



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

% *Date of decision: January 18, 2024*

+ W.P.(C) 10567/2023
(20) SAURABH

..... Petitioner

Through: Ms. Saahila Lamba, Advocate.

Versus

UNION OF INDIA & ANR

..... Respondents

Through: Ms. Nidhi Banga, Sr. PC with Mr.
Nishant Kumar, Advocate for UOI
with Mr. A.K. Rawat, 2IC
(Commandant), BSF

AND

+ W.P.(C) 11265/2023

(21) ASHOK KUMAR

..... Petitioner

Through: Mr. Amit Kaushik, Advocate.

Versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Akash Verma, Sr. PC with Mr.
Abhishek Khanna, GP 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)



CM APPL. 3193/2024 (for condonation of delay) in W.P.(C) 10567/2023

The present application has been filed by the respondents seeking condonation of delay in filing the counter affidavit.

For the reasons stated in the application, the same is allowed and the delay is condoned and the counter affidavit is taken on record.

Application stands disposed of.

CM APPL. 43866/2023 (exemption) in W.P.(C) 11265/2023

Allowed, subject to just exceptions.

The application is disposed of.

W.P.(C) 10567/2023 & W.P.(C) 11265/2023

1. Since both the petitioners in the aforesaid petitions are aspirants desiring to join the respondent no.2 as Head Constable (Radio Mechanic), and both the petitions involve similar issues, raise similar contentions with similar prayers, therefore, this Court after hearing the learned counsels for the petitioners, is proceeding to decide them by this common judgment.
2. As per the common brief background involved, the Director General, Border Security Force, i.e. respondent no.2 herein, on 20.08.2022 issued an advertisement for filling of 248 posts of Head Constable (Radio Mechanic), of which, 64 posts were reserved for Other Backward Castes [**OBC**] category. Though the petitioner in each of the two petitions applied for the post of Head Constable (Radio Mechanic) under the OBC category and successfully cleared three stages of the examination, their names did not appear in the final merit list declared on 12.04.2023.



3. Being aggrieved, the petitioners 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 Mechanic). 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.

4. Thereafter, the petitioners alongwith other similarly situated petitioners, in the second round of litigation, filed another petition before this Court under Article 226 of The Constitution of India being W.P.(C) No.7488/2023 *inter-alia* seeking modification of the final result declared on 12.04.2023, direction to the respondents to get correctness of answers to two questions checked and details of the last selected candidate in the OBC category. This Court, while disposing the aforesaid petition vide order dated 26.05.2023, directed the respondents therein, to treat the said writ petition as a representation as also to decide the same by a Board of Officers, '*consisting of Mathematics and Science experts*', within six weeks.



5. Thus, taking into account the discrepancy highlighted by the petitioners, the respondent no.2, vide a speaking order dated 30.06.2023, observed that the representation had no merit and the petitioners 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.

6. Thereafter, in the *third round of litigation*, the petitioners have filed the present petitions under Article 226 of The Constitution of India, seeking quashing/modification of the order dated 30.06.2023 passed by the respondents as also a direction to the respondents to appoint the petitioners to the post of Head Constable (Radio Mechanic), Border Security Force with all consequential benefits.

7. The learned counsels for the petitioners submit that the order dated 30.06.2023 of the Board of Officers is *ultra vires* to the Constitution as it is arbitrary and unfair, thereby violating the rights of the petitioners enshrined in Article 14 of the Constitution of India. It is their case that as answers, in the answer key to two questions were found incorrect, it was incumbent upon the respondents to accordingly award marks to the petitioners and it would have *ipso facto* meant that the petitioners had qualify the examination. Learned counsels 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.

8. Upon issuance of notice, the respondents in W.P.(C) 10567/2023 filed a counter affidavit alongwith an application for condonation of delay



which has been allowed hereinabove. It is the case of the respondents therein that the petition is liable to be dismissed as the representation of the petitioner was already rejected vide a reasoned speaking order dated 30.06.2023 wherein it was clearly stated that the decision of the department in all matters relating to eligibility, acceptance or rejection of the application etc. will be final and binding. Further, even if the error in the written examination is rectified at this stage, it shall not affect the merit list as the benefit of the additional marks shall be given to all the candidates and thus the petitioner will still not qualify.

9. The respondents in W.P.(C) 11265/2023 though have been represented, but, have chosen not to file the counter affidavit and have proceeded with the arguments.

10. 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 the Board of Officers found the answers to question 47 of Set A and question 52 of Set B correct and answers to question 70 of Set A and question 75 of Set B incorrect. Based thereon, he lastly submits that despite thereto none of the petitioners have qualified as their individual marks are still below the minimum qualifying marks of the selected candidates and benefit of the same cannot be given as the challenge is belated.

11. 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 Mechanic), BSF in the OBC category, as



also the revised list of all the non-selected candidates for the post of Head Constable (Radio Mechanic), BSF in the OBC category, wherein each of the petitioners have already been duly accorded due credit of the additional marks for the incorrect questions alongwith deductions, wherever necessary, by a body of experts.

12. This Court, upon perusal thereof, finds that neither of the petitioners herein can be considered in the OBC category for the post of Head Constable (Radio Mechanic) because despite they having been accorded due credit of the additional marks for the incorrect questions 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. Moreover, as per the list of overall candidates to be considered in the OBC category for the post of Head Constable (Radio Mechanic), there are other candidates in the race for consideration in the OBC category for the post of Head Constable (Radio Mechanic) 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. Thus, none of the petitioners can be considered under the facts and circumstances involved.

13. Additionally, it is an undisputed fact that as on date since the list of selected candidates for the post of Head Constable (Radio Mechanic), BSF in the OBC 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 questions 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 petitions are 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 petitions are 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 petitions at this belated stage when much water has flown under the bridge.

14. 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 Mechanic), BSF in the OBC category.

15. 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 Mechanic), BSF in the OBC 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.

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

17. Accordingly, the present writ petitions are dismissed with no order as to costs.

18. A copy of this judgment be kept in other petition.

SAURABH BANERJEE, J

V. KAMESWAR RAO, J

JANUARY 18, 2024

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