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

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Decided on: 02.05.2022

+ W.P.(C) 3999/2019

SUJAL GUATAM & ANR

..... Petitioners

Through: Mr. Ankur Chhibber, Mr. Harkesh, Mr. Yogesh Kumar and Mr. Nikunj Kumar, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Akshay Amritanshu, Advocate for R-1 to R-6.

+ W.P.(C) 8111/2019

ARVIND KUMAR SAINI & ORS.

..... Petitioners

Through: Mr. Ankur Chhibber, Mr. Harkesh, Mr. Yogesh Kumar and Mr. Nikunj Kumar, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Monika Arora with Mr. Yogesh Panwar, Advocate for UOI.

+ W.P.(C) 12683/2019

ANAND SINGH & ORS.

..... Petitioners

Through: Mr. Ankur Chhibber, Mr. Harkesh, Mr. Yogesh Kumar and Mr. Nikunj Kumar, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Manish Mohan, CGSC with Mr. Devendra Kumar,



Advocates.
Mr. Naresh Kaushik and Mr.
Anand Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

NAJMI WAZIRI, J (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. The petitioners seek issuance of a direction to the respondents to prepare, maintain and operate a Reserve Panel/Wait List apropos the recruitment process conducted by way of Sub-Inspector, CAPFs & Assistant Sub-Inspector in CISF Examination-2017 in W.P.(C) 3999/2019 and W.P.(C) 8111/2019 and Central Armed Police Forces Examination, 2018 in W.P.(C)12683/2019; and consider the petitioners for appointment, by making appropriate recommendations to the various Cadres in accordance with their respective Merit Positions and to assign them all consequential benefits.
2. In essence, the issue before the court is whether any obligation exists on the part of Union of India to seek details of unfilled vacancies after the initial list of successful candidates (prepared/recommended by it) gets exhausted, and to offer appointments to persons, in the order of merit, from the same selection against the said unfilled vacancies.
3. The facts leading to the present petition are that, the petitioners



had applied for recruitment in Sub-Inspector, CAPFs & Assistant Sub-Inspector in CISF Examination-2017 in W.P.(C) 3999/2019 and W.P.(C) 8111/2019 and Central Armed Police Forces Examination, 2018 in W.P.(C)12683/2019 conducted by the respondents; they were meritorious enough to be classed in a Reserve Panel/Wait List. They want the respondents to maintain and operate the said List, to be exhausted by making appointments against requisitioned vacancies that may remain unfilled, from the candidates in the Merit List. The respondents have been reluctant to prepare a Reserve Panel citing difficulty in operating it, especially in a case of combined examination for filling vacancies in different services/departments. The petitioners were not appointed against the vacancies; instead a fresh recruitment exercise was initiated.

4. It is pertinent to note that such non-compliance by the respondents has continued despite specific instructions issued by this court in *Union of India v. Shrey Bajaj & Anr*, WP(C) No. 11739/2016 for the Department of Personnel & Training to maintain a Reserve Panel/Wait List by the recruitment agencies towards the recruitment process, (vide several Office Memorandums dated 10/06/1959, 18/01/1990 and 13/06/2000).
5. On 16.05.2019, this court had passed following order:

“

1. *Matter is heard in part.*

2. *We have heard Mr.Ankur Chhibber, learned counsel for the petitioner and Mr.Bhardwaj, learned counsel for the respondents in the presence of Mr.Ashim Khurana,*



Chairman, Staff Selection Commission. While it is not disputed by Mr.Bhardwaj that the decision in the case of Union of India Vs. Shrey Bajaj & Anr. [WP(C)11739/2016] decided on 16.12.2016 has attained finality and is binding on the respondent, however, he submits that there are practical difficulties in implementation of the said decision, when the common recruitment process relates to vacancies in different departments; having different posts and different pay-scales/ grade pay, and; different educational qualifications. He also submits that normally, the joining time in respect of the persons/ candidates initially recruited is 3 to 6 months of the declaration of results.

3. The difficulty expressed by Mr.Bhardwaj is that if a wait-list/panel is maintained, and vacancies arise in different departments; for different posts having different pay –scales/ grades, and; different educational qualifications, the candidates from the wait-list cannot straightway be offered the vacant slots, and it would be essential to offer the vacant slots to those higher on merit, and those who may not have been able to get those slots in the first round of counselling / recruitment, when their turn initially came up for consideration. Based on the above submission, Mr. Bhardwaj has articulated 10 aspects which would need to be resolved before the reserve list/panel is maintained and operated.

