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

+ W.P.(C) 4656/2021, C.M. No. 14315/2021 (for stay)
GUROONAM SINGH Petitioner

Through: Mr. Ashish Nischal, Advocate.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Siddharth Khatana, Senior Panel
Counsel with Mr. Sahaj Garg,
Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% **13.07.2021**

[VIA VIDEO CONFERENCING]

1. The petitioner, a Constable (GD) in the respondents Central Reserve Police Force (CRPF) pursuant to recruitment of the year 2015, has filed this petition impugning the communication dated 17th March, 2021 of the Directorate General (Recruitment Branch) of CRPF to the unit where the petitioner is posted, intimating, that pursuant to the orders of the High Court of Rajasthan, Jaipur Bench at Jaipur in SB CWP No. 12062/2019 filed by one Mahendra Kumar son of Shri Kalu Ram, also a candidate in the recruitment of the year 2015, the result of the examination/recruitment process had been revised and as per the revised result, the petitioner had been disqualified, and directing the unit where the petitioner is posted, to take departmental action against the petitioner.

2. The petition came up first before this court on 15th April, 2021 and

thereafter on 6th May, 2021, when the counsel for the respondents appeared on advance notice and the petition was adjourned to enable the counsels to take instructions.

3. The counsel for the respondents appears on advance notice, today also.

4. From the impugned communication dated 17th March, 2021, it is not very clear whether the change in the result of the examination/recruitment process, in so far as *qua* the petitioner, is for the reason of any mis-information furnished by the petitioner during the recruitment process or otherwise. We are *prima facie* of the opinion that if the change in the result of the recruitment process/examination is for the default of the recruiting/examining agency and not for any fraud practiced by the petitioner, then the petitioner, after 4 years of appointment in the year 2017, and after 6 years of the recruitment process in which he had participated, cannot be dismissed from service. It cannot be lost sight of that all recruitments prescribe an age limit thereof and once the petitioner, safe in the belief that he has succeeded in the various stages of the recruitment process and/or had been recruited and employed, has not participated in the subsequent recruitments, the petitioner cannot, after a lapse of 4 or 5 years, be told that he was wrongly recruited.

5. We have thus enquired from the counsel for the respondents, whether the petitioner had furnished any wrong information or practised any fraud, for getting recruited.

6. The counsel for the respondents states that he will have to obtain instructions.

7. The counsel for the respondents however states, in pursuance to the

instructions obtained since the earlier orders, that the preliminary enquiry against the petitioner has been completed and the disciplinary proceedings against the petitioner have been commenced. We have however wondered that once the examining/recruiting agency has itself taken a decision that petitioner has not cleared the examination/recruitment process and stands disqualified therefrom, whether the unit in which the petitioner is presently serving can still retain the petitioner and what purpose the disciplinary enquiry would serve. It thus appears that the disciplinary proceedings against the petitioners are without any avail.

8. We are however perturbed by another factor. The order in compliance of which the recruitment of the petitioner has been reviewed/re-looked at, is of the High Court of Rajasthan. Though the counsel for the petitioner has not placed the said order of the High Court of Rajasthan before us but we have enquired, that once the action impugned in this petition is in compliance of the order of the High Court of Rajasthan, how we can undo what the Rajasthan High Court has ordered. It *prima facie* appears that any order in this petition, if in favour of the petitioner and/or quashing the communication dated 17th March, 2021, would be directly in conflict with the order aforesaid of the High Court of Rajasthan.

9. The petitioner, in the petition is pleaded to be a domicile of Rajasthan. We have thus enquired from the counsel for the petitioner, whether not in compliance with the principle of Comity of Courts, it is better for the petitioner to, for the same grievance as urged in this petition, approach the High Court of Rajasthan instead of this High Court.

10. The counsel for the petitioner states that the petitioner is willing therefor but may be protected in the interregnum.

11. This petition is thus disposed of as withdrawn with liberty to the petitioner to, for the same cause of action and on the same pleas, approach the High Court of Rajasthan.

12. Having found *prima facie* merit as aforesaid in the claim of the petitioner, we further direct that the respondents, though would be entitled to proceed with the disciplinary proceedings stated to have been initiated against the petitioner, but if in pursuance thereto pass an order of dismissal of the petitioner from service, would not give effect to the said order till 20th August, 2021. However if by 20th August, 2021, there is no order in favour of the petitioner, the respondent shall be entitled to give effect to the order, if any passed in the disciplinary proceedings.

13. The petition is disposed of.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

JULY 13, 2021

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