



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

% *Date of decision: January 18, 2024*

+ W.P.(C) 10001/2023

(19) MUKUL KUMAR & ANR Petitioners
Through: Ms. Saahila Lamba, Advocate.

Versus

UNION OF INDIA & ANR Respondents
Through: Mr. Rajkumar Yadav, Advocate
for UOI with Mr. A.K. Rawat, 2IC
(Commandant), BSF

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

SAURABH BANERJEE, J (ORAL)

1. The Director General, Border Security Force, i.e. respondent no.2 herein, on 20.08.2022, issued an advertisement for filling up of 736 posts of Head Constable (Radio Operator), of which, 269 posts were reserved for Economically Weaker Section [**EWS**] category. Though both of the petitioners applied for the post of Head Constable (Radio Operator) under EWS category and successfully cleared three stages of the examination as well, their names did not appear in the final merit list declared on 12.04.2023.

2. Being aggrieved, the petitioner no.1 alongwith other similarly situated petitioners, in the first round of litigation filed a petition before this Court under Article 226 of The Constitution of India being W.P.(C)



No.5585/2023, *inter-alia*, seeking setting aside of the result declared on 12.04.2023 as also publication of answer key for the OMR based examination, declaration of marks obtained by the petitioners and cut-off marks for all categories and re-examination of the case of petitioners therein for appointment to the post of Head Constable (Radio Operator). On the first hearing of the said petition, the respondents were directed to inform the petitioners of their score and show their OMR answer key alongwith the answer key prepared by the respondents. In response, this Court was apprised that a question therein was indeed found '*incorrect*'. Thus, the said writ petition was dismissed by this Court vide order dated 08.05.2023, *albeit*, with liberty to file afresh assailing the discrepancy found.

3. Thereafter, in the *second round of litigation*, the petitioner no.1 filed another petition before this Court under Article 226 of The Constitution of India being W.P.(C) No.6680/2023, *inter-alia*, seeking modification of the final result declared on 12.04.2023 for the post of Head Constable (Radio Operator) as also re-examination of his case. This Court, while disposing of the aforesaid writ petition, vide reasoned order dated 18.05.2023, directed the respondents to treat the said writ petition as a representation and also to decide the same by the Board of Officers within six weeks.

4. Thus, taking into account the discrepancy highlighted by the petitioner no.1, the respondent no.2, vide a speaking order dated 30.06.2023, observed that the above representation of the petitioner no.1 had no merit and that he ought to have contested the question within 3-7 days of the date of examination as also that the recruitment process was



already over with the selected candidates having joined Training Centres on 15.05.2022 for basic recruitment training.

5. Thereafter, in the *third round of litigation*, the petitioner no.1 alongwith another similarly situated petitioner, has filed the present petition under Article 226 of The Constitution of India, seeking quashing of the order dated 30.06.2023 passed by the respondent no.2 as also a direction to the respondents to appointment the petitioners to the post of Head Constable (Radio Operator) in Border Security Force [**BSF**] with all consequential benefits.

6. The learned counsel for the petitioners submits that the order dated 30.06.2023 passed by the Board of Officers is *ultra vires* to the Constitution of India as it is arbitrary and unfair, thereby violating the rights of the petitioners enshrined in Article 14 of the Constitution of India. He further submits that it is the case of the petitioners that as a question was found incorrect, considering the adjustments of marks, it was incumbent upon the respondents to award 2 marks to the petitioner no.1 and 2.25 marks to the petitioner no.2 and it would have, *ipso facto*, meant that the petitioners had qualified the examination. Learned counsel for the petitioners then submits that the petitioners have been challenging/ contesting the final merit list before this Hon'ble Court and in no manner should it be concluded that they are belated in challenging the same.

7. Upon issuance of notice, though the respondents have been duly represented and also contested the present petition, however, they have chosen not to file any counter affidavit and instead proceed with arguments.



8. The learned counsel for the respondents submits that the present petition is belated as the selected candidates are on the verge of finishing their training, so much so, the next batch is also ready for moving onto onward training. He then submits that even otherwise each of the non-selected candidates, including the petitioners herein, have already been accorded due credit of the additional marks for the incorrect question alongwith deductions, wherever necessary, by a body of experts. Based thereon, he lastly submits that despite that none of the petitioners have qualified as their individual marks are still below the minimum qualifying marks of the selected candidates.

9. In substantiation of the above, during the course of hearing, learned counsel for the respondents appearing alongwith the responsible officers of the respondent no.1 handed over the list of selected candidates for the post of Head Constable (Radio Operator), BSF in the EWS category, as also the revised list of all the non-selected candidates for the post of Head Constable (Radio Operator), BSF in the EWS category, wherein each of the petitioners have already been duly accorded due credit of the additional marks for the incorrect question alongwith deductions, wherever necessary, by a body of experts.

10. This Court, upon perusal thereof, finds that neither of the petitioners herein can be considered in the EWS category for the post of Head Constable (Radio Operator) because despite they having been accorded due credit of the additional marks for the incorrect question alongwith deductions, wherever necessary, by a body of experts, they do not qualify as their marks are well below the last selected candidate in the said list of selected candidates.



11. Besides that, a perusal of the list of selected candidates for the post of Head Constable (Radio Operator), BSF in the EWS category, also reveals that there are other candidates in the race for consideration in the EWS category for the post of Head Constable (Radio Operator) above the petitioners who have also not been considered despite being accorded due credit of the additional marks for the incorrect question alongwith deductions, wherever necessary, by a body of experts.

12. Additionally, it is an undisputed fact that as on date since the list of selected candidates for the post of Head Constable (Radio Operator), BSF in the EWS category, have since long been filled, thus, there is no vacancy left and furthermore, since the training of all such candidates is on the verge of completion and the next batch of the selected candidates for the same post(s) are also ready for proceeding to training and also since the petitioners have not qualified despite having already accorded due credit of the additional marks for the incorrect question alongwith deductions, wherever necessary, by a body of experts, the petitioners herein are not in the zone of consideration. As such, in the opinion of this Court, the present petition is liable to be dismissed, more so, when it will tantamount to disturb the existing list, the seniority and will have huge ramifications. This Court is also of the view that the present petition is belated and allowing the same will most likely cause unnecessary administrative hurdles for no good reasons. It is, thus, inconsequential for this Court to allow the present petition at this belated stage when much water has flown under the bridge.

13. Moreover, this Court is dealing with a case wherein the respondents have duly given the accreditation to each of the non-selected



candidates including the petitioners herein after fairly admitting their mistake and it is despite thereto that none of the petitioners have been able to qualify for the post of Head Constable (Radio Operator), BSF in the EWS category.

14. Lastly, and even otherwise under the facts and circumstances involved as also as per the settled law, nobody can have a vested right of appointment [In Re.: *Jitendra Kumar and Ors. vs. State of Haryana* (2008) 2 SCC 161, *Ram Pravesh Singh and Ors. vs. State of Bihar* (2006) 8 SCC 381 and *Union of India and Ors. vs. Hindustan Development Corporation and Ors.* (1993) 3 SCC 499]. Likewise, none of the petitioners can have a vested right or legitimate expectation for being considered to the said post of Head Constable (Radio Operator), BSF in the EWS category, merely because there is a likelihood of them being in the zone of consideration, which, even otherwise, in view of the aforesaid discussions, have since been dispelled.

15. For the afore-going analysis and the reasoning therewith, as also the settled position of law, this Court finds no merit in the present petition.

16. Accordingly, the present writ petition is dismissed with no order as to costs.

SAURABH BANERJEE, J

V. KAMESWAR RAO, J

JANUARY 18, 2024

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