



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

% *Date of decision: May 01, 2024*

+ W.P.(C) 10597/2023 & CM APPL. 41151/2023

(63) RAVI KUMAR ORS.

..... Petitioners

Through: Mr. Jaydip Pati, Adv.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Farman Ali, SPC with Ms. Usha
Jamnal and Mr. Krishan, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

V. KAMESWAR RAO, J. (ORAL)

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

“A. Issue a Writ of Mandamus directing the Respondents to carry forward the list of qualified Petitioners for the next vacancy year for promotion to fill up the vacant post of ASI till they are promoted and modify the letter dated 05.04.2023 including the names of the Petitioners to fill up the vacant posts of ASI.

B. Pass an order staying the examination scheduled to be held on 04.09.2023 as per the Notification dated 04.05.2023.

C. Pass any other appropriate order / direction which this Hon'ble Court may deem fit and proper.”

2. The case of the petitioners is that they were appointed in Central



Reserve Police Force ('CRPF', for short) on the post of Head Constable/Min. ('HC/M', for short), in the year 2015 or before that. In 2006, a policy for departmental examination for promotion to the post of Assistant Sub Inspector/Min. ('ASI/M', for short) was published by the respondent No. 2. As per the said policy, the ASI/M departmental examination will be held every year. However, the list of qualified candidates for one vacancy year will not be carried forward for next vacancy year. On May 11, 2012, paragraph 9.15 (2) and 9.16 (2) of the CRPF Establishment Manual, 1976 ('Manual of 1976', for short) was amended, whereby the respondent No.2 decided that the ASI/M departmental examination will be held every year and the list of qualified candidates, will be carried forward to the subsequent year till they are promoted.

3. As per the Recruitment Rules, HC/Ms who have completed three years of qualifying service are eligible to participate in the departmental examination for promotion to the post of ASI/M. Since the petitioners were appointed during 2015, all of them were eligible to participate in departmental examination for promotion to the post of ASI/M in the year 2018. But, no departmental examination for such promotion was conducted by the respondents till 2022.

4. On February 03, 2022, the respondent No.2 published a notification for conducting the departmental examination for promotion to fill 25% posts of ASI/Ms. On September 22, 2022, the respondent No.2 amended paragraph 9.16 of the Manual of 1976 to state that the name of the list of qualified candidates shall not be carried forward to the next vacancy year or till they are promoted and examination shall be held every year, and once the vacancies are filled from the list of qualified candidates, the names of



rest of the qualified candidates shall not be carried forward and they have to appear and clear the examination again whenever it will be conducted by the respondent No.2.

5. On September 28, 2022, the respondent No.2 issued a notification for conducting the departmental examination for promotion to the post of ASI/M, in which, it was stated in the paragraph 5 (ii) of the notification that the list of qualified candidates in the examination shall not be carried forward.

6. The examination was held on October 28, 2022, in which all the eligible HC/Ms including the petitioners participated. Thereafter, result for the examination was declared by the respondent No. 2 vide office order dated March 29, 2023, in which total 511 HCs/Ms including the petitioners were declared '*qualified*'. The result was published and the name of the qualified candidates in the examination was declared for the departmental promotion to the post of ASI / Ms vide office order dated March 29, 2023.

7. According to learned counsel for the petitioners, the notification dated February 3, 2022, clearly stated that the names of the qualified candidates shall be carried forward to the next vacancy year and there was no requirement to sit in the examination process. The amendment dated September 22, 2022 having been issued much later, the same shall not govern the notification dated February 3, 2022.

8. He states, this signifies that the petitioners having applied under paragraph 9.16 of the old rule of the Manual of 1976 (Corrected upto 2012) which provides list of qualified candidates shall be carried forward to the next vacancy year or till they are promoted, the same need to be implemented in favour of the petitioners.



9. He states that, after the declaration of the result, the respondent No.2 issued a list of 108 candidates/HC/Ms for considering their candidature by the DPC, which did not include the name of the petitioners. So, in other words, the qualified candidates including the petitioners were not included in the list for consideration for promotion to fill up the vacancies. The resultant effect is that the petitioners have to sit in the next examination, if they have to be promoted, this according to the counsel is arbitrary.

10. He states that the petitioners made representation on April 16, 2023, which was rejected on June 01, 2023, which according to learned counsel for the petitioners is without any application of mind.

