

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 01.02.2018****CWP No.18670 of 2016**

Sunita Singh Choken

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. K.S.Banyana, Advocate, for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J. (ORAL)

1. I cannot find my way to distinguish the present case from the cases of Mamta Sodha conquering the Mount Everest on 22.05.2010 and Ram Lal attaining the glory on 21.05.2013 and appointed to Haryana Police. Mamta Sodha was not the first woman from Haryana to have peaked Mount Everest, as before her Santosh Yadav had stood atop the roof of the world and the highest peak Mount Everest repeating the feat twice in two successive years in 1992 & 1993. She was just 20 years old at that time. Ram Lal was the youngest Everest from Haryana to scale the Mountain. Mamta Sodha was rewarded with an appointment as Deputy Superintendent of Police in Haryana and a purse ₹21 lakhs. She did not have to litigate while Ram Lal was not as lucky to start with. He was compelled to approach this Court in CWP No.2304 of 2015, which was allowed on 17.02.2016 by an elaborate order. The Single Bench applied the principle of parity of treatment with Mamta Sodha, arrayed as respondent No.5 in that petition with a direction to the respondents to consider the claim of the petitioner and

thereafter to provide him appointment along with cash award on par with Mamta Sodha. The learned single bench did not read the sports policy as water tight and not admitting of any relief to Ram Lal. The appeal against the judgment has been dismissed.

2. Not only the petitioner herein is a Mountaineer, she also has participated in many adventure sports and won laurels for her achievements, such as, participating in the Alpine Expedition, Uttarakhand in September, 2012; Gangotri, Tapovan, Nandavan, Basukital in May, 2012; Eco Everest Expedition, Nepal-side in April/May, 2011; Island Peak, Nepal in March/April, 2011; Mount Jonli Expedition with IMF (22000 ft.) in September/October, 2010; Mt. Nanda Devi Base Camp, Milam Glacier (Ralam Pass and Pindari Glacier), Kumaun Himalayas in June, 2010; climbing Kabru North (5765m) in October, 2009, Friendship Peak (5289m) in June/July, 2008 and Mt. Draupadi Ka Danda-1 (5627m) in May/June, 2007.

3. Other than climbing mountains and achieving renown, the petitioner is good at other sports. She is a Gold Medalist in Lawn Tennis and Ball Badminton at University Level. She has won Silver Medal in Circle Kabbaddi and has participated in All India International Ball Badminton tournaments. She has won the Bharat Gaurav Award in 2013.

4. The petitioner has not ignored her academic career. She Matriculated in 2002 and qualified 10+2 in 2004 from CBSE stream. She holds a degree of Bachelor of Physical Science from Khalsa College, Ambala, Haryana and was ranked 3rd in Kurukshetra University in 2007. She also holds the degree in Master of Physical Education in the 1st Division from Kurukshetra University passing out in 2015.

5. To claim relief, she relies not only on the case of Mamta Sodha, who was appointed as Deputy Superintendent of Police in Haryana on the ground that she climbed Mount Everest not long before the petitioner, but also claims parity with similarly situated sportspersons, namely, Kanta Devi and Anita Devi, who were appointed as Sub Inspectors on the ground that they climbed Mount Everest on 31.03.2013.

6. On 09.05.2017, the following interim order was passed directing the respondents to pass a speaking order on the claim of the petitioner:

“The petitioner has sought for a necessary direction to the respondents to consider the name of the petitioner for the post of Deputy Superintendent of Police made to the other similarly situated persons and also award a cash of `25 Lakhs as per the judgment dated 17.02.2016 (Annexure P-17).

In this regard, the petitioner has submitted representations dated 28.08.2011, 20.10.2015 and 23.06.2016 (Annexures P-9 to P-11) respectively. With reference to her achievement in the International Mount Everest Peak in the year 2011, the respondents No.2 and 3 are required to take a decision in respect of appointment and award of cash. No speaking order has been passed either petitioner is entitled for appointment or a cash award by the respective respondents.

Therefore, respondents No.2 and 3, who have not passed any speaking order till date, are permitted to pass a speaking order with reference to the fact that the similarly situated persons have been appointed to the post of Deputy Superintendent of Police read with the decision of this Court passed in CWP No.2304 of 2015, dated 17.02.2016 (Annexure P-17) in respect of award of cash to the extent of ₹21 Lacs. Speaking order be passed within a period of two months from today and place it on record before the next date of hearing.

