

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

Civil Writ Petition No.26580 of 2014

Date of Decision: 03.03.2015

Kirandeep Kaur

..... Petitioner

Vs.

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Bhriagu Dutt Sharma, Advocate for the petitioner.

Mr. V. Ram Saroop, Addl. Advocate General, Punjab
for respondent Nos.1 to 3.

Mr. Sharan Sethi, Advocate for respondent No.4.

JASWANT SINGH, J.

1. The petitioner submitted an "Online Application Form" for the post of Sub Inspector (Female) in the Punjab Police in response to Advertisement (**Annexure P-2**) for recruitment against the 110 vacancies/posts of Sub-Inspector (Female) in Punjab Police (District Cadre). The dispute is regarding consideration of the candidature of the petitioner against a single vacancy reserved in the Freedom Fighter Category.

2. It is submitted that pursuant to the Advertisement (**P-2**), the applicants were required to submit their online application forms during 15.11.2013 to 02.12.2013 in the prescribed online format against the 110 posts of Female Sub-Inspector in the Punjab Police (District Cadre). Concededly, one post was reserved for the Freedom Fighter Category. The petitioner being fully eligible submitted an online application within the stipulated time, however, due to an inadvertent/*bona*

fide mistake, the petitioner could not properly mention that she belongs to Freedom Fighter Category as well. The selection process comprised of four stages. The first stage comprised the Physical Measurement Qualifications, and who passed the same were to take the second stage of Physical Fitness Test which comprised 800 Meter Race, Long Jump and High Jump with prescribed standards. Those who passed the second stage also were then admitted to third stage of written examination. Thereafter, the successful candidates were to take the fourth stage of Interview.

3. As per the Prospectus, documents regarding eligibility including the claims qua reservation were to be produced at the time of Physical Fitness Test and the original Certificates were to be checked at the time of Interview of the candidates, who were called for the same.

4. It is averred that soon after submission of her online application form, the mistake was realized and upon contacting the respondent-Authorities, she was informed to bring her documents in support of consideration in the Freedom Fighter Category at the time of Physical Fitness Test. The petitioner was called for Physical Measurements and Physical Fitness Test on 10.09.2014 at Jalandhar. She being declared successful in both the tests, deposited her Certificates including her Certificate dated 27.12.2013 (**Annexure P-5**) showing her to be the real maternal grand-daughter of Freedom Fighter-Sh. Sohan Singh. The petitioner then undertook the written examination, wherein she secured 56 Marks. Thereafter, the petitioner was called for interview on 04.11.2014 and as per record, she has secured 9 out of 15 Marks. Thus, the total marks secured by the petitioner are $56 + 9 = 65$ Marks. However, Manmeet Kaur/respondent No.4 lower in merit having secured 63 marks was illegally selected for appointment against the post reserved for Freedom Fighter Category.

5. Upon notice, the official respondent Nos.1 to 3 have filed their reply and replication to the same has been filed by the petitioner. No reply has been filed by the private respondent No.4.

In the reply, it is stated that since the petitioner had applied in the General Category, and the last candidate selected in that Category having secured 70 Marks, the petitioner was not selected having secured only 65 Marks. Respondent No.4/Manmeet Kaur is stated to have applied in the General Category, Ex-Servicemen Category and Freedom Fighter Category and having obtained total 63 Marks, she was selected in the Freedom Fighter Category. It is denied that the petitioner had submitted the photocopy of her Certificate (P-5) of her belonging to Freedom Fighter Category at the time of Physical Test, however, the submission of the same at the time of Interview is admitted. It is further stated that in case the petitioner had incorrectly submitted her Form by inadvertently omitting to state her Freedom Fighter Category as well, she was free to edit her application form as had been done by another candidate-Navdeep Kaur.

6. In the replication, the aforesaid contents of the written statement have been denied while further stating that respondent No.4/Manmeet Kaur can be adjusted/offered appointment under the 4 vacant posts out of 8 advertised under the Ex-Servicemen Category, apart from the fact that she has secured much more Marks than the last candidate selected and offered appointment in the Ex-Servicemen Category.

7. Learned Counsel for the petitioner has argued that the eligibility of the petitioner in the category of Freedom Fighter cannot be disputed and merely for her inadvertent mistake of not applying in the Freedom Fighter Category as well while submitting her application form, she cannot be denied consideration in the Category

of Freedom Fighter, moreso when the prospectus itself provided submission of documents at the stage of selection process. In support, he has cited the judgments of the Hon'ble Supreme Court titled as **Charles K. Skaria and others Vs. Dr. C. Mathew and others, 1980 AIR (SC) 1230** and **Dolly Chhanda Vs. Chairman, JEE, 2004 (4) S.C.T. 546** and a decision of this Court rendered by Coordinate Bench in **Civil Writ Petition No.3581 of 2014, Monika & others Vs. State of Punjab & others, decided on 23.04.2014.**

8. On the other hand, learned Counsel for the State has argued that the petitioner had applied in the General Category and thereafter could not be permitted to change her Category to Freedom Fighter Category. He, however, concedes that respondent No.4/Manmeet Kaur in view of her merit position, could/can also be offered appointment against the vacant post in the Ex-Servicemen Category.

