

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

CWP No.1099 of 2017

Date of Decision: 26.10.2018

Kapil Raj Sharma

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Pankaj Katia, Advocate, for the petitioner.

Mr.Harish Rathee, Sr.DAG, Haryana.

RITU BAHRI, J. (ORAL)

Petitioner is seeking quashing of the order dated 16.12.2016 (Annexure P-12) passed by the respondent rejecting the claim/representation of the petitioner for considering him Economically Backward Person in General Caste Category (EPBG) instead of General Category for the post of Male Constable (GD).

Petitioner has applied for the post of Male Constable vide advertisement No.2/2013 which was advertised by the Haryana Police Recruitment Board, Panchkula, under EPBG category and participate in the selection process. This advertisement was cancelled vide notice dated 15.07.2015. Subsequently, Haryana Staff Section Commission after its formation issued a fresh advertisement for filling up the 5000 posts of male constable. Petitioner has again applied for the abovesaid

had earlier qualified for interview in pursuance to earlier advertisement No.2/2013. The petitioner was issued new roll number i.e.1001086157 under General Category. The petitioner has appeared for PST and has secured 14 out of 15 marks. Thereafter, he has appeared for the written examination has secured 28.65 marks out of 60 marks and has qualified for PMT and has secured 11 out of 15 marks in PMT. The details of the marks of the petitioner are as follow:-

Roll No.	PST/15	KT/60	PMT/15	Grand Total/90
1001086157	14	28.65	11	53.65

The petitioner was not called for scrutiny-cum-interview as he has secured 53.65 marks out of 90 marks and as the cut off for interview-cum-personality test out of 90 marks under General Category was 54.90. Thereafter, petitioner has also filed a CWP No.22872 of 2016 and claimed his category to be considered under EBPB category under which he has applied for the post of Male Constable against advertisement No.02/2013 and not under General Category under which he has applied for the post of Male Constable against advertisement No.8/2015. Thereafter the writ petition was disposed of by giving directions to the respondents to consider and decide the representation of the petitioner within a period of 10 days from the date of receipt of certified copy. Thereafter, impugned order has been passed rejecting the claim of petitioner vide order dated 16.12.2016 (Annexure P-12).

Kumar Vs. Haryana Staff Section Commission passed in CWP No.19077 of 2017 has considered the case where, wrong category was given by the candidate. In that case, petitioner had applied under a bonafide impression that he was covered by the Sports Policy of the government by which 3% horizontal reservation is provided to outstanding sport persons. Actually, he is belonging from BCA category and he had given the certificate of BCA category at the time of filing the application. This writ petition was allowed and direction was given to the respondents to consider the case of the petitioner in BCA category.

A reference can also be made to the judgment of this Court in the case of Ankita Sheoran Vs. State of Haryana passed in CWP No.19614 of 2017 whereby, the petitioner wrongly applied for the post of PGT (Computer Science) in the category of ESM(Dependent) General Category on account of the fact that his father is a serving as Army Officer and subsequently, the writ petition was allowed by giving direction to the respondents to consider the case of the petitioner under General Category.

In the present case, petitioner pursuant to the advertisement No. 2/13 had applied the post under Economically Backward Person in General Caste Category (EBPG) and even in the selection process, he had given this certificate at the time of scrutiny and he thereafter, had also made a representation (Annexure P-6) to change the category from General Category to EBPG but has been rejected vide order dated

16.12.2016 (Annexure P-12).

Learned counsel for the petitioner submits that the last candidate belonging from EBPB category has got 48 marks, as such, the present writ petition may be allowed by giving direction to the respondent/authority to consider the case of the petitioner under EBPB category as he has obtained 53.65 marks out of total 90 marks in EBPB category.

The stand taken by the respondent that petitioner has applied under General Category and has participated in the selection process under General Category. Now the petitioner is estopped by his act and conduct at this belated stage and his category cannot be changed. He made a reference in the case of Baljinder Singh Vs. State of Haryana passed in CWP No.18442 of 2014 whereby, during process of selection, petitioner intends to change his category from General to Ex-service Man(ESM). It is held that such a change of criteria during the process of selection is impermissible.

In the present case, the judgment referred in the case of Baljinder Singh supra is not applicable as petitioner had applied to the post under EBPB category in the previous application vide advertisement No. 2/2013 and he participated in the scrutiny of document and interview test. Thereafter, cancellation of advertisement No.2/2013, and fresh advertisements was again published in which he also chosen the category EBPB but due to technical mistake General Category option has been taken by the computer. Even, petitioner has

made representation (Annexure P-6) for change the category but no action has been taken by the respondent/authority in this regard.

In view of the above, and judgment referred above in the case of Mitesh Kumar (supra) and Ankita Sheoran (Supra), present writ petition is allowed and the order dated 16.12.2016 (Annexure P-12) is set aside rejecting the claim/representation of the petitioner. Respondents/Department is directed to consider the case of the petitioner under EBPG category for the post of Male Constable (GD).

(RITU BAHRI)
JUDGE

26.10.2018
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No