

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 177 of 2018

Date of Decision: 17.09.2020

Shri. Abhay Tewatia

Vs.

The Union of India & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. D.S. Kauntae, Adv.

For the Respondent(s) : Mr. K. Paul, CGC.

- i) Whether approved for reporting in Law journals etc.: Yes/No
- ii) Whether approved for publication in press: Yes/No

1. The brief facts of the case is that an advertisement was published on 05.10.2012 by the respondents for 328 vacancies for the posts of 'Havildar Clerk'. The petitioner herein had applied for the same and was found to be qualified, but no appointment was afforded to him on the ground that he was found low in the merit list prepared state wise. The petitioner challenged this decision before the Punjab and Haryana High Court which was however, dismissed on the grounds of territorial jurisdiction as the entire recruitment process had taken place in Jorhat, Dimapur and Shillong. As such, this instant writ petition is before this Court.

2. Mr. D.S. Kauntae, Advocate, learned counsel for the petitioner submits that the petitioner on having been found qualified after the selection process was expecting his appointment letter but the name of the petitioner was not found in the list of the 156 selected candidates issued by the respondents. Learned counsel submits that the petitioner on his name not appearing in the merit list, sent a legal notice in the form of a petition cum representation on 05.07.2013, and the respondent No. 2 in reply thereto vide letter dated 18.07.2013, stated therein that the petitioner was not selected being found lower in merit in the respective category. Being aggrieved thereby, learned counsel submits that the petitioner had approached the Punjab and Haryana High Court by way of a writ petition, filed jointly by the petitioner and three other persons whereby the entire selection process was challenged on the main ground that no reservation was made in the advertisement on the basis of region or state, and that the recruitment process was an open rally on an All India Basis.

3. The learned counsel contends that during the pendency of the case before the Punjab and Haryana High Court, the records pertaining to the selection had been examined, and on examination, it was revealed that though indicated therein that all available seats were filled, in addition, thereto two other names were included. Learned counsel submits that the case was contested on the issue that the conditions were ambiguous and unclear and the process adopted arbitrary, with the non-disclosure of criteria, which had resulted in the petitioner being deprived of appointment. The learned counsel further contends that in the round of litigation before the Punjab and Haryana High Court, the respondents had placed heavy reliance on a Policy Circular dated 25.06.2009, which however, was belied inasmuch as, in response to RTI query, the Ministry of Home Affairs vide their reply had clarified that the policy was related to a scheme for recruitment of Constable (GD) and does not pertain to the recruitment of Havildar Clerk. He submits that however, in the present writ petition, the respondents in the affidavit have maintained that the vacancies were distributed as per the MHA Policy and 4 vacancies allotted to the state of Haryana for the post of Havildar Clerk was, General-02, SC-01 and OBC-1. Learned counsel argues that there is no mention about the reservation

of 4 posts for the state of Haryana in the advertisement except that the note appended thereto, only stipulated that the distribution of vacancies was to be based on the policy of the Ministry of Home Affairs.

4. The Learned counsel submits that the SOP (Standard Operating Procedure) as filed by the respondents in their affidavit, is not applicable to the present case, as it has not shown nor disclosed the source or authority for making such distribution of vacancies state wise or category wise, or any regulation or policy in force, to implement the state wise distribution for recruitment of Havildar Clerks as was done by the selection authority. The learned counsel also strongly contests the stand of the respondents with regard to the prevalent policy of the MHA and its application, and further submits that one person namely Krishan Kumar has been appointed, in spite of not figuring in the final merit list. The learned counsel in support of his contentions and submissions has placed reliance in the case of *Rajani Phukon and Ors vs. Union of India & Ors.* reported in *2014 Lawsuit (Gau) 726*, and on judgement and order of the Delhi High Court in case of *S.K. Sachdeva & Ors. vs. Union of India & Ors.* reported in *2011 IX AD (DELHI) 323* wherein, he submits that the facts and circumstances are similar in relation to process adopted being arbitrary and non-disclosure of criteria therefore restating his challenge of non-selection as arbitrary and being patently illegal.

