

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

**Civil Writ Petition No. 23094 of 2017 (O&M)
Date of Decision: 29.10.2018**

Pardeep

..... Petitioner

Versus

Union of India and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Jasbir Mor, Advocate
for the petitioner.

Mr. Brijeshwar Singh Kanwar, Standing Counsel
for the respondents-UOI.

JASWANT SINGH, J.

1. Instant petition under Article 226 and 227 of the Constitution of India has been filed seeking quashing of order dated 20.09.2017 (**Annexure P-8**) whereby respondent has rejected candidature of the petitioner for the post of Soldier Clerk on the ground that petitioner has not secured minimum marks in 10+2 Examination.

2. The respondent issued an advertisement inviting online applications for recruitment of Soldier Clerks, Soldiers General Duty etc. The eligibility criteria were prescribed *qua* education, physical and medical. The petitioner successfully applied online for the post of Soldier Clerk. The petitioner received call for rally of army/recruitment and participated on 31.07.2017 under Roll No. 132556. The petitioner qualified physical test including chest measurement. The petitioner on 04.08.2017 was medically examined and found fit. On completion of all these formalities, the respondent issued admit card for the examination to be held on 29.10.2017.

3. The petitioner through letter dated 19.09.2017 received a call for verification of documents on 25.09.2017. The petitioner came to know that respondents have doubt about his education eligibility criteria. The petitioner had applied on the basis of 10+2 exam. As per enclosed 10+2 certificate issued by Haryana School Education Board, Bhiwani, the petitioner appeared in six (06) papers and secured 386 marks out of 500 marks. He secured 27 marks in Mathematics which were not included in the total marks secured and on the basis of marks of five (05) compulsory subjects, he was declared pass with final Grade Point Average (GPA)-7.

4. Counsel for the petitioner contended that Haryana School Education Board vide letter dated 19.09.2017 (**Annexure P-7**) has confirmed that it is compulsory to pass five (05) subjects and if any candidate has taken an additional subject and failed in the said subject, he would be considered pass if he has passed five (05) subjects. As petitioner has opted Maths as additional subject, he has been declared pass on the basis of aforesaid formula. The petitioner secured more than 50% marks in each subject, 60% in aggregate in 10+2 and 50% marks in English and Mathematics in matriculation; therefore, he fulfilled eligibility criteria and it is unjustified on the part of respondents to reject application of the petitioner.

5. Counsel for the respondent-Union of India contended that the petitioner did not disclose fact of securing less than minimum pass marks in Mathematics in 10+2, therefore, his application was processed otherwise it would have been out rightly rejected. The petitioner has failed in Maths in 10+2 so he cannot claim that he has secured 50% marks in each subject.

6. After having scrutinized record of the case and hearing arguments of both the counsels, this Court finds that present petition deserves to be allowed. The conceded position emerging from record is that as per advertisement a candidate was supposed to fulfil below mentioned criteria to apply for the post of Soldier Clerk / Storekeeper Technical:

Education Qualification:

<i>Category</i>	<i>Education</i>	<i>Age</i>
<i>Soldier Clerk /Store Keeper Technical (All Arms)</i>	<i>10+2/Intermediate Examination Pass in any stream (Arts, Commerce, Science) with 60% marks in aggregate and minimum 50% in each subject. Should have studies and passed English and Maths/Accounts/Book Keeping in Class X or class XII with 50% marks in each subject. In case of graduate with Maths and English as subject in BSc, the stipulation of 50% in Cl X or Cl XII is waived off. In case of graduate without English and Maths/Accts/Book Keeping, he should have scored more than 50% in English and Maths/Accts/Book Keeping at least once in Cl X or Cl XII.</i>	<i>17^{1/2} -23 Yrs</i>

The Education Board vide its letter dated 19.09.2017 has made things clear beyond doubt. As per said letter, a student is required to clear five (05) subjects and in case of additional subject, marks of five (05) subjects are counted if he has failed to secure minimum pass marks in additional subject. In the marks sheet of 10+2, marks of Maths are disclosed however, marks of five (05) compulsory subjects are counted.

The petitioner has secured 50% marks in all the compulsory subjects and 60% aggregate marks in 10+2. The petitioner has also secured 50% marks in English and Mathematics in matriculation, therefore, he has fulfilled afore-stated criteria. It is immaterial that the petitioner secured less

than pass marks in Mathematics in 10+2 because Mathematics was additional subject and it was not compulsory to secure minimum pass marks in said subject. Thus, it is held and declared that the petitioner fulfilled the laid down criterion.

7. In view of afore-stated conceded position, the respondent has wrongly rejected application of the petitioner. As petitioner has fulfilled eligibility criteria as well as cleared physical/medical test, he deserves to be considered for the post applied, if there is no other deficiency. In terms of interim order dated 09.10.2017 of this Court, the petitioner has already appeared in the written test held on 29.10.2017, and therefore, the respondents are directed to declare result of the petitioner. If the petitioner, based on his secured merit, is within zone of appointment against the advertised vacancy in his category, then the appointment order shall be immediately issued. The petitioner shall be entitled to consequential benefits with effect from the date persons junior to his merit have been appointed.

Petition is “**Allowed**” in the above terms. The admissible relief shall be granted within one (01) month from the date of receipt of certified copy of this order, failing which the respondent-authorities shall be liable to be hauled up in contempt proceedings.

Since the main case has been decided, no orders are required to be passed in the pending miscellaneous application(s), if any, and the same stand(s) disposed of.

October 29, 2018

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**(JASWANT SINGH)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>