

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

+ **W.P.(C) No.1034/2014**

% **12th February, 2015**

SHRI DEEPAK CHAUDHARY Petitioner
Through: Mr. Pawan Bahl, Advocate with Mr.
Mukesh Kumar, Advocate.

Versus

UNION OF INDIA AND ORS. Respondents
Through: Mr. S.Nanda Kumar, Advocate with
Mr. Soundara Saran Kumar,
Advocate, Mr. Prateek Gautam,
Advocate and Mr. Parivesh Singh,
Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition under Article 226 of the Constitution of India is filed by the petitioner seeking directions for quashing the appointment of the respondent no.3 as the van driver in the respondent no.2/Sahitya Akademi and for appointment of the petitioner to the post of van driver. Respondent no.3 has been appointed as the van driver vide order dated 3.5.2013.

2. The facts of the case are that the respondent no.2 advertised on 29.1.2013 for appointment to the post of a van driver. The admitted eligibility criteria for appointment to the post of a van driver reads as under:-

“ **Van Driver** (1 post)(UR)

Pay Band-I (Rs.5200-20200) + Grade Pay Rs.1900

Educational & Other qualifications :

Essential:

1. 8th pass or equivalent qualification from a recognized Board or institution.
2. Valid Motor driving licence for light and heavy vehicle
3. Knowledge of carrying out minor automobile repairs
4. Three years experience of motor driving
5. Polite behaviour

Age Limit: Upto 30 Years

1	Name of the post	Driver
2.	Number of posts	Two (2005) Subject to variation depending on workload
3.	Classification	Group ‘C’
4.	Scale of Pay	Rs.3050-4590 (Pre-revised) PB-I (Rs.5200-20200 + G.P. Rs.1900)
5.	Whether selection post or non selection post	Not Applicable
6.	Age for direct recruitment	Up to 30 years
7.	Educational & other qualifications required for direct recruitment	<u>Essential</u> 1. 8 th pass or equivalent qualification from a recognized Board or institution 2. Valid Motor driving licence for light and heavy vehicle 3. Knowledge of carrying out minor

		automobile repairs 4. Three years experience of motor driving 5. Polite behaviour <u>Note.</u> The qualification(s) regarding experience is/are relaxable at the discretion of the Appointing Authority in the case of candidates belonging to Scheduled Castes or Scheduled Tribes if at any stage of selection the Appointing Authority is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancy reserved for them.
8.	Whether age, educational and other qualifications, experience prescribed for direct recruitment will apply in the case of promotion	Not Applicable
9.	Period of probation, if any	Two years
10.	Method of recruitment whether by promotion or by direct recruitment & % of the vacancies to be filled by various methods	Direct recruitment
11.	In case of recruitment by promotion/deputation/absorption grade from which promotion deputation/ absorption is to be made	Not Applicable
12.	Selection Committee/ Departmental Promotion Committee	Secretary, Sahitya Akademi-Chairman Deputy Secretary (Admn.)-Member; and an expert to be nominated by the Secretary

3. We are concerned with the aspects which are stated in para 6 being the age for direct recruitment and para 7 with respect to qualifications

that the candidate must have a valid driving licence for light and heavy vehicles.

4. Petitioner appeared in the selection process but was not selected as he was placed at second number in the select list, with the respondent no.3 being put at number one in the select list. It may be noted that the candidates including the petitioner and the respondent no.3 were put to the written test and the skill test on 2.5.2013, besides undergoing an interview before the selection committee.

5. Petitioner before this Court argues that the respondent no.3 was illegally appointed because the age of the respondent no.3 as per the documents filed by the respondent no.3 itself is more than 30 years as in May, 2013 because date of birth of respondent no.3/Sh. Harinder Singh is 26.5.1973. It is argued that appointment of appointing respondent no.3 is illegal since the age limit was 30 years, and thus since the respondent no.3 was over age, and there existing no provision for relaxation of age in terms of the applicable rules as stated above which only entitles the relaxation with respect to experience in driving and that too only for SC and ST candidates. It is also argued that respondent no.3 was disqualified for being appointed to the post in question because respondent no.3 admittedly did not have the heavy motor vehicle licence and the selection committee has given

WP(C) 1034/2014

relaxation of six months for the respondent no.3 to obtain a heavy motor vehicle licence although no relaxation is permitted as stated above except with respect to experience of three years and that also only for SC and ST candidates.

