



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: March 22, 2024

+ W.P.(C) 14821/2022 & CM APPL. 45558/2022

PAWAN KUMAR

..... Petitioner

Through: Ms. Mehaak Jaggi, Adv.

versus

SASHASTRA SEEMA BAL

..... Respondent

Through: Mr. Raj Kumar, CGSC with
Mr. Abhishek Khanna, GP for UOI

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

V. KAMESWAR RAO, J

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

“(a) Issue an appropriate writ, order or direction thereby setting aside the letter no. 361/RC/SSB/AC(GD)/LDCE-2018/2021/4042-48 dated 23.08.2022 whereby the candidature of the Petitioner for the post of Assistant Commandant (GD), Sashastra Seema Bal has been rejected;

(b) Issue an appropriate writ, order or direction thereby directing the Respondent to approve the candidature of the Petitioner for the post of Assistant Commandant (GD), Sashastra Seema Bal;

(c) Allow the present writ petition with exemplary compensation, costs and litigation expenses in favour of the



petitioner; and

(d) Pass any such order or further orders as this Hon'ble Court may deem fit and proper in the interest of justice and in favour of the petitioner."

2. In substance, the petitioner is praying for consideration of his candidature for the post of Assistant Commandant (GD) in the Sashastra Seema Bal ('SSB', for short).

3. On November 26, 2012, the petitioner joined SSB and commenced training at Tejpur, Assam. On completion of his training, he was posted at Virpur, Bihar in the month of January, 2014 on the post of Sub-Inspector. Later in the month of April, 2018, he was transferred to Pilibhit, Uttar Pradesh. On June 05, 2018, he was promoted to the post of Inspector.

4. On April 22, 2022, SSB issued an advertisement for selection to the post of Assistant Commandant (GD) in Central Armed Police Forces ('CAPF', for short) through Limited Departmental Competitive Examination for the vacancy year 2018-2022. The eligibility condition for the appointment to the said post also included a candidate to have clean record of service as per Recruitment Rules prescribed by the concerned Force. In April, 2022, the petitioner had applied for the post of Assistant Commandant (GD).

5. It is his case that, he has an unblemished and uninterrupted service record and has not received any punishment during his service in the SSB. It is also his case that the Inspector General certified his Service Certificate that, "*there is no vigilance/disciplinary case either pending or contemplated*" against the petitioner.



6. On May 27, 2022, the Assistant Commandant (GD), SSB, Pilibhit received the name of the petitioner who had applied for the post of Assistant Commandant (GD) and the same was forwarded to check whether the petitioner had availed/not availed the chance for the post of Assistant Commandant (GD) through LDCE. In fact, on August 10, 2022, the Recruitment Branch of FHQ, all formations of SSB were asked to immediately reconcile service details and apprise about punishments awarded, if any, in respect of the 501 candidates as per list enclosed.

7. According to the petitioner, his name was at serial No.461 of the said list. On August 23, 2022, the letter issued by the Recruitment Branch, FHQ, was communicated to all formation of SSB, that the Director General, SSB, had approved the candidature in respect of 499 candidates to appear in the written examination, excluding the name of the petitioner. Aggrieved by this, the petitioner submitted a representation to the Inspector General but the same was not responded to which resulted in the filing of the present petition.

8. On the other hand, the case of the respondent is that the SSB was nominated as a Nodal Agency to conduct the LDCE for the post of Assistant Commandant (GD) for CAPFs. Reference has been made in the counter affidavit about the advertisement issued by the SSB on April 22, 2022, by circulating to all CAPFs. The FHQs, SSB, vide letter dated February 22, 2022 requested to all formations of SSB to obtain applications from eligible and willing candidates in the prescribed format from units under their control and forward them to FHQ along with DE/Vigilance clearance certificate from the appropriate authority.



A reference has been made to the eligibility conditions in the following manner:-

“The candidates should have completed four years of regular service as on 1st January of vacancy year in the rank of Sub-Inspector including period of training and have clean record of service as prescribed by respective Force.”

9. The petitioner had applied for the post which was forwarded to FHQ, SSB by FTR, HQ, Ranikhet along with a Service Certificate issued by the Head Office i.e., Commandant and Vigilance/Disciplinary Clearance Certificate issued on June 14, 2022 by IG Frontier Headquarters, Ranikhet.

10. It is the respondent's case that before allowing the candidates provisionally to appear in the written examination, which was scheduled on August 28, 2022, Unit Heads were requested to reconcile service details and apprise about punishment awarded, if any, in respect of the total applications of all 501 candidates. Thereafter, 49 Bn. SSB, Pilibhit intimated FHQ that 01 ROE charged under Section 26 of SSB Act, 2007, against the petitioner has been framed and charge sheet has been issued on July 14, 2022.

