

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

**CWP NO. 10407 OF 2019
DATE OF DECISION : 30.08.2019**

Kaptan Singh

... Petitioner

versus

Union of India & Ors.

... Respondents

with

(2)

CWP NO. 10995 of 2019

Rakesh

... Petitioner

versus

Union of India & Ors.

.. Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Jagdeep Jaswal, Advocate
for the petitioners.

Mr. Karminder Singh, Advocate
for the respondents.

ARUN MONGA, J.

1. This order of mine shall dispose of above-mentioned two writ petitions, as similar facts and common issues are involved therein. For brevity, facts are being taken from CWP No. 10407 of 2019.

2. Challenge herein, is to the rejection of the candidature of the petitioner on the ground of an inadvertent error committed by the petitioner in filling up his gender in the on-line application form, for appointment to the post of Constable in India Railways and the subsequent refusal by the respondents vide letter dated 25.03.2019(Annexure P-5) to rectify the said mistake in the application form on the ground that Computer Based Test(CBT) for the post of Constables was since complete and, therefore, such a rectification could not have been carried

out after the said completion.

3. The Railways issued an employment notice No.1/2018(Annexure P-1) for filling up various posts of Constables, both male and female categories. The petitioner(a male candidate) hails from rural background and is native/ resident of village Malvi, Tehsil Julana, District Jind in the State of Haryana. He visited a nearby cyber-cafe for filling up the online application form qua the post of Constable. The person deployed at cyber-cafe filled up the relevant application form under the instructions of the petitioner. However, the petitioner was totally unaware that the cyber-cafe person had inadvertently filled in the gender column as 'female' instead of 'male' and being unaware of the said mistake, the same escaped the notice of the petitioner.

4. Pursuant to the online application form, respondents issued call letter to the petitioner for CBT, which was duly undertaken by the petitioner. No objection at that time was raised by the respondents qua the gender of the petitioner being 'female' in their records. The petitioner duly qualified the CBT and was accorded Sr. No. 1480. In the normal course of expectation, he awaited call for further selection process i.e. Physical Efficiency Test(PET), Physical Measurement Test(PMT) and Documents verification(DV), but instead, as a bolt from blue, he received call letter dated (Annexure P-4, wherein his gender was mentioned as female instead of male and the schedule date of PET/PMT was fixed as 19.04.2019.

5. It would be apposite to mention that CBT for selection to the post of Constables for both genders(male and female) is/ was same and to that extent the inadvertence in filling up of the gender did not effect the performance of the candidates in the said test.

6. In this background, after receiving the call letters for undertaking the PET/PMT in the female category, the petitioner, for the first time, came to know of the *bonafide* mistake which occurred in filling up the application form. The

petitioner immediately approached the respondents through an application on 12.03.2019. However, his request for rectification in the application was rejected vide order/ letter dated 25.03.2019(Annexure P-5), impugned herein, giving the ostensible reason that CBT for the post of Constables was since complete, therefore, this rectification in the application form cannot be carried out. Hence, this writ petition.

7. In CWP No.10995 of 2019, similar inadvertent error crept while filling up the application form of the petitioner Rakesh by the cyber-cafe. He was also placed at Sr. No. 2010 in the list of candidates called for PET/PMT, wherein also he was shown as 'female' instead of 'male'.

8. At the time of first hearing of CWP No. 10407 of 2019, while issuing notice of motion, following order was passed:-

“Learned counsel for the petitioner, inter alia, contends that inadvertent error of the petitioner in having mentioned his gender as 'female' instead of 'male', while filling up the online application is being held against the petitioner to declare him ineligible for the post of Constable in Railway Protection Force.

Learned counsel also submits that the petitioner has already successfully cleared the written examination for the selection to the said post.

Notice of motion for 01.07.2019.

Process dasti as well.

In the meanwhile, the respondents are directed to allow the petitioner to provisionally participate in the further selection process in male category, subject to final outcome of the present writ petition.”

Similar order was passed in CWP No. 10995 of 2019 when it came up for hearing for the first time on 29.04.2019.

