



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

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Date of decision: April 25, 2024

+ W.P.(C) 12239/2023, CM APPLs. 48104/2023 & 53315/2023

(66) NIRMAL UPADHYAY

..... Petitioner

Through: Mr. S.S. Pandey, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Vineet Dhanda, CGSC for
R-1, R-3 & R-4/IOI

Mr. Ravinder Aggarwal, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE AMIT BANSAL

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 53315/2023

This is an application filed by the petitioner for taking on record certain additional documents.

For the reasons stated in the application, the same is allowed.

The application is disposed of.

W.P.(C) 12239/2023

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

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



(a) Issue appropriate Writ including the Writ of Certiorari calling for the records based on which the Respondents have invoked Rule 8 of Rules of CAPF (ACs) 2021 and cancelled the candidature of the Petitioner in terms of impugned Order dated 11.08.2023 and thereafter quash the same.

(b) Issue a writ of mandamus directing the Respondents to issue appointment Letter to the Petitioner by considering his name for Force Allocation as per his merit based on the result of CAPF (ACs) 2021 with all consequential benefits as applicable without taking into consideration his previous selection in any manner in the peculiar facts and circumstances of the case.

(c) Pass any other and such other further orders as this Hon'ble Court may deem fit, just and proper in the present facts and circumstances of the case.

(d) Issue any other/further direction as this Hon'ble Court may deem fit in the facts and circumstances of the case."

2. In effect, the petitioner is challenging the letter dated August 11, 2023, wherein paragraphs 2 and 3, the respondent No.2 / Union Public Service Commission ('UPSC', for short), has stated as under:

"2. In this regard it is stated that you have already appeared in the CAPF (ACs) Exam, 2020 and have been finally qualified in the same and recommended by the Commission for appointment to the post of Assistant Commandant. Also, you have been allocated Force i.e. BSF. The Nodal Authority has already given you an Offer of appointment vide their letter dated 13.04.2023. Hence, your request for consideration of your candidature for CAPF (ACs) Examination, 2021 has not been accepted and the Commission has decided to cancel your candidature for the CAPF (ACs) Examination, 2021.



3. You are, therefore, requested to report to Directorate General, Border Security Force immediately.”

3. It is the case of the petitioner and so contended by Mr. S.S. Pandey, learned counsel appearing for the petitioner that the petitioner had applied for the post of Assistant Commandant ('AC', for short) in the Central Armed Police Forces ('CAPF', for short) for the year 2020 on the basis of the advertisement issued on August 18, 2020. Subsequently, the petitioner was called upon to appear in the written examination which was held on December 20, 2020 and the result of which was declared on February 8, 2021, wherein the petitioner was declared as qualified.

4. It is his submission that while the petitioner was yet to be called for the interview, the UPSC issued fresh advertisement for CAPF (ACs) 2021 on April 15, 2021 and since the petitioner was not sure of his final selection and the fact that the examination of any subsequent year would have made him ineligible to appear being overage, he filled the form of CAPF (ACs) 2021, as well in which he clearly mentioned about the fact that he had already appeared for CAPF (ACs) 2020, written examination and the interview and also that final recommendation of appointment is awaited.

5. He submits that while waiting for the interview call for CAPF (ACs) 2020, the petitioner got an intimation to appear for the written examination for CAPF (ACs) 2021, which got scheduled for August 08, 2021 and the petitioner, accordingly appeared for the same. Moreover, even when no intimation was available for interview of CAPF (ACs) 2020, the result of CAPF (ACs) 2021, written examination was declared



and the petitioner was again shortlisted for interview which though was initially scheduled on November 9, 2022 but got delayed due to pending writ petition being W.P.(C) 5877/2022 before this Court in which stay was granted on the process for recruitment.

6. It is his case that during this period, the petitioner finally received intimation qua interview of CAPF (ACs) 2020, scheduled on December 16, 2021. Whereas, the final result of the same was declared on January 04, 2022, which did not contain the name of the petitioner and hence an impression was created that the petitioner has not qualified the CAPF (ACs) 2020.

