

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

% **Reserved on: January 30, 2023**

Pronounced on: March 22, 2023

+ **W.P.(C) 4487/2017**

RAKESH MEENA

..... Petitioner

Through: Mr. Vinay Kumar Sharma,
Mr. Prince Sharma & Mr. Aaditya
Sharma, Advocates

Versus

**STAFF SELECTION COMMISSION THROUGH ITS
REGIONAL DIRECTOR**

.....Respondent

Through: Mr. Bhagvan Swarup Shukla,
CGSC & Mr. Sarvan Kumar,
Advocate

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. An advertisement/ Notice dated 24.01.2015 was published in Employment News/ Rozgar for recruitment to the post of Constables (GD), Samachar CAPFs, NIA 85 SSF and Rifleman (GD) in Assam Rifles, Examination, 2015. The applications were invited through online mode except for the State of Jammu & Kashmir, North Eastern States and Left Wing Extremism affected districts and border districts of the country,

where option of applying through both, online as well as offline, mode was given. The eligible candidates were sent call letters for Physical Standard Test ('PST') and Physical Endurance Test ('PET') and those who qualify the PST and PET in both online and offline mode, were eligible for written examination. Thereafter, copies of supporting documents were to be sought from those candidates who qualify PST and PET and these were to be scrutinized after the written examination. The online examination was conducted in English and Hindi languages, whereas the offline examination was conducted in English, Hindi and regional language. After declaration of the result of written examination, the result of the shortlisted candidates was to be declared and call letters for Detailed Medical Examination ('DME') and Review Medical Examination ('RME') were to be issued. The final result of the selected candidates, state-wise without allocation of Force, was to be issued. On the basis of the said merit list, Force allocation was to be done.

2. The petitioner claims to have applied for recruitment in the aforesaid examination in the Scheduled Tribe ('ST') category; appeared in the written examination, medical examination and PET. In the final marks list, petitioner claims to have obtained 67 marks. However, the petitioner did not receive the appointment letter, though the other candidates, who had secured much less marks than the petitioner, were issued joining letter. Hence, the present petition has been filed by the petitioner seeking a direction to the respondent to issue appointment letter to him.

3. During the course of hearing, learned counsel appearing on behalf of petitioner submitted that petitioner had scored 67 marks in the

recruitment process but since he did not receive the appointment letter, therefore, he approached the respondent. He was informed that his claim for reservation under the ST category was not admitted as per Government of India guidelines. Learned counsel submitted that it is admitted by respondent that if a candidate belonging to the SC/ST category migrates from one state to another State, on migration he does not lose his status of SC/ST from the state of origin.

4. Learned Counsel for petitioner placed reliance upon decision dated 24.09.2019 passed by this Court in W.P.(C) 7474/2017, titled as ***“Rohit Kumar Meena Vs. Union of India and another”*** and another decision dated 17.12.2019 in W.P.(C) 8171/2019, titled as ***“Krishna Vs. Union of India and Ors.*** in support of petitioner’s case.

5. Learned CGSC appearing on behalf of respondent, on the other hand submitted that during the recruitment process, the candidates were required to submit their documents for verification at the time of Detailed Medical Examination and this exercise had to be undertaken by the CRPF, being the Nodal Agency for conduct of PET/PST, document verification, DME/RME and allocation of CAPFs. Next submitted that in the Advertisement notice dated 24.01.2015, at Point No.7 it was clearly mentioned that the candidature of a candidate would be provisionally accepted and the copies of the documents will be sought after medical examination and scrutinization thereof shall be undertaken after the written examination. Also, in Para-4C it was mentioned that those who wish to be considered against vacancies under reserved category or seek age relaxation, must submit requisite certificate. The certificate of

category was required to be in the requisite format prescribed by the Government of India, or else the candidature shall be considered under the general (unreserved) category.