5. In response to the submission made by learned counsel for the petitioner, Mr. K. Paul, has at the outset raised the question of maintainability of the writ petition. He submits that the petition is not made maintainable inasmuch as, the prayer of the writ petitioner in prayer B, is to hold and declare the entire recruitment process as arbitrary and patently illegal and in prayer C, has prayed for a writ mandamus commanding the respondents to issue an appointment letter in favour of the petitioner, which he contends is directly contrary to each other, rendering the writ petition liable to be dismissed on this ground alone. The learned counsel further submits that the writ petition deserves no consideration as it is settled law, that if a candidate participates in a selection process he cannot subsequently on being unsuccessful turn around and question the same.

6. The learned counsel submits that the advertisement categorically stated that the distribution of vacancies will be based on the policy issued by the Ministry of Home Affairs (MHA), and further that Clause 16 of the advertisement also stipulated that candidates who qualify in all respects, will be placed in the merit list depending upon the category wise vacancies allocated to States. Learned counsel submits that pursuant to the policy of category wise distribution of vacancies, the state of Haryana was allotted 4 (four) posts for which 2 were earmarked for General Category, 1 for OBC and 1 for SC. In this context, he submits the petitioner being from the General category being low in merit having secured only 46 marks could not be given appointment, and as such, it cannot be taken that any injustice has been done to the petitioner.

7. On the question of policy, and the ground of challenge by the writ petitioner contending that the response to the RTI query showed that the policy as placed in the earlier round of litigation, dealt with a scheme for recruitment of Constable (GD) and does not pertain to recruitment of Havildar Clerk, in respect of the advertisement dated 20.11.2012, learned counsel submits that the same does not merit any consideration, and it is not the case of the respondents that the said advertisement was governed under the scheme as given in the reply to the RTI query. It is also submitted that, the stand as taken in the earlier round of litigation before the Punjab and Haryana High Court was erroneous, whereas, the correct position has been brought on record before this Court by way of an affidavit, wherein it has been stated that under the SOP dated 23.04.2003, the state of Haryana's share is 2.09% of the male population as per the 2011 Census.

8. On the other contention of the petitioner, pertaining to the appointment of one Shri. Krishan Kumar, learned counsel submits that the said person was selected under the scheme of compassionate appointment as his father had expired while serving in the Assam Rifles. He submits that this appointment was as per HQ DGAR SOP No. 29, wherein 5% of vacancies are earmarked for appointments on compassionate ground in each recruitment rally. He

further submits that, no reliance can be placed on the pleadings and proceedings that had taken place before the Punjab and Haryana High Court inasmuch as, the writ petition was dismissed as not maintainable for want of territorial jurisdiction and further, that court had not opined on the merits of the writ petition.

9. In conclusion, the learned counsel submits that there has been no illegality or infirmity in the selection process nor has the writ petitioner been able to make out any case for interference by this Hon'ble Court.

10. Having heard learned counsels for the parties, shorn of all other facts and events that have transpired, such as the earlier proceedings before the Punjab and Haryana High Court, which has become inconsequential, the only question that arises for consideration is whether on being selected, the petitioner has been deprived of appointment to the post of Havildar Clerk in terms of the advertisement and policy as followed by the respondents.

11. The advertisement which finds place at Annexure - A/2 of the writ petition dated 05.10.2012 on close perusal reveals that apart from inviting applications for 328 posts of Havildar Clerk and 28 posts of Warrant Officer (PA) certain conditions were also prescribed therein more importantly, Note (i) which reads as follows:

Note:

(i) Distribution of vacancies will be based on the policy issued by Ministry of Home Affairs (MHA)."

and Clause 16 which stipulates as follows:

"16. Merit List and Call for Training. The candidates who qualify in all respects will be placed in merit list depending on the category wise vacancies allocated to states. Instruction to join the Training Centre for enrolment will be issued on the basis of Merit List."

