

SUPREME COURT OF INDIA

Ravinder Kumar

Vs.

State of Haryana

C.A.No.3127 of 2008

(D.K. Jain and T.S. Thakur JJ.)

22.04.2010

JUDGEMENT

T.S.Thakur, J.

1. This appeal arises out of an order passed by the High Court of Punjab & Haryana, whereby Writ Petition No.1061 of 2007 filed by the appellant has been dismissed and the appellant's claim for appointment as a Constable in the Haryana Police Department turned down. The High Court has taken the view that since the marks scored by the appellant were less than the marks awarded to the last candidate in the general category, he could make no grievance against his non-selection in that category. The appellant assails that view primarily on the ground that the High Court has failed to notice certain important aspects that render the order unsustainable, in particular the fact that two of the candidates selected in the reserved category having scored marks that were higher than those scored by the last candidate selected in the general category, the said candidates ought to have been selected against vacancies in the general merit category. If that were done, the appellant could be appointed against one of the said vacancies. The factual matrix giving rise to the controversy need be summarized at this stage:

2. A selection process to fill up 100 available posts of Constables in Haryana Police in the District of Sirsa, State of Haryana was undertaken in which the appellant was also a candidate for appointment against one of the vacancies in the reserved category of ESM/BC(B) for ex-servicemen and their dependents. The appellant was put through physical efficiency and other tests and eventually placed at Sr. No.3 in the ESM/BC(B) category. An appointment order was also issued in his favour pursuant where to he joined the Police Department on 17th August 2001 and was allotted Constabulary No.2/873 in the 2nd Battalion of the Haryana Armed Force.

3. One, Naresh Kumar who had also applied for selection in ESM/BC(B) category and whose name did not figure in the select list filed Civil Writ Petition No.13130 of 2001 in the High Court of Punjab & Haryana challenging the appointment of the appellant mainly on the

ground that the said petitioner had a preferential right to an appointment in the ESM/BC (B) category on account of his being an ex- serviceman in comparison to the appellant who being a dependent of an ex-serviceman would stand a chance only if no ex-serviceman was available for appointment. The appellant had in the meantime completed the Basic Training Course of nine months duration, passed out in May 2002 and started discharging the duties attached to the post to which he was appointed. The High Court, all the same, allowed the writ petition filed by Naresh Kumar and by its order dated 10th July 2002 quashed the appointment of the appellant with a direction that the claim of ex-servicemen candidates would have priority over those who are dependents of such ex-servicemen. Consequent upon the said direction, the services of the appellant were terminated in terms of an order dated 31st December 2002, the correctness whereof was questioned by the appellant in CWP No.16287 of 2003. The said petition was eventually dismissed as withdrawn with liberty to the appellant to file a review petition against the order of the High Court in CWP No.13130 of 2001. A review petition was accordingly filed by the appellant which was disposed of by the High Court by an order dated 10th March 2006 directing the respondents to re- consider the case of the appellant in the general category.

“Order dated 10th July 2002 passed by the High Court in CWP No.13130 of 2001 was to that extent modified.”

4. It was in compliance with the above direction that the Superintendent of Police, Sirsa passed an order on 26th May 2006 declining an appointment to the appellant as a Constable. The order stated that out of eight candidates in BC(B) category the last candidate selected for appointment had scored 27 marks as against 26 marks awarded to the appellant. The order further stated that out of 45 candidates selected in the General category the last candidate selected for appointment had scored 27 marks. Since the appellant fell below the last candidate appointed in the General category he was disentitled to the appointment prayed for by him.

5. The appellant's case is that the order passed by the Superintendent of Police did not disclose the marks obtained by BC(B) category candidates selected against the eight posts reserved in that category. An application seeking the requisite information and copies of the select list was accordingly filed under the Right to Information Act, but was declined by the State Information Commission on the ground that the Haryana Armed Police was exempt from the purview of the RTI Act. It was in that backdrop that the appellant filed CWP No.1061/2007 before the High Court praying not only for the issue of a writ of certiorari quashing the order dated 26th May 2006 passed by the Superintendent of Police but also a mandamus directing the respondents to supply a complete list of selected candidates in respect of all the categories. By its order dated 23rd January 2007 impugned in this appeal, the High court has dismissed the said petition primarily on the ground that the last candidate selected both in the BC(B) category and in the General category having scored 27 marks each as against 26 marks awarded to the appellant, he was not qualified for appointment in either of the said two categories. The appellant assails the correctness of the said order, as already noticed above.

6. Mr. P.S. Patwalia, learned senior counsel appearing for the appellant strenuously argued that the denial of appointment to the appellant is discriminatory, wholly unjustified and arbitrary. He urged that according to the select list enclosed with the affidavit filed on behalf of respondent No.1 - the State, 45 candidates were selected in the General Category, 14 in BC(A) category and eight in BC(B) category, apart from candidates selected in SC `A' and SC `B' categories. Insofar as ex-servicemen category was concerned, the Select List reveals that there were eight vacancies available for ex-servicemen in the General category, while two vacancies were earmarked for ex- servicemen BC(A) category and three vacancies for ex- servicemen BC(B) category. It was argued by Mr. Patwalia and in our opinion rightly so that if an ex-serviceman candidate scored high enough marks entitling him to be selected in the ex-serviceman (General Category) such candidates ought to be selected in the said category instead of selecting them in the Ex-servicemen BC(A) or BC(B) categories. Mr. Patwalia argued that in BC(A) category, two candidates, namely, Rajbir Singh and Ranjeet Singh had been selected who had scored 29 and 28 marks respectively.

