



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

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Date of decision: February 14, 2024

+ W.P.(C) 3845/2019, CM APPL. 3267/2022

(62) SUNIL KUMAR AND ORS.

..... Petitioners

Through: Mr. Vikash K. Singh and
Mr. Tusha Chawla, Advs.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Naginder Benipal, Sr. PC with
Mr. Ankit, Adv. for UOI with DC. /
Jag. Deeptiman and SI/CM Pramod
Kumar

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed by the petitioners with the following prayers:

"In these facts and circumstances of the case, it is most respectfully prayed that this Hon'ble Court may be pleased to:

a. Issue a writ of certiorari quashing the revised result dated 02.04.2019 whereby the respondents though finds the petitioners "Qualified (not qualified for next stage)" and wrongly disqualified the petitioners from Detailed Medical examination for the post of HC [CM],

b. Issue a writ of mandamus to the respondents to treat petitioners as successful candidates and accordingly in



view of the merit position and allowed the petitioners for medical examination;

c. Issue directions to the respondents to fill up the 15% vacancies of total vacancies of HC [CM] through LDCE candidates as per Recruitment Rules dated 04.07.2018.

d. Pass such other and further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. At the outset, we may state, out of five petitioners, three petitioners at Sr. No.1, 3 and 5 have been given appointment to the post of Head Constable (CM).

3. Insofar as the petitioner No.4, Shahanawaz Ali, is concerned, it is a conceded case that he does not meet the eligibility criteria.

4. The only issue which remains for consideration is in respect of petitioner No.2, i.e., Pushpendra Singh. We have been informed that the last cut-off marks for General Category candidate is 80, whereas petitioner No.2, i.e., Pushpendra Singh secured 77 marks. The merit list has been placed before us. We find that one candidate namely Amit Kumar Rajoriya, even though got 80 marks, as he could not achieve the required typing speed was not appointed. Further, Ram Karan, who secured 78 marks, was also not appointed.

5. In other words, persons above the petitioner No.2, who secured more marks could not be appointed and as such he has no right of appointment over them.

6. The only submission made by the learned counsel for the petitioners is that the vacancies under the UR category should be more than 7. We find that a specific stand has been taken by the respondents



in paragraph 2 of the reply affidavit filed on February 17, 2022, wherein the following has been stated:

“2. That by way of application under reply, the Applicant has sought direction to the respondents to issue Offer of Appointment to Petitioner no. 5 – Shri Phool Chand Jakhar. It is apposite to note that present petition is filed by a total of 5 petitioners who have participated in the recruitment for the advertised vacancies in the Unreserved Category of 'Head Constable/Combatant Ministerial (LDCE) (Limited Department Candidates only), ITBP'.”

7. The above shows, the petitioners having participated against seven vacancies advertised cannot claim, the vacancies should be more than seven.

8. In any case, we find that though the initial advertisement stipulated UR vacancies as seven, the same were reduced. It was contested by the learned counsel for the petitioner that the decrease in vacancies is arbitrary. Be that as it may, the respondents have revised the UR vacancies of LDCE quota from one to seven, that is, they have restored the original number of vacancies. No ground is made out to contend that the vacancies should be more than seven.

9. We find no merit in the petition, the writ petition and connected application are dismissed.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

FEBRUARY 14, 2024/aky