11. On the other hand, Mr. Farman Ali counsel for the respondent would contend that the procedure for filling up the vacancies for the years 2022, 2023 and 2024 is distinct and cannot be compared with that of the previous years. He states that, thereafter amendment was brought in the following manner to paragraph 9.16 of the Manual of 1976, which contemplates that the names shall not be carried forward:

<i>For</i>	<i>Read</i>
<i>Para 9.16(2)</i> <i>The ASI(M) departmental examination will normally be held every year. The list of qualified candidates will be carried forward to subsequent years, till they are promoted.</i> <i>In case there are sufficient persons in</i>	<i>Para 9.16(2)</i> <i>The ASI (M) departmental examination will normally be held every year. However, the selection of the qualified candidates will be limited to the share of departmental examination quota in the vacancies of following vacancy</i>



<i>the qualified list, for filling up the existing and anticipated vacancies, the DG may, in writing dispense with holding of the departmental examination in a particular year.</i>	<i>year. Thus, the list of qualified for one vacancy year will not be carried forward to next vacancy year.</i>
<i>Para 9.16(4)(A) HC(M) with at least 3 years continuous service in the force in their respective grades as on 31st March of the year in which examination is held.</i>	<i>Para 9.1 (4)(a) HC(M) with at least 3 years continuous service in the force in their respective grades as on 31st December of the preceding year in which examination is held.</i>
<i>Para 9.16(10) Irrespective of their inter-se-seniority, HC(M) passing the Examination on earlier dates will be considered for promotion earlier than those who pass the test subsequently</i>	<i>Delete</i>

(emphasis supplied)

12. He states that pursuant thereto the examination was held wherein the petitioners also appeared. Though, the petitioners qualified the written examination but their names could not be considered for further process as they were much below in the merit list as only 83 vacancies were reserved under the departmental examination quota.

13. He states that, in terms of the notification dated September 28, 2022, after the amendment to paragraph 9.16 of the Manual of 1976, the examination in terms of earlier notification dated February 03, 2022, was not



held rather it was cancelled. On September 28, 2022, fresh applications were called for with a clear stipulation that list of candidates will not be carried forward. This is a sufficient indication to all the candidates that, if they are not promoted in the given year they have to appear for promotion next time and that their names will not be carried forward.

14. He submits, the petitioners without demur had appeared in the examination process held on October 28, 2022, and having not come within the 83 available vacancies, the petitioners are estopped from claiming the benefit of stipulation which existed prior to the amendment dated September 22, 2022.

15. Mr. Ali relies on the following judgments in support of his submissions:

- a. State of Uttar Pradesh v. Karunesh Kumar and Others, 2022 SCC OnLine SC 1706;*
- b. State of Karnataka v. Bharathi So., 2023 SCC OnLine SC 665;*
- c. Vallampati Satish Babu v. State of A.P., (2022) 13 SCC 193;*
- d. Bihar State Electricity Board v. Suresh Prasad & Ors., (2004) 2 SCC 681;*

16. Having noted the submissions made by counsel for the parties, it may be stated that, though a notification dated February 03, 2022, was issued, pursuant to which, the petitioners had applied for promotion under LDCE quota, to the post of ASI/Ms, but the fact remains that the selection process pursuant to the said notification was cancelled on May 19, 2022, and a fresh notification was issued with a clear stipulation that the list of successful



candidates will not be carried forward and the petitioners having participated in the selection process cannot seek the prayers as sought by them in the petition.

17. The submission that the petitioners having applied pursuant to the notification dated February 03, 2022, when in terms of paragraph 9.16 (2) of the Manual of 1976, the names of the successful candidates need to be carry forward and as such, the petitioners' names need to be carry forward is concerned, the same is unmerited, for the reason already stated above, and also, that, mere submission of the application pursuant to notification dated February 3, 2022, shall not entitle the petitioners the benefit of the carry forward. It is only when, they get qualified and could not be promoted because of lack of vacancies, they get the benefit. But in this case on the date of declaration of result on March 29, 2023, paragraph 9.16 (2) as amended on September 22, 2022, being in place, shall not result in carry forward of the names of the petitioners to the next promotion year under LDCE quota.

18. We agree with the reliance placed by Mr. Ali on the judgments referred to above. The Supreme Court in *State of Uttar Pradesh (supra)* has in paragraphs 23 to 25 and 30, held as under:-

“23. The aforesaid principle of law applies to the present case. It is not open to the candidate to contend to the contrary so that he can have the best of both sets of rules. Not only is there a difference in the mode of selection, but also in the constitution of recruiting authority as well. It is pertinent to note, that under the 2015 Rules, there is no such procedure for preparing a waiting-list, as the Respondents seek to contend.”

24. We have considered the aforesaid submissions to appreciate the arguments made. Even under the 1978 Rules,



we do not find the existence of any waiting-list in operation to be filled up at a later point of time, when a certain candidate does not join. Such a list has been provided under Rule 15(4) of the 1978 Rules only to facilitate the appointing authority to fill up the vacancies. Thus, after the vacancies are filled up, the door for the other candidates gets closed.

