GAHC010087292022

2026:GAU-AS:16866

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3187/2022

FORCE NO. 175130032 CONSTABLE (GD) MOINUDDIN AHMED
S/O-LATE WAZED ALI
R/O- BAUSIPARA
P.O- KHARSITHA
P.S- BELSOR
DIST- NALBARI, ASSAM,
PIN-781370

VERSUS

THE UNION OF INDIA AND 4 ORS.
- REPRESENTED BY SECRETARY, MINISTRY OF HOME AFFAIRS, NEW DELHI-110001

2:THE DIRECTOR GENERAL
CENTRAL RESERVE POLICE FORCE (CRPF)
CGO COMPLEX
LODHI ROAD
NEW DELHI-110001

3:THE INSPECTOR GENERAL OF POLICE
NORTH EAST SECTOR
CENTRAL RESERVE POLICE FORCE (CRPF)

STONEY- HEAVEN
BISHOP COTTON ROAD
SHILLONG
MEGHALAYA
PIN-793001

4:THE DEPUTY INSPECTOR GENERAL OF POLICE
CENTRAL RESERVE POLICE FORCE

9TH MILE
AMERIGOG
GUWAHATI
ASSAM
PIN-781023

5:THE COMMANDANT
199 BATTALION
D
COMPANY
BIJAPUR
CHATTISGARH
PIN-49445

Advocate for the Petitioner : MR. R MAZUMDAR, MR. R DEKA,MS T WAPANGLA,S BORPUJARI,MR. D GOGOI,MR H BEZBARUA,MRS P RAI

Advocate for the Respondent : ASSTT.S.G.I., MR. U K GOSWAMI (DEPUTY SOLICITOR GENERAL OF INDIA) (R- 1 TO 5)

BEFORE :

HON'BLE MR JUSTICE NCHUMBEMO MOZHUI

Advocates for the Petitioner(s)	:	Ms. T. Wapangla
Advocate for the Respondent(s)	:	Mr. U.K. Goswami, CGC
Date on which judgment is reserved	:	**11.11.2026**
Date of pronouncement of judgment	:	**17.11.2026**
Whether the pronouncement is of the operative part of the judgment	:	Full judgment.
Whether the full judgment has been pronounced	:	Yes.

JUDGEMENT & ORDER (CAV)

Heard Learned counsel, Ms. T. Wapangla for the Petitioner. Also heard Mr. U.K. Goswami, learned CGC, for the Respondents.

2. The instant petition is filed under Article 226 of the Constitution of India praying for issuance of a writ in a nature of certiorari and or mandamus and or any other appropriate writ, order or direction by directing the respondents to deem to be enlisted petitioner in the force as per the merit position in merit list of Advertisement No. 01/2009, along with his batch mate, directing the respondents to reassign the seniority of the petitioner as per the merit list prepared on the basis of recruitment proceedings conducted by in terms of advertisement No. 01/2009 for the post of Constable General (Duty) in Central Reserve Police Force and further directing the respondents to correctly fix pay according to seniority position and further afford all arrears financial benefit along with his batch mate who were recruited on 2010 in terms of advertisement No. 01/2009.

3. Ms. T. Wapangla, learned counsel for the petitioner submits that pursuant to the advertisement No. 01/2009 dated 27.06.2009 petitioner applied for the post of Constable/General (Duty), as a general category candidate and

participated in the selection process held at Guwahati whereby he was allotted Roll No. 09513280008257. The petitioner cleared/qualified in the Physical Efficiency Test, Physical Measurement Test and Written Test. However, in the medical examination held on 11.01.2010, he was declared unfit due to defective vision, cubitus, vulgus, knock-knee and abnormal curvature of spine. Against been declared medically unfit, the petitioner appealed before the appellate authority to conduct review medical test. Thereafter, in the review medical test, the petitioner was found physically fit for recruitment as Constable/General (Duty) which was held on 26.07.2010.

3.1. The learned counsel further submits that in the recruitment process, the petitioner scored 43 marks. However, he could not be appointed for the fact that there were many candidate securing 43 marks and as per the policy decision of the respondents, appointed was to be offered to the candidates older in age, which was communicated to the petitioner vide Office Letter dated 08.02.2011.

3.2. Being aggrieved by the office letter dated 08.02.2011, the petitioner filed Writ Petition (C) No. 2131/2011 before this Hon'ble Court to consider his case against the normal wastage vacancies. During the proceeding of the case, the respondents disclosed that there were total 65 normal wastage vacancies against general category candidates for the year 2009. This Court by Order

dated 08.11.2014, directed the respondents authorities to re-consider the case of the petitioner against the normal wastage vacancies. However, by communication dated 05.02.2015 the petitioner was informed that since he has not secured in the final merit lists, his case could not be considered/selected to the post of Constable/General Duty.