9. Backed up by the aforesaid orders, the petitioners provisionally participated in the PET/ PMT and DV and it is stated that they have successfully qualified in the same.

10. In the return filed on behalf of respondents, reliance has been placed

on Para No.10(a) and (b) of the employment notice wherein it is stated that in case a candidate wishes to modify his application, he ought to do the same well in advance of the closing date of filling up of online application. Since the petitioners did not carry out the corrections before the closing date of the online application forms, the writ petitions are sought to be dismissed on that ground.

11. The moot question that requires adjudication now is, whether the petitioners are entitled to be considered for the post of Constables in the male category?

12. The foundation of rejection of the request of the petitioners has been laid on Paras 10(a) and (b) of the employment notice and the same is reproduced hereinbelow for ready reference:-

“10. Modification of application:-

(a) After final submission of ONLINE application, in case the candidates wishes to make minor changes to correct inadvertent errors in the application, the correction of data other than State, email and mobile number can be done by paying the modification fee of Rs.250/- (non refundable). The modification fee shall be applicable to all candidates including fee concession categories and this fee is not refundable for any category. The modification to the registration and application details can be done twice only.

(b) Candidates are cautioned to ensure that if they wish to modify their application, they are advised to do the same sufficiently well in advance of the closing date and time of the filling up of online application. In case, due to last minute congestion, if the modification attempt fails at any stage, and the modification carried out have not been saved or not submitted in time, the earlier information furnished in the application shall be considered and no correspondence on this subject shall be entertained.”

13. Having heard the rival contentions of learned counsel for the petitioner and learned counsel appearing for the respondents-Railways, I am of the view that both the writ petitions merit being allowed for the reasons stated hereinafter.

14. I am not in agreement with the insipid argument of learned counsel for respondent-Railways that since the petitioners did not rectify/ modify their gender in the application forms before closing date of online application, therefore, they had to be non-suited qua the same for all times to come. Particularly, when the petitioners at the very first instance, approached the respondents to rectify their gender in their records when they came to know of the *bonafide* mistake on receipt of call letters for appearing in the PET/PMT/ DV. To argue, therefore, that the petitioners could have made corrections in their application forms by the closing date i.e. on or before 30.06.2018, but since they did not make any such corrections, therefore, respondents are not bound to carry out the said rectification upon being approached by the petitioners, is completely untenable. Given the prevailing socio-economic conditions in our country, it is safe to assume that every citizen does not have the financial capacity to own his own computer or a laptop and has to, therefore, necessarily depend either on cyber-cafe or any other third person having access to computer for filling up such like online forms. Specially, in the case of petitioners, who are admittedly residents of rural villages/ areas in the remote part of Haryana. In such cases, an inadvertent mistake on the part of third person whose services were perforce utilized by a candidate, cannot be construed as an intentional mistake on the part of a candidate. A candidate cannot, therefore, be made to suffer for the *bonafide* mistake in the present case in filling up the wrong gender while filling up the form by the cyber-cafe person.

15. Having gone through the record of the case, this Court is satisfied that the mistake committed in filling up the gender is indeed a *bonafide* mistake and given the fact that the difficulty level of CBT is same regardless of being a male or female candidate and the petitioners did not earn any undue benefit by giving the erroneous information in respect of their gender.

16. In the circumstances, the respondents ought to have corrected their record about the petitioners' gender when the petitioners approached them with the

said request at the very first instance of coming to know of the *bonafide* mistake committed by the cyber-cafe person.

17. In the premise, keeping in view my aforesaid discussion and the reasons contained therein, both the writ petitions are allowed. Impugned order/ letters dated 25.03.2019 (Annexure P-5) passed by respondent No.4, declining to correct the gender of petitioner is quashed. Respondents are directed in both the cases, to correct the gender of the petitioners in their application forms, which are in their custody. Upon said corrections, the respondents are further directed to accord the benefit of the merit of the petitioners and issue appropriate orders in case they are found fit and meritorious for appointment to the said post, in accordance with law.

(ARUN MONGA)
JUDGE

August 30, 2019
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| 1. | Whether speaking/reasoned : | Yes/No |
| 2. | Whether reportable : | Yes/No |