

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-10558-2021

Date of Decision:-14.07.2021

Satish Kumar

... Petitioner

Versus

Director General of Defence Estates and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Mr. G.S. Bal, Sr. Advocate with
Mr. Sewa Singh, Advocate
for the petitioner.

KARAMJIT SINGH, J.

Case has been heard through video conferencing on account of
COVID-19 Pandemic.

In the present writ petition filed under Articles 226/227 of the
Constitution of India, the petitioner has sought following reliefs:-

- i) Writ in the nature of Certiorari seeking quashing of
impugned order dated 3.5.2021 (Annexure P-6)
passed by Central Administrative Tribunal, Bench
Chandigarh (in short 'the Tribunal').

- ii) Writ in the nature of Mandamus directing the respondents to offer appointment to the petitioner as Chief Executive Officer Group-B, Cantonment Board.
- iii) Issue any other appropriate writ as the Court may deem it fit and proper in the facts and circumstances of the case.
- iv) During the pendency of the writ petition, one post of Chief Executive Officer Group-B, Cantonment Board be ordered to be kept reserved for the petitioner.

As per the petition, the petitioner being diploma holder in Civil Engineering was appointed as Junior Engineer in Cantonment Board, Ferozepur on regular basis, on 27.5.1993. He was promoted as Sub-Divisional Engineer on 21.6.2013, on which post he is still working. The respondents vide notification dated 28.6.2018 (Annexure P-1) invited applications for holding limited departmental examination for recruitment to the post of Chief Executive Officer (Group-B, Gazetted), in the pay-scale of Level-7 in the Defence Estates Organization for the year 2018-2019. The petitioner appeared in the said examination and the result was declared vide letter dated 9.9.2019. As per the said result names of 4 candidates were recommended against 3 available vacancies. The petitioner secured 160 marks while one Uma Shankar who was at No.4 in the merit, obtained 161 marks in the said examination. Both of them being not satisfied, applied for

reevaluation. Consequently, the marks of the petitioner were increased from 160 to 160.50, whereas marks of Uma Shankar were reduced from 161 to 154, on reevaluation. On the basis of the aforesaid reevaluation, the petitioner stood at No.4 position in the final merit list, which is as follows:-

S/Sh	Marks Obtained
1. Satish V Mannurkar	195.00
2. Sudhir Kumar	171.00
3. Mabel Christian	165.00
4. Satish Kumar (Applicant)	160.50

It is further the case of the petitioner that Sudhir Kumar who was placed at No.2 in the aforesaid final merit list was not eligible for the post of Chief Executive Officer (Group-B, Gazetted) and to challenge his appointment, CWP-3420-2020 has been separately filed. The petitioner has also come to know that Satish V. Mannurkar who is placed at No.1 position in the merit list has refused to join and has given his unwillingness to accept the aforesaid post vide letter dated 10.2.2020. The petitioner represented to the respondents to consider him for the post of Chief Executive Officer (Group-B, Gazetted), however his representation was declined. Then the petitioner approached this Court. The learned Single Judge transferred the case to the Tribunal.

The claim of the petitioner was contested by the respondents, who filed written reply. After hearing both the parties, the claim of the

petitioner was declined by the Tribunal vide impugned order dated 3.5.2021 (Annexure P-6).

Aggrieved by the aforesaid order passed by the Tribunal, the present writ petition has been filed by the petitioner.

The counsel for the petitioner while assailing the impugned order, submitted that there were three posts for which the limited departmental examination was conducted. The result was declared, but the petitioner being not satisfied applied for revaluation on which his marks were increased and as such he came at fourth position in the merit. The learned counsel further submitted that one of the selected candidate namely Satish V. Mannurkar refused to join as Chief Executive Officer (Group-B, Gazetted), as is evident from Annexure A-6. The learned counsel for the petitioner further contended that the petitioner being at No.1 in the waiting list is entitled to get the post which is lying vacant as Satish V. Mannurkar is not interested to join as Chief Executive Officer (Group-B, Gazetted).

