

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

CWP No. 24851 of 2019

Date of Decision: 10.09.2021

Joginder Singh

...Petitioner

Versus

State of Haryana and another

...Respondents

Coram: Hon'ble Mr. Justice Arun Monga

Present : Mr. Anurag Jain, Advocate, for the petitioner.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

Arun Monga, J.

Petitioner herein, a decorated Ex-solider of Indian Army and an International Athlete, also won Bronze Medal for India in International Athletics competition (equivalent to Asian Games) at Kuala Lumpur in year 2006, is before this Court seeking appointment on a government job on the basis of his sports achievements, as per government policy. He *inter alia* seeks issuance of a writ in the nature of certiorari to quash an order dated 28.04.2014 (Annexure P-16), whereby, though held eligible otherwise, but being over age has been denied employment on the basis of his Bronze medal/other achievements. The petitioner also further seeks quashing of orders dated 26.11.2018 (Annexure P-11), 09.01.2019 (Annexure P-13) and 18.06.2019 (Annexure P-17) passed by the respondents under the New Sports Policy called Haryana Outstanding Sportspersons (Recruitment and Conditions of Service) Rules, 2018. A writ in the nature of Mandamus has also been sought directing the respondents to consider the petitioner for an appointment in government department with effect from 28.04.2014, as per his entitlement, under the policy notified on 20.08.2013 (annexure P-6) with

all consequential benefits of service, along with payment of interest to be calculated from the date of accrual till realization.

2. Petitioner participated in Far East and South Pacific (FESPIC) Games (for the disabled), Kuala Lumpur in year 2006, in para athletics. He won Bronze a medal. He represented India in the tournament, as a member of Haryana Team. Far East and South Pacific games were equivalent to Asian Para Olympic Games. From 2010 onwards, (FESPIC) Games were replaced by Asian Para Games. The inaugural of first Asian Para Games was held in 2010 in China. Certificate of petitioner having won Bronze Medal is appended as Annexure P-3. Apart from that, petitioner had been representing State of Haryana in different events at national level, wherein he invariably secured 2nd or 3rd place in various athletic events viz. Short Put, Discus Throw, Javelin Throw, etc. His achievement certificates in Para Athletics Championships from 2008 to 16 are appended collectively as Annexure P-5 (colly).

3. Petitioner asserts that he has not been given benefit of a notification dated 20.08.2013 (Annexure P-6) and his request to seek government job has been wrongly rejected. Petitioner is also aggrieved that his request/ application for appointment originally submitted in January, 2014 was kept pending and/or he was never informed of the rejection thereof. It was only for the first time when an information was sought under RTI by his co-villager that vide information dated 09.05.2019 (Annexure P-15), the factum of rejection of his application under new sports policy-2018 *ibid* was disclosed to him vide information dated 09.05.2019 (Annexure P-19), whereas, the case of the petitioner was to be considered under the then applicable notification dated 20.08.2013 (Annexure P-6).

4. In fact, while issuing notice of motion in the writ petition, case of the petitioner was succinctly summed up by a co-ordinate Bench of this Court vide an order dated 09.09.2019. Before proceeding further, it would therefore be apposite to reproduce the same herein below:-

“Mr. Anurag Jain, learned counsel appearing on behalf of the petitioner submits that Department of Sports and Youth Affairs, Haryana came out with the notification dated 20.08.2013 (Annexure P-6) providing out of turn appointment and other incentives in respect of sports achievement after 05.03.2005. The aforementioned notification was amended on 15.07.2014 (Annexure P-7). The petitioner being Bronze Medal holder in KL'06-9th FESPIC Games, held in Kuala Lumpur, Malaysia from 25th November to 1st December 2006, submitted an application in January 2014 but was not communicated any decision thereon. However, in the meanwhile, Government came out with fresh notification dated 05.09.2018 (Annexure P-9) known as Haryana Outstanding Sports Persons (Recruitment and Conditions of Service) Rules, 2018 with different games and also fixing the age limit not above 50 years. Vide letter dated 12.12.2018, Department of Sports and Youth Affairs, Chandigarh informed the petitioner that previous application would not be considered and was directed to apply afresh either in Form I or Form II but was never communicated any decision on the previous application. Vide letter dated 09.01.2019, his candidature was rejected. The petitioner sent a legal notice dated 12.04.2019 (Annexure P-14) and also sought information under Right to Information Act with the help of co-villager named Rajinder Singh. Vide letter dated 09.05.2019, he was provided incomplete information. Vide communication dated 18.06.2019, legal notice was rejected by observing that case of petitioner did not fall within the parameters of policy 2018 (Annexure P-9).

The petitioner again submitted an application in response to the communication dated 12.12.2018 (Annexure P-12) which has also been erroneously rejected vide impugned order dated 09.01.2019 (Annexure P-13). The department is totally playing hide and seek with the petitioner and grievance of the petitioner is left un-redressed, therefore, doctrine of delay and laches in challenging the order dated 28.04.2014 (Annexure P-16) would not be impediment.

Notice of motion for 22.11.2019.”