6. With regard to the case of petitioner, learned CGSC submitted that the petitioner had scored 67 marks in the written examination and after DME, during the process of documents verification, the petitioner had produced certificate of ST category which could not be accepted for the reason it was not in accordance with the prescribed guidelines of Government of India, which states that if a candidate belonging to SC/ST category migrates from one State to another state, on migration he does not lose his status as SC/ST, but will be entitled to the concessions/benefits admissible to the SC/ST from the State of origin and not from the state he has migrated to. According to learned CGSC, the petitioner could not be given benefit of ST category being domicile of Delhi State, as his ST category Certificate belonging to Meena/Mina community was issued by the NCT of Delhi and this category is not mentioned in the central list from domicile state and for this reason, petitioner's category was changed from ST to UR as per the provisions of the Notice of the said exam.

7. Learned CGSC next submitted that if petitioner was not found eligible under ST category and he has to be considered under the General (unreserved) category, then the age limit prescribed for unreserved category was notified as 18-23 years i.e. a candidate should not have been born earlier than 02.08.1992 and not later than 01.08.1997; whereas the date of birth of petitioner was 01.01.1992 and so, petitioner was ineligible

being over aged. Lastly, it was submitted that the relief sought in the present petition is not made out and thus, it deserves to be dismissed.

8. In rebuttal, learned counsel appearing on behalf of the petitioner submitted that respondent has admitted that if a candidate belonging to the SC/ST category migrates from one state to another State, on migration he does not lose his status as SC/ST from the state of origin and not from the State he has migrated to. Hence, petitioner's ST category Certificate belonging to Meena/Mina community issued by NCT of Delhi has to be considered for the purposes of appointment. Reliance was placed upon a decision of this Court in ***Rahul Kumar Meena Vs. Union of India and Others*** 2019 SCC OnLine Del 7893 in support of petitioner's case.

9. Upon hearing learned counsel representing both the sides and on perusal of material placed before this Court we find that the undisputed position is that petitioner had applied for and appeared in the recruitment process to the post of Constables (GD), Samachar CAPFs, NIA 85 SSF and Rifleman (GD) in Assam Rifles, Examination, 2015 and had qualified the written examination with 67 marks and had also qualified the PST/PER and DME. The petitioner had also produced his certificate in respect of ST Meena/Mina category issued by the Office of Sub Divisional Magistrate (Rohini) DC Office Complex, Kanjhawal, Delhi, however, his candidature was not accepted for the reasons mentioned in communication dated 24.07.2017, which reads as under:-

**“OFFICE OF THE DY. INSPECTOR GENERAL OF
POLICE, REGIONAL.
RECRUITMENT, CENTRE, GROUP CENTRE, CRPF,
JHARODA KALLAN, NEW DELHI-72**

No.I-II-1/2015-RRC-GC DELHI Dated the July, 2017

To

Shri S.C. Kashyap,
Under Secretary (NR),
CGO Complex, Lodhi Road,
New Delhi-03.

Subject:- **REG: WP NO. 4487/2017 FILLED BY RAKESH MEENA ROLL NO. 2201142400 IN THE HON'BLE HIGH COURT DELHI IN CONNECTION WITH CONSTABLE (GD) IN CAPFs, NIA & SSF AND RIFLEMAN (GD) IN ASSAM RIFLE EXAMINATION.**

Kindly refer to DIGP (Rectt.), Directorate, CRPF, CGO Complex, New Delhi letter No. A.VI-I/2015-Rectt.-(SSB) CT/GD-2015 dated 07/07/2017.

2. In compliance of DIGP (Rectt.) Directorate letter under reference photo copy of dossiers and brief details of the case in connection with the subject recruitment of the candidates are forwarded herewith for further needful please.

