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

+ W.P.(C) 7805/2016

MANOJ KUMAR

..... Petitioner

Through: Mr. Shanker Raju and Mr. Nilansh Gaur,
Advts.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Vijay Joshi and Ms. Meenakshi
Pandey, Advts. with Mr. Nishant Yadav, Deputy
JAG

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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07.11.2016

1. In this writ petition, the petitioner, a scheduled caste candidate for recruitment to the post of Constable (Driver) in the Indo-Tibetan Border Police Force has questioned the action of the respondent authorities in disqualifying the petitioner on the ground that he could not clear the practical skill test.
2. The facts giving rise to the writ petition are very briefly stated hereinafter.
3. The authorities of the Indo-Tibetan Border Police Force issued a recruitment notice inviting applications for 472 vacancies in posts of

Constable (Driver). Clause 12 of the recruitment notice provided for screening tests in four phases as enumerated in the said clause. The selection process in phases II and III, as notified by the recruitment notice is set out hereinbelow:-

<i>Phase-II</i>	<i>Written Test (OMR Based)- 50 Marks (01 hour)</i>	<i>The candidates who qualify in RACE and PST will be required to pass the bilingual OMR based written examination:</i> <i>i) Candidates will be required to answer in OMR sheet, which will be signed both by the candidate and invigilator.</i> <i>ii) Answer key to the question paper will be uploaded on the website www.itbpolice.nic.in after completion of exam.</i> <i>iii) Cut off percentage:- The cut off percentage of marks in written examination will be as under:-</i> <i>Unreserved/Ex-Servicemen - 35%</i> <i>SC/ST/OBC (NCL) – 33%</i>
<i>Phase-III</i>	<i>Practical (Skill) Test (50) Marks</i>	<i>The candidates who qualify the written test will be put through a Skill Test, Skill test is divided into following parts:-</i> <i>i) Initial Driving Test - 15 Marks</i> <i>(Starting procedure, Marching Procedure, Control on vehicle, System, Garaging in side, Garaging off side and turn about).</i> <i>ii) Final Driving Test - 35 Marks</i> <i>(Starting procedure, Marching Procedure, Change of Gear drill, Signaling Drill, Turning Drill, Change of lane, Response on traffic signal, Over taking, sped control, Letting the vehicle pass, Slowing of vehicle and Halting drill)</i>

4. The recruitment notice inter-alia provided that candidates short listed in order of merit would be put through a detailed; medical examination to assess their medical fitness, as per the medical policy issued by the Ministry

of Home Affairs.

5. Clause 13 of the recruitment notice provided as follows:-

“13. MERIT LIST

After completion of Phase-II & Phase-III, Merit lists in each category namely, Gen, SC, ST, OBC (NCL) and Ex-Servicemen will be drawn on the basis of total marks obtained by the candidates in the written examination and practical tests. The candidates shall be shortlisted for Verification of Original Documents/Certificates and Detailed Medical Examination (DME) as per the category wise vacancies on the basis of this merit. Extended list shall also be prepared to cover the shortfall due to failure of candidates in DME and Review Medical Examination (RME). However, there shall be no reserve list.”

6. It is the case of the petitioner that the petitioner applied for the post of Constable (Driver) as a scheduled caste candidate and was allotted Roll no. 15108435. The petitioner appeared for the written test, in which he scored 35 marks. The petitioner also appeared in the practical / skill test.

7. According to the petitioner the respondents videographed the practical/skill test of those candidates who failed in the practical/skill test. The practical/skill test of the petitioner was not videographed. This, though not material, is disputed on behalf of the respondents, who contend that the

practical/skill test of all the candidates was duly videographed.

8. It seems difficult to believe that videography should only be shot of candidates who did not clear the practical/skill test. The performance of the candidate could have been known after the test.

9. It is not in dispute that the petitioner cleared the written test and was accordingly allowed to appear for the practical/skill test. According to the petitioner, the petitioner obtained aggregate of 42 marks in the written test and the practical/skill test, as against the cut off marks of 37.5 for the scheduled caste category candidates.

10. As argued on behalf of the petitioner the merit list was, in terms of the recruitment notice, required to be prepared on the basis of the aggregate marks obtained in the written and the practical/skill tests. It is also not in dispute that the final merit list was, in fact, prepared on the basis of the aggregate marks obtained in the written and the practical/skill tests.

11. According to the respondent authorities, the petitioner succeeded in the written test, scoring 36 out of 50. The petitioner scored 6 marks out of 15 in the practical/skill test conducted at the skill test centre and within the campus on 11th March, 2016. However, in the Final Driving Test in actual traffic conditions, he scored only 5 out of 35 marks. The petitioner obtained 11 out of 50, that is, only 22% in the practical/skill test. As the petitioner failed to clear the practical/skill test, he was disqualified.

12. The question before us, however, is whether any minimum pass marks

were necessary either for the practical test, and if so, whether the requisite pass marks were required to be intimated to the candidates in advance.

13. Learned lawyer appearing on behalf of the petitioner also argued that no reasons had been disclosed by the respondents for disqualifying the petitioner in the practical/skill test. From the recruitment notice, there does not appear to be any requirement to give reasons for failing a candidate in the practical/skill test. That is also not the procedure adopted in most practical tests.

14. The petitioner has impugned his exclusion from the merit list on the purported ground of not clearing the practical / skill test. Counsel appearing for the petitioner argued that the recruitment notice did not notify any cut off and/or pass percentage for the practical/skill test. Counsel also argued that the respondents did not intimate the reasons as to how and why the petitioner failed the driving test. The petitioner was mechanically shown to have “failed the test”. It is not the case of the petitioner that those conducting the practical test had any reason to be vindictive against the petitioner or to deliberately fail the petitioner.

15. It is true that ordinarily in cases of selection where the selection criteria is notified, selection has to be as per the criteria notified. It is, however, difficult to accept the argument that for recruitment of Constable (Driver), who would be required to drive vehicles including heavy vehicles, performance in the practical test would be of no consequence at all and that a candidate would be able to get selected even if he failed to score any

marks at all in the practical test. If the cut-off marks were 35, it would be possible for a candidate who scored 35 in the written test to get through, even if he got zero in the practical test, in the absence of qualifying marks for the practical test.

16. According to the petitioner, the cut off marks for the practical/skill test was 17 marks. Perhaps, as contended by the petitioner, the minimum cut-off marks and/or the pass marks for the written as well as the practical/skill test should have been notified. However, failure to notify the minimum cut-off marks in the practical skill test cannot have caused any prejudice to the petitioner, more so, since the petitioner secured marks far below the cut-off marks of 17, and other candidates who had scored higher marks than the petitioner in the driving skill test had also been disqualified.

17. It is the case of the respondents that it has been the consistent practice to have separate cut-off marks for the practical / skill test, which seems to be reasonable.

18. Exercise of jurisdiction under Article 226 of the Constitution is discretionary. In exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, this Court is not inclined to exercise its discretion to declare a candidate, who scored only 5 out of 35 marks in the final driving test and only 22% (11 out of 50 in the aggregate) in the practical/skill test as selected. This, in our view, would clearly be against public interest since, as noted above, constable (drivers) would be required to drive and manoeuvre different kinds of vehicles in congested areas as well

as in difficult terrain. It is, however, directed that in future respondent authorities shall notify cut-off marks of the practical/skill test in advance to prevent the possibility of the arbitrariness of any last moment variation in the cut-off marks.

10. The petition is disposed of accordingly.

INDIRA BANERJEE, J

V. KAMESWAR RAO, J

NOVEMBER 07, 2016/jg