

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

CWP No.6300 of 2012

Date of Decision:07.11.2016

Rishi Singla

... Petitioner

Vs.

National Fertilizer Limited and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Aman Chaudhary, Advocate for the petitioner.

Mr. Vipin Mahajan, Advocate for respondents No.1 and 2.

Mr. Rahul Gautam, Advocate for respondent No.3.

P.B. BAJANTHRI J. (Oral)

In the instant writ petition, the petitioner has questioned the selection and appointment of 3rd respondent vide offer of appointment/communication dated 5.10.2011 (Annexure P-1) to the post of Technician Grade-V (Mechanical) in 1st respondent-company.

The 1st respondent advertised to fill up the post of Technician Grade-V (Mechanical) amongst other posts. The post was reserved for persons having "Speech/hearing impairment", and persons with disabilities other than speech/hearing impairment will also be considered.

The petitioner is a candidate with a physical disability of speech/hearing impairment of 100% whereas 3rd respondent has disability with orthopedic with 40%. The Selection Authorities have resorted mode of selection by holding interview only. The petitioner, respondent No.3 and 10 others were called for interview wherein persons with speech/hearing impairment disability are Prabhuling, Hitesh Ahuja, Rishi Singla (petitioner) whereas Sudin Kumar, Udai Veer Singh, Lila Krishna, Pankaj Rupchand Bhowate, Vishal Kumar, Om Parkash Paswan, Ritesh Kumar and Hari Om

all are disabilities with Orthopedic and one Hitesh who has disability with Visual Impaired.

Perusal of the proceedings of Selection Authority held on 4.10.2011 (Annexure P-11) reveals that the Selection Authority have considered names of Ritesh Kumar and Pankaj Rupchand Bhowate whereas 3rd respondent Ritesh Kumar has been selected. Thus, the petitioner is aggrieved by the selection of 3rd respondent to the post of Technician Grade-V (Mechanical).

Learned counsel for the petitioner submitted that having regard to the advertisement, the post was reserved for speech/hearing impairment and if there are no suitable candidate then only the Selection Authority is required to select other than speech/hearing impairment candidate. Whereas in the present recruitment, there were three candidates with disabilities of speech/hearing impairment including the petitioner and the Selection Authorities have selected 3rd respondent who has disability with orthopedic. No reason have been assigned as to why candidate having disability of speech/hearing impairment had not been selected and also no reason have been assigned to hold that those candidates are ineligible in order to select 3rd respondent (disability with orthopedic). It was further argued by the learned counsel for the petitioner that as per the advertisement first preference should be given to the candidate having disability of speech/hearing impairment with reference to the Government order dated 29.12.2005 which stipulates how the vacancies can be filled up and to what extent reserve vacancy can be carried forward treating it as backlog reserve vacancy. Thus, the Selection Authorities have violated the advertisement as well as the Government order by selecting 3rd respondent.

Learned counsel for respondents No.1 and 2 submitted that the post of Technician Grade-V (Mechanical) was notified for the first time on 21.4.2006. Thereafter, it was advertised in the year 2008 and 2010. In all those selection, the petitioner was candidate who was not selected that itself shows that he is ineligible/unsuitable for the post under speech/hearing impairment quota. It was further contended by the learned counsel for respondents No.1 and 2 that on 31.7.2009, Government issued order wherein it is held that if the post is not filled up in accordance with law while having reservation of two recruitment years, thereafter the reservation would lapse. Therefore, the official respondents have resorted to fill up the post of Technician Grade-V (Mechanical) for the candidate having disability of speech/hearing impairment and also such of those persons with disability other than speech and hearing impairment. Since the petitioner was unsuitable, therefore, respondents-Selection Authorities have resorted to select the person other than speech/hearing impairment like 3rd respondent, who is disability with orthopedic. Thus, there is no lacuna in the selection proceedings while selecting 3rd respondent and the petitioner has not made out case to interfere with selection and appointment of respondent No.3.

Learned counsel for 3rd respondent contended that the reservation was carried forward with speech/hearing impairment from earlier recruitment. Thus, the advertisement is very specific that the post in question has been reserved for persons having speech/hearing impairment and other than disabilities with speech/hearing impairment. Therefore, there is no absolute reservation insofar as speech/hearing impairment persons to be selected to the post in question. Hence, there is no infirmity in selection

and appointment of 3rd respondent.

Heard learned counsel for the parties.

Question for consideration in the present petition is whether the Selection of 3rd respondent is in accordance with the advertisement as well as there is a merit consideration or not?

