

Item No.4

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 17.08.2022

DELIVERED ON: 17.08.2022

CORAM:

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

WPA 14652 of 2021

Banty Sarkar

VERSUS

Union of India & Ors.

Appearance:-

**Mr. Dibyendu Chatterjee,
Ms. Piyali Paul**

.....for the petitioner.

Ms. Susmita Saha Dutta

... for the respondents.

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

1. The writ petitioner has prayed for a mandamus to set aside and cancel the select list dated 7th September, 2018 and to appoint him as soldier General Duty for recruitment process of July, 2018.

2. The writ petitioner claims that he is the holder of NCC "C" certificate and as per the rules he should be placed at the top of the merit list.

3. Mr. Chatterjee, learned Advocate appearing for the petitioner submits that the petitioner being the holder of National Cadet Corps "C" certificate is exempted from sitting in the written test and as per the rules will be awarded 100 marks out of 100 marks in the written examination. He further submits that the petitioner has also obtained 100 marks out of total 100 in the physical efficiency test. Therefore, the petitioner has secured 200 out of 200 marks and he is entitled to be appointed in the post of Solder (General Duty).

4. Mr. Chatterjee further submits that the respondent no.3 by an order dated August 3, 2019 observed that the petitioner's name could not be short listed in the final merit list on the basis of the available vacancies as he was considered to be Priority 5 candidate. By drawing the attention of the Court to the Office Order dated September 12, 2007, Mr. Chatterjee argues that the petitioner could not have been placed under Priority 5 as the same is applicable for other regiments / corps only in case of the serviceman who died in harness. He further submits that a candidate holding

Roll No.1EME/WB?GD/260818/1287, who secured 192 marks out of 200 marks was given appointment by totally ignoring that the petitioner having secured more marks is entitled to be appointed.

5. Ms. Saha Dutta, learned Advocate appearing for the respondents submits that the petitioner was rightly categorised under Priority 5 since he is the son of an ex-serviceman and the principle applicable to the case of Priority 3 for own regiment / corps is to be implemented in respect of other regiments / corps in the same order / precedence. She further submits that the final merit list is prepared on the basis of the priority list in terms of the order of priority and the policy requiring placing the holder of an NCC "C" certificate to be placed at the top of the panel implies that such candidate is to be placed at the top of the merit list under Priority 5. She submits that the petitioner's name could not be short listed in the final merit list on the vacancy available for Soldier (General Duty) category allotted to one EME Centre as he was a priority 5 candidate.

6. Heard the learned Advocates for the parties and considered the materials placed.

7. For the purpose of adjudication of this writ petition, it would be relevant to extract the relevant portion of the Office Order dated September 12, 2007, which defines the priorities for recruitment under Unit Headquarters quota.

"6. Priority 2 (Own Regt/Corps) (Disability Pensioners/Special Family Pensioners).

(a) In respect of Serviceman who die in harness, one son/one legally adopted son of one Real brother (if the Serviceman is unmarried) where the Widow /.....receipt of Special Family Pension.

(b) One Son/one legally adopted son of Ex Servicemen or one Real brother (if the Serviceman is unmarried) in receipt of Disability Pension more than 20%, and the disability is attributed to /aggravated by Military Service.

7. Priority 3 (Own Regt/Corps) (Serving/Ex-Serviceman).

(a) One son of Serviceman who die in harness to include legally adopted son whose death is not attributed to Military Service.

(b) One Son of Serving/Ex-Serviceman to include legally adopted son.

(c) One Brother of Serviceman/Ex-Serviceman if the Serviceman / Ex-Serviceman is unmarried. (in such cases individual forfeit his right for his own Son/legally adopted Son).

9. Priority 5 (other Regt/Corps)

(a) As per Priorities 2 and 3 given in Paras 6 and 7 above for own Regt/Corps to be implemented in respect of other Regt/Corps in the same order/precedence."

8. It is not in dispute that the petitioner is the son of an ex serviceman and the vacancy sought to be filled up in the instant case pertains to other regiments / corps. Upon reading the said office order as a whole, this Court is of the considered view that a son of an ex-serviceman of other regiments/corps shall fall under priority 5 and the petitioner was rightly classified under Priority 5. The order of preference given to the candidates as indicated in the Office Order is a policy decision and this Court in exercise of the powers of judicial service should refrain from interfering with such order of preference.

9. In the guidelines for preparation of merit list dated July 31, 2001, it has been stipulated that NCC "C" certificate holders will be placed at the top of the merit list amongst the qualified candidates provided he meets the other laid down criteria.

10. The categorisation of candidates in terms of the priorities as per the Office Order dated September 12, 2007 is no doubt a criteria for preparation of the merit list. Therefore, the guideline directing placement of an NCC "C" certificate holder at the top of the merit list would obviously mean that holder of such certificate is to be placed at the top of the merit list under the concerned priority. Since the petitioner falls within the Priority 5 in terms of the guidelines dated July 31, 2001, the petitioner deserves to have been placed at the top of the merit list under Priority 5 and not at the top of the merit list irrespective of the categorisation of candidates as per the priorities as sought to be argued by Mr. Chatterjee. Any contrary interpretation would frustrate the very object of the said Office Order for giving preference to candidates as per the priority list.

11. It is not the case of the writ petitioner that any candidate falling in the same category under the Priority 5 list and has secured marks equal to or less than that of the petitioner has been selected.

12. In view thereof, this Court does not find any reasons to interfere with the decision of the respondent no.3 in not

placing the petitioner in the final merit list on the vacancy for Soldier (General Duty) category allotted to 1 EME Centre.

13. For the aforesaid reasons, the writ petition fails and the same is dismissed without, however, any order as to costs.

14. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)

Naren, AR(Ct.)