“Similarly in BC(B) category, Sube Singh, Veer Bhan and the appellant Ravinder Kumar had been initially selected each one of whom had scored 26 marks. With the High Court directing appointment of ex-servicemen before any dependent of any ex-serviceman could be appointed the appellant had to vacate to make room for Naresh Kumar, who was an ex-serviceman in BC(B) category. Even so two vacancies out of eight reserved for in the Ex-Servicemen (General category) had gone to Subhash Chander and Taket Singh both of them had scored 25 marks each. This implied that if candidates selected in Ex-Servicemen BC(B) categories were shifted to the Ex-Servicemen (General category) both Sube Singh and Veer Bhan would have moved to the General category, making room for the appellant to take an appointment in the BC(B) category.

Inasmuch as the respondents had ignored the principle underlying the selection of candidates in reserved categories even when such candidates had scored better marks than the candidates selected in the open category, the respondents had committed a mistake which deserved to be corrected. The order passed by the Superintendent of Police did not, according to the learned counsel, take note of these aspects and adopted an approach which was legally unsound. It was also argued by Mr. Patwalia that the appellant had undergone training and even started serving the Police Department before he was asked to vacate the post which was then allotted to Naresh Kumar. This, according to the learned counsel, had happened despite the fact that the appellant was nowhere at fault. He had on the contrary changed his position to his detriment by undergoing an arduous training apart from losing opportunities to seek employment elsewhere.”

7. On behalf of the respondents, it was argued by Mr. Manjit Singh, learned Additional Advocate General that the appointment of the appellant could be justified only if the appellant figured higher in the merit list than the last candidate in the General category.

Inasmuch as the appellant failed to satisfy that requirement both in the General category as also in general and reserved categories for ex-servicemen he could make no grievance against refusal of an appointment to him.

8. When this appeal came up before this Court, Mr. Patwalia made a statement on instructions that if the appellant was offered employment as a Constable in the Haryana Police, District Sirsa even at this stage he will not claim back wages or seniority on the basis of his selection and appointment. Learned counsel for the State was accordingly directed to take instructions whether the appellant could be accommodated against a vacant post in the said District. Mr. Manjit Singh, is however unable to make any statement pursuant to the above direction as according to him the respondents had not suitably responded to his queries nor given to him any instructions in the matter one way or the other. He therefore sought further time to do the needful. We regret our inability to grant any further opportunity having regard to the fact that the matter has remained pending in this Court and the Court below for long and two opportunities for the purpose aforementioned have already been granted to the respondents. The controversy as noticed above primarily revolves around the method adopted by the respondents in drawing up the Select List of candidates. Apart from the vacancies in the General category there were, as noticed above, vacancies for reserved categories also. The reserved category for ex-servicemen was divided into three distinct sub categories, namely, Ex-servicemen (General Category), Ex-servicemen BC(A) and Ex-servicemen BC(B) category.

“The names of the candidates and the marks awarded to them in each one of these categories were as under:- "EX-SERVICEMEN GENERAL CATEGORY

1. 6003 Durga Dass 27
2. 6005 Balbir Singh 27
3. 6037 Ved Parkash 26
4. 6007 Ram Sarup 26
5. 6015 Rajender Parshad 26
6. 6010 Gurpal Singh 26
7. 6023 Subhash Chander 25
8. 6027 Taket Singh 25 B.C. `A'
1. 6028 Rajbir Singh 29
2. 6016 Ranjeet Singh 28 B.C. `B'

1. 6001 Sube Singh 26

2. 6035 Veer Bhan 26

3. 6031 Ravinder 26”

9. It is evident from the above that in ex-servicemen (general category) the last two candidates namely:

“Subhash Chander and Taket Singh had scored only 25 marks each. Sube Singh and Veer Bhan selected in Ex-servicemen BC(B) category had however scored more marks than Subhash Chander and Taket Singh. Sube Singh and Veer Bhan could and indeed ought to have been selected against the vacancies in Ex-servicemen (General) category as per their merit. This in other words would require the Select List to be recast and candidates suitably shifted from the reserved category to the general category in which event appointments can be offered to other candidates in the Ex-servicemen BC(B) category depending on their merit. Such an exercise long after the selection process was completed may unsettle the settled position and lead to removal of candidates who stand already selected and who have been serving for a long time after undergoing the prescribed training. This may also mean that candidates who have accepted the result of the selection and may even have become over-age may have to be brought in. We do not see any compelling reason for us to adopt that course at this distant point of time especially when the same would upset what stands settled for a long time. Interest of justice would in our opinion be sufficiently served if we direct the appointment of the appellant against an Ex-servicemen BC(B) vacancy and if no such vacancy is available against an ex-servicemen (General Category) vacancy. In the unlikely event of there being no vacancy in either one of these categories the appellant could be appointed against any other vacancy in the General category. Any such appointment would, however, in keeping with the statement by the appellant be effective from the date the same is made and shall not entitle the appellant to claim any back wages, seniority or other benefits. The appointment shall for all purposes be treated as a first appointment subject to the condition that the competent authority shall be free to direct that the appellant shall undergo the training afresh or take a refresher course of such training if deemed fit.”

10. In the result, we allow this appeal but only in part and to the extent that the appellant shall be appointed as a Constable in the Haryana Armed Police, Sirsa District against any vacancy in the Ex-Servicemen (General Category) or ESM/BC (B) category. If no vacancy in the said two categories is available the appellant shall be appointed against any vacancy in the General category. The appointment shall for all intents and purpose be a fresh appointment which would not entitle the appellant to any back wages, seniority or any other benefit based on his earlier appointment. The order passed by the High Court shall to the above extent, stand modified. No costs.