

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (S) No. 1412 of 2014-

Mahesh Prasad Verma son of Sri Dharam Mahto, resident of Village-Dari, P.O.-Edla, P.S.-Simaria, District-Chatra**Petitioner**

Versus

1. The Union of India through the Ministry of Personnel, P.G. & Pension, Department of Personnel & Training, Staff Selection Commission, having office at Eastern Regional Office, Nizam Palace, 1st MSO Building (8th Floor), 234/4, Acharya Jagdish Chandra Bose Road, Kolkata-700020.
2. The Regional Director (ER), Staff Selection Commission, 1st MSO Building (8th Floor), 234/4, Acharya Jagdish Chandra Bose Road, Kolkata-West Bengal-700020
3. The Director General, Boarder Security Force (BSF) having office at Lodhi Road, New Delhi.
4. The Inspector General of Police, Boarder Security Force, Meru Camp, Hazaribagh, P.O. & P.S.-Hazaribag, District-Hazaribag

.....**Respondents**

CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner(s) : Mr. Manoj Tandon, Advocate
For the Resp.-U.O.I : Mr. Prashant Pallav, ASGI
Mr. Abhijeet Kr. Singh, CGC
Mr. Ayush, A.C to A.S.G.I

09/19.01.2026 Heard learned counsel for the parties.

2. The instant writ application has been preferred by the Petitioner praying for a direction upon the concerned Respondent for appointment on the post of Constable (GD), pursuant to advertisement published in Rozgar Career India dated 03.12.2011.

3. Mr. Manoj Tandon, learned counsel for the Petitioner draws attention of this Court towards Annexure-5 and submits that the petitioner herein secured 38 marks and he was medically fit; however, two persons, namely, Sanjeet Kumar Verma and Umesh Prasad Verma, who secured 37 marks and were declared unfit; still they were appointed as Constable in CRPF, but the petitioner was not appointed.

4. Ld. Counsel for the Respondents submits that the petitioner applied for Constable under BSF and the concerned

two candidates, namely, Sanjeet Kumar Veerma and Umesh Prasad Verma, whose names are reflecting at Annexure-5, they were appointed for the reason that the Petitioner has given preference for BSF and those two persons were given preference for CRPF and subsequently they were appointed under CRPF.

5. Having heard learned counsel for the parties and after going through the documents available on record, it appears that from bare perusal of advertisement, it would appear that the allotment of CPO to the candidates selected from each State will be done from merit cum option depending on availability of vacancies in each CPO earmarked for State.

It further transpires that the merit-list of the candidates on the basis of marks obtained and choice given would show that the petitioner had not obtained required marks for his choice i.e., BSF. It further transpires from the averments made in the counter affidavit that in absence of choice of CRPF he could not be selected in CRPF as claimed by the petitioner now.

6. As a matter of fact, this issue has been decided by Hon'ble Supreme Court in the case of *Union of India and others Vs. Probir Ghosh and others*¹, wherein the Hon'ble Supreme Court has held in Paras 34 to 45, which are quoted hereunder:

“34. In Column 16 under Para 4.0 of Annexure II, which is the brochure containing instructions for filling up the application, candidates were called upon to carefully indicate preference for the post under different Forces. It was also made clear that option once exercised will be final and that no change will be allowed thereafter.

35. The preference for BSF was to be indicated by the alphabet “A”. The preference for CISF, CRPF, SSB, ITBP and Assam Rifles are to be indicated respectively by the alphabets “B”, “C”, “D”, “E” and “F”. The respondents are candidates who have clearly indicated their preference to one service only. Some candidates have indicated preferences to multiple services, as there was no prohibition under the Recruitment Notification to do so.

36. What the Staff Selection Commission did was, to confine the consideration of candidates who indicated

¹ (2022)12 SCC 250

preference only to one service, to that service only. Candidates who indicated multiple preferences were considered for all those services and depending upon the cut-off marks, they were allotted to any one of the services.

