



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.27248 of 2004

&

W.M.P.No.28270 of 2017

Bhopinderpal Singh

... Petitioner

Vs.

1.Union of India
rep by its Secretary to
Government of India
Ministry of Defence,
South Block
New Delhi-110001

2.The Director General
Coast Guard Head Quarters
National Stadium Complex
New Delhi-110001

... Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to promote the petitioner was found fit out of zone of consideration made by Departmental promotion committee held on 18.08.2003, to the post of Deputy Inspector General in Coast guard in the remaining existing vacancies.

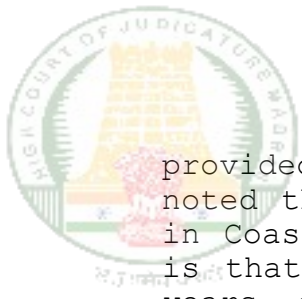
For Petitioner : Mr.K.S.Gnana Sambantham

For Respondents : Mr.N.Ramesh, SPC

O R D E R

The writ petition is directed against non selection of petitioner to the post of Deputy Inspector of General in Coast Guard as the Departmental Promotion Committee(DPC) held on 18.08.2003 and to promote him in the remaining existing vacancies.

2. The respondents were directed to produce the files and I have perused the files. From the perusal of the material



provided by both parties and after hearing both the sides, it is noted that promotion to the post of Deputy Inspector of General in Coast Guard is from category of Commandants. The requirement is that as a Commandant the candidate should have put in eight years of service with two years sailing in the sea. The petitioner has completed eight years of service and also two years of sailing in the sea. The minutes of the DPC dated 18.08.2003 reveals that totally 18 Commandants of general duty were available for promotion as under:

NOMINAL ROLL OF COMMANDANTS (GENERAL DUTY)
FOR CONSIDERATION FOR PROMOTION TO THE RANK OF DIG
BY CGSPB NO.2-18 AUG 03 (FOR THE YEAR 2002)

S.No	Name	P.No	Rank Seniority	Medcat	Remarks
1.	PK Luthra	0010-V	02 May 90	S1A1	
2	LS Asai	0024-D	23 Jun 92	Cpmp S2A2 (P) T-24	
3.	S Sridharan	0043-V	01 Jun 93	S1A1	
4.	KC Pande	0072-M	01 Jun 93	S1A1	
5.	MA Thalha	0068-D	01 Jun 93	S1A1	
6.	KR Nautiyal	0070-J	03 Jun 93	S1A1	
7.	SC Tyagi	0066-X	03 Jun 93	S1A1	
8.	Shrish Sonak	0061-M	24 Jun 93	S3A2 (P) T24, (LMC) S2A2 (P) PMT	
9.	Sk Chaudhary	0063-Q	29 Jun 93	S3A2 (P) T-24 (LMC)	
10.	KN Krishnamurti	0078-C	20 Dec 93	S1A1	
11.	RK Wadhwa	0041-Q	01 Jun 94	S1A1	
12.	BP Singh	0073-P	01 Jun 94	S1A1	
13.	Sk Singh	0069-E	01 Jun 94	S1A1	
14.	VK Sharma	0042-S	01 Jun 94	S1A1	
15.	VSR Murthy	0092-J	01 Jun 94	S1A1	
16.	K.Natarajan	0091-E	11 Jun 94	S1A1	
17.	KPS Raghuvarshi	0095-P	11 Jun 94	S1A1	
18.	G Singh	0083-M	08 Sep 94	S1A1	



3. Since the DPC has decided to select 4 Deputy Inspector of General, 12 of those 18 candidates were taken into consideration as they fell within the extended zone of consideration for four posts. The petitioner was found in 12th place within the zone of consideration.

4. The Departmental Promotion Committee selected the names of K.C.Pande, Ma.A.Thalha, K.R.Nautiyal and S.C.Tyagi. The petitioner was found unfit and was not selected.

5. The contention of the petitioner is that originally on an information given under the Right To Information Act, the respondents have informed that 13 posts were available. On further information it was stated that there were only 7 posts. Even assuming that there were 7 posts, the respondents have selected only four posts and therefore the petitioner who was found fit for promotion should have been selected in the remaining existing posts. According to him non selection is bad. Even in the counter affidavit it is stated that the case of the petitioner would be considered in the future vacancies, even that was not done. Therefore, he would contend that non selection is bad.

6. Learned counsel for the petitioner would substantiate the qualification of the petitioner on the ground that those persons who have secured more than 13.5 marks were only included in the panel for promotion and therefore as the petitioner has been included in the zone of consideration, it should be considered as he has secured 13.5 marks. Even assuming that the contention of the respondents are correct that he has not secured 13.5 marks and visited with adverse remarks, non communication of the adverse remarks renders it bad and therefore, the petitioner should be considered as fully qualified for promotion to the post of Deputy Inspector of General Coast Guard.

