

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.4171 of 2012 (O&M)

Date of decision: 14.08.2015

Rajesh Hooda

...Petitioner

Versus

Haryana Gramin Bank and others

...Respondents

Coram: HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Sumit Sangwan, Advocate for the petitioner.

Mr.A.S.Gaghra, Advocate for

Mr.P.K.Dutt, Advocate for respondents No.1 and 2.

Mr.R.K.S.Brar, Addl. AG, Haryana.

HARINDER SINGH SIDHU, J.

By filing this petition, the petitioner has challenged the selection-list dated 29.2.2012 (Annexure P-6), whereby, respondents No.5 and 6 were selected to the post of Office Attendant in respondent - Bank. He has also sought a direction to the respondents to consider him for selection as per the policy/rules for appointment to the said post against the vacancy meant for Ex-Servicemen category in District Rohtak with all consequential benefits.

The case of the petitioner is that he suffered a disability during Op. VIJAY (Kargil War) on 16.5.1999 while serving as Sepoy in 4 Jat Regiment of Armed Forces. He was issued disability certificate Annexure P-1 by the Jat Regiment. The Government of India issued him certificate Annexure P-2 for employment assistance under Priority-I Scheme and a similar certificate (Annexure P-3) was

issued by the concerned Zila Sainik Board, Rohtak. The Board has also issued him an eligibility certificate (Annexure P-4) in this regard and his name is also registered with Employment Exchange/Zila Sainik Board, Rohtak. Thus, he is entitled for re-employment on Priority-I basis in ex-servicemen category.

In response to the requisition sent by the respondent – Haryana Gramin Bank for appointment to fill posts of Office Attendants (Multipurpose), the respondent – Zila Sainik Board forwarded names of 10 candidates, including the petitioner. The petitioner attended the interview on 24.2.2012 and the result was declared on 29.2.2012 (Annexure P-6), wherein, respondents No.5 and 6 were selected in the ex-servicemen category.

Learned counsel for the petitioner has contended that as per instructions dated 14.7.1975 (Annexure P-7) direct recruitment vacancies of priority and non-priority candidates in ex-servicemen category are to be filled in the ratio of 50:50 and accordingly, one post was meant for Priority-I candidate, to which the petitioner belongs. Reference has also been made to the circular dated 6.3.1972 (Annexure P-9), which says that preference in civil posts be given to disabled ex-servicemen with disability between 20% to 50%.

In response to notice of motion, respondent No.1 and 2 (Bank) have filed reply, wherein, they have not controverted the eligibility or preferential right of the petitioner, but have only stated that the petitioner neither disclosed about his preferential category nor any document indicating that he was required to be given

preference in the reservation quota for ex-servicemen, was placed on the record or provided by him at the time of the interview.

In the written statement filed on behalf of respondent Nos.3 and 4 (Board), it is admitted that the petitioner falls under Priority-I Scheme as he is war-disabled ex-serviceman as per certificates issued by Government of India. They have also admitted that the Zila Sainik Board has also issued a certificate to him under Priority-I Scheme. It is their further stand that the list of candidates forwarded to the respondent – Bank was sent without mentioning Priority-I as it was not so asked by the respondent – Bank. Respondents No.3 and 4 have also admitted the instructions of the Central Government and State Government to give priority to disabled ex-servicemen in public appointments.

I have heard Learned counsel for the parties and have gone through the paper-book of the case.

Relevant extracts of instructions (Annexure P-7 and P-8) issued by the Government of India and circular (Annexure P-9) issued by the Government of Haryana, which relate to the eligibility of the petitioner to have preferential right being a candidate of Priority-I Scheme over the other ex-servicemen candidates, read as under:-

Annexure P-7 dt.14.7.1975:

“The undersigned is directed to refer to the Ministry of Home Affairs (now Department of Personnel and Administrative Reforms. Office Memorandum No.71/300/54 CS(C) dated 28th May, 1955, according to which the Central Government vacancies notified to the Employment Exchanges are to be filled by candidates belonging to the Priority categories and those belonging to non-priority categories, in the ratio of 50:50. For this

purpose, the appointing authorities should maintain a roster starting with a candidate of priority category and while intimating a vacancy, to the Employment Exchange indicate clearly whether the vacancy should be filled by a priority or by non-priority candidate.”