The grievance of the petitioner as earlier noted, stems only from the fact that in spite of qualifying, no appointment was given and the deprivation thereof, was illegal as the stated advertisement, did not contain any clause highlighting the facts of any region or state wise reservation. On examination of the above noted relevant clauses which have been relied upon by the respondents, however, it is noticed that provision has been made for the application of the prevailing recruitment policy. In this context, the policy has been brought on record which is in the form of an SOP (Standard Operating Procedure) for recruitment in the Assam Rifles. This SOP lays down the procedure for enrollment of recruits in the Assam Rifles in compliance with the various provisions of reservations as per rules laid down by the Ministry of Home Affairs from time to time. Clause 6 of the SOP lays down the format for the allocation of vacancies from recruitment rallies.

12. By application of the said SOP dated 23.04.2003 (Annexure - 2 to affidavit) and prevalent policy, it is noted, and has also been submitted by the respondents, that based on the advertisement and MHA guidelines, only 04 (four) (Gen – 02, OBC – 01 and SC – 01) vacancies were allotted to the state of Haryana for the post of Havildar Clerk. This computation is because as per the recruitable male population, the state of Haryana held a share of only 2.09% according to the 2011 Census. Since the state is neither affected by militancy nor shares an international border with any country, the total share of 2.09% is further reduced by 40%, which is earmarked for militancy affected areas and border areas. By this calculation, the final share for the state came to 1.25% for the year 2012 recruitment and 1.25% of the total of 328 vacancies for the Clerk therefore, amounted to 4.1 vacancies. It is also noticed that in the reply dated 18.07.2013 (Annexure – A/6) to the legal notice sent by the petitioner, the respondents had categorically stated that, distribution of vacancies will be based on the policy issued by the Ministry of Home Affairs and that the merit list in each category namely General, OBC, SC, ST and Ex-servicemen would be prepared separately in respect of each State/UT on the basis of aggregate marks obtained in the written test.

13. As observed earlier the provisions for the application of prevalent policy has been spelt out in the advertisement itself and the consistent stand of the respondents is that the appointment has been done as per the policy of the MHA. As such, in my opinion the contention that there is no mention of region or state wise reservation cannot be accepted. In the formatting and formulating of the merit list which is reproduced herein below, it is clearly seen that the selected candidates in the General list for the state of Haryana, had scored much more than the petitioner who had secured only 46 marks.

<i>S/No</i>	<i>ID No</i>	<i>Name</i>	<i>Category</i>	<i>Marks Obtained</i>	<i>Cut off Marks</i>	<i>Remarks</i>
<i>1st Merit List (After Detail Medical Examination)</i>						
<i>a)</i>	<i>1229</i>	<i>Amit Kharab</i>	<i>Gen</i>	<i>68</i>	<i>66</i>	
<i>b)</i>	<i>519</i>	<i>Naveen</i>	<i>Gen</i>	<i>66</i>	<i>66</i>	
<i>c)</i>	<i>6706</i>	<i>Ajit Singh</i>	<i>OBC</i>	<i>63</i>	<i>63</i>	
<i>d)</i>	<i>11121</i>	<i>Deepak</i>	<i>SC</i>	<i>51</i>	<i>51</i>	
<i>2nd Merit List (After Review Medical Examination)</i>						
<i>a)</i>	<i>5597</i>	<i>Parveen Kumar</i>	<i>OBC</i>	<i>66</i>	<i>63</i>	
<i>b)</i>	<i>3877</i>	<i>Krishan Kumar</i>	<i>Gen</i>	<i>Compassion ate appointment</i>	<i>-</i>	

14. Situated thus, the writ petitioner cannot be said to have been illegally or arbitrarily deprived of appointment to the post of Havildar Clerk inasmuch as, there has been no violation of the conditions in the advertisement, any statutory provisions, or Articles 14 and 16 of the Constitution of India, which will warrant interference by this Court in exercise of powers under Article 226 of the Constitution of India.

15. The writ petition is accordingly dismissed. No order as to costs.

Judge

Meghalaya
17.09.2020
"D.Thabah-PS"