7. However, the UPSC by issuance of a subsequent order dated June 08, 2022, notified the Merit Order Result (Reserve List) in which the name of the petitioner was also included but his candidature along with few other candidates was kept provisional without disclosing any reasons for the same. Moreover, it was also not clarified as to whether the candidates kept in the Reserve List / Provisional List, will be finally selected and sent for training by giving any time line for the same.

8. He submits that whilst the respondent No. 4/ BSF, already commenced the training upon induction of the candidates who joined BSF with effect from September 26, 2022, out of CAPF (ACs) 2020, the petitioner received no intimation, till September 29, 2022 at 7.25 PM, whereby vide letter dated September 29, 2022, he was informed for the first time that he has to submit his Income Criteria by submitting Income and Asset Certificate for the financial year 2019-2020, which the petitioner submitted the very next day on September 30, 2022 itself.



9. Thereafter, the petitioner did not hear anything regarding issuance of the appointment letter as well as instructions to join the training as given to all the candidates who were upgraded from the Reserve List to the Main List and had already joined the training from September 26, 2022 or subsequent days.

10. According to Mr. Pandey, while the petitioner got no intimation about the final decision regarding confirmation of the petitioner from the Reserve List, he received an intimation to appear for the interview on April 13, 2023 for CAPF (ACs) 2021, when in normal course any candidate who is likely to be issued any appointment letter based on any previous selection are intimated about the same and are not called for the interview for the subsequent examination as happened in few cases. However, in the case of the petitioner, he did not get any such intimation which made him believe that he has not been finally selected in his previous examination.

11. He submits that the petitioner finally appeared for the interview of CAPF (ACs), 2021 on April 13, 2023 and at that stage itself, i.e., after seven months of the conduct of training qua CAPF (ACs) 2020, he received the letter dated April 13, 2023, on April 18, 2023, intimating him about his selection as AC in BSF, with a direction to accept the offer of appointment and join on May 15, 2023 for the purpose of training with Course Sr. No.48.

12. It is his submission that as in the meantime, the petitioner had accepted the job of Assistant Audit Officer on December 05, 2022, he sought extension from the respondents vide letter dated May 12, 2023, to join as asked by the respondents vide letter dated April 13, 2023.



Whereas, the petitioner received a reply vide letter dated June 01, 2023, whereby he was asked to join the Force, latest by June 27, 2023 with a clear stipulation that if he fails to join by that date, his candidature will be canceled.

13. It is in the interregnum i.e., on June 02, 2023, the UPSC issued the final result of CAPF (ACs) 2021, in which the petitioner was selected in the final list even as per his merit.

14. It is his case that while the petitioner was waiting for the issuance of appointment letter for CAPF (ACs) 2021, he received a letter from UPSC dated July 04, 2023, asking him to show cause as to why his candidature for CAPF (ACs) 2021, should not be cancelled, on the ground that he has violated Rule 8 of the Rules of CAPF Examination 2021 ('Rules', for short), which was absolutely uncalled for, as based on the facts stated above, the petitioner has not violated any such provision and the situation so created, was due to inordinate delay and inaction on the part of the respondents to follow clear and unambiguous instructions as well as schedule. The petitioner has also submitted his reply to the letter of the UPSC and clearly brought out that he has not violated any such condition as alleged in the said communication.

15. According to Mr. Pandey, while the petitioner was quite hopeful that UPSC would take a decision with an open mind in view of peculiar facts and circumstances of the case, most importantly, when Rule 8 of which reference has been made has no application in the present case and therefore a candidate who is selected for both the Examinations in the given circumstances could not have been



compelled to join any particular course disregarding all such aspects, the UPSC, vide impugned order dated August 11, 2023, cancelled the candidature of the petitioner for the CAPF (ACs) 2021 and proceeded to allocate the Force as per the merit in terms of CAPF (ACs) 2020.

