioner joined services for the post of CT/GD on 27th December, 2014 in the SSB. Thereafter, it is stated that the services of the Petitioner were sought to be terminated in accordance with the decision in ***Vijay Kumar Soni v. Staff Selection Commission***.

16. Mr. Chhibber is right in submitting that the decision in ***Vijay Kumar Soni v. Staff Selection Commission*** arose in a different set of facts. It was held therein:

“Reservation benefit claimed on the strength of domicile in a particular state be not extended to domicile in another state notwithstanding the fact that a candidate opted for examination centre in a particular state”.

17. However, the Court also proceeded to issue certain directions for verifying the reservation benefit claimed on the strength of domicile in respect of all candidates.

18. As far as the Petitioner is concerned, the SSC by its letter dated 23rd April, 2018 revised his results. He was declared as having not qualified under the OBC category for Odisha. Noting that he belonged to Bihar, his candidature was reviewed under the OBC category for “general vacancies of Bihar.”

19. At the outset, it bears mentioning that, as noted by this Court in its order dated 22nd November, 2018, the impugned SCN which was issued on 20th October, 2018 was preceded by the order dated 30th August, 2018, wherein the DIG virtually instructed the Commandant that the administrative action to be taken by him should be “not less than termination of service.” There is no explanation given by the Respondents for the impugned SCN which itself referenced an instruction to the adjudicating authority as regards what could be done. To that extent, clearly, the SCN dated 20th October, 2018 is bad in law and is hereby set aside.

20. Moreover, there is no question of the Petitioner being disqualified on the ground of his having been appointed in the OBC category in Odisha. The distinguishing feature, as far as *Vijay Kumar Soni v. Staff Selection Commission* (supra) is concerned, is that there was no Note IV in the advertisement in that case. In the present case, it was perfectly permissible for the Petitioner to have taken the exam under the OBC category in Rourkela since his father was serving in the CISF in Odisha. The Respondents have misconstrued the scope of the above provision in the advertisement. The orders dated 23rd April, 2018 and 30th August, 2018, as well as the consequential SCN dated 20th October, 2018, are therefore

hereby declared to be bad in law and accordingly set aside.

21. Consistent with the directions issued in the case of the aforesaid Sumit Kumar Singh, the Respondents are directed to issue appropriate orders reinstating the Petitioner with no loss of seniority for the interregnum period, but with no arrears of pay from the date of termination till the date of reinstatement, based on the principle of 'no work, no pay'.

22. The petition is disposed of in the above terms but no order as to costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 06, 2019

mw