

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 13.05.2025

DELIVERED ON: 13.05.2025

CORAM:
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
F.M.A. 1300 of 2022

Banty Sarkar
Vs.
Union of India & Ors.

Appearance:-

Mr. Dibyendu Chatterjee

Mr. Rahul Deb Goenka

Mr. Mainak Singha Barman

Ms. Satabdi Dasfor the appellant

Ms. Susmita Saha Duttafor the respondents

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal been filed by the writ petitioner challenging the order dated August 17, 2022 in W.P.A. 14652 of 2021. The said writ petition was filed by the appellant/writ petitioner for issuance of a writ of Mandamus to set aside and cancel the select list dated September 7, 2018 and to appoint him as Soldier General Duty for the recruitment process of July, 2018. The petitioner's claim is solely based upon the fact that he is the holder of NCC-C certificate and as per the terms and conditions

mentioned in the advertisement for recruitment, as published in the Employment News dated May 26-June 1, 2018, he should be placed in the top of the merit list.

2. The appellant's contention was that he obtained 100 marks out of 100 marks in the physical efficiency test and was also awarded 100 marks out of 100 marks in the written test and therefore, he has secured 200 marks out of 200 marks and he should be placed in the top most of the merit list since he possesses NCC-C certificate and non-selection of the appellant is illegal.
3. The respondents had filed their affidavit-in-opposition, to which reply was also filed and the matter was heard by the learned Single Bench and it has been dismissed by the impugned order. The correctness of the impugned order is challenged in this appeal by the unsuccessful writ petitioner.
4. We have elaborately heard the Mr. Chatterjee, learned advocate for the appellants and Ms. Susmita Saha Dutta, learned advocate for the respondents.
5. What is relevant to note is that the appellant had applied for the selection under a priority category viz. Priority-5, which relates to Other Regt./Corps. Admittedly, the NCC-C certificate produced by the appellant was given due credence and he was exempted from appearing for the written examination. However, the question would be whether merely because he possesses the NCC-C certificate, should he be placed highest in the merit list. This cannot happen since the appellant had admittedly, applied under a priority category and in this regard it is relevant to take note of the office order dated September 12, 2007, which has been set out by the learned Single Bench in paragraph 7 of the impugned order.

6. The appellant is admittedly, the son of an ex-serviceman and the vacancy sought to be filled up in the instant case pertains to Other Regt./Corps.
7. A bare reading of the office order will show that the son of an ex-serviceman of Other Regt./Corps shall fall under Priority 5 and therefore, the appellant was rightly classified under Priority 5. The order of preference of candidates, as indicated in the office order dated September 12, 2007 is a policy decision taken by the concerned authorities and it is not for the Court to sit in judgment over such policy decision, more particularly, when the recruitment is for a disciplined/uniformed service.
8. The appellant having applied under the priority category, cannot stand outside the priority category and claim for a larger relief. In fact, the advertisement makes it clear that all other details can be obtained by any candidate from the Administrative Officer, Headquarters at Secundrabad, as clearly mentioned in the recruitment notification.
9. The benefit, a candidate will get by holding a NCC-C certificate has been extended to the appellant inasmuch as he was exempted from appearing for the written examination. Therefore, if the appellant reaches the zone of consideration under Priority-5, then and then alone, the question of placing him higher in the merit list would arise. Therefore, the interpretation given by the learned Single Bench that the appellant would have a right to be placed in the top of the merit list under Priority-5 and not at the top of the merit list irrespective of the categorisation of the appellant as per the priorities, as contended by the appellant. Therefore, the learned Single Bench was right in observing that any other interpretation given to the office order will frustrate the purpose of the office order and the Court is,

obviously, not entitled to re-write an office order, which is undoubtedly, a policy decision taken by the appropriate authority.

10. Thus, for the above reasons, we find no ground to interfere with the impugned order. Accordingly, the appeal fails and is dismissed.
11. No costs.
12. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(CHAITALI CHATTERJEE (DAS), J.)