16. Therefore, on the basis of the aforementioned facts and circumstances, it has been submitted by Mr. Pandey, that the petitioner be issued appointment letter by considering his name for Force Allocation as per his merit based on the result of CAPF (ACs) 2021 with all consequential benefits as applicable without taking into consideration his previous selection in any manner.

17. On the other hand, Mr. Ravinder Aggarwal, learned counsel appearing for the respondent No.2 / UPSC, at the outset, would submit that the present petition is totally misconceived and should be dismissed more particularly in view of Rule 8 of the Rules, which reads as under:

“8. A Candidate who has been finally selected on the basis of an earlier examination to the post of Assistant Commandants in any of the Forces participating in the Central Armed Police Forces (Assistant Commandants) Examination will not be eligible to appear at a subsequent examination for recruitment of Assistant Commandants in the participating Central Armed Police Forces.”

(emphasis supplied)

18. It is his submission that the petitioner has deliberately suppressed the relevant information which was required to be honestly disclosed by him at least immediately after the receipt of the communication dated April 13, 2023, whereby, he was offered



appointment as AC with the BSF w.r.t. to his recommendation for CAPF (ACs) Examination, 2020, through Reserve List.

19. It is also his submission that had the petitioner not suppressed the aforesaid relevant information, the UPSC would have taken the requisite steps before the completion of interviews on May 26, 2023. Moreover, had the UPSC been apprised of this aspect soon after the receipt of appointment order by the petitioner, Commission would not have included his name in the merit list at the time of declaring the final result on June 2, 2023.

20. He submits that all the appointments are initially provisional, until satisfactory completion of period of training. Moreover, the language of the Rule 8 speaks of final selection and not even the appointment. There is no doubt that the petitioner got finally selected for CAPF (ACs) 2020, at the time, when his name was included in the Reserve List of the said examination on June 8, 2022 and also when he was finally offered the appointment letter on April 13, 2023.

21. He also submits that there is no cause or grievance which can be raised by the petitioner after April 13, 2023, if not by June 8, 2022. As such, the writ petition has been filed after a period of 5 months from the date of offer of appointment and hence the same is clearly an abuse of process of Court and process of law as well. Hence, the same needs to be rejected.

22. In the rejoinder submissions, Mr. Pandey would submit that Rule 8 of the Rules, applies only on "*finally selected candidates*" on the basis of earlier examination to the post of ACs in any of the Forces participating in the CAPF (ACs) Examination.



23. According to him, the provisional selection does not mean final selection. He also refers to a case where one of the candidates viz. Satyam Mishra who had secured Sr. No.21 of Merit Order Result (Reserve List) 2020 of CAPF (ACs) 2020 was not awarded with a Final Merit Status and hence was opted out from the Final Merit List thereby not furnishing the joining letter. He submits that the petitioner had secured 22 in Merit Order Result (Reserve List) 2020 declared on June 08, 2022, which was exactly one rank subsequent to the Rank of Satyam Mishra. However, the petitioner received the offer of appointment by the BSF for AC (GD) 2020 dated April 13, 2023 on April 18, 2023 and the other candidate viz. Satyam Mishra despite being conferred the Rank of 21 in the Reserve List was not issued any joining letter, which confirms the averments made in the present petition that the name secured in the Reserve List does not result in the final selection of a candidate. Additionally, it has been stated that the candidate Satyam Mishra, has now again been selected in the Merit Order Result (Reserve List) 2021 of CAPF (ACs) 2021, at Sr. No.19 declared on October 06, 2023, which points out a clear demarcation of an inferred interpretation of Rule 8.

24. Mr. Pandey also submits that the petitioner while submitting Detailed Application Form ('DAF', for short) against the advertisement of CAPF (ACs) 2021, had disclosed by uploading the scanned copies of relevant certificates / documents in support of his eligibility that he had appeared with Roll No.3400929 in CAPF(ACs) 2020. So, the plea of the UPSC that the petitioner has suppressed the relevant information cannot be accepted.