4. Mr.Bhardwaj submits that the manner in which this situation has to be dealt with is a policy decision, which the Nodal Ministry i.e. Department of Personnel & Training, Ministry of Personnel Public Grievances and Pensions, would have to consider in consultation with all other stake holders and other agencies, such as the UPSC.

5. The decision in Shrey Bajaj & Anr. (Supra) was rendered by the Division Bench of this court on 16.12.2016. Pertinently, Shrey Bajaj & Anr. (Supra) is also a case relating to a single recruitment process for



recruitment of candidates in different departments. The respondents preferred a Special Leave Petition against the said decision, which was dismissed by the Supreme Court. Thus, the respondents have no option but to implement the said decision. Pertinently, the respondents did not come back to this court to express difficulty in implementing the said decision which has attained finality.

6. Post recruitment, invariably there is a requirement for the fresh recruits to undergo some kind of training and orientation. Invariably, the fresh recruits are initially appointed on probation. In matters of administration, certainty and stability is an important consideration. It would not be conducive to good administration if the officers/ employees recruited in any department have to remain on tenterhooks- that they could be shunted out to another department/ service within a few months of their initial joining. For the administration it can create myriad difficulties, if the fresh recruits who may be undergoing, or who may have undergone training/ orientation and acclimatisation in a particular service/ department, are suddenly moved out and replaced with new recruits.

7. Aforesaid being the position, we see no difficulty if all recruiting agencies, such as SSC, upfront make it clear to all the candidates who are applying for posts in different departments; having different pay scales, and; educational qualifications through a Common Examination Process, that (i) the vacancies would be filled up according to merit in the first round; (ii) a wait-list/panel would be maintained for a specified period; (iii) the wait-list/panel would be operated in respect of the vacant slots which are not filled/vacated within a specified time; (iv) the vacant slots shall be offered according to merit to the candidates in the wait-list/panel only, provided they qualify for the vacancies, and (v) those candidates who already stand assigned to a particular vacancy/service according to their merit in



the first round, would not be entitled to stake a claim in respect to the vacant slots.

8. The apprehension expressed by Mr.Bhardwaj, learned counsel for the respondents is that a candidate who may have been assigned to a vacancy in the first round (who would normally be more meritorious than those on the wait-list/panel), may have a claim in respect to the vacant slot, which may be in a higher grade-pay, or in his preferred service.

9. This apprehension, prima facie, in our view, may not be justified for the reason that a candidate has a right of consideration according to his merit on the date when he is so considered, and once that consideration has taken place and he has been assigned to a particular vacancy in a particular service according to availability and his preference, that right stands extinguished. The second round is undertaken for filling up the vacancies, which remain unfilled or arise due to non-joining of the selected candidate by the last date of joining; his/her being terminated while on probation, or; his/her resigning – during the currency of the wait list/ panel. Thus, firstly, there would be no question of discrimination between the set of candidates who get allocated in the first round, and those on the wait list/ panel and who get allocated in the second/ successive round(s). If a candidate has opted to accept the vacancy offered to him according to his merit, in our prima facie view, he would have no vested right to then stake a claim in respect of a vacancy which may arise subsequently on account of non-joining; or resignation; or termination of the recruit during the period when the wait-list / reserve panel is in operation. They fall in distinct classes. Secondly, the rights of the selected candidates have to be balanced against the administrative inconvenience and chaos that would result, if all the selected candidates – including those selected in the initial round, were to be again offered all the vacant posts/ slots according to their merit and large scale pushing up/shifting of the



recruited employees undertaken. That would have a chain reaction and may result in large scale reallocation of posts/ services.

