

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

1.

CWP No.12895 of 2014
Date of Decision:05.09.2017

Smt. Surinder Kaur

....Petitioner

Vs.

Union of India and others

....Respondents

2.

CWP No.14559 of 2014

Pushp Lata

....Petitioner

Vs.

Bharat Petroleum Corporation Limited and others

....Respondents

3.

CWP No.5739 of 2015

Seema Devi

....Petitioner

Vs.

Bharat Petroleum Corporation Limited and others

....Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Balwinder Singh, Advocate,
for the petitioner (in CWP No.12895 of 2014).

Mr.Vipin Mahajan, Advocate,
for the petitioner (in CWP No.5739 of 2015).

Mr.Raman Sharma, Advocate,
for respondents No.4 to 6.

Mr.Kamal Sehgal, Addl. A.G., Punjab.

Mr.Brijeshwar Singh Kanwar,
Standing Counsel for UOI (in CWP o.14559 of 2014)

Mr.Puneet Gupta, Senior Panel Counsel,
for respondents No.1 to 3 (in CWP No.12895 of 2014) and
for respondents No.2 and 3 (in CWP No.5739 of 2015)

RAKESH KUMAR JAIN, J.

This order shall dispose of three writ petitions bearing *CWP No.12895 of 2015* tilted as “*Smt. Surinder Kaur Vs. Union of India and others*” [for short ‘the 1st petition’], *CWP No.14559 of 2014* tilted as “*Pushp Lata Vs. Bharat Petroleum Corporation Limited and others*” [for short ‘the 2nd petition’] and *CWP No.5739 of 2015* tilted as “*Seema Devi Vs. Bharat Petroleum Corporation Limited and others*” [for short ‘the 3rd petition’] as the issue involved in all the petitions is common.

The basic facts involved in all the three petitions are that the Bharat Petroleum Corporation Limited [for short ‘the BPCL’] offered the LPG distributorship at Narot Jaimal Singh, District Gurdaspur by way of advertisement in The Tribune, Chandigarh dated 1.12.2017 for the defence personnel in the category of women. The eligibility criteria for the defence personnel (DC) and the norms for evaluating the candidates provided in the brochure are reproduced as under: -

“b. Defence Personnel (DC)

*Defence Personnel means personnel of
armed forces (viz. Army, Navy, Air Force) and will
cover widows /dependents of those who died in*

war, war disabled/ disabled on duty, widows / dependent of those members of Armed Forces who died in harness due to attributable causes and disabled in peace due to attributable causes.

Inter-se priority under Defence Personnel (DC) category:

(a) Widows/dependents of Posthumous gallantry award winners.

(b) War widows/dependents of those who died in war

(c) War disabled / disabled on duty.

(d) Widows/dependents of those who died in harness due to attributable causes.

(e) Disabled in peace due to attributable causes.

Person applying under Defence Personnel (DC) Category should produce Eligibility Certificate issued from Directorate General of Resettlement (DGR), Ministry of Defence, Government of India sponsoring the candidate for the distributorship for which he/she has applied. Certificate of eligibility issued for one distributorship is not valid for another distributorship and therefore a candidate can be considered to be eligible only if he/she has been sponsored for the particular location with reference to current advertisement. In case of any

doubt DGR would be consulted before calling the candidate for interview.

14. NORMS FOR EVALUATING THE CANDIDATES

The LPG distributor will be selected on the basis of evaluation of all eligible applicants on the following parameters.

<i>a. Capability to provide infrastructure *</i>	<i>35 marks</i>
<i>b. Capability to provide finance</i>	<i>35 marks</i>
<i>c. Educational qualifications **</i>	<i>15 marks</i>
<i>d. Age**</i>	<i>4 marks</i>
<i>e. Experience</i>	<i>4 marks</i>
<i>f. Business ability / acumen</i>	<i>5 marks</i>
<i>g. Personality</i>	<i>2 marks</i>
TOTAL MARKS	100 marks

The evaluation on the parameters (a) to (d) above will be done on the basis of the information given in the application. The evaluation on the parameter (e) to (g) will be done based on the interview.”

The allocation of marks to the candidates/applicants were on various parameters based upon the documents. The marks were to be given on different heads as per Clause 14 of the brochure, which was further divided under sub-heads mentioned in Clause 14.1, 14.2 and 14.3 of the brochure. The marks list was to be prepared after the interview and the first candidate in the merit was to be issued letter of intent followed by field

verification. In clause 14.3 of the brochure, in respect of inter-se priority for the DC and PMP categories, following priorities were fixed: -

“14.3 *INTERS-SE-PRIORITY FOR "DC"*

AND "PMP" CATEGORIES

In respect of Defence (DC) and PMP categories where the inter-se priority is given by the competent authorities like DGR etc. the evaluation as per our spelt out norms as above will be carried out simultaneously considering the following marks in addition to the 100 marks mentioned above based on the certificate produced by the candidate from the appropriate authorities. In other words these persons will be evaluated on a total marks of 140.