11. Therefore, the Record of Evidence ('RoE', for short) was pending, the candidature of the petitioner was not considered. A reference has been made to the DoP&T instruction that vigilance clearance shall be withheld if a charge sheet has been issued against the candidate in a disciplinary proceedings and proceedings are pending.

12. It is also stated that, a Court of Inquiry was constituted by detailing a Commandant Level Officer to investigate failure to adopt



prescribed procedure as per GFR for procurement of items under the MHA funds of the Unit for the financial year 2020-21, against the petitioner. Based on the said Court of Inquiry, a charge sheet was issued against the petitioner and RoE also ordered against the petitioner. Reference is also made to the representations made by the petitioner which were rejected.

13. The submission of learned counsel for the petitioner is that the rejection of the candidature of the petitioner for the post of Assistant Commandant (GD) is illegal as the advertisement itself stipulates the candidate to have clean record of service as per Recruitment Rules of the concerned Force. It is his case that, no punishment has been imposed against the petitioner in his entire service career and as such the record of the petitioner is clean, which is the prerequisite as per the advertisement. In fact, much reliance has been placed on the certificate issued by the Inspector General which states that there is no Vigilance/Disciplinary case pending or contemplated against the petitioner. Moreover, once a Service Certificate has been issued by the Inspector General and further, since no punishment has been awarded to the petitioner, the candidature of the petitioner ought not to have been rejected.

14. According to him, the rejection of the candidature of the petitioner is illegal and arbitrary and shall have serious consequences as it was his last chance to appear in the LDCE Exam due to his attaining the maximum age limit for the post.

15. Having heard the learned counsel for the parties, the short issue which arises for consideration is whether the respondent has rightly



rejected the candidature of the petitioner. The case of the respondent is primarily that the advertisement stipulates that the applicant should have completed four years of regular service as on 1st January of vacancy year in the rank of Sub-Inspector including period of training and should have clean record of service as prescribed by Recruitment Rules of the respective Force.

16. The advertisement dated April 22, 2022, issued by the Director General, SSB, was with respect to the appointment to the post of Assistant Commandant (GD) in all CAPFs through LDCE. An Office Memorandum was also issued by the Director General, SSB on the same date, primarily for internal circulation, stipulating as under:-

“Before forwarding of applications, the H.O.O. will also ensure that on the date of issuance of certificate, no DE/Vigilance case is either pending or contemplated against the candidate and he/she must have clean service record.”

17. The answer to the said stipulation in the office memorandum on behalf of the petitioner was that the Service Certificate issued by the appropriate authority has certified that there is no vigilance/disciplinary case either pending or contemplated against the petitioner. In other words, the case of the petitioner as contended by his counsel is that, once such a certificate is issued by Inspector General (the appropriate authority), and no punishment has been awarded to the petitioner, there was no occasion for the respondent to reject his candidature. The rejection of the petitioner’s candidature has far reaching consequences inasmuch as this is his last chance to appear in LDCE Examination.

18. We note that, a chargesheet was issued on July 14, 2022, much



after the service certificate was issued by the Inspector General in the manner depicted above. In other words, on the date when the application was forwarded there was no DE/vigilance enquiry pending and it is settled law that DE gets initiated only when a chargesheet is issued.

19. The issue is whether the DE/Vigilance enquiry was contemplated against the petitioner on June 14, 2022, when his application/service certificate was forwarded for being considered to the post of Assistant Commandant (GD). The answer is in negative because '*Contemplation*' must necessarily mean that, a decision has been taken by the competent authority on the file to initiate disciplinary proceedings against the petitioner. No such clarification has come on record, as to when exactly the disciplinary authority has decided to initiate disciplinary enquiry/vigilance enquiry against the petitioner. That becomes relevant only when the concerned decision on the file is signed. Based on a conjoint reading of the advertisement and OM dated April 22, 2022, issued by the respondent, a candidate must have clean record and there should not be any DE/vigilance case pending or contemplated against the candidate on the date of issuance of the certificate. In the present case, there is no material on record to hold that, a decision has been taken by the competent authority to initiate DE/vigilance case on/before, June 10, 2022. Therefore, it is difficult for this Court to conclude against the petitioner that such DE/vigilance case was pending.

20. So, appropriate for this Court is to remand the matter back to the respondent to ascertain/decide whether or not a vigilance case/DE



was pending or contemplated against the petitioner on the date of the petitioner's Service Certificate verification i.e., June 14, 2022. Thereafter, the respondent shall accordingly take a decision within a period of three weeks from today, as an outer limit, based on the decision the respondent shall proceed in accordance with law. The petition is therefore allowed in terms of the above. No cost.

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In view of the above, the same is dismissed as infructuous.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

MARCH 22, 2024*/ds*