

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

% **Date of decision: 3rd June, 2021**

+ **W.P.(C) 5154/2021 & C.M. No.15806/2021(for stay)**

AVICHAL TOMAR Petitioner

Through: Petitioner in person.

Versus

UNION OF INDIA & ORS. Respondents

Through: Mr. J.P.N. Shahi, Advocate, Senior
Panel Counsel.

AND

+ **W.P.(C) 3069/2021**

SURENDRASANKHLA Petitioner

Through: Mr. Praveen Kumar, Advocate.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Manish Mohan, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. On 27th May, 2021, when these petitions came up before us for admission, *inter alia* the following order was passed:

“3. The petitioner in both of these petitions was a candidate in the examination notified on 3rd March, 2018 for recruitment of

Sub Inspectors in Delhi Police and Central Armed Police Forces (CAPFs) and for recruitment of Assistant Sub Inspectors in Central Industrial Security Force (CISF). These petitions have been filed, seeking a direction to the respondents CISF to “grant the vacancies for the post of Sub Inspectors in Central Industrial Security Force” against the vacancies of the year 2018, under the applicable Recruitment Rules”.

4. It is the case of the petitioners, that (i) in the Notification dated 3rd March, 2018, though the tentative vacancies in Delhi Police and other CAPFs were notified but against vacancies of Sub Inspectors as well as Assistant Sub Inspectors in CISF it was mentioned “vacancies will be intimated later”; (ii) at the time when the candidates were to exercise option of the force also, no opportunity to opt for CISF was given; and, (iii) the petitioners have qualified in the examination and as per their marks / rank in the result of the examination, are likely to get CISF as Sub Inspectors, which is their first choice, but are being prevented therefrom for the reason of CISF having not notified the vacancies.

*5. We have enquired from the counsel for the petitioner/petitioner appearing in person, under which law can the respondents No. 1 and 3 CISF, even if have vacant posts, be compelled to fill up the same. As per our understanding, no direction to the government/governmental agency to fill up the vacant positions can be issued. Reference in this regard can be made to **State of Rajasthan Vs. Rajendra Kumar Rawat** 1989 Supp (2) SCC 268, **Shankarsan Dash Vs. Union of India** (1991) 3 SCC 47, **Government of Orissa Vs Haraprasad Das** (1998) 1 SCC 487 and **Subha B. Nair Vs State of Kerala** (2008) 7 SCC 210.*

6. *The counsel for the petitioner in W.P.(C) 3069/2021 seeks time to study.*

7. *The petitioner appearing in person in W.P.(C) 5154/2021 refers to the Recruitment Rules and contends that though CISF has filled up vacancies of the post of Sub Inspector, required under the Recruitment Rules to be filled up by promotion but has not filled up the vacancies to be filled up by direct recruitment.*

8. *We have enquired from the petitioner in person in W.P.(C) 5154/2021, whether it is his case that the vacancies of post of Sub Inspector have been filled up in excess of quota thereof to be filled up by promotion.*

9. *The petitioner in person states that it is not his case.*

10. *Even if vacancies of the post of Sub Inspector in excess of the promotion quota have been filled up, the question would still arise whether the petitioners who are still not in service of CISF, have a cause of action to challenge the same.*

11. *It is deemed appropriate to grant an opportunity.*

12. *List on 3rd June, 2021.*

13. *The respondents may file counter affidavits and documents before that date.”*

2. The counsels for the respondents in both the petitions, on enquiry state that counter affidavits in both the petitions have been filed. In the counter affidavit filed in WP(C) 5154/2021, it is stated (i) that the projection/calculation of vacancies in the rank of Sub-Inspector (Executive) (SI/Exe) to be filled through the Central Armed Police Forces (CAPFs)

Exam of the year 2018 was NIL, from the beginning of the said recruitment, because of abolition of 1358 posts of SI/Exe during Cadre Review approved by the Ministry of Home Affairs (MHA) vide letter dated 5th February, 2018; (ii) that NIL vacancies in the rank of Assistant Sub-Inspector (Executive) (ASI/Exe) was also due to discontinuance of direct recruitment considering the change in Recruitment Rules of ASI/Exe; (iii) that the projection of NIL vacancies in the ranks of SI/Exe as well as ASI/Exe in Central Industrial Security Force (CISF) for recruitment through 2018 examination was communicated to MHA vide letter dated 6th June, 2018 and to the Staff Selection Commission (SSC) by MHA, vide letter dated 19th June, 2018 i.e. well before the start of the CAPFs Examination, 2018; (iv) that as per the Central Industrial Security Force, Security Wing, Sub-Inspector (Executive) Recruitment Rules, 2013, vacancies in the rank of SI/Exe are to be filled up by two modes, i.e. (a) 50% through direct recruitment and (b) 50% by giving promotions to ASI/Exe who fulfill the eligibility criteria and are found FIT for promotion; (v) vide letter dated 4th September, 2018, 1260 ASI/Exe were found FIT for promotion and promoted to the rank of SI/Exe against the vacancies for promotion quota; (vi) 1575 candidates of 2016 Exams, joined during January-February, 2018 and 88 vacancies were already notified for the year 2017; (vii) thus, against the 1225 vacancies to be filled up by the direct recruitment, CISF already had a surplus strength of 984; (viii) vide letter dated 30th August, 2019 i.e. after more than one year of projection of vacancies for the year 2018, 692 posts of SI/Exe, for recruitment through the examination of the year 2019, were communicated to MHA; and, (ix) accordingly the notification, for recruitment of 692 SI/Exe through CAPFs Exam 2019, was published by

SSC on 17th September, 2019. The counter affidavit filed in WP(C) 3069/2021 is to the same effect.

3. In view of the aforesaid stand of the respondents in their affidavits and the judgments referred by us in the order dated 27th May, 2021 reproduced above, we have enquired, what remains in the petitions.