10. The result of this apprehension expressed by the respondents is twofold. Firstly, those who do not get recruited in the first round and are high in the wait list, are denied recruitment even though there may be vacancies existing (from amongst the posts for which the recruitment process was undertaken). Secondly, the administration suffers as, despite undertaking a long drawn process of recruitment, it is still left with several vacancies, resulting in shortage of manpower. Though not directly on the point, we may quote the observations of the Supreme Court in Gujarat State Dy. Executive Engineers Association v. State of Gujarat & Ors., 1994 Supp (2) SCC 591. The same read as follows:

“8. Coming to the next issue, the first question is what is a waiting list?; can it be treated as a source of recruitment from which candidates may be drawn as and when necessary?; and lastly how long can it operate? These are some important questions which do arise as a result of direction issued by the High Court. A waiting list prepared in service matters by the competent authority is a list of eligible and qualified candidates who in order of merit are placed below the last selected candidate. How it should operate and what is its nature may be governed by the rules. Usually it is linked with the selection or examination for which it is prepared. For instance, if an examination is held say for selecting 10 candidates for 1990 and the competent authority prepares a waiting list then it is in respect of those 10 seats only for which selection or competition was held. Reason for it is that whenever selection is held, except where it is for single post, it is normally held by taking into account not only the number



of vacancies existing on the date when advertisement is issued or applications are invited but even those which are likely to arise in future within one year or so due to retirement etc. It is more so where selections are held regularly by the Commission. Such lists are prepared either under the rules or even otherwise mainly to ensure that the working in the office does not suffer if the selected candidates do not join for one or the other reason or the next selection or examination is not held soon. A candidate in the waiting list in the order of merit has a right to claim that he may be appointed if one or the other selected candidate does not join. But once the selected candidates join and no vacancy arises due to resignation etc. or for any other reason within the period the list is to operate under the rules or within reasonable period where no specific period is provided then candidate from the waiting list has no right to claim appointment to any future vacancy which may arise unless the selection was held for it. He has no vested right except to the limited extent, indicated above, or when the appointing authority acts arbitrarily and makes appointment from the waiting list by picking and choosing for extraneous reasons.”

9. A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list.....”



11. We see no difficulty in filling up the vacant slots in the manner we have suggested above, and we see no possibility of challenge being raised, once this position is made upfront clear to the candidates at the time of inviting applications.

12. We, accordingly, direct the respondents to take up the issues raised by Mr. Arun Bhardwaj, learned counsel for the respondents, for consideration, in the light of the aforesaid observations. Let consideration in this regard be undertaken without any delay since the matter is of grave urgency.

13. The Secretary, Department of Personnel and Training, is directed to call a meeting to consider the aforesaid aspects and take a decision after consultation with all the stake-holders before the next date of hearing, and to communicate the same to this Court on the next date.

14. List on 19.7.2019.”

6. The respondents were to take a view in the matter. About three years have gone by and nothing worthwhile has been done by them. The learned counsel for the respondents seeks further time to comply with the order.
7. The learned counsel for the petitioners submits that the petitioners have a right of legitimate expectation in terms of DoPT Memorandum No.41019/18/97-Estt.(B) dated 13.06.2000, which directs inter-alia as under:

“...

2. The Fifth Central Pay Commission, in para 17.11 of its Report, has recommended that with a view to reduce delay in filling up of the posts, vacancies resulting from resignation or death of an incumbent within one year of his appointment should be filled



immediately by the candidate from the reserve panel, if a fresh panel is not available by then. Such a vacancy should not be treated as a fresh vacancy. This recommendation has been examined in consultation with the UPSC and it has been decided that in future, where a selection has been made through UPSC, a request for nomination from the reserve list, if any, may be made to the UPSC in the event of occurrence of a vacancy caused by non-joining of the candidate within the stipulated time allowed for joining the post or where a candidate joins but he resigns or dies within a period of one year from the date of his joining, if a fresh panel is not available by then. Such a vacancy should not be treated as fresh vacancy.

3. It has also been decided that where selections for posts under the Central Government are made through other recruiting agencies such as Staff Selection Commission or by the Ministries/Departments directly and the reserve panels are similarly prepared, the procedure for operation of reserve panels maintained by UPSC as described in para 2 above will also be applicable for the reserve panels maintained by the other recruiting agencies/authorities.

... ”

8. Also, the learned counsel for the petitioner emphasizes on the ratio and decisions of this court in the *Chairman D.S.S.B and Ors v. Miss Rajni and Ors* (WP(C) No.2552/2012) and *Shrey Bajaj* (supra) wherein the Commission/recruiting agency was directed maintenance of a Reserve Panel. The directions have not been implemented till date. It is not in dispute that vacancies, which could be filled up by appointing the petitioners, were available for one year from the creation of the reserve panel/waiting list. The learned counsel for the



petitioners further submits that within the year of publication of the Reserve Panel/Wait List, there were 185 vacancies which were available to be filled up. These vacancies should have been filled-up through the Reserve Panel/Wait List. Not doing so is in contravention of the aforesaid OM.