3.3. Thereafter, the petitioner not being satisfied with the communication dated 05.02.2015, preferred Writ Petition (C) No. 2497/2015, praying for consideration of his case against the normal wastage vacancies. By order dated 02.03.2016, this Hon'ble Court disposed the writ petition, with a direction to the respondents to treat the petitioner as a selected candidate against normal wastage vacancies under General Category Candidate and thereafter, offer him, consequential appointment within a period of 3 (three) months.

3.4. This Hon'ble Court while passing the order dated 02.03.2016 had also observed that: -

> "*the last selected candidate under the general category had secured 43 marks which the petitioner had also secured. Petitioner initially was declared as medically unfit. After review medical, he was declared as medically fit. 65 normal wastage vacancies were available for the general category out of which 29 have been filled up. Respondents have not disclosed the marks secured by those 29 candidates who have been appointed against the normal wastage vacancies under the general category. Admittedly, when 36 normal wastage vacancies are available, there cannot be any justification to deprive the petitioner from selection when a candidate securing equal*

marks have been selected."

The counsel for the petitioner submits that under such circumstances, the appointment of the petitioner ought to have been from the date of initial recruitment process of 2009 and placed in merit position in merit list of advertisement No. 01/2009 along with his batch mate.

3.5. The learned counsel further submits that against the order dated 02.03.2016 passed in WP(C) No. 2497/2015, the respondents preferred a review which was registered as Review Petition No. 142/2016. However, by order dated 24.10.2016, the review petition was dismissed.

3.6. Consequent upon the dismissal of the review petition, the respondent's authorities issued the Letter No. R.II-10/2012-16-EC-V dated 20.11.2016, offering appointment to the petitioner to the post of Constable/General Duty in the Central Reserve Police Force (CRPF). The counsel for the petitioner submits that the Letter dated 20.11.2016, has been issued as per the result of recruitment of 2009 for the post of Constable/General Duty and implementation of the court's order dated 02.03.2016 passed in WP(C) No. 2497/2015, it is admitted fact that the recruitment and selection is as per 2009 recruitment process and as such the appointment so issued as per court directive granting him consequential appointment should be taken as affective from the date, his batch mate has been appointed and should also be granted all monitory benefits at par with his batch mate.

3.7. The counsel for the petitioner in support of her contentions has relied on the decision in the case of ***Surendra Narain Singh & Ors Vs. State of Bihar & Ors*** reported in ***1998(4) Supreme 221***, and ***Keshab Ch. Paul Vs. State of Assam and Ors***. reported in ***(2003) 3GauLT 390***.

4. Per contra, Mr. U.K. Goswami, CGC, for the respondents submits that the petitioner been appointed in the CRPF on 31.01.2017 and in terms of Rule 8 (f) of the Central Reserve Police Force Rules, 1955, the petitioner cannot claim his seniority and pay fixation as per the recruitment of 2009, as he has been appointed and joined as Constable/General Duty on 31.01.2017.

Rule 8 (f) of the Central Reserve Police Force Rules, 1955 is reproduced herein: -

> "*Those recruited as Constable shall take their seniority from the date of their first appointment. Provided that on confirmation they will take their seniority in accordance with the date of their confirmation.*"

In view of the above rules, the claim of the petitioner is unsustainable and as such the petitioner is devoid of merit and does not call for interference by this Court.

5. Heard the parties at length at the decisions relied upon.

6. This Court has taken into consideration of the submission made by the parties and more particularly the claim of the petitioner with regard to the

entitlement of the petitioner in terms of maintaining his seniority as per the merit position in merit list of advertisement No. 01/2009 along with his batch mate.

A perusal of the "*Guidelines for Recruitment of Constable (GD) in CRPF Constable Recruitment Procedure CRPF Constable Recruitment Scheme"* more particularly at Stage V Clause 3 reveals that Candidate found medically fit by the review medical board will be recruited against the normal wastage vacancies. This Court has also taken consideration of the Circular No. R.II-15/2005-Pers II dated 15.07.2005, whereby clarification has been issued with regard to the Constable/General Duty Recruitment. Clause (n) & (o) of the circular is reproduced herein below:-

> "*(n) After the conduct of medical tests, those candidates declared' temporary unfit would continue to be at the same position in the merit list, however, it would be mentioned that there candidature is provisional and subject to medical fitness in re-medical. Grounds of being 'temp. Unfit' shall be conveyed to the candidate in writing by the M.O conducting the medical exam.*
>
> *(o) Sector will cater for vacancies of the' temp. Unfit candidates till such time they are finally declared fit/unfit in the re-medical exam. It is further clarified that if any "unfit" candidate is subsequently declared "fit" after appeal to the DIG and conduct of review medical, then he has to be recruited against normal wastage of CT/GD in the respective Sector."*

