

November 29, 2023
Sl. No. 1
Court No.2
s.biswas

**In the Calcutta High Court
Circuit Bench at Jalpaiguri
Appellate Side**

WPA 2488 of 2023

Suvrojit Majumdar @ Suvrojit Majumder
vs.
The Registrar General, Appellate Side,
High Court and others

Mr. Sanjay Mazoomdar
... for the petitioner
Mr. Nilay Chakraborty
... for the respondent no.1
Mr. Bikramaditya Ghosh
Mr. Sumanto Ghosh
... for the respondent nos.3 & 4
Ms. Bedashruti Bose
Mr. Sumit Kumar
... for the District Judge, Darjeeling
Ms. Sukanya Adhikary
... for the respondent no.5

The petitioner appeared at the selection process initiated by the office of the learned District Judge, Darjeeling in the Employment Notification No.103/E dated April 22, 2019. Eighteen vacant posts were advertised under the Group-D category. The Group-D category consists of Night Guard, Farash and Karmabandhu. The petitioner qualified at the selection process and obtained 80.25 marks. He was appointed as a night guard.

The petitioner contends that in a reply given by the learned District Judge to one Dilip Sarkar under the Right to Information Act, the persons

who obtained highest marks in the recruitment process, were designated as Farash.

If such was the basis for appointing the three persons as Farash amongst the selected candidates for the Group-D posts, the petitioner contends that he should have been appointed as Farash, as he had obtained higher marks than both Mainak Bhattacharjee and Rahul Gurung.

The controversy has arisen as the learned District Judge, Darjeeling had replied thus:

“The allocation of various Group ‘D’ posts, namely Farash Nigh Guard and Karmabandu were made on the basis of the Final Marks obtained by the selected candidates keeping into consideration the various aspects and also taking the final marks of the written examination and the interview together. The top four selected candidates on the final merit list irrespective of the Groups they belong to were allotted Group ‘D’ posts of ‘Farash’, next top eight selected candidates on the final merit list were allotted ‘Nigh Guard’ posts excepting the case of physically challenged candidate and the remaining six number of selected candidates who were at the bottom of the selected candidates were allocated the duties of Karmabandhu.”

This court, taking note of the anomaly which arose by comparing the marks obtained by the petitioner as also the respondent nos.2 and 3, vis-à-vis the reply of the learned District Judge under the Right to Information Act, had directed that an

information clarifying such contentions should be filed before this court.

A report has been filed by the learned District Judge, Darjeeling and the same is taken on record. It has been explained that on a, prima facie, perusal of the recruitment records, the learned District Judge, Darjeeling was of the impression that the posts of Farash was given to the top four selected candidates, but in effect, there were no guidelines or regulations which would indicate that there was any distinction made between the sub-classes of Group-D posts, namely, Night Guard, Farash and Karmabandhu. All the three categories under the Group-D enjoyed the same pay-scale, i.e. Pay Band 1 Level 1 (17000-43600). The Night Guards were given an additional amount of Rs.300/- per month as allowance, which are not given to the other Group-D staff.

The report filed indicates that there was a mistake on the part of the learned District Judge, Darjeeling in understanding the process as to how the three persons were selected as Farash from amongst the selected Group-D staff. It was not, definitely, on the basis of the marks obtained. The

information given by the learned District Judge was defective.

It is submitted by Mr. Ghosh, learned advocate appearing for the respondent nos.3 and 4 that a comparison of the vacancy of 18 posts and distribution of the reserved posts, would indicate that the three unreserved posts were allocated to the post of Farash. The petitioner belongs to the scheduled caste category and had also applied as a scheduled caste candidate. The authority had decided on an administrative level, how the reservation will be distributed amongst the Group-D posts. The same was beyond judicial scrutiny.

Ms. Bose, learned advocate appearing for the learned District Judge, Darjeeling and Mr. Chakraborty, learned advocate for the learned Registrar General, have pointed out the terms and conditions of recruitment which is annexed to the employment notification. Such terms and conditions provide that the District Recruitment Committee, has every discretion in respect of fixing the qualifying marks with regard to the category of the posts and also have the discretion to relax any part of the norms. Relying on such clause, it has been urged that the administration was within its power to allot the three unreserved

posts to the post of Farash and the petitioner, although, had obtained higher marks was appointed as a night guard under the reserved scheduled caste category. The decision of the administration and the District Recruitment Committee as to how the categories of posts (Reserved and Unreserved), shall be allocated against the 18 vacancies in the sub-categories of Group-D posts, namely, night guard, farash and karmabadhu, was within the domain of the selection committee. There does not appear to be violation of the service rules or the reservation policy or the roster system.

In this case, there are no allegations of any deviation from any rules. The petitioner only has questioned his selection as a night guard, when he had scored higher marks. He has based his entire case on the reply given by the learned District Judge, Darjeeling under the Right to Information Act.

The petitioner also submits that if the best three were given appointment to the post of farash on merit, according to Rule 30, the petitioner should have been amongst the best.

However, there is no dispute with regard to the following facts:-

- a) Admittedly, all the posts of farash, night guard and karmabandhu are Group-D posts.
- b) They are in the same cadre and enjoy the same pay scale.
- c) The night guards are given an additional benefit of Rs.300/- per month as allowance for the nature of job they perform.
- d) The night guards are given 30 days of earned leave, whereas farash and karmabadhu are given 15 days earned leave. Taking into consideration that the farash and karmabadhu have off days on gazetted holidays, such benefit is given to the night guards.

Yet, this Court is of the view that there should have been more transparency in the allotment of reserved and the unreserved posts against the 18 vacancies and the decision of the committee should have been indicated to the participants. However, this Court finds that, in effect, no real prejudice or injury has been caused to the petitioner, but for the mis-information given under the Right to Information Act. The same has sent a message to him that despite having scored higher marks than the candidates who had been

appointed as farash, the petitioner was deprived of such opportunity.

The fact remains that the posts belong to the same cadre and the benefits are similar. It also appears from the record that the posts are temporarily interchangeable. Due to exigencies, a night guard has been assigned the job of farash and a farash has been assigned the job of peon. All such arrangements were done for administrative convenience.

Under such circumstances, as no prejudice has been caused to the petitioner and the petitioner's rights have not been violated, as also, taking note of the fact that the petitioner has been working successfully as a night guard since 2019, nothing further remains to be decided in the writ petition save and except the following:

- a) The learned District Judge, Darjeeling shall communicate to the petitioner and clarify with an explanation, the confusion created by the information given under the Right to Information Act as has been mentioned in the report filed before the Court. The mistake committed shall be rectified. The misinformation shall be withdrawn.

- b) The letter shall reach the petitioner within a week from the date of communication of this order.
- c) In future, when administrative decisions are taken with regard to a selection process, there should be a proper resolution, adopted at a meeting, which should be made known to the participants, prior to the examination.
- d) The petitioner shall not be discriminated upon and singled out for having moved this Court on the grounds stated in the writ petition.
- e) If the petitioner faces any hardship in future owing to his posting at Mongpoo, the petitioner may apply before the appropriate authority for a transfer and the petitioner's application shall be decided in accordance with law.

It is also well-settled that any information given under the Right to Information Act, cannot be the sole basis for the Court to decide the merits of the case, and as such, there is no interference at this stage, i.e., after four years from the appointment, but the court finds lack of

transparency and a careless handling of the RTI application.

Accordingly, the writ petition is disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)