

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

% **Reserved on: October 12, 2022**

Pronounced on: November 09, 2022

+ **W.P.(C) 13915/2018**

SH. ARUN KUMAR

.....Petitioner

Through: **Mr.Vibhas Kumar Jha &
Mr.Deepak Jha, Advocates**

Versus

UNION OF INDIA & ANR.

.....Respondents

Through: **Mr.Ramjee Pandey, Senior Panel
Counsel**

CORAM:

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE SAURABH BANERJEE**

JUDGMENT

SURESH KUMAR KAIT, J

1. In the present petition, petitioner claims to have applied for the post of Sub Inspector in Railway Protection Force (henceforth referred to as the 'RPF'), Ministry of Railway pursuant to advertisement No.2/2011 dated 13.04.2011 and upon successfully clearing the selection process, he was called for Viva-Voce and documents verification. However, his candidature was turned down on account of deficiency in the caste certificate, having not been in the format prescribed in the advertisement.

2. Being aggrieved, petitioner approached this Court in W.P.(C) No. 36/2014 *inter alia* praying for a direction to the respondents to accept his caste certificate and to consider him for appointment to the post of Sub Inspector (Executive) in RAILWAY ZONE (RPF), Ministry of Railway. Vide Judgment dated 30.01.2015 the Court held that the Caste Certificate produced by the petitioner was in requisite format and directed the RPF to appoint the petitioner as Sub Inspector under the Scheduled Caste Category, while permitting the respondent to verify its authenticity from the office of the Sub-Divisional Magistrate who had issued it. According to petitioner, despite specific direction by the Court vide Judgment dated 30.01.2015, he was not appointed and had to prefer a miscellaneous application being CM No 14805/2015 in W.P.(C) No. 36/2014, wherein this Court called upon the Chief Security Commissioner, Railway Zone (RPF) on 12.10.2015, pursuant where to the respondents on 02.11.2015 reported compliance in the matter. However, on 19.10.2015, the respondent appointed the petitioner in Railway Protection Special Force (RPSF) instead of RPF and was directed to report for training on 11.11.2015. The petitioner claims to have completed his two years' training and probation period on 24.01.2018. Thereafter, he made a representation for consideration of his joining in the Railway Zone (RPF) and to treat him on parity with 53rd batch, who were promoted as Inspector. The petitioner thereafter again claims to have written letters dated 21.05.2018 and 06.10.2018 to the Director General, RPF, duly forwarded by his Superiors, but according to him, no action has been taken by the respondents.

3. During the course of hearing, learned counsel appearing on behalf of petitioner submitted that the criteria for appointment in the 53rd Batch in RPF and RPSF was as per merit of marks obtained and preference submitted by the applicants. The candidates who had secured 96.75 marks and had submitted preference as RPF, were given appointments in RPF. However, even though petitioner had secured 99.25 marks and had also filled his preference as RPF, he has been deliberately given appointment in RPSF by the respondents, which is arbitrary to Rule 89 of Railway Zone (RPF) Rules, 1987. Learned counsel further submitted that petitioner's merit position falls at Serial No.23 in the 53rd Batch and since he has been appointed pursuant to directions of this Court for the selection process of 53rd Batch, petitioner is seeking parity with consequential seniority and benefits.

4. To refute the claims of petitioner, learned senior panel counsel appearing on behalf of respondents submitted that petitioner's candidature for the post of SI was turned down by the Screening Committee during the course of verification of documents on 09.02.2013 as the Caste Certificate was not as per prescribed annexure of the employment notice. Next submitted that the recruitment process for all 511 notified vacancies was already over consequent upon verification of documents of all candidates on 09.02.2013. However, subsequent upon decisions of this Court dated 30.01.2015 and 09.03.2015 in W.P.(C) No. 36/2014, the authenticity of Caste Certificate of petitioner was verified and pursuant to receipt of Verification Report dated 18.05.2015 from the concerned Sub- Divisional Magistrate, the petitioner was called for viva

voce on 20.6.2015 in the next phase of selection process and he was considered for empanelment to the post of Sub-Inspector in RPF/RPFS. Yet again, the petitioner filed miscellaneous applications CM Appl. 14805/2015 & CM No. 15288/2015, wherein the respondents filed a compliance affidavit dated 29.10.2015.