(a) For Defence Category (DC)

<i>Priority I</i>	<i>Widows / dependants of posthumous Gallantry Award Winners</i>	<i>40 Marks</i>
<i>Priority II</i>	<i>War Widows / dependants of those who died in war</i>	<i>32 Marks</i>
<i>Priority III</i>	<i>War disabled</i>	<i>24 Marks</i>
<i>Priority IV</i>	<i>Widows /dependants of</i>	<i>16 Marks</i>

	<i>those who died in harness due to attributable causes</i>	
<i>Priority V</i>	<i>Disabled in peace due to attributable causes</i>	<i>8 Marks</i>

(b) For PMP Category (PMP)

<i>Priority I</i>	<i>Widows/dependants of posthumous Gallantry Award Winners</i>	<i>40 Marks</i>
<i>Priority II</i>	<i>War Widows / dependants of those who died in action</i>	<i>32 Marks</i>
<i>Priority III</i>	<i>Persons disabled on duty</i>	<i>24 Marks</i>
<i>Priority IV</i>	<i>Widows /dependants of persons who died while in service</i>	<i>16 marks</i>
<i>Priority V</i>	<i>Disabled in peace due to attributable causes</i>	<i>8 marks</i>

The aforesaid procedure was allegedly adopted and result was prepared on 21.2.2009 after giving marks to each candidate. The details of the marks given to the each candidate, typed in a tabulated form, is as

under:-

Bharat Petroleum Corporation Limited, Bathinda LPG Territory Plot No.A-1 & A-2, PSIDC Growth Centre, Mansa Road, Bathinda (Punjab)

Date: 21.02.2009

List of Empanelled candidates for LPG Distributorship at Narot Jaimal Singh, District Gurdaspur Punjab State Under DC (Women) Individual Marks obtained by each candidate interviewed

Sr. No.	Name of candidate	Capability to provide land infrastructure and facilities		Capability to provide finance	Educational qualification	Age	Inter se priority	Experience	Business ability/acumen	Personality	Total marks	% marks	remarks
		Godown	showroom										
1.	Samitri	10.00	10.00	1.70	0.00	0.00	0.00	DRG Cert. Not Produced			21.70	15.50%	Not interviewed
2.	Kulwinder Kaur	10	0	13.00	7	4	32	0.00	0.00	1.00	67.00	47.86%	
3.	Shakuntala Rani	10	5	2.90	7	2	40	1.67	3.17	1.83	76.57	54.69%	

	Seema Devi	25	10	15.50	7	4	32	2.00	1.50	1.17	98.17	70.12%	Third
5.	Sunita Thakur	18	7	11.00	7	2	0	DRG Cert. Not Produced			45.00	32.14%	Not interviewed
6.	Jatinder Jit Kaur	25	10	0.20	8	4	0	DRG Cert. Not Produced			47.20	33.71%	Not interviewed
7.	Lakhwinder Kaur	25	10	15.90	7	4	32	absent			96.90	89.21%	Absent
8.	Pushp Lata	10	10	33.20	7	1	40	2.00	2.00	1.50	106.70	76.21%	Second
9.	Tripta Devi Katoch	25	10	8.20	7	1	0	Absent			51.20	35.57%	Absent
10.	Surender Kaur	25	10	18.70	10	2	32	4.00	4.00	2.00	107.70	76.93%	First

Sd/- Chairman

Sd/- Member

Sd/- Member-II

According to the result, Surinder Kaur (petitioner in the 1st petition) secured 107.70 total marks and stood first, Pushp Lata (petitioner in the 2nd petition) secured 106.70 total marks and Seema Devi (petitioner in the 3rd petition) secured 98.17 total marks. The cause of action to file the 1st petition by Surinder Kaur arose when she received the order dated 28.02.2011 (Annexure P-8 in the 1st petition) passed by respondent No.3 i.e. the Director, Directorate General of Resettlement (SE), West Block-IV, Govt. of India, Ministry of Defence. By this letter her priority was down graded from Priority-II to Priority-IV and amendment was made in the eligibility certificate SL No.617/2007 dated 19.12.2007 to Priority-IV.

The petitioner in the 1st petition is the widow of Capt. Partap Singh, who was killed in the 1984 Anti-Sikh riots. The petitioner was issued eligibility certificate dated 19.12.2007 by the Directorate General Resettlement, Ministry of Defence for the purpose of allotment of oil product agencies. The said certificate read as under: -

“It is certified that Smt. Surinder Kaur widow of late Capt. Partap Singh is a bonafide dependent of Late Capt. Partap Singh and is eligibile for allotment of LPG Distributorship at Narot Jaimal Singh, Gurdaspur DT (Punjab) as advertised by M/s BPCL and that she falls under Priority-II (Two).