4. Mr. Avichal Tomar, Advocate/petitioner in W.P.(C) 5154/2021 as well as the counsel for the petitioner in W.P.(C) 3069/2021 contend that they are not seeking appointment, as was the claim in **Rajendra Kumar Rawat, Shankarsan Dash, Haraprasad Das** and **Subha B. Nair** supra. It is contended that the petitioners have been successful in demonstrating before this Court, and which is not controverted in the counter affidavits, that there were vacancies to the post of SI in the relevant year and which have not been filled up. It is thus contended that these cases are different from the aforesaid cases.

5. We have enquired, that if the petitioners are not seeking appointments, then, whether not the cause of action with which these petitions were filed, would disappear and the petitions liable to be dismissed on this ground alone and that the petitioners, without a cause of action, can only file a Public Interest Litigation.

6. Mr. Avichal Tomar, Advocate/petitioner in person, rightly states that in service matters, there can be no Public Interest Litigation either. He however reiterates that if in spite of availability of vacancies as per the Recruitment Rules, the vacancies are not filled, there is a breach/violation of the Recruitment Rules and which is actionable.

7. We are unable to agree. In *Shankarsan Dash* supra it was held, that even if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire any indefeasible right to be appointed against the existing vacancies. It was explained, that ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. It was further held that unless the Recruitment Rules so indicates, the State is under no legal duty to fill up all or any of the vacancies. The petitioners herein, though have referred to the Recruitment Rules, have not pointed out any rule, which mandates the respondents to, year after year make direct recruitment of SIs, or, if filling up 50% of posts of SIs to be filled by promotion, necessarily also make direct recruitment to equal number of such posts of the direct recruitment quota. On the last date of hearing, it has already been stated that it is not the case of the petitioners that any posts of SI of direct recruitment quota have been filled up by promotion. Similarly, in *Haraprasad Das* supra it was held that even if there was a recommendation to fill up the posts, it is still not open to the Court/Tribunal to direct the Government to fill up those posts. It was further held that if the Government decides not to make further appointments for a valid reason, it cannot be said that it has acted arbitrarily by not appointing those whose names were included in the selection list. To fill up or not to fill up a post, was held to be a policy decision. In *Subha B. Nair* supra, a decision to fill up or not to fill up existing vacancies was held to be in the domain of the Government as employer and in which decision, the Court was held not entitled to interfere. Even availability of finances to

pay the emoluments, in **Rajendra Kumar Rawat** supra was held to be not a ground for the Court to direct appointments to be made.

8. The argument of the petitioners, even if were to be accepted, only tantamounts to contending that in spite of the vacancies being available, the same were not notified for filling up and not filled up. However, the law laid down in the aforesaid judgments as well as in **Food Corpn. Of India Vs. Bhanu Lodh** (2005) 3 SCC 618 cited by the counsel for the respondents in W.P.(C) 3069/2021 today, is that merely because the vacancies exist or even have been notified, there is no obligation for filling up thereof.

9. The counsel for the petitioner in W.P.(C) 3069/2021 has contended that the respondents, within three days of notifying that there were no vacancies in CISF for the 2018 examination, notified that there were vacancies for the 2019 examination.

10. The counsels for the respondents have explained that the respondents, at the time of the notification of the 2018 examination itself communicated that there were likely to be no vacancies in CISF owing to the Cadre Review having been undertaken and a large number of posts of SI/Exe having been abolished. It is contended that the vacancies of the year 2019 arose owing to the promotional avenues from the post of SI having opened up in the same Cadre Review. Attention is drawn to Annexure R-1 to the counter affidavit in W.P.(C) 3069/2021. It is further highlighted that the gap is not of three days but of one year.

11. Mr. Avichal Tomar, Advocate/petitioner in person has referred us to paragraph 34 of **Bhupendra Nath Hazarika Vs. State of Assam** (2013) 2 SCC 515.

12. We have perused the said judgment. The controversy therein pertained to *inter se* seniority in Assam Police Service and the observations made in paragraph 34 of the judgment, relied upon by Mr. Avichal Tomar, Advocate, are in the said context and have no relevance or bearing to the controversy in these petitions.

13. Mr. Avichal Tomar, Advocate/petitioner in person has also contended that though the new Recruitment Rules are of the year 2018 but came into force only in the year 2020 and thus the respondents, in anticipation of the Recruitment Rules being notified and brought into force, could not have suspended the appointments.

14. The aforesaid argument is again contrary to dicta in the judgments aforesaid. The respondents, in their counter affidavits have even otherwise explained, how there were no vacancies available of the direct recruitment quota in the year 2018 and which have not been controverted. The respondents, for the sake of employing the petitioners cannot be compelled to make appointments.

15. These petitions have been preferred, forgetting the law laid down in the said judgments and on the premise that the petitioners have a right to appointment if there are any vacancies.

16. The counsel for the petitioner in W.P.(C) 3069/2021 has contended that the subject examination was the last attempt of the petitioner therein inasmuch as he is over-age for the next year's examination; another opportunity to participate beyond the prescribed age is sought.

17. Such a relief as sought would be granted only if it were to be found that any injustice had been meted out to the petitioner i.e. if the petitioner was found to be entitled to the relief but which could not be granted for

supervening circumstances. Here, when no error is found in the conduct of the respondents and the petitioner is not found to be having any right to appointment in CISF, the question of granting any relaxation to the petitioner does not arise.

18. There is no merit in the petitions.

19. However we strongly recommend to Mr. Avichal Tomar, Advocate/petitioner in person in W.P.(C) 5154/2021, who has ably argued his petition, to consider pursuing a career in law, rather than in the CAPFs.

Dismissed.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

JUNE 3, 2021

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