5. It was empathically pointed out by learned Senior Panel Counsel appearing on behalf of the respondents that the applications for the post of Sub-Inspector in RPF and RPSF were invited pursuant to Employment Notification No. 02/2011 dated 30.04.2011 and as per Section 15(I) of RPF Act, 1957, every member of the force, for the purpose of the Act, shall always be considered on duty and be liable to be placed anywhere in India.

6. Further submitted that Rule 89.1 of RPF Rules; Standing Order-94 dated 27.08.200 as well as Para 14 (C) of modification No. 1 of Standing Order -94 dated 14.03.2011, the Zonal allotment to SI Cadets will be done by DG/RPF after successful conclusion of mandatory training and the selected candidates will be liable to serve anywhere in India in RPF/RPSF.

7. It was further submitted that the petitioner was sent for initial training on 16.11.2015, which he had completed with 56th Batch along with 04 other SI cadets, whereas 421 candidates out of 521 vacancies of Sub-Inspector notified vide impugned Advertisement, were sent for initial training in 53rd batch and therefore, he has been appointed with 56th batch in RPSF. Lastly, it was submitted that the relief sought in the present petition is without any merit and this petition deserves to be

rejected.

8. Upon hearing learned counsel for the parties and on perusal of the material placed before this Court we find that respondents in the counter affidavit have admitted that pursuant to directions of this Court vide order dated 30.01.2015 and 09.03.2015 in W.P.(C) No. 36/2014; and receipt of Verification Report dated 18.05.2015 qua his Caste Certificate, petitioner was called for viva voce on 20.06.2015 in the second phase of selection as per notification No. 02/2011 dated 30.04.2011. Though the stand of respondents is that the recruitment process for all 511 notified vacancies was already over consequent upon verification of documents of all candidates on 09.02.2013, however, it is not disputed by the respondents that the petitioner had participated in the selection process culminating from notification No. 02/2011 dated 30.04.2011 only.

9. Reliance was placed by respondents' counsel upon Rule 89.1 of RPF Rules; Standing Order-94 dated 27.08.200 as well as Para 14 (C) of modification No. 1 of Standing Order -94 dated 14.03.2011 to submit that the Zonal allotment to SI Cadets will be done by DG/RPF after successful conclusion of mandatory training and the selected candidates will be liable to serve anywhere in India in RPF/RPSF. Also that as per Section 15(I) of RPF Act, 1957, every member of the force, for the purpose of the Act, shall always be considered on duty and be liable to be placed anywhere in India.

10. We do not wish to interpret the contents of the afore-noted Statute, as it is not required. There is no dispute that the appointment Rules and prescribed procedure under the Statute, have to be followed. The position

in the present case is that petitioner having participated in the selection process of the year 2011, had been offered appointment by the respondents pursuant to directions of this Court vide order dated 30.01.2015 and vide Appointment Letter dated 19.10.2015 he was directed to report for training on 11.11.2015. Further, vide Battalion Order No. 86/2016 dated 20.12.2016, petitioner was posted in RPSF and his seniority was fixed from 30.08.2016. It is not the case of respondents that petitioner had defaulted in the training or his performance has not been upto the mark or that he was below in ranking, therefore, has been allocated in RPSF. Also, it is not the case of petitioner that he has any constraints to work anywhere in India.

11. Though the stand of respondents is that out of 511 vacancies of Sub-Inspector notified vide Employment Notice No.02/2011, 421 candidates were sent for initial training as 53th batch and after their allotment in RPF Zones and RPSF, there are 142 available vacancies of Sub-Inspector (03-UR in SR, 05-UR in NFR and 84 UR, 25 OBC, 17 SC & 8 ST in RPSF) and, therefore, the petitioner, who was in SC category, after having completed training along with 56th batch, was allotted RPSF. Hence, no vacancies were available in the RPF.

