

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 13554 of 2017 (O&M)

Date of Decision: 06.02.2019

Satyender Kumar and others

...Petitioners

Vs.

Haryana Staff Selection Commission

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sunil Nehra, Advocate
for the petitioners.

Ms. Shruti Jain Goyal, DAG, Haryana.

RAJIV NARAIN RAINA, J. (Oral)

1. When this matter came up for hearing on 18.12.2018 after notice was issued to the respondents and they had entered appearance, after hearing parties, the following interim order was passed:

“Learned counsel for the petitioner states that this petition survives only qua petitioner No.12 Anurag Singh, his result has been produced in Court today. In the Physical Measurement Test, he has not qualified the measurement of his height and chest. He has 173 normal chest add 89.5 cm expanded chest. Result is being returned back.

Learned State counsel will file reply to this application bearing CM No. 12646-CWP of 2018 explaining if the petitioner had fulfilled the criteria PET in Delhi (Annexure A-2). A perusal of the result dated 25.10.2016 conducted by Haryana Staff Selection

Commission and Staff Selection Commission result Annexure A-2 conducted on 16.09.2016 shows that there is only a gap of one month in conducting the physical measurement test in the both selection process . In the selection process of Delhi (Annexure A-2) minimum standard of chest unexpanded was 84.5 cm whereas in the present case the petitioner has secured 80.0 cm the difference of 4.5 cm within one month does not seem to be. Keeping in view the difference of 4.5cm. A direction is being issued to Government Hospital Sector -6 Panchkula to constitute a medical Board to do the Physical measurement test of petitioner No.12 of height and chest. Report be sent.

Petitioner at the same time will give physical measurement test conducted in the Chandigarh selection process and subsequent Delhi test to the respondent-Commission.”

2. The physical measurement test of petitioner No. 12 was conducted in Civil Hospital, Sector-6, Panchkula on the directions of this Court to resolve a disputed fact whether the petitioner No. 12 is medically fit for the job of Constable (General Duty) in Haryana Police. The petitioner was examined by the medical doctors in the Government Hospital. The report dated 14.01.2019 was submitted to this Court, whereupon the following order was passed:

“Report dated 14.1.2019 submitted by Civil Hospital, Panchkula has been perused. Petitioner Anurag Singh's

height measured at 172 cm and Chest Inspiration 100 cm and Expiration is 91 cm which is far better than the prescribed minimum physical measurements for recruitment of Constables. The minimum height required is 169 cm and Chest Inspiration should be 85 and Expiration 81 cm. The last selected candidate in the BCA category, to which the petitioner belongs, secured 58.15 marks while the petitioner has got 60 marks as per the physical measurement carried out as per Court directions.

In the face of this report submitted by Government Hospital Panchkula, Ms.Shruti Jain Goyal, learned DAG Haryana prays for a week's time to obtain instructions regarding the vacancy position existing as on today and vacancies which are likely to arise in the near future to consider the case of the petitioner in the light of the report.

3. On the awaited instructions regarding vacancy position, the learned Law Officer states that two vacancies are presently available in BCA category, the category in which the petitioner No.12 is an aspirant. It is disclosed by State counsel that these two vacancies have been re-advertised by the Haryana Staff Selection Commission, amongst other vacancies in the same category and other advertised categories, and keeping this fact in view it is a priori that in case this petition succeeds, a direction is likely to be issued to treat petitioner No.12 as a physically qualified candidate, if he is otherwise eligible to be appointed to the post.

4. At this juncture, it is argued by the learned law officer that there are now three reports in existence; the 1st conducted by the Haryana Staff Selection Commission at the time of Physically Measurement Test conducted on the spot during the selection process involving a large number of candidates where the petitioner No.12 was declared medically unfit as he did not meet the prescribed physical standards required of unexpanded chest, the 2nd report is from the recruitment process conducted by the Delhi Police in a direct recruitment process in which the petitioner No.12 was a participant. The Delhi Police recorded the petitioner's expanded and unexpanded chest measurements at 85.5 cm and 90 cm respectively. The report is dated 16.09.2016. It has been noticed in the interim order dated 18.12.2018 that there was a gap of only one month in conducting the Physical Measurement Test (PMT) in both the selection processes. The Delhi report qualifies the petitioner in the physical test as per Haryana Police standards for recruitment of Constables (General Duty). The 3rd report dated 14.01.2019 is by the Civil Hospital, Panchkula under Court directions. The Medical Board has measured the petitioner No.12's height as 172 cm, chest inspiration at 100 cm and chest expiration 91 cm which is far better than the prescribed minimum physical measurements required in terms of the advertisement.

5. Learned Law Officer burnishes her contention saying that in the face of three contradictory reports the first should be accepted as

correct and looking to the distance of time between the 2nd and 3rd reports, variations are quite possibly may arise by the very nature of physical things which vary on the state of health on a given day, and, therefore, the measurements done by the agents of the Commission cannot easily be repudiated or faulted and on the other hand implicit trust must be placed on those and the candidature of the petitioner should be rejected by ignoring the result of the third test. A candidate must be measured fit on the day appointed for the purpose by the recruiting agency.

6. I have considered the contention of the learned Law Officer which on first glance may to start with seem attractive, but, deserves to be rejected on the ground that the question of pure fact still remains glaring in the face that the measurement test conducted by the Government Hospital, Sector 6 Panchkula was as per directions of this Court in the interim order and that turns out in favour of the petitioner that he is physically fit and thus eligible. It is not possible to accept the argument in the face of a report of the Government Hospital itself delivered by Government doctors constituting the Medical Board in the Civil Hospital and hence it would not redound to the credit of the State to disregard the report of its own department. The State must repose faith in its own doctors unless the decision was tainted, which is not the case.

7. Accordingly, I have no occasion whatsoever to discard the

process concluded at the Civil Hospital, Panchkula which amply determines that the petitioner was up to the physical standard. In this view of the matter, I am constrained to reject the argument of the Law Officer by virtue of the *fiat accompli* of the measurement exercise performed at Civil Hospital, Panchkula. Those measurements will always form part of the government record and cannot be pooh-poohed. It would also not redound to the credit of the Court to dismiss the petition even when relief can be given within legitimate rights and without upsetting any settled third party rights of the selected candidates.

8. As a result of the discussion, the petition is allowed on the strength of the report dated 14.01.2019. All adverse orders, actions and decisions of the Commission and the Police Department adverse to the rights of the petitioner No 12 are nullified. The case of the petitioner No. 12 is directed to be reconsidered in the light of this order and he may accordingly be offered appointment against one of the two available vacancies of Constable (General Duty) in BCA category. To achieve the purpose one post/vacancy is directed to be excluded from the ongoing selection process of advertised vacancies of Constables in Haryana Police, if the said petitioner is otherwise eligible. In case he is, he will be assigned seniority from the merit position determined by the Commission in the BCA category in relation to his batch mates.

9. However, the actual monetary benefits will accrue from the

date of appointment within the time specified in this order, while the other rights will be granted notionally from the retrospective date of appointment of persons lower in merit in the same recruitment process and in the same reserved category. The entire process of appointment be concluded by the respondents within six weeks from the date of receipt or supply of a certified copy of the order, whichever is earlier.

10. The petition is, however, dismissed as far as the remaining petitioners are concerned, as they failed to cut any ice.

(RAJIV NARAIN RAINA)
JUDGE

06.02.2019
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No