

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14626 of 2008

Date of Decision: 07.09.2018

Surender Singh

... Petitioner

Versus

Haryana Staff Selection Commission
and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. A.S. Tewatia, Advocate,
for the petitioner.

Ms. Shruti Jain Goyal, DAG, Haryana.

RAJIV NARAIN RAINA, J.(Oral)

1. When this matter came up for hearing on May 10, 2017 the Court passed the following order:-

“Matter relates to selection and appointment to the post of 'A' Class. The petitioner's claim is in respect of Naib Tehsildar under physically handicapped category. The process of selection commenced on 07.09.2007 and it was concluded on 22.06.2008 while announcing the result. The petitioner submitted RTI application on 01.07.2008 seeking certain information relating to supply of answer sheets of the petitioner. The respondent-selecting authority is of the view that petitioner is not entitled for answer sheet. In that event it was bounden duty of the selecting authority to keep the records. Whereas, the selection records are stated to have been destroyed on 02.08.2008 without even waiting for the completion of 3 months in view of the resolution passed by the Government or Selection Commission. Thus, it is

evident that in order to hush up the records relating to selection hurriedly the records have been destroyed.

Learned counsel for the contesting respondents pointed out from Annexure R1/1 that this court has perused the question papers, answer sheets and key answers and this court was satisfied. Therefore, there is no infirmity in the answer sheets. The same cannot be accepted for the reasons that petitioner in the present petition is not party in CWP No. 7926 of 2008 so as to contend that the petitioner's answer sheet is correct or not. Having regard to the conduct of the selecting authority in destroying the records within 3 months and in not furnishing answer sheets to the petitioner an inference can be drawn by this court to the extent that the selecting authority in order to overcome certain hurdles in future they have destroyed the records before the time limit. In the absence of record the present petition cannot be decided. Therefore, the State counsel is hereby directed to get necessary instructions having regard to the facts and circumstances, whether the petitioner can be accommodated as a Naib Tehsildar on notional basis or not or in the alternative are they willing to pay compensation of Rs. 5,00,000/- to the petitioner?

List this matter on 26.05.2017.

Copy of this order be given to learned State counsel under the Signatures of the Bench Secretary of this court."

2. On the previous date of hearing, Ms. Goyal took time to obtain instructions from the quarters concerned as to what relief in the view of the State Government is admissible to the petitioner. She has returned with instructions from the Chief Secretary, Haryana in consultation with the Haryana Staff Selection Commission that due to the fault of the Commission, the Commission would be prepared to pay a compensation of

Rs. 5 lakh to the petitioner in lieu of appointment.

3. It is the stand of the State in the reply filed by the Commission based on advise of the State Government that the Government did not receive the name of the petitioner in the recommendations made by the Commission for appointment to the post of Naib Tehsildar advertised on September 07, 2007. The petitioner had applied under the Physically Handicapped category. Even if a vacancy remains unfilled, the learned State counsel reminds the Court that being a disability vacancy it has to be carried forward as per the provisions of Section 36 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 read with the instructions dated February 05, 2007. The Commission has stated categorically that waiting list was not prepared by it when the list of successful candidates was forwarded to the department. The name of the petitioner figured at Sr. No.38 in the result sheet (roll number wise) (Annex R-1/4). There were two candidates who were higher in merit than the petitioner in his category (PHC), but they have not approached Court for relief and are non-petitioners.

4. Due to long passage of time, beyond anyone's control, with a decade gone by, this Court though finds some substance in the contention of Mr. Tewatia resulting from a mistake committed by the Commission that appointment could be offered to the petitioner in certain circumstances which are not to the best advantage of the petitioner, yet the wiser course, in my considered view, possibly to be adopted would be to avoid administrative chaos by interjection of the petitioner as Naib Tehsildar at this stage in the cadre which may result in fanning avoidable litigation and

disturbing the settled rights of a large number of the members of service involving rather complex issues regarding seniority, fitment and promotions etc. arising in the meanwhile not easily reconcilable.

5. Nevertheless, the consultation between the Chief Secretary and the Commission which has now taken place has led to a consensus between the State and the Commission that respondents are prepared to pay compensation of Rs. 5 lakh as suggested in the interim order dated May 10, 2017 on account of fault being squarely found with the working of the Commission with the financial liability falling on the Commission and not on the State exchequer. This via media is accepted to serve the ends of justice and the petitioner is held entitled to compensation of Rs.5 lakh together with litigation costs of Rs. 50,000/- to be paid by the Commission to the petitioner within one month from the date of receipt of certified copy of this order.

6. In view of the above, the petition stands disposed of, on the above consent terms.

(RAJIV NARAIN RAINA)
JUDGE

07.09.2018
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Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*