

**Sr. No.113  
IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH**

**CWP No.22642 of 2017 (O&M)  
Date of Decision:20.11.2017**

Sandeep Kumar

... Petitioner

Versus

State of Punjab and others

... Respondents

**CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA**

Present:- Mr. Parminder Singh Rai, Advocate,  
for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.

**TEJINDER SINGH DHINDSA, J.(ORAL)**

In pursuance to the order dated 15.11.2017 passed by this Court, Mr. Rahul Bhardwaj, Deputy Superintendent of Police, Headquarter Fazilka is present in Court.

Learned State counsel on the basis of the official record as also upon instructions from the police official present in Court has apprised the Court that the height of the petitioner during the process of recruitment had been recorded as 5' 9 <sup>3</sup>/<sub>4</sub>" inches (177.1 cms) and, accordingly, had been awarded 12 marks towards height.

Counsel for the parties have been heard.

Brief facts are that the Police Department, State of Punjab had issued an advertisement in May 2016 initiating a recruitment process for filling up 6252 posts of Constables in the District Police Cadre and Armed Police Cadre. The requisite educational qualifications and physical standards were stipulated in the advertisement itself. One percent posts were reserved for the wards of Freedom Fighters. In other words, a total of

63 posts for the District Police Cadre as also Armed Police Cadre (taken together) were filled up from amongst the wards of Freedom Fighters.

As per eligibility criteria furnished in the advertisement itself, the minimum requirement for height in the case of a Male Constable was 5' 7" inches. As per selection criteria marks to be awarded towards height were in a graded structure i.e. 10 marks for 5' 7" inches, 11 for 5' 8" inches, 12 for 5' 9" inches, 13 for 5' 10" inches, 14 for 5' 11" inches and maximum 15 marks for 6 feet and above.

The present petitioner belongs to the Reserved Category of wards of Freedom Fighters and had applied for the post in question and subjected himself to a process of selection.

When this writ petition came up for preliminary hearing on 04.10.2017, a contention had been noticed on behalf of the petitioner that his height has been incorrectly recorded as 5' 6" inches whereas his height actually is 5' 10" inches. Accordingly, directions were issued for the petitioner to appear before the Medical Superintendent, Government Multipurpose Speciality Hospital, Sector 16, Chandigarh on 24.10.2017 and for constitution of a Medical Board for measuring his height. The requisite report in a sealed cover was called for.

In pursuance to the order dated 04.10.2017 passed by this Court, a report dated 30.10.2017 of the Medical Superintendent-cum-Joint Principal Medical Officer, GMSH, Sector 16, Chandigarh has been placed on record. A perusal of the same reveals that a Board of three doctors i.e. Dr. V.K.Nagpal, SMO, Incharge Ortho, Dr. K.S.Bal, SMO, Incharge Surgery and Dr. Satbir Singh, SMO, Incharge Casualty of the Government Hospital, Sector 16, Chandigarh was constituted and as per the proceedings

conducted by the Board, the height of the petitioner has been measured as 178.5 cms.

Clearly, there is a discrepancy as regards measurement of height. During the process of recruitment height of the petitioner has been recorded as 177.1 cms i.e. 5' 9  $\frac{3}{4}$ " inches and, accordingly, he was awarded 12 marks.

As per report furnished by the Board of Doctors, the height of the petitioner has been measured as 178.5 cms i.e. above 5'10" inches but less than 5' 11" inches.

Even though learned State counsel would impress upon the Court that the height of the petitioner at the stage of recruitment was measured with the aid of a duly certified instrument yet there would be no occasion for this Court to doubt the authenticity and credibility of the report dated 30.10.2017 furnished by Medical Superintendent-cum-Joint Principal Medical Officer, GMSH, Sector 16, Chandigarh. Such report measuring the height of the petitioner to be a shade above 5' 10" inches is on the basis of proceedings of recording of height at the hands of three specialised doctors i.e. SMO, Incharge Ortho, SMO, Incharge Surgery and SMO, Incharge Casualty of a Premier Government Hospital.

In the considered view of this Court, the report dated 30.10.2017 from the Government Hospital, Chandigarh would prevail as regards measurement of height as opposed to the height recorded during the process of recruitment. In taking such view, this Court would also notice that in a previous recruitment process for the post of Jail Warder (Male) under the Punjab Jail Department and in which the petitioner had participated, the Recruitment Board in question had recorded his height to

be 5' 10" inches. The document in support has been placed on record and appended at Annexure P-8 and the contents of which are not disputed.

What flows from the recording of the height of the petitioner to be above 5' 10" inches is that he would now be entitled to 13 marks towards height as opposed to 12 marks that were awarded.

State counsel apprises the Court that the last selected and appointed candidate in the Freedom Fighter Category has secured a total of 25 marks in the recruitment process. By virtue of the petitioner being awarded one extra mark in the light of his height having been correctly measured as above 5' 10" inches he would also now secure a total 25 marks and as such would be bracketed in order of merit with the last selected and appointed candidate to the post of Constable under the Freedom Fighter Category.

State counsel submits that the last selected candidate having secured 25 marks has been issued appointment letter for the post of Constable in the Armed Police Cadre.

Court has also been apprised that in a situation where two candidates are bracketed in merit, standing order No.1 of 2016 issued by the Office of the Director General of Police, Punjab would apply inasmuch as the candidate elder in age would be preferred.

As per record made available in Court, State counsel concedes that the present petitioner is elder in age as his date of birth is 16.03.1988 as opposed to the date of birth of the last selected candidate in the Freedom Fighter Category whose date of birth is 18.12.1988. It stands conceded as such that the petitioner herein, namely, Sandeep Kumar had a prior and superior right to be appointed to the post of Constable under the ward of

Freedom Fighter Category as opposed to Mr. Gagandeep Singh Sandhu S/o Bhupinder Singh who has already been issued the appointment letter.

The last selected and appointed candidate i.e. Mr. G.S. Sandhu is not a party respondent in the instant writ petition.

Be that as it may, the petitioner has a vested right to be appointed as Constable against the wards of Freedom Fighter Category on the basis of securing 25 marks in final merit and being elder in age to Gagandeep Singh Sandhu.

In the peculiar facts and circumstances of the case, no fault also can be attributed to Mr. G.S.Sandhu who has been selected and issued an appointment letter to the post in question. Such selected candidate has not misrepresented to the respondent authorities. Rather Police Department is the author of such piquant situation that has arisen.

Under such circumstances and for the reasons recorded, the instant writ petition is allowed. Respondent State is directed to issue appointment letter to the petitioner for the post of Constable either under the Armed Police Cadre or the District Police Cadre. Such appointment would relate back to the date when other candidates under the same category i.e. wards of Freedom Fighter Category had been so appointed. Actual arrears of salary, however, would not be paid to the petitioner.

Since the right of the petitioner to be appointed on the post is as per the marks he has secured under the selection criteria formulated under the advertisement and by applying standing order No.1 of 2016 issued by the Office of Director General of Police, Punjab, it would be open for the State to consider such appointment in terms of creation of a supernumerary post. Such direction is being issued as the respondent State is itself

responsible for this mess and also towards protection of the appointment of a candidate who otherwise was bracketed in merit and to whom no blame can be apportioned.

Petition allowed in the aforesaid terms.

**20.11.2017**

vandana

**(TEJINDER SINGH DHINDSA)  
JUDGE**

Whether speaking/reasoned

Yes

Whether Reportable

Yes