37. *Unfortunately, the respondents in these appeals indicated preference only to one service. They did not secure more than or equal to the cut-off mark for that service in the category to which they belonged. It is true that candidates who secured lesser marks than these respondents have been selected in other services, but it was because of the expression of their openness for appointment to any service, even at the time of submitting the application. The respondents have become wiser after the event.*

38. *The High Court proceeded on the basis that the candidates cannot be pinned down to the preference indicated in the application form and that appointing persons who secured lesser marks and rejecting those who secured higher marks on this ground, would be violative of Article 14 of the Constitution.*

39. *In doing so, the High Court clearly overlooked Column 16 under Para 4 of Annexure II, to the notification. This is clearly erroneous.*

40. *However, the learned counsel for the respondents relied upon a decision of the Division Bench of the Patna High Court in Ram Bilash Ram v. State of Bihar and the decision of the Allahabad High Court in Bindhyachal Kumar Singh v. Union of India*

41. *In Ram Bilash Ram, the High Court of Patna interpreted the word “preference” to mean a mere indication of a choice and held that the same cannot be taken to indicate the rejection of other options. The relevant portion of the judgment reads as follows : (SCC OnLine Pat para 11)*

“11. So, the ordinary meaning of “preference” is to give priority to one over another. It would mean that by giving preference to one the person shows his liking for it over the others. This does not mean that by giving preference or priority to one, he shows his dislike for others and opts against them. So, if the appellant gave preference to some services/posts, it cannot be said that he has withdrawn his candidature for the rest of the services/posts. Any contrary inference drawn on the basis of preference list would be opposed to the principle of natural justice. If one says that he prefers a five-roomed house, it cannot be interpreted to mean that he would not accept a four-roomed house if no five-roomed house is made available to him. The term “preference” always indicates that the person has a choice to make. It cannot be interpreted to mean that if he is not offered the thing for which he has shown his preference, he will not accept the other things offered to him for which also he was otherwise eligible and for which also he was candidate from

the very beginning. If the applicant had no choice left with him, as he was not found suitable for the services/posts for which he had shown preference, it cannot be said that he has abandoned his claim for the rest of the services, as it cannot be presumed that he would prefer to remain unemployed, if he did not get services/posts of his choice.”

But in para 12 of the said decision itself, the High Court made it clear that “it would have been a different matter had there been a rule or instruction to the contrary”. In the case on hand the instructions were very clear and hence the decision of the Patna High Court will not apply.

42. *In Bindhyachal Kumar Singh , the Allahabad High Court was concerned with a case where the candidate left the column relating to preference, blank. Therefore, the High Court held that in the absence of any condition or instruction to the effect that if any column in the application form is left blank, the application form would be rejected, and the approach adopted by the Staff Selection Commission was not correct. Therefore, the said case is also not on a par with the case on hand.*

43. *As a matter of fact, a similar question came up for consideration before this Court in Union of India v. M.V.V.S. Murthy. The candidate in that case preferred Indian Administrative Service in the Civil Services Examination, 1983. He was actually selected for IPS. He did not accept it but chose to appear for the next year examination. When he could not make it in the next year examination, he gave a representation seeking at least to be allotted to IPS for the CSE 1983 batch on the ground that candidates who had secured lesser marks than him have been allotted to IPS in CSE 1983. When it was not accepted, he approached the court, but this Court rejected his claim.*

44. *Para 5 of the said decision clinches the issue and it reads as follows : (M.V.V.S. Murthy case , SCC p. 373)*

“5. Indisputably the respondent confined his preference only to the Indian Administrative Service. The note appearing below Column 22 in the application form reads thus:

‘In respect of the services/posts not covered by the entries above, it will be assumed that you have an equal preference for those services/posts. You will therefore, be considered for any of those services if you cannot be allotted to the services of your preference.’

The real meaning of this note appears to us to be that if preferences given by the candidate are not available to be accommodated on the basis of the results of the candidate's preference in the selection examination, instead of being rejected he would be available to be considered for the other service. As already pointed out, the Civil Services

Examination is a combined examination for several services and when a vacancy is not available within the field of the candidate's choice, it is open to the Central Government to consider the candidate for other services. The effect of this note is not that preferences given by a candidate securing a place lower to the respondent would not be entitled to his preference because he has been placed below the respondent in ranking. If ranking alone is to be the test, preferences would have no meaning. On the other hand, the procedure that preferences are acceptable with reference to the position in the final list till vacancies in the services preferred are exhausted is the most logical one and meets the requirements of the scheme. Merely because the respondent was placed at the 280th place in the merit list and someone else placed at No. 291 was being offered the Indian Police Service in keeping with his preference, would not give the respondent any cause of action."

(emphasis supplied)

45. *Therefore, the High Court was clearly wrong in granting relief to the respondents : (i) by diluting the significance of preferences given by candidates; and (ii) in nullifying the effect of the instructions contained in Column 16 of Para 4 of Annexure II to the Recruitment Notification."*

7. Having regard to the aforesaid facts and circumstances and the judgment of Hon'ble Supreme Court in the above referred case, no relief can be granted to the petitioner. Accordingly, the writ petition stands dismissed.

8. Pending I.A(s), if any, stand closed.

(Deepak Roshan, J.)

19th January, 2026

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