List this matter on 23.05.2017.”

7. In compliance of the order, an office order dated 06.07.2017, endorsed on 18.07.2017, has been passed by the Additional Chief Secretary to Government, Haryana, Department of Sports & Youth Affairs which deserves to be reproduced verbatim without paraphrasing. That order reads as follows:

“This order is being passed in compliance of the directions dated 09.05.2017 passed by the Hon’ble Punjab & Haryana High Court, Chandigarh in CWP No.18670/22016, whereby it has directed that respondent No.2 and 3, who have not passed any speaking order till date, are permitted to pass a speaking order with reference to the fact that the similarly situated persons have been appointed to the post of Deputy Superintendent of Police read with the decision of this Court case in Civil Writ Petition No.2304 of 2015 dated 17.02.2016 (Annexure P-17) in respect of award of cash to the extent ₹21.00 lacs. Speaking order be passed within a period of two months from today and place it on record before the next date of hearing.

Briefly stated the factual matrix of the case are as under:-

Sunita Singh Choken D/o Shri Johri Singh Choken has prayed to consider her representation dated 28.08.2011, 20.10.2015 and 23.06.2016 (Annexure P-9 to P-11) of the petitioner for appointment given to the other similarly situated persons along with the cash award of ₹21.00 lacs. She further prayed to direct the respondents to constitute fresh selection committee to consider the name of the petitioner for appointment in Home Department (Police Department) on the post of DSP along with all consequential benefits.

I have gone through the official record and find that the petitioner had conquest the Mount Everest on May, 2011. As per the request of the petitioner dated 21.06.2013, which was received through concerned District Sports & Youth Affairs Officer, the cash award of ₹5.00 lacs had been given

to the petitioner on the basis of her achievements as per Sports Policy dated 02.05.2013. It is pertinent to mention here that the petitioner has claimed to appoint in the Police Department on the post of Deputy Superintendent of Police and further to disburse her ₹21.00 lacs as the same amount was given to Ms. Mamta Sodha. It is clarified that when cash award of ₹21.00 lacs was given to Ms. Mamta Sodha at that point of time there was no Sports Policy was framed by the Department to provide the cash award and Government job to the Mount Everest climbers. The cash award of ₹21.00 was given to Ms. Mamta Sodha as per the announcement of then Chief Minister, Haryana, which later on confirmed by the order dated 12.08.2011. Since at that time there was no provision in Sports Policy-2009 for cash award and Government job to the Mount Everest climbers and her case was approved by the Cabinet as a special case. Later on, Sports Policy 2009 amended by order U.O.No.9/87/2013-2 Cabinet, dated 02.05.2013 and provision had made for cash award of ₹5.00 lacs to Mount Everest climbers subject to conditions that they are not in Government employee/have not been provided Government job on this ground.

Further perusal of record, I find that the Government has decided and approved to amend the policy for giving cash award to the Mountaineers which is as under:-

1. From the date on which Ms. Mamta Sodha scaled the Mount Everest till the policy for making for giving cash award to the Mount Everest climbers came into existence be treated as per and ₹21.00 lacs be given as award money to each of the Mount Everest climbers during this period i.e. w.e.f. 02.05.2010 to 02.05.2013 subject to the outcome of LPA to avoid contempt proceedings in the matter.
2. For the Mount Everest climbers from 02.05.2013 to 12.01.2015 a cash award of ₹5.00 lacs may be given to those persons from Haryana who have successfully scaled Mount

Everest. Similarly, the Mount Everest climbers from 05.03.2005 to 02.05.2010 shall be paid ₹5 lacs as per Cabinet decision.

3. there is no provision in the Policy dated 12.01.2015 for giving cash award to the Mount Everest climbers, accordingly no award money is payable to the Mount Everest climbers after 12.01.2015.

As far as the Government job is concerned, there is no provision of job in the policy of Department of Sports & Youth Affairs, Haryana for Mount Everest climbers.

After the careful observation and strict analysis of the factual matrix of the case and having regard to the official record, I am of the considered view that the case of the petitioner comes within the period of 02.05.2010 to 02.05.2013. Therefore, the petitioner may be given ₹16.00 lacs subject to the outcome of SLP/LPA, if any, filed by the Government excluding ₹5.00 lacs which has already given to her in terms of the policy of 2013.

