



\$~2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 04.10.2024

+ W.P.(C) 2757/2013

GIRRAJ PRASAD GURJAR

.....Petitioner

Through: Mr.Satya Narayan Vashishth,
Ms.Meena Kumari and
Mr.Nitin Kumar Tewatia, Advs.
along with petitioner in person.

versus

UNION OF INDIA AND ORS

....Respondents

Through: Mr.Tanveer Ahmed Ansari,
SPC for Review Applicant.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (ORAL)

REVIEW PET. 556/2016

1. This petition has been filed seeking review of the Order dated 19.08.2015 passed by this Court in W.P.(C) 2757/2013, whereby this Court while holding that the respondents acted unlawfully in denying the post of Sub-Inspector (GD) to the petitioner, as the respondents considered the period of his absence from work as Non-Qualifying Service (NQS), further directed that the petitioner be appointed to the said post as per the respective merit in the respective Limited Departmental Competitive Examination (LDCE).

2. The review petitioner submits that in the merit list that was drawn pursuant to the above order, the petitioner was placed at serial no.184 while the last selected candidate was at serial no.139. The



petitioner, therefore, did not make the merit list for appointment. The review petitioner submits that, therefore, the direction of this Court to offer the appointment to the writ petitioner deserves to be recalled.

3. On the other hand, the learned counsel for the writ petitioner submits that this Court had directed the respondents/review petitioners to offer appointment to the writ petitioner to the abovementioned post. Aggrieved of the said order, the review petitioner challenged the same before the Supreme Court by way of SLP (C) CC No.21207/2016, titled *Union of India & Ors. v. HC/GD Girraj Prasad Gurjar*. The same was, however, dismissed by the Supreme Court as withdrawn *vide* Order dated 18.11.2016, giving liberty to the review petitioner to file a review petition before this Court. He submits that there is no reason to review the order passed by this Court on 19.08.2015.

4. We have considered the submissions made.

5. This Court while disposing of the writ petition had observed and directed as under:

“10. After having heard the learned counsel for the parties, a query was put by the Court to the learned counsel for the respondents, whether the petitioners had been intimated of the said NQS entry in their service record and the answer was in negative.

11. This Court is of the view that putting a government servant at a disadvantage by an adverse entry in his service book without intimation to him would be against the principles of natural justice. It need not be re-emphasised that no punishment or adverse entry can be meted out to any person without first giving the person an opportunity to be heard.

12. In the present cases, the petitioners were never informed that certain periods of absence



from work were treated as NQS. Although, it is claimed that they were very much within the AWS precincts and were dining in B Mess. Furthermore, the amended Standing Order requires consideration of only the immediately previous four years' ACRs and an unblemished service record, till the issue of appointment letter. It is not in dispute that the petitioners' last four years' ACRs immediately preceding the Limited Departmental Competitive Examination (LDCE) were good and they continued to have unblemished service records thereafter till the impugned letter of rejection, which actually should have been offer of appointment. Therefore, the entry of the aforementioned number of days as NQS is void and meaningless and is unsustainable in law. There being no impediment in the appointment of the petitioners to the posts of Sub Inspector (GD), they ought to be so appointed.

13. In view of the above, the writ petitions are allowed. The respondents are directed to issue, within two months from today, letters of appointment to the petitioners to the post of Sub Inspector (GD) as per their respective order of merit in their respective LDCE. The petitioners shall be entitled to all benefits, as available to them in law. The petitions are disposed off the above terms."

6. From the above, it would be apparent that this Court was only considering the issue whether the respondents/review petitioners were correct in treating the period of absence from work as NQS without informing the same to the writ petitioner. The Court found the same to be unlawful and further held that it was only the petitioner's last four years' ACRs immediately preceding the LDCE and the unblemished service record thereafter, which was actually to be considered by the respondents. This Court, therefore, directed the respondents to issue



letters of appointment to the petitioner in the present Writ Petition and the petitioners in the connected Writ Petitions, for the post of Sub-Inspector (GD) as per their respective order of merit in their respective LDCE. This Court, at that stage, was not informed nor was it concerned with the respective merit of where the petitioner stood in the LDCE.

7. By the present petition, the respondents in the writ petition/review petitioners have informed that the petitioner could not make it to the merit list as he has been placed at serial no.184 in the merit list while the last candidate selected for the post is at serial no.139 in the general category.

8. As the petitioner has failed to achieve the merit cut-off, the review petition is allowed. The direction to the respondents to issue appointment letter to the petitioner is recalled.

9. It is, however, clarified that in case the petitioner is aggrieved of the merit list, it shall be open to the petitioner to challenge the same in accordance with law. It is made clear that we have not passed any opinion on the merit of the merit list that has been drawn by the respondents/review petitioners.

NAVIN CHAWLA, J

SHALINDER KAUR, J

OCTOBER 4, 2024/ns/as

Click here to check corrigendum, if any