This Court has also taken consideration of the Letter No. R.II-15/2005-Pers.II dated 08.09.2005 with regard to the clarification of Constable/General

Duty Recruitment. Clause (9) of the letter is reproduced herein: -

> "*(9) It has already been clarified vide Para(n) & (0) of this Dte letter of even number dated 15/07/2005 that vacancies are to be kept for temporary unfit candidates till. they are declared fit or unfit. No vacancies are to be kept for unfit candidates who go in for appeal for review medical to the DIGP. Such candidates if found fit later, are to be recruited against normal wastage of the Sector.. (Sponsored by TPA)".*

As far as the interpretation of the Guidelines for Recruitment of Constable (GD) in CRPF Constable Recruitment Procedure CRPF Constable Recruitment Scheme, Circular dated 15.07.2005 and Letter dated 08.09.2005, this Hon'ble Court by order dated 18.11.2014 in WP(C) No. 2131/2011 and order dated 02.03.2016 in WP(C) No. 2497/2015 has already been taken care of for the very fact that the petitioner being declared medically fit in the review medical board, this Court has directed the respondents authorities to treat the petitioner as a selected candidates against the normal wastage vacancies under general category and offer him consequential appointment.

Under such circumstances, the claim of the respondent authorities that the case of the petitioner would be covered under Rule 8 (f) of the CRPF Rules 1955 cannot be accepted by this Court and accordingly declined.

7. This Court on the question of whether the petitioner would be entitled for seniority benefits as claimed has taken into consideration the decision of the Apex Court in the case of ***C. Jayachandran Vs. State of Kerala & Ors.*** reported in ***AIR 2020 Supreme Court 3846***, wherein it has been held that: -

"*37. In Sanjay Dhar, a three-Judge Bench of this Court held as under:*

"16. For the foregoing reasons the appeal is allowed. The judgment under appeal is set aside. It is directed that the appellant shall be deemed to have been appointed along with other appointees under the appointment order dated 6-3-1995 and assigned a place of seniority consistently with his placement in the order of merit in the select list prepared by J&K PSC and later forwarded to the Law Department..."

38. In Lakshmana Rao Yadavalli, this Court held as under:

"13. For the reasons recorded in Lakshmana Rao Yadavalli v. State of A.P. [Set out in paras 1 to 13, above.], the present appeals are allowed and it is directed that the High Court as well as the respondent State will do the needful for giving appointment to the appellant with retrospective effect i.e. from the date on which she ought to have been appointed, however, she shall not be paid salary for the period during which she has not worked as a District and Sessions Judge. We are sure that the respondents will do the needful for the appointment of the appellant at an early date."

39. In view of the above, the appellant having been participated in the same selection process and in view of the direction of the Division Bench of the High Court, was rightly placed by the High Court by giving him revised select list placing him at Sl. No. 41 by pushing Badharudeen from general category candidate to OBC category candidate at Sl. No. 42.

40. The appellant was wrongfully excluded from the process of appointment on account of an illegal and arbitrary grant of moderation of marks. The Government in its Order dated 22 nd December, 2010 cancelled the appointment of three District and Sessions Judges who were granted benefit of moderation."

8. On the above settled principle of law, a candidate who is wrongfully not appointed, is entitled to notional seniority from the date he should have been appointed. This principle ensures that employees are not penalized for delay or errors made by the employer.

Under such circumstances, the respondent authorities are hereby directed to grant notional seniority to the petitioner from the date of selection to the post of Constable/General (Duty) in view of the initial advertisement No. 01/2009 at par with his batch mate.

9. This Court has taken into consideration of the decision of the Hon'ble Apex Court in the case of ***U.P. Public Service Commission Vs. Satya Narayan Sheohare & Ors*** reported in ***(2009) 5 SCC 473***, wherein it was held that candidates wrongfully omitted from appointment, the only relief to be granted should be prospective in nature on the principle of *No Work No Pay.* Also in the case of ***RANJAN JYOTI SARMA AND ANR. v. THE STATE OF ASSAM AND 2 ORS.*** reported in ***2016 5GLT 489,*** a coordinate bench of this Court has held that in case of denial of appointment to meritorious candidates, the consequential benefit pertaining to seniority is to be given on the principle of "next below rule" and notional pay shall be with effect from the date of appointment and actual pay from the date of joining.

10. Accordingly, keeping view of the decisions and also the directions granting of notional seniority to the petitioner from the date of selection to the post of Constable/General Duty in view of the initial advertisement No. 01/2009, it is also directed to the respondent authorities to notionally fix the pay of the

petitioner at par with his bath mate from 2010. However, applying for the principle of "***No Work No Pay"***, the petitioner shall not be entitled for any actual monetary benefits for the periods not served including arrears but from the date of joining the post by the petitioner.

11. With the above observation and directions, the instant petition is allowed to the extent above. No order as to cost.

JUDGE

Comparing Assistant