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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 03.04.2019

Pronounced on: 16.04.2019

+ W.P.(C) 4396/2017 and CM APPL. 22729/2018

NEERAJ YADAV

..... Petitioner

Through Ms. Pooja Dhar, Adv.

versus

AIRPORTS AUTHORITY OF INDIA

..... Respondent

Through Mr. Dig Vijay Rai and Mr. Kustubh
Singh Advs.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide the present petition, the petitioner seeks direction declaring that the exclusion of the petitioner from the select list of recruitment for the post of Junior Assistant (Fire Service) held by respondent pursuant to Advertisement No.02/2016, is arbitrary, unlawful and violates the fundamental rights of the petitioner under Article 14, 19(1)(g) and 21 of the Constitution of India. Consequently, commanding the respondent to include the petitioner's name in the select list.

2. The brief facts of the case are that in August 2016, the Respondent

issued Advertisement No. 02/2016 for recruitment to the post of Junior Assistant (Fire Service). 59 vacancies were advertised for general candidates, 12 for Scheduled Castes, 16 for Scheduled Tribes and 19 for OBC's (total 105 vacancies). As per the advertisement, the applicants would have to first appear for online exam, followed by physical measurement, and subject to passing these two, appear for driving test and then if successful in driving test, appear for physical endurance test. The educational qualifications as provided in the advertisement are as below:

- “a) 10th Pass + 3 years approved regular Diploma in Mechanical/Automobile/Fire with minimum 50% marks, OR*
- b) 12th Pass (Regular Study) with 50% marks”*

3. The petitioner qualifies under the second part of the educational qualifications prescribed, i.e. 12th Pass (Regular Study) with 50% marks. The petitioner has passed 10+2 Board exam conducted by the CBSE in the year 2011, with subjects of English, Economics, Business Studies, Accountancy, Physical Education and Mathematics. The marks statement issued by the Central Board of School Education for the Senior School Certificate Examination 2011 dated 23.05.2011, is Annexure P-2.

4. Further case of the petitioner is that as per the regulations to pass the exam a candidate must pass in five subjects of external examination which

can be either two languages and three electives or one language and four electives as per the scheme of studies. Thus, the petitioner who was marked on six subjects could choose one language and four electives. The marks awarded to the petitioner in six subjects as per the marks statement is tabulated below –

SL.NO.	SUBJECT	MARKS
1.	English Core	60
2.	Economics	48
3.	Physical Education	63
4.	Business Studies	40
5.	Accountancy	58
6.	Mathematics	18

5. As per above table, excluding Mathematics, the total marks secured by the Petitioner in the first five subjects is 269(Two Hundred and Sixty Nine) and if divided by five, the percentage is 53.8% (Fifty Three point Eight percent). Hence, the Petitioner qualified as per the Advertisement.

6. Accordingly, the petitioner being fully eligible as per the terms and conditions specified in the advertisement, he applied in the OBC category and was allotted Roll No. 1002111062. He participated in the online exam conducted by the respondent on 15.10.2016. Thereafter, on 30.12.2016 the respondent notified that the petitioner was provisionally successful in the online exam and was invited for certificate verification, physical

measurement test, driving test and physical endurance test to be held on 21.01.2017. Accordingly, the petitioner reported on 21.01.2017, however, to the petitioner's shock, he was disqualified by the officials of the respondent by saying that his marks were less than 50%. The petitioner showed his mark sheet and tried to explain that he in fact had more than 50% marks and further explained them that they were wrongly taking into account all six subjects (due to which they erroneously calculated the overall percentage as 47.83%). However, no heed was paid to him and the petitioner was disqualified by the respondent. Being aggrieved, the petitioner addressed a representation to the respondent on 23.01.2017 explaining the correct position, but did not get any reply. Finally, the select list was published in which the petitioner's name was not there. Only 36 names were mentioned in the select list as against the total 105 vacancies advertised.