I ordered accordingly.”

8. ₹5 lakhs has been paid to the petitioner and by the order reproduced above, the petitioner has been held entitled to payment of ₹21 lakhs, but as far as Government job is concerned, it has been denied since there is no provision of providing job in the policy in the Department of Sports & Youth Affairs for Mount Everest climbers. This brings us back to the fulcrum of the cases of Mamta Sodha and Ram Lal appointed without provision in policy for mountaineers, one without and one with Court intervention creating an administrative and a judicial precedent.

9. The expedition in which the petitioner participated started from Base Camp on 29.03.2013, while Ram Lal was in the immediately next expedition starting two days thereafter on 31.03.2013. The petitioner hoisted

the National Flag with the slogan 'Stop Child Marriage', which was the *raison d'être* or motivational factor for her to conquer Mount Everest and be the first person to take the message against 'Early Marriage Cult' plaguing parts of India.

10. To the delight of Haryana the very next day Ram Lal hoisted the National Flag on Mount Everest. The cases of the petitioner and Ram Lal are on par, if not better, since she hoisted the Indian flag on Mount Everest before Ram Lal. The only difference is that Ram Lal was the youngest mountaineer from Haryana to have scaled the Mount Everest.

11. On merits, the Additional Chief Secretary to Government, Haryana, Department of Sports & Youth Affairs, in his order clearly recognizes the fact that the case of the petitioner falls within the period 02.05.2010 to 02.05.2013 and accordingly holds her entitled to payment of a sum of ₹16 lakhs less ₹5 lakhs already paid in terms of the policy of 2013 subject to outcome of SLP/LPA, if any, to be filed by the Government in the case of Ram Lal.

12. It may be noticed that on 02.05.2013, the Cabinet had met to pass a resolution restricting the benefit to those who climb Mount Everest representing the State to be awarded a one-time cash award of ₹5 lakhs to be provided to the Sportsperson of Haryana who have successfully scaled Mount Everest and have done so since 2005 subject to the condition that they are not Government employees/have not been provided Government job on this account.

13. There are sufficient administrative precedents in the cases of Mamta Sodha appointed as Deputy Superintendent of Police and others as Sub Inspectors in Haryana Police against Sports quota for successfully

climbing Mount Everest and standing at the top of the world. In the considered view of the court the petitioner deserves the same treatment/consideration at the hands of the respondent – State for offering her appointment to the Haryana Police similar to the cited cases. Appointments under Sports quota from amongst persons who have stepped on the peak of Mount Everest is not only a matter of pride for the recipients or award winners but for the State of Haryana which justifiably prides itself of supreme achievements of its sportspersons in a wide range of sports at national and international levels. And if such persons are given jobs in the police department their presence as officials with epaulettes while working in the rank and file of the disciplined uniformed force would be inspirational for the police force and its mascots. In the case of the petitioner, her achievements in adventure sports suitably match achievements in the academic field.

14. The Police Department/State Government shall consider the case of the petitioner keeping in view administrative and judicial precedents and Rule 18 of the Haryana Police Service Rules, 2002, which make State Government competent to relax any provision of the Rules with respect to a category of persons, in case age is an impediment to appointment, it can be ignored because the mandate of Article 14 of the Constitution of India is the supreme law preventing discrimination amongst equals by promoting fraternity and a balanced equality of treatment without insisting on too much mathematical exactness of facts, so long as the range of selection permits reasonable classification and the object sought to be achieved is the same.

15. Accordingly, the instant petition is allowed. The office order dated 06.07.2017 is set aside to the extent it declines consideration for

appointment to a Government job for achievers from Haryana who scaled the Mount Everest. More so, when the Additional Chief Secretary to Government, Haryana, Department of Sports & Youth Affairs, is conscious and sanguine that the case of the petitioner lies within the compass of the period from 02.05.2010 to 02.05.2013. The case of the petitioner will be considered on par with the cases cited and relied upon in this matter as administrative and judicial precedents and in the light of this order. The competent authority is directed to make a final decision within 8 weeks from the date of receiving a certified copy of the order.

01.02.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>