



\$~16

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) 11334/2021 & CM APPL. 34903/2021 –Int. dir.

INDRAJEET KUMAR SINGH

.....Petitioner

Through: Mr. Prabhat Kumar Rai, Adv.

versus

UNION OF INDIA & ANR.

.....Respondents

Through: Ms. Shiva Lakshmi, CGSC for UOI

SI Shrabarta Sarkar, SSB

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

21.08.2024

%

1. The petitioner, who is serving as a Constable (GD) in the Sashastra Seema Bal (SSB) and has been declared unsuccessful in the Limited Departmental Competitive Examination (LDCE) held on 22.11.2020 for the post of Sub-Inspector (SI), General Duty (GD), has approached this Court under Article 226 of the Constitution of India seeking the following reliefs:

“a. Issue writ, order or direction in the nature of mandamus or any other appropriate writ or direction commanding the respondents to prepare the select list 16.08.2021 as fresh, in accordance with the office memorandum dated 01.03.2019 by considering the name of only those candidates who are eligible being Constable (General Duty) to Assistant Sub-Inspector (General Duty) and Constable (Tradesman) of SSB;

b. Pass such other or further orders as this Hon' ble Court deems fit an proper in facts and circumstances coming to the notice during the pendency this petition.”

2. Learned counsel for the petitioner contends that the petitioner was



placed at serial no. 1 in the non-select list of candidates qua the aforesaid LDCE only because the respondents wrongly included the name of one Mr. Gautam Tiwari, who had already resigned from service on 27.07.2021 before the select list was issued on 16.08.2021. His plea being that if the name of Mr. Gautam Tiwari were to be excluded from the select list, the petitioner would automatically stand selected for promotion to the post of SI(GD), having been placed at serial no.1 in the 'non-select' list of candidates. He, therefore, prays that the respondents be directed to correct the said error by including the name of the petitioner in the select list and promote him as a SI (GD) with all consequential benefits.

3. On the other hand, learned counsel for the respondents seeks dismissal of the writ petition by contending that the name of Mr.Gautam Tiwari was correctly included in the select list as despite having resigned, he still had a lien in the SSB for a period of two years. Furthermore, she submits that all the vacancies of SI (GD) from the LDCE quota, now stand filled by candidates from other quotas and therefore, it would not be possible to accommodate the petitioner at this belated stage.
4. Having considered the submissions of learned counsel for the parties and perused the record, we find that the respondents do not deny that the resignation of Mr. Gautam Tiwari had been accepted on 27.07.2021 and consequently, his name stood struck off from the strength of the SSB on the said date. It is, therefore, evident that when the select list was issued on 16.08.2021, Mr.Gautam Tiwari was no longer in service with the SSB. In these circumstances, once it is



undisputed that the name of Shri Gautam Tiwari stood struck off from the strength of SSB much prior to issuance of the select list, there was no justification on the part of the respondents to include his name therein. Even if, we were to accept the respondents' plea that his lien had to be retained for two years, in our view the said lien could only be on the post on which he was serving when he resigned and not on the promotional post of SI(GD).

5. Taking into account the admitted position that had the name of Mr. Gautam Tiwari not been included in the select list, the petitioner would have found a place in the said list, we are of the view that the petitioner's prayer for inclusion of his name in the select list deserves to be accepted. We have also considered the respondents' plea that since no interim stay was granted by this Court, the vacancies of SI(GD) notified for the LDCE 2018 stand filled and therefore, the petitioner cannot be promoted as SI (GD). We, however, find no merit in this plea as we are of the considered opinion that the petitioner, who has been before this Court since October 2021, cannot be deprived of his rightful promotion only because the respondents chose to divert the vacancy under the LDCE quota, to which the petitioner was rightfully entitled, to some other quota.
6. We are, therefore, of the view that in the peculiar facts of the present case, the petitioner is entitled to succeed. The writ petition is, accordingly, allowed by setting aside the select list dated 16.08.2021, to the extent it includes the name of Mr. Gautam Tiwari and excludes that of the petitioner. The respondents are directed to include the name of the petitioner in the select list issued on 16.08.2021 and grant



him promotion as SI(GD) along with notional pay fixation w.e.f. the date when the other candidates placed in the select list dated 16.08.2021 were promoted as SI (GD). The petitioner will, however, not be entitled to claim any back-wages and will be entitled to the salary of SI (GD) only from the date he assumes charge against the said post. The exercise in terms of this order be conducted within a period of four weeks.

7. We, however, make it clear that in case the respondents have erroneously promoted any candidate from any other quota as SI(GD) against the vacancy reserved for LDCE, it will be open for them to adjust the said candidate against the next available vacancy without demoting him at this stage.
8. The writ petition, alongwith the pending application, is disposed of in the aforesaid terms.

REKHA PALLI, J

SHALINDER KAUR, J

AUGUST 21, 2024/acm