The counsel for the petitioner further argued that the impugned order passed by the Tribunal is totally perverse and illegal. The Tribunal wrongly came to conclusion that there is no provision for extended panel or waiting list or reserved list and that no such panel/list was ever prepared or got approved by the competent authority while inviting the vacancies or at the time of declaration of the result. The counsel for the petitioner next argued that the Tribunal erroneously ignored the citations referred by the petitioner, which are squarely applicable to the case in hand. The counsel for petitioner brought to the notice of this Court the different decisions relied

upon by him before the Tribunal. The learned counsel referred to **LPA-716-2011 (O&M), State of Haryana and Others vs. Gajraj Singh**, decided on 20.4.2011; **CWP-8121-2002, Digvijay Pal Singh vs. State of Punjab and Others**, decided on 4.3.2008; **CWP-20393-2015, Shilpa Gupta vs. State of Punjab**, decided on 2.3.2016; **LPA-2257-2011, Ravinderjit Singh and Others vs. State of Punjab**, decided on 8.4.2013, wherein it was held that once post has not been consumed and merit list candidate in the merit list is available then the vacancy could be filled-in by inviting next person in merit. The counsel for the petitioner further contended that in the present case, the petitioner is at No.4 position in the merit list and due to the reasons stated above, he is to be appointed against the post which has been left by Satish V. Mannurkar, who has refused to join. It is next contended that furthermore one of the selected candidate namely Sudhir Kumar is ineligible for appointment to the post of Chief Executive Officer (Group-B, Gazetted). So even his post could be given to the petitioner.

We have considered the submissions made by the counsel for the petitioner.

The competent authority issued notification dated 28.6.2018 (Annexure-A1) for holding limited departmental examination for appointment to the post of Chief Executive Officer (Group-B, Gazetted) in Defence Estates Organization and invited applications from the eligible employees of Cantonment Board stream, Defence Estate stream and Ex-Servicemen stream. The last date for submission of application forms was 1.8.2018. In the said notification, the detail of vacancies was given.

However, the notification is silent regarding preparation of any waiting list or reserve list. The petitioner also applied to appear in the aforesaid examination being eligible candidate. The result of the successful candidates was declared on 9.9.2019, as is evident from Annexure A-4. The list of the qualified candidates who had cleared the examination is as follows:-

Sr. No.	Roll No.	Cat	Name (S/Shri)	Designation	Office
1	C029	UR	Satish V Mannurkar	Asstt. Engineer	CB, Belgaum
2	C005	UR	Sudhir Kumar	Accountant	CB-Meerut
3	C057	UR	Mrs. Mabel Christian	O.S.	CB, Wellington
4	C043	SC	Sonawane Sanjay Chindhu	Asstt. Teacher	CB, Khadki

From the perusal of aforesaid result dated 9.9.2019, it is clear that the aforesaid written examination was conducted as per the provisions of the Defence Estate Service (Cantonment Executive Officer) (Group-B), Recruitment Rules, 1987. Admittedly, in the said Recruitment Rules, there was no provision of waiting list to be maintained by the Department. The counsel for the petitioner failed to bring to the notice of this Court any subsequent amendment in the Rules providing for waiting list or reserve list of the candidates, who cleared the limited departmental examination but did not find place in the merit list. Even from the perusal of the result dated 9.9.2019, one cannot make out that there is a provision for waiting list in the selection procedure. Thus making it ample clear that the Recruitment Rules, notification of examination and the result of the successful candidates nowhere provided or contemplated any waiting list or reserve list of the candidates who passed the examination but failed to figure in the merit list.

The Hon'ble Apex Court in **Civil Appeal No.6084 of 1998** titled as **Bihar State Electricity Board vs. Suresh Prasad and Others** decided on **25.2.2004**, held that in the absence of any such rule for preparing a waiting list for successful candidates to fill the vacancies which remained unfulfilled due to not turning up of the candidates to join, the Court has no power to order that unfilled vacancies be offered to further candidates in order of merit. The Hon'ble Apex Court further observed that mere selection does not give any indefeasible right to appointment to a candidate against existing vacancies.

As per the result dated 9.9.2019 (Annexure A-4) only three candidates in unreserved category and one candidate belonging to reserve category were recommended for their appointment to the posts of Chief Executive Officer (Group-B, Gazetted). The name of Uma Shanker is not figuring in the said result, who as per petitioner was at No.4 position in the initial merit list. There is no document available on the record to show that after revaluation the petitioner was placed at fourth position in the merit list or that his name was ever recommended for appointment.

In the absence of any rules regarding preparation of waiting list, the Court/the Tribunal has no jurisdiction to issue direction to consider the petitioner for the post of Chief Executive Officer (Group-B, Gazetted), even if one of the successful candidate has failed to join. The petitioner has failed to establish as to how one of the selected candidate namely Sudhir Kumar, was ineligible for appointment.

The citations referred by the counsel for the petitioner have been fully examined and discussed by the Tribunal and it rightly concluded that the facts of the case at hand were entirely different from the case law cited by the petitioner.

In the light of the above discussion, we do not find any illegality or perversity in the order dated 3.5.2021 (Annexure P-6) passed by the Tribunal.

The present writ petition being without merit is hereby dismissed.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

14.07.2021
Gaurav Sorot

Whether reasoned / speaking?

Yes / No

Whether reportable?

Yes / No