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

+ **W.P.(C) 8747/2015**

BRAJ MOHAN

..... Petitioner

Through: Mr.Yusuf Khan, Advocate with
Mr.Amarjeet Singh and Mr.Vimal
Dubey, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr.Rajesh Kumar Das and
Mr.Abhishek Kumar Choudhary,
Senior Panel Counsel for UOI.
Mr.S.C.Kashyap, Under Secretary,
SSC (NR), Delhi.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

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12.03.2019

1. The petitioner who applied for the post of Constable General Duty (GD) in the CRPF is aggrieved by his non selection and seeks directions to the respondents in that regard.

2. The facts in brief are that pursuant to the advertisement issued in 2011 by the Staff Selection Commission (SSC) the Petitioner appeared for recruitment to the post of Constable GD in the Central Para Military Forces. The recruitment was to be made State wise through the regional offices of the SSC.

3. The Petitioner appeared as an OBC category candidate and cleared the physical test, written test and medical test. He was however not selected since he had left column No. 17 of his application form blank which meant that he did not give preference for the forces which he like to join.

4. W.P.(C) 7651/2012 was filed in this Court by one of the candidates who had scored more marks in the last and final candidate in State of Himachal Pradesh. That candidate was not included in the select list because of not indicating his preference in column No. 17. Another batch of writ petitions came to be filed by those who had left column No. 17 blank. By an order dated 6th May 2014 in W.P.(C) 5663/2013 the Court directed the Respondents to consider those cases on the basis of inter se merit as a onetime measure. The name of those Petitioners was to be placed at the bottom of the select list as well as the result list subject to their furnishing an unconditional undertaking not to claim any right to seniority and of consequential benefits. A similar order was passed in another writ petition being W.P. (C) 8004/2014.

5. Consequent to the above orders, a notice was issued by the SSC in the State of Uttar Pradesh publishing an additional list of candidates who had left column No.17 blank. Those candidates whose marks were more in the last selected male candidate and whose name did not figure in the list were also allowed to make a representation with supporting documents by 31st March 2015.

6. Pursuant thereto, the Petitioner made a representation enclosing the relevant documents. It must be mentioned here that the Petitioner is a

resident of District Firozabad in Uttar Pradesh. When the Petitioner's name was still not included in the final select list dated 9th June 2015, the Petitioner filed the present petition for a direction to the SSC to revise and modify the select list released by it on 9th June 2014.

7. The case of the Petitioner is that the last selected candidate in the aforementioned list had scored 58 marks and since the Petitioner also scored 58 marks he ought to have been included in the list. Counsel for the Petitioner states that pursuant thereto sometime prior to 17th November 2017, he handed over to counsel for the Respondents a list of 49 names of persons who according to the Petitioner scored less than 58 but were still given appointment as Constable GD.

8. On 17th November 2017, the Court passed the following order:

“1. Learned counsel for the petitioner states that he has complied with the order dated 23.11.2016 by furnishing the list of candidates of OBC to counsel for the respondents to enable him to verify the same.

2. On 23.11.2016, counsel for the respondents was directed to produce the relevant record relating to the breakup of the marks of the respective candidates. Counsel for the respondents states that pursuant to order dated 23.11.2016, an additional affidavit has been filed by the respondents. However, the records have not been made available today. The relevant record shall be kept handy by the respondents on the next date of hearing.

3. List on 05.01.2018.”

9. Today learned counsel for the Respondent-SSC has handed over to the Court a note concerning recruitment of Constable GD in the CAPF pursuant

to the SSB examination of 2011. It is seen that as far as Uttar Pradesh is concerned for Category D i.e. Sashastra Seema Bal the cut off for an OBC candidate is 58 marks. For Uttar Pradesh (Naxal) area it is 40 marks, for Uttar Pradesh (Border) area it is 32 marks.

10. The Respondents have also produced before the Court the break-up of marks as far as the petitioner's result is concerned. It is seen that he scored 14 marks in Part A, 13 marks in Part B and after adding Part C and Part D he is shown to have scored 58 marks in all. Learned counsel for Respondents points out that the Petitioner's case is a 'Tie Case'. Respondent No.1 has in Annexure R-1 to the affidavit enclosed a copy of the notice for the examination in question. Paragraph 11 thereof talks of 'Resolution of Tie Cases' and reads as under:

‘(a) The tie is resolved by the Commission by referring to the marks in Part A of the written paper i.e. a candidate having more marks in Part A is given preference.

(b) If the tie still persists, the candidate older in age gets preference.

(c) If the tie still persists, it is finally resolved by referring to the alphabetical order of names i.e. a candidate whose name begins with the alphabet which comes first in the alphabetical order gets preference.’

11. It is pointed out that in the present case the last qualified candidate who has secured 58 marks had secured 19 marks in Part A which is the minimum cut off for Part A. In as much as the Petitioner's Part A marks are 14, it is far less than the last selected candidate. Therefore, notwithstanding that the Petitioner also scored 58 marks, he still does not meet the cut off.

12. Learned counsel for the Petitioner referred to an Annexure to the additional affidavit filed by the Respondents where names of 23 candidates who have got less than the minimum cut off have still been appointed by permitting them to be considered for the Border area. He refers to the remark in the last column of the table set out in Annexure T/1 of the additional affidavit and which reads “qualified as per revised result (revised from general to border).

13. Counsel for the Respondent on instructions of Mr. S.C. Kashyap, Under Secretary of the SSC, Northern Region, Delhi who is present in Court clarifies as follows:

- (i) The aforementioned 23 candidates were considered for the Border area because their addresses in fact were in the Border areas.
- (ii) No candidate who has scored less than 19 marks in Part A in the State of Uttar Pradesh in the OBC category has been given appointment.
- (iii) As far as the Petitioner is concerned, although he had scored 58 marks which was the cut off mark for the OBC category, since he scored only 14 marks in Part A he did not qualify. Secondly, because his address is not in a Border area he cannot be considered for appointment to a border area.

14. Counsel for the Petitioner states that details of only 23 candidates out of the 49 pointed out by him have been verified by the Respondents. In the additional affidavit it is explained that as per the records available of the Constable GD exam the break up marks of 23 out of the 49 candidates were formed. The records in respect of the remaining 26 is not available with the

SSC and this might be because the roll numbers may be wrong or may in fact they did not take the examination.

15. Learned counsel for the Petitioner states that the Respondents should be given a further time to file a further affidavit to clarify the position. The Court does not consider this necessary for the simple reason that it is satisfied with the reasons given by the Respondents for not offering appointment to the Petitioner as a Constable GD. With the Petitioner not making the cut on merits, the prayers in the present petition cannot be granted.

16. The petition is accordingly dismissed. No costs.

S.MURALIDHAR, J

I.S.MEHTA, J

MARCH 12, 2019

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