Sl No.	Roll No. & Name	Dossiers	Total Pages
01	2201142400, Rakesh Meena	01	29

3. Apart from above, as per existing instruction/guideline, testimonials of the candidates were checked/verified by concerned CAPFs Recruitment Boards at time of Detailed Medical Examination (DME) stage. In the instance case, petitioner has produced Domicile certificate and category (ST) certificate belonging to Meena issued by NCT Delhi, which is not in order for benefit of category where vacancies and merit is state wise, the category should be notified in central list from domicile state whereas Meena caste is not notified in the ST central list of Delhi. As such his claim was considered

in UR but due to date of birth 01/01/1992 petitioner becomes overage in UR. The same may kindly be apprised to Hon'ble High Court, Delhi accordingly please.

Encls:- 01 dossier (30 pages).

*For DIGP
RRC, GC, CRPF,
New Delhi."*

10. In the afore-noted communication dated 24.07.2017, the respondent has mentioned that in cases where the vacancies and merit is State wise, the category has to be notified in the ST Central List of Delhi; whereas Meena/Mina caste is not notified in the ST Central List of Delhi.

11. On this aspect we find that time and again various instructions/clarifications on the question of admissibility of caste certificate in respect of candidates belonging to the reserved categories upon being migrated to the other State, have been issued. It has been made clear that for the purpose of education, employment etc., the competent authority of the State/Union Territory of the origin State, upon being satisfied or pursuant to an inquiry, has to issue a Caste Certificate to a candidate and upon being migrated from the State/U.T. of his origin to another State/U.T, where his caste is not mentioned in list, the concessions and benefits from the State of his origin and Union Government, shall be admissible and not from the State where he has migrated to.

12. The fact remains that petitioner's father had migrated from the State of Rajasthan to Delhi and belonged to "Meena/Mina" community, which as per "State /Union Territory wise-list of Scheduled Tribes in India", appears at Serial No.9 in the State of Rajasthan. Pursuant to caste

verification, the petitioner has been issued the ST Certificate dated 30.04.2001 for caste “Meena/Mina” by the Sub Divisional Magistrate, NCT of Delhi. The certificate notes as under:-

“Hence, a field enquiry was conducted into the matter and on the basis of statement of neighbor and the field inquiry report, the case of Sh. Rakesh Meena, S/o Babu Ram Meena found to “Meena” which is covered under Schedule Tribe.”

13. Pertinently the Ministry of Home Affairs/Grih Mantralaya, Government of India/Bharat Sarkar, vide Communication No. 35/1/72-R.U. (SCT.V), dated 02.05.1975 has notified as under:-

“2. Cases of migration:

(i) Where a person migrates from the portion of the state in respect of which his community is scheduled/notified to another part of the same State in respect of which his community is not scheduled/notified, he will continue to be deemed to be a member of the Scheduled Caste or the Scheduled Tribe or the Other Backward Class, as the case may be in relation to that State;

(ii) Where a person migrates from one state to another, he can claim to belong to a Scheduled Caste or Scheduled Tribe or Other Backward Class only in relation to the State to which he originally belonged and not in respect of the State in which he has migrated.”

14. For the examination in question, the petitioner had applied from the State of Delhi and for rejecting the claim of petitioner, the plea taken by respondent is that the petitioner could not be given benefit of ST category

being domicile of Delhi State, and his ST category Certificate belonging to Meena/Mina community was issued by the NCT of Delhi and this category is not mentioned in the central list from domicile state. In fact, the undisputed position is that by virtue of communication dated 02.05.1975, the persons belonging to the SC/ST categories on migration from one State to Union Territory would carry their reservation. Also, if a candidate's caste is notified as SC/ST in a resident State, then the benefit of such reservation would be extended to such a candidate, as regards posts in a Union Territory as well.