12. A perusal of material placed on record shows that those candidates who had secured cut-off marks of 96.75 have been directed to join RPF; whereas as per copy obtained by the petitioner under Right to Information Act, 2005 dated 03.10.2017 given by the respondents, petitioner has secured 99.25 marks. It is pertinent to mention here that the allotment of the candidates in the 53rd Batch has been made on merit

basis i.e. on the basis of marks obtained in written examination and viva voce. This Court would like to elucidate that this is not a case where the petitioner is seeking transfer from RPSF to RPF, but he is seeking appointment / allotment in RPF instead of RPSF in terms of his merit secured in the written examination and viva-voce pertaining to the year 2011.

13. Succinctly put, the petitioner had joined the initial training on 16.11.2015 along with 56th Batch, though the other selectees of the said examination had undergone training in the 53rd Batch. It needs no reiteration that the petitioner had to undergo initial training with the 56th Batch for the fault of respondents. It is unpleasant to note that despite directions of this Court vide judgment dated 30.01.2015 to appoint the petitioner within six weeks, petitioner had to again knock the doors of the Court by filing miscellaneous application being CM No 14805/2015 in W.P.(C) No. 36/2014 for appointment and it is only when this Court called for personal appearance of Chief Security Commissioner, Railway Zone (RPF) on 12.10.2015, that the compliance affidavit dated 29.10.2015 was filed by the respondents. We are concerned about the torment of a candidate who participated in the selection process pertaining to the year 2011; had to pursue litigation to secure appointment and thereafter, got appointed in the year 2015; and thereafter again sought intervention of this Court to seek appointment in the Force where he deserves to be allocated as per his merit. In a sundry of decisions it has been held that if the delay in joining by the candidate is attributable to the appointing authorities, the appointee cannot be

deprived of his/her seniority and consequential benefits.

14. The Hon'ble Supreme Court in *M.C.D Vs. Veena & Ors.*, (2001) 6 SCC 571 had allowed the appeal pertaining to the issue whether the Other Backward Class (OBC) of the other States than Delhi, could be treated as OBCs in Delhi and could be offered appointment in Delhi and directed for their appointments and in case of no vacancy, further directed to create vacancies.

15. The decision of Supreme Court in *M.C.D. (Supra)* has been followed by High Court Of Gujarat at Ahmedabad in decision dated 16.06.2022, R/SPECIAL CIVIL Application No. 5192 of 2019, titled as *Bhalodiya Ravikumar Jaynatilal Vs. State Of Gujarat*, wherein the petitioner had appeared in the examination for the post of Multi Purpose Health Worker (male) and after verification of his documents on 27.08.2012, he was issued appointment letter on 08.07.2013; whereas the other selectees were offered appointment on 01.10.2012. The petitioner had joined the services on 09.07.2013, whereas others had joined duty on 03.10.2012. In the said case, petitioner claimed to be senior than the candidate at Sl. No. 106, who was promoted as Multi Purpose Health Supervisor, though he was not. The Court re-determined petitioner's seniority holding that the delay in appointment was purely attributable to the respondents and directed all consequential benefits to him.

16. With regard to present case, we are conscious that the recruitment process pertaining to the appointment of Sub-Inspectors notified vide Employment Notice No.02/2011, had attained finality. At the same time, we cannot ignore the legitimate rights of the petitioner, who has been

denied posting in RPF, though he had secured the desired ranking. It is not misplaced to expect that at the time of allocating appointment to the petitioner, the appointing authorities should have taken into consideration the merit rank of the petitioner and should have accordingly placed him in RPF. For the mistake committed by the respondents, the petitioner cannot be made to suffer the ignominy of discrimination.

17. Accordingly, we direct the respondents to appoint the petitioner at par with those who have been appointed pursuant to Notification No. 02/2011 dated 30.04.2011 in terms of his merit, which we are informed is 53rd Batch. It is made clear that if there exists no vacancy for the relevant year, as we are informed all the vacancies were filled, the respondents shall create a supernumerary post to place petitioner in terms of his merit and grant him all consequential benefits, including seniority in 53rd Batch and consequent benefits thereto.

18. With directions as aforesaid, the present petition is accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

NOVEMBER 09, 2022
r