7. On a perusal of the DPC records placed before me shows that the petitioner has secured bench marks of 12 during 1997-98, 10.40 during 1998-99, 12.30 during 1999-2000, 14.2 during 2000-01 and 14 during 2001-02. I also noted that for fixing the bench marks 5 years of ACR are taken in to consideration. Average of these 5 years marks is calculated and considered at the time of selection to the post of Deputy Inspector of General. As such the average marks for the 5 years of ACR for the petitioner is 12.58.



APPENDIX 'B'

LAST FIVE YEARS ACR AVERAGES.

S. NO	NAME	P.NO	2001 - 2002	2000 - 2001	1999- 2000	1998 -99	1997 -98	199 6- 97	Avg.	FIT /UN FIT
1	PK LUTHRA	0010 -V	13.3 0	13.9 0	12.90	13.5 0	11.4 0		13.00	UN FIT
2	LS ASAI	0024 -D	11.5 0	12.4 0	12.90	11.4	11.00		11.84	UN FIT
3	SRIDHARAN.S	0043 -V	13.7 0	14.5 0	13.20	12.0 0	11.2 0		12.92	UN FIT
4	KC PANDE	0072 -M	14.6 0	14.4 0	14.60	13.5 0	NA	13. 90	14.20	FIT
5	MA THALHA	0068 -D	12.4 0	14.3 0	14.60	14.5 0	13.8 0		13.92	FIT
6	KR NAUTIYAL	0070 -J	13.8 0	14.8 0	14.30	13.1 0	13.2 0		13.84	FIT
7	SC TYAGI	0066 -X	13.8 0	14.5 0	14.10	13.6 0	12.7 0		13.74	FIT
8	SONAK S	0061 -M	13.6 0	13.1 0	12.50	14.8 0	12.9 0		13.37	UN FIT
9	CHAUDHARY SK	0063 -Q	13.1 0	13.0 0	14.40	14.2 0	14.1 0		13.76	FIT
10	KRISHNAMURT HI, KN	0078 -C	14.5 0	15.6 0	14.10	13.8 0	14.1 0		14.42	FIT
11	WADHWA RK	0041 -Q	13.9 0	13.7 2	14.20	13.4 0	13.0 0		13.64	FIT
12	SINGH BP	0073 -P	14.0 0	14.2 0	12.30	10.4 0	12.0 0		12.58	UN FIT

8. As contended by the learned counsel for the petitioner the petitioner has admittedly secured 14.2 and 14 in the ACR for the year 2000-01 and 2001-02. But the so called adverse entries were made between 1997-98 and 1999-2000. If the petitioner had any grievance against these adverse entries, he should have agitated it then and there. Be that as it may, the average of 5 years of ACR as per the records is shown as 12.58. Admittedly, those who have secured between 13.5 to 14.9 are considered as very good and found fit for promotion.

9. In such view of the matter, the petitioner, who has secured 12.58 of 5 years average was recorded as unfit. Even



assuming the contention of the learned counsel for the petitioner is correct that non communication of adverse remarks is bad and it cannot not be fatal. I find that three more seniors of the petitioner were found fit, but were not selected for promotion. They have secured 13.76, 14.42 and 13.64 respectively. The senior most person who is next in the line has challenged the non promotion but was promoted in the subsequent DPC. Even assuming that there are two other seniors available for promotion, it is required to be noted that in the year 2004 there was an amendment to the rules by which eligibility criteria has been changed. Therefore, the contention that the selection for remaining existing vacancies cannot be considered in view of the amended rules. Therefore, restraining within the selection conducted by DPC on 18.08.2003, it is to be seen whether the petitioner is qualified to be promoted to the post of Deputy Inspector of General Coast Guard. The answer is 'NO'.

10. I find that even assuming the petitioner is qualified, there are three senior commandants above the petitioner who are found fit for promotion are waiting in the queue. The petitioner may not have any legal right to challenge the same. It is not the case that the petitioner has secured extra ordinary marks over and above the selected candidates to supercede them.

11. In such condition, this Court finds it difficult to direct the respondents to promote the petitioner to the post of Deputy Inspector of General Coast Guard. In such view of the matter, the petitioner is not entitled to the relief sought for in the writ petition. It is also recorded that the subsequent events cannot be considered in this writ petition which is beyond the scope of the writ petition. If at all the petitioner has any grievance against the non selection in subsequent DPCs, it is open to him to challenge the same by filing appropriate petitions.

With these observations, the writ petition is dismissed. The original files produced by the respondents are returned. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to
Government of India,
Union of India,
Ministry of Defence,
South Block,
New Delhi-110001.
2. The Director General,
Coast Guard Head Quarters,
National Stadium Complex,
New Delhi-110001.

W.P.No.27248 of 2004
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SR (CO)
PR (31/08/2021)