9. On the other hand, the learned Counsel for the respondents submits that pursuant to the aforesaid order dated 16.05.2019, there have been practical difficulties in implementing the court's directions, especially when the common recruitment process pertains to vacancies in different departments; having different posts/designations and different pay scales, as well as different qualifications.
10. This contention has already been dealt with by this court in paragraphs 9, 10, 11, 12, 13 of the order dated 16.05.2019. The court finds no reason to differ with the opinion.
11. In similar circumstances, this court in W.P.(C) 9723/2019 dated 24.10.2019 titled *Vikram Singh And Ors. vs. Union Of India And Ors.* had observed as under:

“...

7. A grievance of the present Petitioners is on the issue of a failure by the Respondents to prepare a waiting/reserve list. Petitioners 1 to 5 figured in the provisional list at the serial Nos. 392, 94, 185, 328 and 80 respectively. They also successfully qualified the medical examination. It was contended by the Petitioners that although they were qualified they were not given offers of appointment.

...

9. In the reply filed in the present petition, the stand of



the Respondent is that the aforementioned OM dated 13th June, 2000 does not apply to recruitment to the Central Armed Police Forces (CAPFs), including the CISF where the recruitment is undertaken by the concerned CAPF itself. Specific reference is drawn to Note No. 4 in the advertisement which stated that that 'no waiting list will kept/maintained'.

....

12. Having heard the submissions of the learned counsel for the parties, the Court is of the view that the stand taken by the Respondents is untenable for the reasons that follow. The OM dated 13th June 2000 states clearly in para 3 that where 'a selection for a post under the Central Government' is made either through the agencies such as Staff Selection Commission (SSC) or by the Ministries/Departments 'directly' and where reserved panels as envisaged in para 2 of the OM are prepared, the procedure outlined in para 2 would be applicable to the reserved panels. Para 2 of the OM states that if a person selected either resigns or dies within one year of appointment, then the vacancy resulting will not be treated as a fresh vacancy and a candidate in the reserve list will be given the offer of appointment. This is clear from the sentence 'vacancies resulting from resignation or death of an incumbent within one year of his appointment should be filled immediately by the candidate from the reserved panel, if a fresh panel is not available with them'.

13. Learned counsel for the Respondent sought to contend that the expression 'ministries/departments' would not cover the CAPFs. This contention stands negatived by the judgment dated 16th December, 2016 of this Court in Writ Petition (Civil) 11739/2016 (Union of India v. Shrey Bajaj) which concerned recruitment inter alia to the posts of Sub-Inspectors in the Delhi Police and the CAPFs etc. In fact, the Respondent Shrey Bajaj was selected for appointment as SI in the CISF in



the open OBC category but could not ultimately make the cut for the Delhi Police because there was no reserve list. This Court in the said judgment discussed the earlier decision in The Chairman, Delhi Subordinate Services Selection Board v. Ms. Rajni as well as the OM dated 13th June, 2000 and concluded that it is obligatory on the Respondents to have prepared a reserve list. In para 16 and 17 it was observed as under:

“16. With the aforesaid observation and directions, we dismiss the present writ petition. We clarify that the respondent No.1 would be eligible for consideration, if there were unfilled OBC category Sub Inspector (Executive) posts in the Delhi Police and on the basis of marks obtained by him, as per merit, he was entitled to consideration. The discretion whether or not to appoint, is with the Delhi Police, which we accept and believe would be exercised as per, and in accordance with, law.

17. The Staff Selection Commission must take into notice the ratio and directions of the Division Bench of the Delhi High Court in the case of M. S. Rajni (Supra), which are salutary and merited. Had due notice and consideration to the ratio been given, this controversy and litigation would have been avoided.”

....