6. A reading of the counter affidavit shows that both the aspects of the respondent no.3 being more than 30 years and the respondent no.3 not having the heavy motor vehicle licence is not disputed. In fact, the qualifications for appointment of a van driver of the respondent no.2 and which have been quoted in the earlier part of this judgment, are those as extracted from Annexure R-2 which is filed alongwith the counter affidavit of the respondent no.2, and which prescribes the age bar and the aspect that a heavy motor vehicle licence is required and on which aspect no relaxation can be given since relaxation is only with respect to the eligibility criteria of experience of three years and that too only for SC and ST candidates.

7. The minutes of the Selection Committee meeting appointing the respondent no.3 and putting the petitioner at serial no.2 of the select list is dated 2.5.2013 and which reads as under:-

“ SA/

02.05.2013

The written test and skill test for the post of Van Driver followed by a meeting of the Selection Committee at 02:30 p.m. today to interview the

candidates for the above post to be filled-up as per advertisement. After short-listing, 14 candidates were called for test/interview (as per list enclosed). The following were on the Selection Committee:

1. Dr. K. Srinivasarao, Secretary, Sahitya Akademi
2. Smt. Renu Mohan Bhan, Deputy Secretary (Admn.), Sahitya Akademi
3. Sri Mayank Surolia, Assistant Director, Estt., NBT, India

Out of 14 candidates called for interview 12 appeared for written test, skill test and interview.

1. Sri. Harinder Singh
2. Sri Rajesh Kumar
3. Sri S Lokesh
4. Sri Sachin Kumar
5. Sri Yaad Ram
6. Sri Amit Kumar Meena
7. Sri Vijay Pal
8. Sri Vicky Singh
9. Sri Vijay Kumar
10. Sri Deepak Chaudhary
11. Sri Balbir Singh
12. Sri Rahul Gaur

After carefully taking into consideration the qualification prescribed for the post and also other requirements and performance of the candidates in the written test, skill test & interview, the Committee recommended the following candidates in order of preference for the post of Van Driver in Pay Band I of Rs.5,200-20,200 + Grade Pay of Rs.1900.

1. Sri Harinder Singh
2. Sri Deepak Chaudhary

In case the offer is acceptable to the candidate at S. No.1 above he may obtain valid motor driving license for heavy vehicle within six months.

Sd/-
(Renu Mohan Bhan)

Sd/-
(Mayank Surolia)

Sd/-
(K. Sreenivasarao)"

8. It is thus clear that the officials of the respondent no.2 and who are part of the Selection Committee who selected the respondent no.3 on 2.5.2013, have acted in gross violation of the eligibility criteria of appointment of a van driver and very frankly this Court has failed to understand as to how the two members of the Selection Committee being Dr. K. Srinivasarao and Smt. Renu Mohan Bhan, Secretary and Deputy Secretary (Admn.) respectively of the respondent no.2 have acted in a totally illegal and arbitrary fashion by overlooking the admitted eligibility criteria and by appointing the respondent no.3 to the post of a van driver in violation of the eligibility criteria.

9. Though learned counsel for the respondent no.2 very valiantly sought to argue that the petitioner has no licence of a heavy motor vehicle because petitioner's licence only shows an endorsement of HTV i.e Heavy Transport Vehicle, however, the argument is totally frivolous to say the least and in fact is an additional arbitrariness to the arbitrary action which the respondent no.2 has committed by appointing the respondent no.3 illegally. There is no difference between a HTV licence and a Heavy Motor Vehicle

licence, and this is all the more so because of two reasons. The first reason is that the requirement of the eligibility criteria 7(2) is only a valid motor driving licence for a heavy vehicle and it cannot be said that HTV is not a heavy motor vehicle driving licence. Secondly, the petitioner has alongwith rejoinder affidavit filed the information received from the Motor Licencing Officer under the RTI that there is no difference between a HTV (Heavy Transport Vehicle) licence and a HMV (Heavy Motor Vehicle) licence.

10. In view of the above, the writ petition is allowed. Appointment of the respondent no.3 is quashed. Since the petitioner is at no.2 in the selection list, he will hence be automatically entitled to get appointment inasmuch as the appointment of the respondent no.3 is quashed. Petitioner will also be entitled to costs of Rs.10,000/- and which costs will be debited by the respondent no.2 from the accounts of the two members of the Selection Committee of the respondent no.2 who appointed the respondent no.3 in spite of the requirements of the eligibility criteria qua the appointment made of respondent no.3 having been *ex facie* violated by them. Petitioner be given appointment letter of a van driver within four weeks from today.

FEBRUARY 12, 2015
Ne

VALMIKI J. MEHTA, J