From the perusal of the advertisement, it is crystal clear that the post is reserved for persons having speech/hearing impairment and also persons with disabilities other than speech/hearing impairment would be considered. In other words, the post of Technician Grade-V (Mechanical) could be filled up only under the physically handicapped persons irrespective of their disabilities. Even though the advertisement speaks of that the persons having disabilities of speech/hearing impairment, it is only for the purpose of indication to carry forward the earlier vacancy advertisement speaks of reservation to speech/hearing impairment candidates. Therefore, the Selection Authority is required to consider the name of the physically handicapped persons irrespective of their disabilities. Accordingly, the respondents have called for interview with disabilities of speech/hearing impairment, orthopedic and visual impaired persons. Thus, 12 persons were called for interview whereas the Selection Committee considered the name of 3rd respondent and one Sh. Pankaj Rupchand Bhowate. Whereas, the Selection Authorities have selected 3rd respondent- Ritesh Kumar. Proceedings of Selection Committee read as under:

“Proceedings of Selection Committee Meeting held on 4.10.2011 in the office of Executive Director to interview candidates for selection to the post of Technician Grade-V (Mechanical) in the pay scale of Rs.9000-16400:-

Present:

S/Shri

1. K.B. Verma, Executive Director - Chairman
2. V.K. Gogia, GM (O&M) - Member
3. M.K. Agarwal, Dy. GM (HR) - Member
4. Harbhajan Singh, CM (Matls) - Member
(Rep. Of SC/ST/OBC)
5. Sucha Singh Bandi, ALC, Bathinda - Member
(Nominee of Principal Secretary, Labour Deptt, Punjab)
6. A.K. Choudhary, Dy. Mgr (Prod) - Member
(Rep. Of Min. Communities)

Against requisition dated 01.03.2011 to Employment Exchange for one backlog post of Technician Gr. V (Mechanical) reserved for persons with disabilities, which was also notified through Press Advt. In regional newspapers & Employment News, in all 25 applications were received. On scrutiny of all the applications, 12 eligible PH (SC-2, OBC-3, UR-7) candidates were called to appear in the interview, 09 PH (SC-1, OBC-2, UR-6) candidates attended the interview. The candidates being PH were assessed on relaxed standards.

Based on their performance in the interview, the Selection Committee recommends the following candidate(s) for appointment in order of merit as Technician Gr. V (Mechanical) in the pay scale of Rs.9000-16400 (W-3) at minimum basic pay:-

<i>Sr. No.</i>	<i>Name S/Shri</i>	<i>Father's name S/Shri</i>
1.	Sh. Ritesh Kumar	s/o Sh. Ved Prakash
2.	Sh. Pankaj Rupchand Bhowate	s/o Sh. Rupchand Dajiba Bhowate
	(A.K. Choudhary) Member	(Sucha Singh Bandi) Member
	(M.K. Agarwal) Member	(Harbhajan Singh) Member
		(V.K. Gogia) Member
	(K.B. Verma) Chairman	

Perusal of the record reveals that 12 candidates have been interviewed including the petitioner and 3rd respondent whereas respondent-Selection Authorities have not recorded under what circumstances, 11 persons other than 3rd respondent are ineligible for selection. No reasons have been recorded. Consequently, the proceedings of selection to the post

of Technician Grade-V (Mechanical) is farce. In other words, it is only an eye wash. In the absence of awarding marks in the interview on various heads, one cannot determine on what basis selection has been made. In other words comparative merit and de-merit have not been drawn while selecting respondent No.3. Even assuming that if interview marks are not prescribed at least reasons must have been recorded in the selection proceedings so as to see in what manner other 11 candidates are ineligible so as to give preference to 3rd respondent. In the absence of materials, the selection and appointment of 3rd respondent is highly arbitrary and illegal for the reasons that selection to the post of Technician Grade-V (Mechanical) is only by mode of interview. Since selection is by interview, it was necessary to make certain procedure like awarding of marks for different discipline including for the education qualification. In the absence of said procedure, merely pick and choose method lead to suspicion in the selection and appointment. Thus, the selection and appointment of 3rd respondent issued vide offer of appointment/communication dated 5.10.2011 (Annexure P-1) is set aside. The respondent-Selection Authorities are directed to re-interview the 12 candidates and adopt transparent procedure in order to avoid arbitrary action in the selection process. Let the needful be done within a period of four months from today.

Accordingly, the petition stands allowed.

07.11.2016
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No