15. In **Rahul Kumar Meena (Supra)**, the petitioner had applied for the post of Constable in CRPF and despite having cleared the written examination, PST and PET, his candidature was rejected on the ground that he belonged to the 'Meena' caste which was not notified in the central list of Delhi. This Court had observed as under:-

“7. Having heard the learned counsels for the parties, we find that the case of the petitioner is indeed covered by the judgment of the Full Bench in the case of Deepak Kumar (supra) as endorsed by the Apex Court in the case of Bir Singh (supra). The petitioner's caste 'Meena' has been notified as Scheduled Tribe in the State of Rajasthan and there is no dispute on this fact. It is also not disputed that the advertisement in question related to recruitment for the post of constables in the CAPFs and Assam Rifles for which the Ministry of Home Affairs i.e., the Central Government is the Cadre Controlling Ministry. The petitioner had applied for selection in the Delhi region and it is again undisputed that Delhi is a Union Territory. The petitioner is, thus, clearly entitled to the benefit of these judgments and, therefore, he would be

entitled to be treated in the reserved category of Scheduled Tribe for the present selection.....”

16. The aforesaid decision in ***Rahul Kumar Meena (Supra)*** relies upon decision of a Full Bench of this Court in ***Deepak Kumar & Ors. Vs. District and Sessions Judge, Delhi & Ors.*** 2012 SCC OnLine Del 4794 , wherein it is observed and held as under:-

“2. At this stage, it would be necessary to state that the precise question involved is whether castes or tribes which do not find mention in the relevant Scheduled Castes or Scheduled Tribes orders issued by the President or the Amendment Acts (by Parliament) in relation to the Union Territory of Delhi, but are so described in relation to other states or Union Territories or such castes who are separately notified as scheduled castes in relation to other states, can claim the benefit of reservation for the purpose of employment in the service of the Union Territory of Delhi, or for the purpose of admission to its educational institutions

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20. The expressions “in relation to that State or Union Territory” and “for the purposes of this Constitution” used in Articles 341 and 342 of the Constitution of India are relevant and determinative of the issues in this case at hand. According to one set of petitioners, since under the constitutional scheme, the Union Territory NCT of Delhi has to be administered by the President acting through an Administrator, the Union of India is within its rights in issuing instructions, either under specific statutes, or generally of executive nature, requiring

reservations to be made for admissions to institutions in the Union Territory of Delhi. The other set of petitioners, on the other hand, urged that Article 239 should be read harmoniously with Articles 341 and 342 of the Constitution of India. It is argued that Article 15(4) and Article 16(4) are merely enabling provisions, and do not confer any substantive power to classify or choose castes or tribes. The specific provision under Article 16(4) only deals with the State's duty to ensure "adequate representation" in the services, but under no circumstances does it enable the exercise of deciding which communities or castes are to be included or excluded for the purpose of reservation. In other words, the entitlement of communities and the conditions attached to such entitlement, to reservations, are exclusively found in the Presidential notifications, or amendments to it, by Parliament. If therefore, there is no Presidential Notification under Article 342 of the Constitution of India for the purposes of reservation for Scheduled Tribes, or only a few castes are notified as Scheduled Castes for the Union Territory of Delhi, the sine qua non being missing, no reservation can be effected for members belonging to Scheduled Tribes or for those castes which are not notified for the Union Territory. Furthermore, the nature of Scheduled Castes Orders, made under the Constitution and as amended from time to time by the Parliament, indicate a clear intent to limit benefits to only those enlisted in the Constitution Schedule Caste (Union Territories) Order, 1951, in relation to Delhi, and subject to residential qualifications spelt out in it.

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39. In view of the above discussion, this Court holds that whatever reservations may exist and might have even been voiced in Subhash Chandra about the holding in S. Pushpa being contrary to earlier Constitution Bench rulings in Marri, Action Committee, Milind etc., it was not open to a Division Bench of this court, in Delhi and State Subordinate Selection Board v. Mukesh Kumar (supra) to say that Subhash Chandra prevailed particularly since S. Pushpa was by a larger three member Bench. It is true that the concerns and interpretation placed by Subhash Chandra flow logically from a reading of the larger Supreme Court Constitution Bench rulings. Nevertheless, since this Court is bound by the doctrine of precedent, and by virtue of Article 141 has to follow the decision in Pushpa, as it deals squarely with the issue concerning status of citizens notified as scheduled castes from a state to a Union Territory, it was not open, as it is not open to this court even today, to disregard Pushpa. The Court further notices that the correctness of Subhash Chandra has been referred for decision in the State of Uttaranchal case; the matter is therefore at large, before the Constitution Bench, which will by its judgment show the correct approach. Till then, however, Pushpa prevails.