9. After hearing learned Counsel for the parties, this Court is of the opinion that the claim of the petitioner for consideration in the Freedom Fighter Category is meritorious.

10. It is not in dispute in the light of Certificates **Annexures P-1 and P-5** that the petitioner belongs to Freedom Fighter Category. It is also not in dispute that the petitioner has secured 65 Marks and respondent No.4/Manmeet Kaur selected against the solitary post in the Freedom Fighter Category has secured 63 Marks.

The dispute is that there was an alleged inadvertent mistake by the petitioner at the time of submission of her online application form, where she failed to mention consideration in the Freedom Fighter Category as well, whereas the stand of the respondents is that the petitioner has to be considered only in the General Category to which she had applied. It is also not in dispute that the candidates were required to submit their documents in support of their eligibility in

the “category/categories” at the time of conducting of the tests (Physical Measurement and Physical Test) of the Selection Process, which admittedly in the present case, had been conducted after a period of nine months from the date of submission of application forms.

11. The Hon'ble Supreme Court in **Charles K. Skaria's case (supra)** was considering the impact of receipt of communication from the University after the last date for submission of the application, as to the students having obtained a diploma before the last date of the application, and held that the proof of having obtained a diploma was different from the factum of having obtained it prior to the date of application. It held that it was prudent to produce the evidence of diploma along with the application, however, the proof of having obtained the same prior to the last date could be produced later but before the date of actual selection.

Similarly, in **Dolly Chhanda's case (supra)**, it was held that there could be no relaxation in holding the requisite eligibility qualification before the last date fixed, however, some relaxation, in given cases, in the matter of submission of proof of having obtained the eligibility qualifications before the last date can be permitted to be submitted at a later stage but before the selection process is completed. Depending upon the facts of the case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains to the domain of procedure. Every infraction of the Rule relating to submission of proof need not necessarily result in rejection of candidature.

A Coordinate Bench of this Court in **Monika's case (supra)** directed the consideration of the candidate for change of her Category from General to OBC Category wherein a similar issue of mistake in applying only in the General

Category at the time of submission of “Application Form” was concerned. The judgment covers the facts of the present case on all fours. The relevant extract of para 7 of the said judgment reads as under:-

“ 7. After hearing counsel for the parties, this Court is of the opinion that admittedly, there is no dispute regarding the fact that the petitioner belongs to OBC Category. It is by mistake that he had wrongly applied in the General Category and thus, is not qualifying the cut-off marks in the General Category. However, by getting 83 marks, as per the revised marks, he qualifies in the OBC Category. In such circumstances, this Court is of the opinion that the authorities should be directed to consider the representation of the petitioner for change of his category from General Category to OBC Category. ”

12. Applying the ratio of the aforesaid judgments, to the facts in the present case, a crystal clear case for issuing directions for consideration of the case of the petitioner in the Category of Freedom Fighter is made out. It is not disputed that the maternal grand-father of the petitioner-Sh. Sohan Singh was awarded a “*Tamra Patra*”, being Freedom Fighter as reflected from the Certificate dated 15.08.1972 (P-1). It is also not in dispute that the petitioner is the maternal grand-daughter of the Freedom Fighter-Sh. Sohan Singh and thus belonging to the Category of Freedom Fighters. It also cannot be accepted by a prudent mind that the petitioner would not offer the photocopy of the Certificate dated 27.12.2013 (P-5) of her belonging to the Freedom Fighter Category at the time of conduct of Physical Fitness Test, as contemplated by the terms of the Prospectus/Instructions. Therefore, the insistence of the respondents to consider the petitioner only in the General Category as per her Online Application Form is not appreciable and held unreasonable, moreso, when no prejudice to any other candidate is being caused as

admittedly respondent No.4/Manmeet Kaur also secures selection and appointment in the Ex-Servicemen Category against the vacant posts. Therefore, the said action is declared arbitrary and illegal. In such circumstances, this Court is of the opinion that the petitioner is entitled to be considered in the Category of Freedom Fighters as well.

13. Accordingly, the present writ petition is allowed with a direction to the official respondents to consider the petitioner for selection and appointment on the basis of her merit secured in the Freedom Fighter Category, with all consequential benefits except arrears of salary, if any. It is further directed that respondent No.4/Manmeet Kaur would be entitled to be considered for selection and offer appointment/adjustment on the basis of her merit in the Ex-Servicemen Category. The needful exercise shall be conducted within two weeks from the receipt of certified copy of this order.

March 03, 2015

Gagan

**(JASWANT SINGH)
JUDGE**