

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos. 817-818 OF 2019  
(Arising out of SLP(C) Nos.1926-1927 of 2017)

PRABIR PAL

Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

O R D E R

Leave granted.

Heard learned counsel for the parties.

This appeal takes exception to the judgment and order dated 12.07.2016 passed by the High Court of Delhi at New Delhi in W.P.(C) 494 of 2016 whereby the Writ Petition preferred by the appellant came to be dismissed on the ground that persons senior to the appellant were available for being considered for absorption from Inspector (Combatant Ministerial) in ITBP.

The grievance of the appellant, is that, a specific plea was taken before the High Court that no senior candidate, with the requisite qualification, than the appellant, was available for the appointment to the post of Inspector

(Accountant) in ITBP. In para 5 of the Writ Petition, the appellant had stated thus:

"5. That it is pertinent to mention that admittedly the Petitioner has the seniority among the eligible and interested candidates who have passed the cash and accounts course from ISTM Delhi, but the Respondent No.2 is illegally and whimsically comparing the seniority of the petitioner from those candidates who are not eligible and not interested for appointment in the post of Inspector (Accounts) which is in gross violation of the ITBP service rules as it provides for appointment to the post of Inspector (Accountant) not only from within the eligible ITBP cadres but also through absorption from NDRF. Relevant as it is to mention that Petitioner is currently working in NDRF through deputation and he was nominated for "Cash & Accounts" course from ISTM with the approval of NDRF head quarters."

In response to the said averments, the reply filed by the respondent states as follows:

"5. That the contents of para 5 of the petition, it is submitted that the respondent No.2 is not illegally whimsically comparing the seniority of the petitioner from those candidates who are not eligible and not interested for the appointment in the post of inspector (Accounts). The petitioner has completed respective posts in the working period in NDRF through deputation and he was nominated for cash and accounts course from ISTM"

And again it is stated that:

"That the petitioner is therefore

aggrieved by the said illegal rejection letter No.1-21018/01/2013/Estt-24660 dt. 30.11.2015 and challenging the same on the following amongst other grounds:

A. The contention of the petitioner is not correct. That he has not been compared with unqualified and uninterested candidate with the ITBP Care. In fact Senior Inspector/CM did not qualify the said course as they were not nominated by ISTM. However, after concerted efforts ISTM is going to run a special batch of cash and account course of 25 senior/willing inspectors/CM of ITBP which is scheduled from 21.03.2016 presently at least 170 Senior Inspector (CM) to petitioner are awaiting for cash and account course. Hence, the claim of petitioner for absorption to the post of Inspector (Accountant) in ITBP is totally baseless and unjustified and again the prevalent procedure."

This factual position was denied by the appellant by filing rejoinder affidavit in the following words:

"5. That the contents of para 5 of the reply are wrong and hence denied and the corresponding paras of the Writ Petition are reiterated and reaffirmed. It is further submitted that the absorption to the post of Inspector (Accounts) from Inspector (Combatant Ministerial) is not a departmental promotion but it is only an absorption from one department to another on the basis of special skill/knowledge possessed by the candidates in the same pay scale and therefore even the Administrative rule applicable for the post Inspector (Accountants) does not mention seniority as criteria for posting. The said administrative rules only mention

that the candidates should possess the cash & Accounts Course from any recognized institute and should be medically fit."

And again it is stated as follows:

"That the contents of para 7 of the Reply are wrong and hence denied and the corresponding para of the Writ Petition which contains the ground to the petition is reiterated and reaffirmed. It is further submitted even at the cost of repetition that the petitioners case was rejected by the Respondents even without referring the same to the screening committee. Further, the contention of the Respondents that the post of Inspector (Accountants are lying vacant due to non-allotment of seats in cash and Accounts course by ISTM, New Delhi is highly misleading. The true fact is that even in the year 2015 certain seats were allotted by the ISTM, New Delhi to the Respondents but they failed to nominate any candidate for the said training. Further, again, the Respondents arguments that the petitioner was nominated for Cash and Accounts course by NDRF due to their own administrative requirement is highly absurd and in reply thereto it is again submitted that when the Department (ITBP) is forced to take candidates from outside on deputation due to ineligibility of candidates within the department then there is no justification in ignoring the Petitioner's candidature who belongs to ITBP cadres and possess the necessary qualification, merely on the ground that he was not nominated for training course by ITBP."

We find that these factual aspects have not been analyzed at all by the High Court in the impugned judgment. We are conscious of the fact that the High

Court in paragraph 4 of the impugned judgment, has noted that in the rejoinder the petitioner has himself given the names of : Ram Singh, Manmohan Singh and Vimlesh Kumar Tiwari. However, the High Court has not fully addressed the issues raised by both parties. Therefore, we are inclined to relegate the parties to the High Court for reconsideration of the Writ Petition on the aforementioned limited grievance of the appellants.

The High Court shall decide the stated issue afresh uninfluenced by the observations made in the impugned judgment and in accordance with law.

The appeals are allowed. The Writ Petition is restored to its original number on the file of the High Court for its decision afresh.

.....J.  
**(A.M. Khanwilkar)**

.....J.  
**(Ajay Rastogi)**

**NEW DELHI;  
JANUARY 15, 2019.**

ITEM NO.15

COURT NO.10

SECTION XIV

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 1926-1927/2017

(Arising out of impugned final judgment and order dated 12-07-2016 in WPC No. 494/2016 23-08-2016 in WPC No. 494/2016 23-08-2016 in RP No. 371/2016 passed by the High Court Of Delhi At New Delhi)

PRABIR PAL

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

Date : 15-01-2019 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR

HON'BLE MR. JUSTICE AJAY RASTOGI

For Petitioner(s)

Mr.Anil Kumar Tiwari, Adv.  
Mr. Amit Pawan, AOR

For Respondent(s)

Ms. Pinky Anand, ASG  
Ms. V. Mohana, Sr. Adv.  
Mr. V. Balaji, Adv.  
Ms. Kritika Sachdeva, Adv.  
Ms. Tanisha Samanta, Adv.  
Mr.B. V. Balram Das, AOR  
Mr. B. Krishna Prasad, AOR

UPON hearing the counsel the Court made the following  
O R D E R

The appeals are allowed in terms of the signed order.

Pending applications, if any, stand disposed of.

(DEEPAK SINGH)  
COURT MASTER (SH)

(ANITA RANI AHUJA)  
COURT MASTER (NSH)

[Signed order is placed on the file]