17. Relevantly, Supreme Court in **S. Pushpa Vs. Sivachanmugavelu**, (2005) 3 SCC 1 has held and observed as under:-

“21. Clauses (1) and (2) of Article 16 guarantee equality of opportunity to all citizens in the matter of appointment to any office or of any other employment under the State. Clauses (3) to

(5), however, lay down several exceptions to the above rule of equal opportunity. Article 16(4) is an enabling provision and confers a discretionary power on the State to make reservation in the matter of appointments in favour of “backward classes of citizens” which in its opinion are not adequately represented either numerically or qualitatively in services of the State. But it confers no constitutional right upon the members of the backward classes to claim reservation. Article 16(4) is not controlled by a Presidential Order issued under Article 341(1) or Article 342(1) of the Constitution in the sense that reservation in the matter of appointment on posts may be made in a State or Union Territory only for such Scheduled Castes and Scheduled Tribes which are mentioned in the Schedule appended to the Presidential Order for that particular State or Union Territory. This article does not say that only such Scheduled Castes and Scheduled Tribes which are mentioned in the Presidential Order issued for a particular State alone would be recognised as backward classes of citizens and none else. If a State or Union Territory makes a provision whereunder the benefit of reservation is extended only to such Scheduled Castes or Scheduled Tribes which are recognised as such in relation to that State or Union Territory then such a provision would be perfectly valid. However, there would be no infraction of clause (4) of Article 16 if a Union Territory by virtue of its peculiar position being governed by the President as laid down in Article 239 extends the benefit of reservation even to such migrant Scheduled Castes or Scheduled Tribes who are not mentioned in the Schedule to the Presidential Order issued for such Union Territory. The UT

of Pondicherry having adopted a policy of the Central Government whereunder all Scheduled Castes or Scheduled Tribes, irrespective of their State are eligible for posts which are reserved for SC/ST candidates, no legal infirmity can be ascribed to such a policy and the same cannot be held to be contrary to any provision of law.”

18. Applying the dictum of Supreme Court in ***S. Pushpa (Supra)*** to the facts of the present case, we find that since petitioner's father had migrated from Rajasthan to Delhi, petitioner has been issued ST category certificate for caste “Meena” by the NCT of Delhi and even though caste “Meena” may not be mentioned in the Central List of Delhi, petitioner cannot be precluded to get benefit of his caste Certificate for having migrated to the State of Delhi and shall be entitled to get benefit of caste certificate from the State of his origin i.e. State of Rajasthan. The respondent has gravely erred in denying this benefit to petitioner on the premise that he has applied under the State of Delhi.

19. The further plea of respondent that since Delhi being a Union Territory, does not notify the castes under the ST categories, therefore, his candidature was considered under the UR category and was rejected being over aged. On this count we find that the competent authority of Delhi i.e. Sub Divisional Magistrate, NCT of Delhi has after due inquiry issued the Caste Certificate to the petitioner and hence, the petitioner shall be entitled to get benefit of appointment under the ST “Meena” category from the State of NCT of Delhi as well.

20. In view of above said, the respondent is directed to accept and take

on record the caste certificate produced by the petitioner and to issue him Offer of Appointment within four weeks for the post of Constable (GD) as per his merit position from the date his batch mates in the examination of the year 2015 have been appointed. Petitioner's seniority shall be counted from the date of his batch mates as per his merit position, however, since he has not performed his duties during this period, he shall not be entitled to any financial benefits.

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

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 22, 2023
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