

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23790 of 2018

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Shashiranjana Kumar son of Shri Dinesh Singh resident of Village and P.O.
Timura, P.S. Pauthu, District Aurangabad.

... .. Petitioner/s

Versus

1. The Union Of India through the Secretary, Ministry of Home Affairs,
Government of India, New Delhi.
2. The Director General, Border Security Forces, Block Number 10, CGO
Complex, Lodhi Road, New Delhi.
3. The Inspector General of Police, FTR, Headquarters, Border Security
Force, North Bengal, P.O. Kadamtala, Siliguri, District Darjeeling – 734011.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajiv Ranjan Tiwari, Advocate
For the Respondent/s : Mr.S.D Sanjay Addl. Soc. Gen.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

3 16-01-2020 Heard learned counsel for the petitioner and learned
counsel for the Union of India.

The petitioner was a candidate for the post of
Constable (Tradesmen) in the Board Security Force for the year
2017-18 which was conducted according to the Standard
Operating Procedure (SOP) issued by the Force Headquarter
(FHQ), Border Security Force, New Delhi vide Letter No.
29/41/SOP/Rectt-CT (TM)/BSF/18957-78 dated 17.11.2016



which has been circulated by FHQ BSF Pers. Dte. (Rectt-Sec.) vide letter no. 22/41/SOP/CT(TM)/R/BSF/2016/19016-35 dated 18.11.2016. FHQ BSF Pers. Dte. (Rectt. Sec.) Standing Operating Procedure vide No. 29/41/SOP/Rectt-CT(TM)/BSF/18957-78 dated 17.11.2016.

In pursuance of the aforementioned selection procedure, the petitioner qualified amongst the unreserved category and was at Serial No. 8 but since there were only 7 posts available for the unreserved categories, the petitioner's name was not considered and only 7 candidates were selected and a merit list was issued.

Learned counsel for the petitioner, however, has come to this Court staking his claim on the 7th post in view of the fact that even before the merit list was issued, the candidate, who was placed at Serial No. 3, had withdrawn his candidature and had communicated to the said effect to the concerned authorities vide his registered letter dated 07.08.2018. He, thus, submits that the declaration of the merit list excluding the petitioner was wholly untenable on both facts and law, as one candidate of the unreserved category had already withdrawn prior to the declaration of the merit list which gave him the right to be placed at Serial No. 7. He further submits that the merit list was



prepared on 29.09.2018 which is self expository from Annexure – D to the counter affidavit filed by the respondents. He, thus, submits that the petitioner may be directed to be appointed on the post as his right accrued to him much prior to the declaration of the merit list which fact has been totally ignored by the respondents while issuing the merit list.

Learned counsel for the Union of India, however, contends that the respondent authorities are fettered by their own rules as vide Rule – 11 (b) of the Standing Operation Procedure (SOP) no waiting list will be kept in anticipation of vacancies and this fact has itself restraining the respondents from accepting the case of the petitioner for appointment on the post of Constable (Tradesmen) in the Boarder Security Force. He further submits that in the absence of any stipulation in the Standing Operation Procedure (SOP) for creation of a waiting list and for adjustment from the waiting list to any vacancies which may arise, the candidature of the petitioner cannot be accepted. He also submits that the petitioner had made the application only subsequent to the declaration of the merit list and, therefore, his case cannot be considered for that reason also.

I have heard learned counsel for the parties and



perused the documents on record as well as the submissions advanced by the parties. It is clear from Annexure- 4 that the 7th candidate namely, Dhananjay Kumar, who was at Serial No. 3 of the merit list prepared, subsequently, had already opted out of his candidature prior to 29.09.2018 and, therefore, the application of the rule in the case of the present petitioner is wholly uncalled for. The authorities ought to have taken note of his withdrawal while preparation and declaration of the merit list as the petitioner's name fell which is below the 7th candidate. It is, thus, considered that the declaration of the merit list was in total ignorance of the fact that one of the candidates had already withdrawn his candidature and the next candidate ought to have been automatically offered to the next meritorious candidate which is admittedly the petitioner. It is, thus, directed that the authorities being the respondent no. 3 will take necessary action to review the candidature of the petitioner and since it has not been denied that the petitioner being of the unreserved category is the next meritorious candidate, he should be taken into service under the unreserved category subject to the condition that all other eligibility criteria stands fulfilled. The aforementioned exercise shall be taken into consideration within a period of eight weeks from the date of receipt/production of a



copy of this order.

With the aforementioned direction, the writ application stands allowed.

(Anjana Mishra, J)

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