

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

CWP No.2360 of 2017
Date of Decision : 12.12.2019.

Rakesh Kumar ...Petitioner
Versus
State of Haryana and others Respondents

Coram : Hon'ble Mr. Justice B.S.Walia

Present: Mr. Ranjit Saini, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

B.S.Walia, J.

1. Prayer in the petition under Articles 226/227 of the Constitution of India is for the issuance of a writ of Mandamus for directing the respondents to give relaxation in height to the petitioner as given to other candidates and to select and appoint him on the post of Constable.
2. Brief facts of the case leading to the filing of the writ petition are that applications were invited for 169 temporary posts of male constable and 33 temporary posts of female constable in the Haryana Police vide advertisement Annexure P/1. Physical standards for recruitment to the post of male constable as stipulated in advertisement Annexure P/1 are as under :-

Male	Female
a) Height minimum 5'7"	Height minimum
b) Chest -	5'2"
Unexpended minimum 33", expended minimum 34 ½	
Minimum expansion of one and half	

inch	
Note: Suitable relaxation in height and chest may be granted by Director General of Police, for recruitment of outstanding sport persons after recording reasons in writing as per PPR, 12.15(2).	

3. The petitioner applied for the post of male constable and pursuant to communication Annexure P/2, appeared before respondent No.3 on 12.02.2009 for physical test. However, the petitioners candidature was rejected on account of his not meeting the stipulated physical standards.
4. The petitioner claims that on 13.02.2009, he submitted application Annexure P/3 to respondent No.2, requesting grant of relaxation on account of being a sports person. Grievance is that neither representation Annexure P/3 nor subsequent reminders were of any avail whereas one Sombir who was also an aspirant was appointed as constable in response to advertisement Annexure P/1 in relaxation of the stipulated physical standards. Likewise one Harish Kumar, was also appointed as constable under the sports quota upon approval of the Cabinet.
5. Reply has been filed by respondent No.3, taking up preliminary objection that the writ petition filed on 06.02.2017 was barred by limitation as the petitioner’s candidature was rejected on 12.02.2009 on account of not meeting the physical standards stipulated in the advertisement. Further by referring to Rule 12.15 (2) of PPR, 1934 which deals with relaxation i.e. :-

“Provided further that suitable relaxation in height and in chest may be granted by the Director General of Police for

recruitment of outstanding sports persons after recording reasons in writing.”

it has been contended that the petitioners height, unexpended and expended chest measurements were 5’5”, 32” and 34” respectively. In other words the petitioner was 2” shorter than the stipulated height, 1” short in unexpended chest measurement and ½” short in expended chest measurement. As such the candidature of the petitioner was not considered for appointment as constable. Moreover, the petitioner was having lesser measurements of height and chest than the candidates who were granted relaxation in height by the Director General of Police, on the recommendation of the selection committee on account of said candidates being sports persons as per details given below :-

Sr. No.	Name	Regd. No.	Date of Birth	Height	Chest	Relaxation granted in height
1	Somvir S/o Hawa Singh	284	20.11.88	5’ 6 ½” inch	33” unexpended 38” expended	½” inch
2	Ajay Kumar s/o Ram Dhan	77	06.11.87	5’ feet 5 ½ inches	34” unexpended 36” expended	1 ½” inch
3	Ashwani Kumar S/o Jai Narain	413	09.11.86	5’ 6” inch	35” ununexpended 37 ½” expended	1” inch
4	Dalbir Singh S/o Sh. Ram Mehar	1019	11.06.87	5’ 6” inch		1” inch

5	Rakesh Kumar S/o Jagdish Chander (petitioner)	988	14.5.86	5' 5" Inch	32" ununexp ended34" expanded	Seeking relaxation of 1 inch in height (after availing concession against BC quota as per rule/instruction)
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6. I have considered the submissions of learned counsel. The petitioner was not found meeting the stipulated physical standards as per screening test held on 12.02.2009 whereas the writ petition has been filed on 06.02.2017 after eight years of the accrual of cause of action. Rule 12.15(2) of the PPR, 1934, provides for suitable relaxation in height and chest for recruitment of outstanding sports persons after recording reasons in writing. Sports achievements of Sombir qua whom the petitioner alleges discrimination are as under :

- 1st position in 17th All India A.K. Mishra Memorial Boxing Championship 2009-2010 :
- Silver Medal in All India Inter University Year 2008 :
- Ist position in 5th North Zone National Wushu Championship 2008 :
- 2nd position in 16th North Zone Boxing Championship 2008-2009.

The petitioner, on the other hand, apart from mentioning in the legal notice Annexure P/5 dated 14.03.2016 that he was an outstanding sport person and had obtained 1st/2nd position in National Games/National Level Tournaments organized by the Recognized State Federation and thus deserved to be granted relaxation in height, has not given any details qua

his achievement in sports. In other words, the claim for relaxation is as vague as it could be and is not in conformity with the requirement stipulated under Rule 12.15(2) of PPR, 1934. Thus the petitioner has failed to make out a case for grant of relaxation in height and chest measurement in terms of Rule 12.15(2) of PPR, 1934, by setting out his achievements as outstanding sports person.

7. That apart from no case being made out for grant of relaxation, the writ petition is also liable to be dismissed on the short ground of delay and laches as the claim is highly belated and has been filed after a delay of eight years from the date of rejection of the petitioners candidature on 12.09.2009. A Division Bench of this Court in **Naresh Kumar vs State of Haryana and others 2004 (4) RSJ 652**, while considering a writ petition filed by the petitioner therein challenging his termination after delay of nine years, dismissed the writ petition by relying upon the decision of a Constitution Bench of Hon'ble the Supreme Court in **State of Madhya Pradesh and another vs Bhailal Bhai and others AIR 1964 Supreme Court 1006**. Relevant extract of the same is reproduced as under:-

“The special remedy provided in Article 226 is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defence legitimately open in such actions. It has been made clear more than once that the power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise

of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it.

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It is not easy nor is it desirable to lay down any rule for universal application. It may however be stated as a general rule that if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus.

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The provisions of the Limitation Act do not as such apply to the granting of relief under Article 226. However, the maximum period fixed by the Legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable. ”

8. The decision in Bhailal Bhai's case (supra) was reiterated by Hon'ble the Supreme Court in M/s Tilokchand Motichand and others vs H.B. Munshi and another AIR 1970, Supreme Court 989 as also by a Eleven-Judge Bench of Hon'ble the Supreme Court in Mafatlal Industries Ltd. Etc. Vs Union of India etc. JT 1996 (1) SC 283, wherein it was held

that the High Court should not entertain belated petitions. Hon'ble, the Division Bench of this Court also relied upon the decision of Hon'ble the Supreme Court in **Kamini Kumar Das Choudhary vs. State of West Bengal and others, AIR 1972 SC 2060**, to hold that a petition for quashing an order of termination after a lapse of two years deserved to be dismissed on the ground of delay.

9. In the present case, no case is made out on merits. Even otherwise, in view of delay of eight years in approaching this court, and keeping in view the nature of service as well as duty to be performed by a constable, no case whatsoever is made out to exercise jurisdiction. Accordingly, finding no merit in the writ petition, the same is dismissed.

(B.S.Walia)
Judge

12.12.2019

rajesh.k.khurana

Whether speaking / reasoned

: Yes / No

Whether reportable

: Yes / No