Annexure P-8 dt.5.1.1989:

“The undersigned is directed for to refer to the DPAR's OM No.14/1/74-Estt(D) dt.14.7.75 and O.M.No.14034/3/84-Estt (D) dt. 31.7.84 on the above subject and to say that instances have come to the notice of this department in which Ministries Departments, etc. have not been indicating the number of priority vacancies while sending their requisitions to the employment exchange. This has resulted in denial of employment assistance to the categories of persons covered under various priorities, particularly disabled Defence service personnel under priority I and dependents of Defence personnel killed or severely disabled in action under Priority IIA... ..

3.All the Ministries/Departments are requested strictly to adhere to the govt. instructions referred to above and indicate clearly the number of vacancies while sending requisitions to the employment exchanges for sponsoring candidates.”

Annexure P-9 – dt.6.3.1972:

“I am directed to refer to Haryana Govt. letter No.4741-4-GS-11-71, dated 13.9.71 and to say that the question of the rehabilitation of disabled ex-service personnel (disability between 20% to 50%) and dependents of personnel killed/disabled beyond 50% had been under consideration and it has been decided as follows:

(a) Reservation

The existing reservation in respect of civil posts for ex-servicemen should be utilized in the manner given below:

(i) disabled ex-servicemen with disability between 20% to 50%

(ii) Up to two dependents of service personnel killed/disabled beyond 50%.

(iii) Other ex-servicemen.”

In view of the instructions, referred to above as also the

admission on the part of the respondents regarding the eligibility of the petitioner, there no room of doubt that out of the two posts reserved for ex-servicemen category, the first one should have been

given to a candidate of Priority-I category, to which the petitioner belongs.

Thus, the act of the respondents in not considering the petitioner for appointment in the Priority-I Category of ex-servicemen on the basis of the certificates issued to him by the Government of India and as per the policy of the Government of Haryana, is not justified. It is, accordingly held that the petitioner was entitled to be considered for selection and appointment in the Priority-I category of ex-servicemen.

The consequence of the above would be that from out of respondents No.5 and 6, the candidate lower in merit would have to make way for the petitioner. But taking into consideration the fact that after their appointment, respondents 5 and 6 have been working for more than three years, and that there was no fault or misrepresentation on their part in securing the appointment, I am of the view that it would be unfair and unjust to disturb their appointment. The respondent – Bank is, accordingly, directed to take necessary steps to protect their appointment.

In holding as above, I am relying on a decision of this Court in **Harinder Pal Singh Vs. State of Punjab and others (CWP No. 18419 of 2013 decided on 3.11.2014)**. In this case, while allowing the petition and directing the appointment of the petitioner therein, which would have entailed ousting the respondent from the zone of appointment, the Court directed that the appointment of the respondent be not disturbed as there was no fault or

misrepresentation on his part in securing appointment and he had worked for about one year.

In another decision **Sahil Aggarwal Vs. State of Punjab, 2014 (3) SCT 813**, where some candidates were appointed on the basis of result of competitive examination and later on it was found that there was some error either in the questions or answer keys, taking note of the fact that there were no allegations of fraud or misrepresentation on their part and they had worked for three years or more, their appointments were not set aside, even though they did not make it on merit in terms of the revised result

Resultantly, this writ petition is allowed. Respondent – Haryana Gramin Bank is directed to offer appointment to the petitioner on the post of Office Attendant subject to the necessary formalities like medical and police verification etc. The petitioner would be entitled to seniority and notional pay fixation from the date the appointments were originally made. However, it is made clear that he will not have the right to claim arrears of salary for the period prior to his joining.

The appointment of respondent Nos.5 and 6 will not be disturbed.

Disposed of accordingly.

August 14, 2015

gian

**(HARINDER SINGH SIDHU)
JUDGE**