7. Learned counsel appearing on behalf of the petitioner submits that having no option, the petitioner moved an application under the Right to Information Act on 06.04.2017 asking the respondent about the reason for not including his name in the select list. In reply dated 17.04.2017 vide a covering letter dated 21.04.2017, reasons for rejection was stated as "*Less than 50% marks in Class 12th*"

8. Counsel for the petitioner further submitted that the very mark sheet of the petitioner discloses that he has secured more than 50% and the respondent has erroneously calculated the marks less than 50%. The respondent has incorrectly calculated the petitioner's percentage by taking into account all six subjects, instead of excluding mathematics which was an additional subject and counting the remaining five subjects. Taking the correct method of calculation into account, the petitioner has secured 53.8%, which is well-above the minimum qualification provided in the advertisement. In these circumstances, clearly, the rejection of the petitioner suffers from the voice of *Wednesbury* unreasonableness and is not sustainable either in law or in the facts of the case.

9. Counsel for the petitioner has pointed out that the respondent has selected only 36 persons as against 105 vacancies advertised, hence, there is sufficient space to accommodate the petitioner in the post in question.

10. To strengthen his argument, learned counsel for the petitioner submits that a similar issue came before the Hon'ble Supreme Court in case of ***Kusum Lata vs. State of Haryana & Ors.: (2002) 6 SCC 343*** whereby held as under:

“8. As per the scheme of examination of CBSE the marks obtained in the additional subjects are not taken into

consideration in the passing of the examination. The additional subject is optional. A candidate may take it or not. The requirement is that a candidate should obtain 33% marks or Grade D-2 in each of the five subjects of external examination as per the scheme of the studies. When the eligibility clause stipulates that a candidate should have passed 10+2 examination with at least 50% aggregate marks, it is implicit that the aggregate marks are required to be calculated keeping in view only the subjects which are necessary to pass 10+2 examination and not the marks of the additional subject which is not taken into account for passing the examination. This is the only reasonable interpretation having regard to the spirit of the clause providing for eligibility conditions. The relevant factor is to see what is necessary to pass 10+2 examination conducted by CBSE and on that basis decide whether a candidate fulfils or not the requirement of the eligibility clause. If seen from this perspective, the aggregate marks would have to be worked out having regard to the marks obtained in five subjects and not in the additional subject which is not taken into account for passing the examination.”

11. On the other hand, learned counsel appearing on behalf of the respondent submits that a selection committee was constituted by the competent authority vide office order dated 04.01.2017 to conduct the skill test for 154 qualified candidates including the petitioner and the skill test was held in four batches from 18.01.2017 to 21.01.2017 in the following four steps:

“Step 1: Certificate Verification

Step 2: Physical Measurement Test

Step 3: Driving Test

Step 4: Physical Endurance Test”

12. Accordingly, the petitioner was called to appear for the skill test vide letter dated 30.12.2016 on 21.01.2017 in the fourth batch. As per the selection process, the petitioner was required to clear all the four steps mentioned above before the Selection Committee for final selection. As per records, the petitioner was disqualified by the Selection Committee in the First Step i.e. Certificate Verification as he was not meeting the criteria of 50% in 12th class and hence was not allowed to enter into the next subsequent steps for selection. The petitioner in the 12th class had secured 287 marks out of 600 and hence was not meeting the educational qualification criteria.

13. He further submitted that the case of the petitioner is that he qualified the 12th Board exam conducted by CBSE in the year 2011 with subjects English, Economics, Business Studies, Accountancy, Physical Education and Mathematics. As per the Regulations of the CBSE, to pass the examination, a candidate must pass in five subjects of External examination which can be either two languages and three electives or one language and four electives as per the scheme of studies and hence the petitioner who was marked on six subjects could chose one language and four electives. The

petitioner further claimed that taking the above formula and exclude mathematics and add two languages and three electives viz. Business Studies, Physical Education and Accountancy, the total marks secured by the petitioner in the first five subjects 269 i.e. 53.8% and hence the petitioner was qualified as per the advertisement.

14. Learned counsel submitted that the said formula of CBSE is only for passing of the exam of 12th class and not for other purposes i.e. recruitment. In case of Shri Vishal Chaudhary who was selected, had appeared in six subjects in his 12th class CBSE, his total marks were considered to determine his percentage. Similar was the case of Shri Shakti Singh, Shri Nitesh, Shri Vikrant Tomar (U.P. Board) and Shri Sonu Kumar Bharati.