25. In substance, it is the plea of Mr. Pandey that till the receipt of offer of appointment against CAPF (ACs) 2020, the appointment could not have been deemed to be fructified for the said examination and it is an admitted position that before the receipt of appointment letter in respect of CAPF (ACs) 2020, the petitioner had already appeared in the selection process for CAPF (ACs) 2021. In other words, it is his submission that while the petitioner was given extension till June 27, 2023 to join the said post in BSF, in the interregnum period i.e., on June 2, 2023, because of the declaration of the final result of the CAPF (ACs) 2021 and the fact that he was selected, the petitioner could not join on June 27, 2023. Hence, he states that Rule 8 has no applicability and the petitioner should be allocated service as per merit of CAPF (ACs) 2021.

26. Suffice to state no counter affidavit has been filed by the other respondents i.e., respondent Nos.1, 3 and 4. As the impugned action in question is primarily relatable to UPSC, we have also heard Mr. Vineet Dhanda, learned CGSC appearing for the said respondents.

27. Having heard the learned counsel for the parties and perused the record, the short issue which arises for consideration is whether the candidature of the petitioner in CAPF (ACs) 2021 could have been cancelled by the UPSC, in view of the fact that the petitioner had been given the offer of appointment in terms of CAPF (ACs) 2020, to the post of AC in the BSF.

28. Suffice to state that the facts as narrated above are not in dispute. We have already reproduced Rule 8 of the Rules, in paragraph 17 above, which clearly stipulates that a candidate who has been finally



selected on the basis of an earlier examination to the post of ACs in any of the Forces participating in CAPF (ACs) examination, will not be eligible to appear at a subsequent examination for recruitment of ACs in the participating in CAPF examination.

29. In the present case, the petitioner had appeared in the CAPF (ACs) 2020. It is an admitted fact that though the petitioner's name was initially put in the Reserve List, he was given the offer of appointment only on April 13, 2023, which was received by the petitioner on April 18, 2023. In the meantime, as the petitioner, for the reasons already advanced by Mr. Pandey and as noted above, had also applied for the CAPF (ACs) 2021, it so happened that on April 13, 2023, the petitioner had appeared for the interview scheduled for CAPF (ACs) 2021. So, in that sense, the petitioner had participated in all the stages of the selection process of CAPF (ACs) 2021 (before the receipt of offer of appointment), which he qualified and culminated in his selection in the final result announced on June 2, 2023, wherein, he got a better merit and a service of his choice. In other words, before the final culmination of the selection process with regard to CAPF (ACs) 2020, the petitioner had appeared for selection in CAPF (ACs) 2021.

30. In that sense, it cannot be strictly said that the petitioner stood finally selected in the earlier examination i.e., CAPF (ACs) 2020, to the post of AC, when before the receipt of offer of appointment against CAPF (ACs) 2020, on April 18, 2023, he had already participated / appeared in all the stages of subsequent CAPF (ACs) 2021; the last one being on April 13, 2023. Moreover, the petitioner having secured a better merit in the CAPF (ACs) 2021, resulting in the appointment in



the Force of his choice, we are of the view, in exercise of our powers under Article 226 of the Constitution of India in the facts of this case, on a *prima facie* interpretation of Rule 8, the prayer made need to be granted in favour of the petitioner.

31. Accordingly, the impugned order of the UPSC dated August 11, 2023 is set aside. The respondents are directed to issue offer of appointment to the petitioner on the basis of the merit of the CAPF (ACs) 2021. On appointment, his pay shall be fixed from the date when the candidates of CAPF (ACs) 2021 were appointed, but the fixation shall be notional. The aforesaid direction must be complied within a period of eight weeks from today.

32. The writ petition is disposed of. No Costs.

CM APPL. 48104/2023

Dismissed as infructuous.

V. KAMESWAR RAO, J

AMIT BANSAL, J

APRIL 25, 2024/aky