

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

**CWP No.16637 of 2019 (O&M)
Date of Decision.01.08.2019**

Maj Deepak Vaishnav

...Petitioner

Vs

Haryana Public Service Commission

..Respondent

2. CWP No.17360 of 2019 (O&M)

Diksha

...Petitioner

Vs

The State of Haryana and another

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sachin Jain, Advocate and
Mr. Naman Jain, Advocate
for petitioner.

Mr. Kanwal Goyal, Advocate
for respondent-HPSC.

Ms. Shruti Jain, DAG, Haryana.

^-^-

AMIT RAWAL J.

This order of mine shall dispose of two writ petitions bearing No.16637 of 2019 and 17360 of 2019 seeking quashing of result dated 21.05.2019 (Annexure P-7) qua Ex Serviceman BCA Category and Ex-Serviceman category to be not in accordance with Instructions dated 6.3.1972 (Annexure P-4) attached with CWP No.16637 of 2019. Facts are being enumerated from CWP No.16637 of 2019.

Mr. Sachin Jain, learned counsel appearing for petitioner(s) submitted that petitioner being ex-serviceman retired from Indian Army under Short Service Commission having disability

of 20% as per Annexure P-1. Petitioner also belongs to OBC A category (Non Creamy Layer). Haryana Public Service Commission caused advertisement No.3 dated 2.8.2018 (Annexure P-3) inviting applications for recruitment on 166 posts providing 5% reservation for Ex-servicemen (ESM). The publication clearly specified that reservation will be utilized as per Instructions dated 06.03.1972. A disabled Ex-serviceman having disability between 20% to 50% have to be given preference first than Ex-serviceman.

Being eligible, petitioners applied for above said posts on 1.9.2018 by annexing disability certificate reflecting disability between 20% to 50%. Accordingly, petitioner was issued roll number (Annexure P-6). As per policy of Haryana Public Service Commission, 12 times candidates against the vacancy for main examination are required to be shortlisted. Accordingly, 12 candidates of OBC A category were required to be shortlisted. Petitioner was sanguine of selection but was flabbergasted noticing result that he was not found selected.

He further submitted that main examination was held in first week of July and therefore, approached this Court to allow petitioner to appear in main examination. The matter in principal is squarely covered by judgment of this Court rendered in CWP No.1626 of 2009 decided on 17.09.2009 titled as **Sandeep Singh Vs. State of Haryana and others.** The Appointing Authority was bound to keep in mind priority indicated in instructions, in essence, an Ex-serviceman suffering from a disability between 20% to 50% was to be given preference against dependents of those killed/disabled beyond

50% and thereafter, other Ex-servicemen can be considered for appointment. The process followed by Public Service Commission resulted into conferring benefit upon candidates, who fall under category of other Ex-servicemen and candidates falling in second category have been deprived preferential right.

Per contra, Mr. Kanwal Goyal, counsel appearing for HPSC supported stand of Haryana Public Service Commission for not shortlisting names of petitioners in written examination as marks secured in preliminary examination were less than cut-off marks. Instructions dated 06.03.1972 (Annexure P-4) pertaining to scheme of reservation would be applicable only to those posts of Class I and II where recruitment is not on the basis of competitive examination. Since instructions are not applicable to posts in question being under Clause (c) (ii) Class I and II posts, no benefit of reservation to any Ex-Serviceman/DESM under clause (a) of aforementioned instructions can be given to such “reserved category” candidates at the time of preparation of result. In fact, reservations, as per instructions, are to be applied at the time of final selection and not prior to that. Purpose of preliminary examination is to only shortlist candidates and thereafter, at that relevant point of time policy of reservation cannot be applied. Judgment relied upon pertains to selection at the time of final and main examination, thus, would not apply. In support of contentions, relied upon judgment of Division Bench rendered in CWP No.3144 of 2019 titled as *'Naveen Rao Vs. State of Haryana and others'* decided on 11.02.2019, thus, urges this Court for dismissal of writ petition.

I have heard learned counsel for parties and appraised paper book. Facts of petitioners belonging to Ex-servicemen BCA/ESM and submission of application in pursuance of advertisement as well as obtaining minimum marks than cut-off date are not in dispute. It would be apt to reproduce relevant clause fixing academic qualification as well as relevant clauses of instructions, which are as under:-

“The reservation for ESM will be utilized in the order given below:- (as per instructions No.945-GS-II-72/6451 dated 06.03.1972)

(i) Disabled ex-servicemen with disability between 20% to 50%

(ii) Up to two dependents of service personnel killed/disabled beyond 50%

(iii) other ex-servicemen”

Instructions dated 06.03.1972.

(a) Reservation

The existing reservation in respect of civil posts for ex-servicemen should be utilized in the under given below:-

(i) disabled ex-servicemen with disability between 20% to 50%.

(ii) up to two dependents of service personnel killed/disabled beyond 50%.

(iii) other ex-servicemen.

xxxx

xxxx

xxxx

*(c) Procedure for appointment**(i) Class III and IV posts**xxxx**xxxx**xxxx**Class I and II posts*

(ii) For Class I and Class II posts of which recruitment is not made through competitive examination, the appointing authority while forwarding the requisition to the Haryana Public Service Commission will also forward a copy to the Director, Employment, Haryana (Special cell for Employment of Ex-servicemen). If the names of disabled ex-servicemen (disability between 20% to 50%) and dependents of those killed/disabled beyond 50% in action are available with the Employment Exchange, then these names will be sent by them to the Haryana Public Service Commission within 10 days. On the receipt of the names from the Director of Employment, the Haryana Public Service Commission will first interview those persons and if any among them is found suitable he will be appointed to the post. In case no name is sent by the Director Employment out of the above two categories, or if out of the names sent by the Director Employment no one is found suitable by the Commission then other ex-servicemen will be considered for the post.

(The procedure for recruitment of other ex-servicemen will continue to remain as at present). ”

On a plain and simple language of instructions reproduced supra, it is axiomatic that recruitment, which is not made through competitive examination, the appointing authority will forward requisition to Haryana Public Service Commission providing reservation to ESM. It is a matter of record that test undertaken by petitioners is only “Preliminary”. Petitioners have not been able to make cut-off marks. Reservation as sought to be applied in submission of Mr. Sachin Jain by relying upon judgment supra would not apply, as it pertains to final selection process and not to preliminary examination. It is matter of record that marks obtained in preliminary examination are not to be taken into consideration qua marks obtained in main examination. It is only process to shortlist candidates for main written examination. Though point raised in judgment rendered by Division Bench, relied upon by Mr. Goyal, pertains to a controversy where reserved candidates who secured higher merits, in the process of selection for appointment sought to be considered for appointment against general vacancies, despite the fact that they applied under reserved categories and slot vacated by them was to be given to next candidate in reserved category, would apply at the time of making appointment on completion of selection process and not at the stage of qualifying examination/shortlisting/screening test.

The language of instructions reveals that reservation to be applied for recruitment not to be made through competitive

examination. Preliminary examination is not competitive examination, thus, argument of Mr. Sachin Jain highlighting alleged violation of non-application of reservation at the time of preliminary examination must fail.

No ground for interference is made out. Writ petitions are dismissed being devoid of merit.

(AMIT RAWAL)
JUDGE

August 01, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No