15. Learned counsel further submitted that the respondent has uniformly calculated the percentage of the candidates in their 12th class to determine as to whether the candidates have secured 50% marks in their 12th class exams irrespective of the fact whether they appeared in five subjects or six subjects. There has been no discrimination qua the petitioner, therefore, the present petition deserves dismissal.

16. It is not in dispute that as per the advertisement, the educational qualification required for the post in question is 12th pass (Regular service)

with 50%. As per the guidelines 3(a) of the CBSE which is at page 15 of the paper book is as under:

“(a) To pass the examination, a candidate must obtain atleast Grade D-2 in all subjects of internal assessment unless the candidate is exempted and 33% marks or Grade D-2 in each of the five subjects of external examination.”

17. The marks awarded to the petitioner in six subjects as per the marks statement is tabulated below:

S.No.	Subject	Marks
1.	English Core	60
2.	Economics	48
3.	Physical Education	63
4.	Business Studies	40
5.	Accountancy	58
6.	Mathematics	18

18. As per the Regulations of the CBSE, to pass the examination, a candidate must pass in five subjects of External examination which can be either two languages and three electives or one language and four electives as per the scheme of studies. If we take the above formula and exclude mathematics and add one language and four electives viz. Economics, Business Studies, Physical Education and Accountancy, the total marks secured by the petitioner in the first five subjects 269 and if divide by 5, the percentage is 53.8%. Hence, the petitioner is qualified as per the

advertisement. The mark sheet clearly says “pass” which further collaborates that only marks for five subjects were required to be calculated which can be either two languages and three electives or one language and four electives as per the scheme of studies.

19. In addition to above, as per Annexure D which is at page 126 of the paper book, the mathematics is shown as additional subject wherein marks obtained is 18 with Grade ‘E’ and declared ‘Fail’. Thus in any sense, the mathematics which is additional subject cannot be considered as the main subject of the petitioner.

20. A similar issue came in the case of *Kusum Lata (supra)* as cited by the petitioner wherein it is held that as per the scheme of examination of CBSE, the marks obtained in the additional subjects are not to be taken into consideration in passing of the examination. The additional subject is optional. A candidate may take it or not. The requirement is that a candidate should obtain 33% marks or Grade D-2 in each of the five subjects of external examination as per the scheme of the studies. When the eligibility clause stipulates that a candidate should have passed 10+2 examination with at least 50% aggregate marks, it is implicit that the aggregate marks are required to be calculated keeping in view only the subjects which are

necessary to pass 10+2 examination and not the marks of the additional subject which is not taken into account for passing the examination.

21. Accordingly, I hereby declare that the aggregate of the petitioner in the class 12th is more than 50% by excluding the mathematics being additional subject which is evident from Annexure D at page 126 of the paper book.

22. It is not in dispute that the total vacancies were 105 and only 36 names were mentioned in the select list as per the Annexure P5. Thus, the vacancies are still to be filled up.

23. It is pertinent to mention here that vide order dated 08.01.2018, this Court made it clear that one of the vacancies which has been carried forward would be the subject matter of this writ petition. Thus the respondent cannot say, at this stage, that there is no vacancy left for the petitioner.

24. As argued by the counsel for the respondent that the respondent has uniformly calculated the percentage of the candidates of 12th class as to whether candidates have secured 50% marks in their 12th class exam irrespective of the fact whether they appear in five subjects or six subjects.

25. Accordingly, respondent is directed to allow the petitioner in further process for the selection of the post in question. It is upto the respondent

whether to call all the candidates who were rejected on this ground and allow them to participate in the further selection process and if found eligible otherwise, they may be selected accordingly. The whole exercise shall be carried out within two months from the receipt of this order.

26. The petition is allowed and disposed of, accordingly.

CM APPL. No.22729/2018

In view of the order passed in the present writ petition, the application has been rendered infructuous and is accordingly, disposed of.

(SURESH KUMAR KAIT)
JUDGE

APRIL 16, 2019
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