There was a complaint made by Pushp Lata, who is respondent No.7 in the 1st petition and was at No.2 in the select list and has also filed the 2nd petition challenging the ‘select list’ being not prepared in terms of the

priority. Since the complaint/representation was not decided, therefore, Pushp Lata filed CWP No.3867 of 2009 which was disposed of by this Court on 02.02.2011 with the direction to the respondents to decide the same. The petitioner had challenged the order dated 28.2.2011 by way of OA No.366 of 2011 before the Armed Forces Tribunal, Chandigarh but the said OA was dismissed on 8.2.2013 for want of jurisdiction. Respondent No.3 had challenged the priority on the ground that the husband of the petitioner-Surinder Kaur, namely, Capt. Partap Singh was not a war casualty, therefore, the petitioner in the 1st petition was wrongly put in priority-II and awarded 32 marks and was rather a widow of the officer, who died in harness due to attributable causes and should have been put in Priority-IV for which she deserves to be awarded 16 marks because Capt. Partap Singh did not die fighting war and rather died during the Sikh riots on the railway station. The petitioner in the 1st petition has not only challenged the order dated 28.2.2011 by which her priority was down graded from II to IV but has also prayed for issuance of mandamus directing respondents No.4 to 6 to issue her Letter of Intent (LOI) for LPG distributorship.

I would first deal with the case set up by the petitioner in the 1st petition. It is not the case of the petitioner that her husband was a war casualty. It is a positive case of the petitioner that her husband, who was serving in the Army was killed by the mob during the Anti Sikh riots. According to the petitioner, it was a sort of war in which her husband lost his life and therefore, the Directorate General Resettlement, Ministry of Defence had initially issued the correct certificate of eligibility on 19.12.2007 putting the case of the petitioner in Priority-II. It is also submitted that respondent No.3 has committed an error in amending the

eligibility certificate by scaling down the priority of the petitioner from II to IV.

On the other hand, learned counsel for the respondents has submitted that in order to remove any element of arbitrariness in the matter of preference, as many as five priorities were made for Defence Category (DC) and marks were accordingly allotted against each priority. The petitioner was given the certificate of eligibility (Annexure P-3) as in Priority-II, considering her war widow/dependent of one, who died in war but actually she was not a war widow or dependent of one who died in war rather she is the widow of the person who died in harness due to attributable cause and in this case the attributable cause was the Anti Sikh riot.

I have heard learned counsel for the parties and perused the record insofar as the 1st petition is concerned.

There is no dispute that the deceased Capt. Partap Singh was not a war casualty and was killed by the mob, therefore, he would be considered to have died in harness due to attributable cause and has rightly been placed in Priority-IV by scaling down from Priority-II, which was earlier inadvertently given by respondent No.3. Accordingly, I do not find any merit in the 1st petition in order to quash the impugned order dated 28.2.20011 and hence, the 1st petition is hereby dismissed.

The 2nd petition is filed by Pushp Lata, who has prayed for a writ in the nature of mandamus seeking a direction to the respondents to allot the gas agency/LPG distributorship to her being fully eligible.

The facts of her case are that she is the wife of Capt. Janmej Singh. Her son Lt. Triveni Singh died while fighting with the terrorists and because of his valour, awarded Ashoka Chakra (posthumously). She has

been given 40 marks, having been kept in Priority-I, which is meant for the widows/dependents of the posthumous gallantry award winners. She was second in the select list with 106.70 total marks as against Surinder Kaur (petitioner in the 1st petition), who had secured 107.70 total marks.

Since the category of Surinder Kaur has been changed from Priority-II to Priority-IV, therefore, her marks have been reduced from 32 to 16 and after deducting 16 marks out of 107.70, it comes to 91.70 total marks, which is less than the third candidate, namely, Seema Devi, who has secured total marks 98.17.

The claim of Pushp Lata has been seriously challenged by Seema Devi, who has filed the 3rd petition. Her husband was Sepoy Vikrant Singh No.31897 6ON “the Dogra Regiment”, who sustained gunshot wound, leading to sudden death, due to terrorist fire, while participating in search and destroy operation on 11.7.2002 at Tehsil Mandi (Haveli), District Poonch in the State of J & K. The death of the husband of Seema Devi was declared a battle casualty as per letter dated 11.7.2002 (attached as Annexure P1 with the 3rd petition). She has filed 3rd petition with a prayer that Pushp Lata, who is arrayed as respondent No.5 in her petition, is not eligible to be considered as a dependent and therefore, her application should not have been considered at all and has further prayed for a direction that LPG distributorship should have given to her being a war widow.

The success of the 3rd petition naturally depends upon the failure of the 2nd petition, which would depend upon the decision as to whether Pushp Lata (petitioner in the 2nd petition) is a dependent of her son, who is a posthumous gallantry award winner.