25. The same is the position under the 2015 Rules by which the Commission is required to send the merit list alone to the appointing authority which it actually did and in case of non-joining, the vacancies are carried forward to the next process of selection, as has been rightly done by the authority in the present case. An employer shall always have adequate discretion with an element of flexibility in selecting an employee. Interference can only be made when a selection is arbitrary or contrary to law, which we do not find to be the case in the present matter. The approach of the High Court is like a visually impaired person looking for a black cat in a dark room when the cat itself is not there.

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*30. The aforesaid decision, in our considered view, may not have any application to the case on hand. The effect of the relevant rules is not considered therein, as the select list shuts the door to everyone other than the selected candidates. The aforesaid decision was in the context of the 1999 GO, however, as we have held that the 1978 Rules do not apply to the present recruitment, the aforesaid decision would not be of any service. Further, it is settled law that there is no vested right of the unsuccessful candidate to insist upon their consideration, in the absence of any such rule requiring for the preparation of a waiting-list. This Court in the recent decision in *Vallampati Sathish Babu v. State of A.P.* (Civil Appeal No. 2473 of 2022) has held that:*

“7.4 In the present case, the final selection list of 33 candidates was prepared. Thereafter all the selected candidates were called for counselling, but one of the candidates did not report for counselling. The aforesaid event took place after the final selection list was



prepared and published. As there was no requirement of preparation of a waiting list, the appellant claiming to be the next in the merit cannot claim any appointment as his name neither figured in the list of the selected candidates nor in any waiting list as there was no provision at all for preparation of the waiting list. Sub-rule (5) of Rule 16 is very clear. Therefore, the post remained unfilled due to one of the candidates in the final list did not appear for counselling and/or accepted the employment. Hence, that post has to be carried forward for the next recruitment.

7.5 The appellant could have claimed the appointment to the post which remained unfilled provided there is a provision for waiting list as per the statutory provision. In absence of any specific provision for waiting list and on the contrary, there being a specific provision that there shall not be any waiting list and that the post remaining unfilled on any ground shall have to be carried forward for the next recruitment. The appellant herein, thus, had no right to claim any appointment to the post which remained unfilled.

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8.1 An identical question came to be considered by this Court in the case of Suresh Prasad (*supra*). In the said decision, it is specifically observed and held that even in case candidates selected for appointment have not joined, in the absence of any statutory rules to the contrary, the employer is not bound to offer the unfilled vacancy to the candidates next below the said candidates in the merit list. It is also further held that in the absence of any provision, the employer is not bound to prepare a waiting list in addition to the panel of selected candidates and to appoint the candidates from the waiting list in case the candidates from the panel do not join. The aforesaid decision of this Court has been subsequently followed by the Andhra Pradesh High Court in the case of Samiula Shareef (*supra*)”



(emphasis supplied)

19. Similarly, in the case of **Bihar State Electricity Board**, the Supreme Court has in paragraph 6, held as under:

“6. We find merit in this appeal preferred by the Board. In the case of Shankarsan Dash v. Union of India [(1991) 3 SCC 47: 1991 SCC (L&S) 800: (1991) 17 ATC 95] it has been held by this Court that even if number of vacancies are notified for appointment and even if adequate number of candidates are found fit, the successful candidates do not acquire any indefeasible right to be appointed against existing vacancies. That ordinarily such notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. It was further held that the State is under no legal duty to fill up all or any of the vacancies unless the relevant recruitment rules indicate. In the present case we are not shown any such relevant recruitment rules. Moreover, there is no merit in the contention advanced on behalf of Respondents 1 to 7 that the appellant had violated the order of the High Court dated 23-3-1994 by preparing a list of only 22 candidates instead of filling up 50% of the alleged 161 vacancies. In this connection, the impugned judgment of the High Court has recorded a finding of fact that the Board has rightly reduced the number of vacancies to 50 and to that extent claim of the writ petitioners was rejected. In the impugned judgment, the High Court found that 50 vacancies were required to be filled up, 25 against the advertisement dated 15-12-1986 and 25 against advertisement dated 15-11-1992. However, according to the impugned judgment, the appellant ought to have made appointments by preparing a further panel for 18 vacant posts which became vacant when the earlier 18 selected candidates opted out. It is this part of the reasoning of the High Court, which is fallacious.”

(emphasis supplied)



20. Mr. Jaydip Pati, relies upon the judgment of the Supreme Court in the case of *N.T. Devin Katti and Others v. Karnataka Public Service Commission and Others*, (1990) 3 SCC 157. The said case has no applicability to the facts of the present case.

21. In view of our above discussion, we do not see any merit in the petition. The same is dismissed. No cost.

CM APPL. 41151/2023

Dismissed as infructuous.

V. KAMESWAR RAO, J

RAJNISH BHATNAGAR, J

MAY 01, 2024/ds