15. Even otherwise with the Respondents having advertised 447 vacancies, there appears to be no logical reason for not preparing a reserve list. The contention of learned counsel for the Respondents, on the basis of averment in the counter affidavit, that candidates from the reserved list may miss out on the training already being imparted to the 372 selected candidates overlooks the fact that there have been numerous instances where there is a large batch of candidates qualifying in a selection, all of them may not be able to be sent for training at the same time but are further split into groups and sent for training in batches. In any event of



the present case, the fault entirely lies with the Respondents for not adhering to the settled legal position explained in the above decisions of the Court interpreting OM dated 13th June, 2000 and underscoring the need to prepare the reserve list of candidates.

16. Consequently, the Court directs that the Respondents will now prepare a reserve list of candidates pursuant to the result already declared on 29th August, 2019 taking into account the reservations provided in terms of the advertisement. Those figuring in the reserve list, including the Petitioners if they do figure in such reserved list, will be sent offers of appointment. This exercise be completed not later than 8 weeks from today. The petition is allowed to the above terms. The pending application is also disposed of. No order as to costs.
...”

12.The SLP against the aforesaid order was dismissed on 02.03.2020. The petitioners, who are identically situated, are entitled to the same relief.

13.In *Dinesh Kumar Kashyap and Others vs South East Central Railway and Others*, (2019) 12 SCC 798 decided on 27.11.2019, the Supreme Court has held inter-alia as under:

“....

6. Our country is governed by the rule of law. Arbitrariness is an anathema to the rule of law. When an employer invites applications for filling up a large number of posts, a large number of unemployed youth apply for the same. They spend time in filling the form and pay the application fees. Thereafter, they spend time to prepare for the examination. They spend time and money to travel to the place where written test is held. If they qualify the written test they have to again travel to appear for the interview and medical



examination, etc. Those who are successful and declared to be passed have a reasonable expectation that they will be appointed. No doubt, as pointed out above, this is not a vested right. However, the State must give some justifiable, non-arbitrary reason for not filling up the post. When the employer is the State it is bound to act according to Article 14 of the Constitution. It cannot without any rhyme or reason decide not to fill up the post. It must give some plausible reason for not filling up the posts. The courts would normally not question the justification but the justification must be reasonable and should not be an arbitrary, capricious or whimsical exercise of discretion vested in the State. It is in the light of these principles that we need to examine the contentions of SECR.

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12. Another argument raised is that recruitment policy is an executive decision and the courts should not question the efficacy of such policy. Neither the appellants nor this Court is questioning the efficacy of the policy contained in the letter dated 2-7-2008. All that has been done is to ensure implementation of the policy by Respondent 1, especially when it has failed to give any cogent reason to justify its action of not calling for candidates from the replacement list of extra 20 per cent candidates.

.....

14. While allowing the appeals we issue the following directions:

14.1. The benefit of this judgment shall only be available to those appellants who had approached CAT;

14.2. The appellants shall not be entitled to any back wages;

14.3. The appellants shall, for the purpose of seniority and fixation of pay be placed immediately above the first selected candidates of the selection process which



commenced in the year 2012 and, immediately below the candidates of the selection list of 2010 in order of seniority;

14.4. The appellants shall be entitled to notional benefits from the date of such deemed appointment only for the purposed of fixation of pay and seniority.

... ”

14. The said dicta delineate the legal landscape. While the respondents were instructed to take a view in this regard, nothing worthwhile has been done in the last three years. In this regard, reference to the judgment of the *R.S. Mittal v. Union of India*, (1995) Supplement (2) SCC 230 is worthwhile:

“It is no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr Murgad within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government’s approach in this case was wholly unjustified.”



- 15.Nothing more is required to be clarified. As discussed above, the petitioners and others similarly situated, who are/would be in the Reserve Panel/Wait List, would be entitled to offer of appointment against vacancies that may have arisen in the one year for which the said List was valid. Consequently, this court directs the respondents to prepare a Reserve Panel/Wait List of candidates taking into consideration the result already declared on 03.11.2018 in W.P.(C) 3999/2019 & W.P.(C) 8111/2019 and 02.08.2019 in W.P.(C) 12682/2019.
- 16.For the foregoing reasons, those figuring in the Reserve Panel/Wait List, including the petitioners, shall be sent offers of appointment within six weeks of receipt of this order.
- 17.The petition, along with pending applications, is disposed-off in terms of the above.

NAJMI WAZIRI, J

SWARANA KANTA SHARMA, J

MAY 2, 2022

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