The 2nd writ petition filed by Pushp Lata is basically directed against Surinder Kaur (petitioner in the 1st petition) because she was placed at No.1 in the select list and has filed the writ petition alleging that since the priority of Surinder Kaur has been scaled down from Priority-II to IV, therefore, her marks are now less than her and hence, she is entitled to be allotted the distributorship being at No.1.

In the 3rd petition filed by Seema Devi, she has only impleaded Pushp Lata as a party because after the marks of Surinder Kaur were scaled down from 107.70 to 91.70 she has risen upto 2nd position and if Pushp Lata is declared ineligible then she would get the distributorship.

The petitioner in the 3rd petition has alleged that Pushp Lata is not dependent upon her son and is rather dependent upon her husband. As per the petitioner, the husband of Pushp Lata is a retired Army officer, who is getting pension and her husband is also in receipt of family pension of his late son Lt. Triveni Singh. In this regard, she has referred to a letter dated 22.05.2013 received from the RTI Cell ADG MT (AE). The relevant text of the information is as under: -

“With regard to information sought by you vide your application under reference, it is intimated that parents of an Armed Forces Personnel are entitled to family pension in case the personnel died as a bachelor/widower without children. In the instant case the deceased officer was unmarried and family pension has been sanctioned to father of the deceased

personnel who himself is also a pensioner.

In such a scenario, the mother is dependent on her husband. Family pension is admissible to only the member of the family at a time. Further the definition of family, kindly refer the information provisions vide this officer letter No.A/810027/RTI/12660 dated 17 May, 2013.”

Learned counsel for the petitioner in the 3rd petition has submitted that the family of Pushp Lata has already managed to get job for her daughter/sister of the deceased Lt. Triveni Singh under the Defence Category by projecting her as a dependent of her deceased son. It is further submitted that now the mother of Lt. Triveni Singh has projected herself as dependent of her son in order to get the LPG distributorship whereas the special family pension, as per the rules, is given to the father. It is further submitted that Pushp Lata in her own petition has nowhere mentioned that she was financially dependent upon her deceased son.

On the other hand, learned counsel for Pushp Lata has not denied the assertion made in para No.16 of the 3rd petition about the appointment of the daughter of Pushp Lata, as a dependant of her son Lt. Triveni Singh in the Excise and Taxation Department, Punjab in the Defence Category. He has also not stated that the family, especially Pushp Lata was financially dependent upon her deceased son. All that has been stated is that he was a war hero much less gallantry award winner and therefore, his mother has been treated as a dependent and has rightly been given 40 marks in Priority-I.

The definition of ‘dependent’ is neither given in the brochure nor by counsel for the parties. However, the definition of ‘dependent’ as per the Black’s Law Dictionary means “*one who relies on another for support, one not able to exist or sustain oneself without the power or aid of someone else.*”

Similarly ‘dependency’ is also defined in the Black’s Law Dictionary which means “*a relationship between two persons or things whereby one is sustained by the other or relies on the other for support or necessities*”.

The father of the deceased Lt. Triveni Singh owns 20 acres of land. He is an ex-serviceman, retired as captain and is getting pension. An information has also been given by the Army to the petitioner that the mother of deceased Lt. Triveni Singh is not dependent upon the deceased rather she is dependent upon her husband, who is alive.

Lt. Triveni Singh left behind his father, namely, Janmej Singh, who is a retired Captain of the Indian Army, his mother Pushp Lata (housewife), a married sister Pooja Singh (housewife) and another unmarried sister, namely, Jyotsna Singh. In ***CWP No.19503 of 2008*** titled as “***Capt. Janmej Singh Vs. State of Punjab and others***” direction was sought by Janmej Singh for appointment of his daughter Jyotsna Singh against Class-I or Class-II post as a dependent of her brother Lt. Triveni Singh. The said writ petition was allowed.

The purpose of awarding LPG distributorship to the dependent of a deceased soldier is to replace the income loss suffering by the dependent on account of the death of the earning member of the family but in the absence of any conclusive evidence that the deceased Lt. Triveni Singh was

contributing his income, much less, to support his mother financially as the income of his father, may be from all known sources, was not sufficient to make two ends meet, then the dependency could be ascertained as it pertains to the financial dependency and not otherwise.

In view of the aforesaid facts and circumstances, there is no doubt that Pushp Lata was not dependent upon her deceased son Lt. Triveni Singh, therefore, she was not eligible to seek allotment of the LPG distributorship. Consequently, the 2nd petition filed by Pushp Lata is hereby dismissed and as a result thereof, the 3rd petition filed by Seema Devi succeeds. Thus all the three petitions are hereby disposed of.

A photocopy of this order be placed on the file of other connected cases.

05.09.2017
Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*