5. Apart from what is noted above, petitioner also seeks two fold special benefit on account of a) being an ex-serviceman and b). his permanent 100% disability (visually impaired) suffered while serving the Nation during his army service. He pleads that he joined Indian Army on 15.06.1985 as a Bengal Sapper, was a hale and hearty young man of 20 years then, date of birth being 09.07.1965, as per his matriculation certificate issued by Haryana School Education Board. During 22 years tenure with the Indian Army, the petitioner was awarded commendation medals from the army known as: 9 years medal, Special Service Medal-20 years medal and Operation Vijay Medal (Kargil War).

6. While serving in Indian Army, petitioner was posted at border, where he suffered an injury in his eyes, resulting in permanent loss of vision. Initially, he was found to be 75% visually handicapped as per his medico-legal examination carried out on 02.06.2006 at AIIMS, New Delhi. Later, he was also medically examined at Command Base Hospital, Delhi on 22.01.2007, where he was found to be 100% disabled on account of poor vision, as is borne out from his disability certificates collectively attached as Annexure P-1 (colly). When petitioner was declared medically unfit to serve for Indian Army, the army authorities got him enrolled in an institute called as National Institute for the Visually Handicapped (run under the aegis of Ministry of Social Justice & Empowerment, Government of India). He was imparted training at their Centre for Vocational Training & Skill Development, Dehradun, for the session 2005-06, in a trade known as Basic Electricals. On account of medical reasons, the petitioner was discharged from Indian Army on 02.02.2007. Copy of discharge book and the Ex-serviceman Identity card are Annexures P/4 and P-4/A, respectively.

7. State of Haryana notified a Sports Policy on 20.8.2013 (Annexure P-6) with the intent to encourage and motivate the general public to participate in sports. It provided for an out of turn appointments to Government jobs as well as certain other incentives to those sports persons, who won medals for the State. Relying on the said notification, the petitioner also sought an appointment in the State of Haryana some time in January, 2014. Policy of 2013 was later amended vide a subsequent policy dated 15.07.2014 (Annexure P-7). The relevant extract of both the Sports Policies are reproduced herein below:-

Sports Policy dated 20.08.2013 (Annexure P-6)

“The Governor of Haryana is pleased to accord the approval for out of turn appointment and other incentives to sports medal winners of the Haryana on the following lines:

(1) For providing out of turn appointment to sports medal winners:-

a) xx xx xx

b) xx xx xx

(c) The appointment to sports medal winners will be on Group ‘A’ or Group ‘B’ or Group ‘C’ posts in accordance with the following criteria:-

i) Gold Medal winners of Olympic Games will be considered for appointment to any Group ‘A’ post in these Departments.

ii) Silver and Bronze Medal winners of Olympic Games and Gold Medal winners of Asian Games and Commonwealth Games will be considered for appointment to any Group ‘B’ post in these Departments.

*iii) Participants of Olympic Games, Silver and **Bronze Medal winner of Asian Games** and Commonwealth Games and Medal winners of World Championships and Asian*

Championships organized by recognized Sports Associations, on the basis of level and importance of competition/ tournament, will be considered for appointment to any Group 'C' post in these Departments.

- iv) Only sports achievements after 05.03.2005 of the players will be considered.*
- v) Posts will be provided to eligible sportspersons of Haryana.*
- d) Medal winners who are appointed under this category in different departments will be encouraged and provided enabling environment to continue playing and achieving high goals in their respective sports for at least 5 years and during this period their performance assessment will be linked to their sporting achievements. These players will also be made available to the Sports & Youth Affairs department for participation, training or supervision of tournaments as required.*
- e) The Eligible medal winners will be appointed on different category posts which are vacant or by deemed creation of new posts in the required category by the concerned department. These new posts will be in addition to the regular cadre strength. The eligible medal winners who join a department on a particular category of post will be exempt from the requisite professional qualifications and will be required to complete special courses/ professional courses prescribed by the department in a given frame.*
- f) The appointments being offered to medal winners to different posts under this policy will be recommended after consideration by a Committee chaired by the Chief Secretary, with Administrative Secretaries of the Departments of Home, School Education,*

Development & Panchayats and Sports & Youth Affairs as members. Director General, Sports & Youth Affairs will function as Member Secretary of the Committee. These recommendations will be processed by the Sports & Youth Affairs Department and submitted to the Government for approval.

Sports Policy dated 15.07.2014 (Annexure P-7)

*In continuation of notification issued vide Endst No. Sports-Estt-DA-I-2013/28357-28409 dated 20.08.2013, the Governor of Haryana is pleased to amend the **Para (1)(C)(iii)** of the policy for out of turn appointment and other incentives to sports medal winners of the Haryana as under:*

(1) For providing out of turn appointment to sports medal winners:-

a) xx xx xx

b) xx xx xx

(c) The appointment to sports medal winners will be on Group 'A' or Group 'B' or Group 'C' posts in accordance with the following criteria:-

i) xx xx xx

ii) xx xx xx

iii) Participants of Olympic Games, Silver and Bronze Medal winners of Asian Games/ Commonwealth Games or Medal winners of World Championships /World Cup, Asian or Commonwealth Championships organized by recognized Sports Associations, on the basis of level and importance of competition/ tournament, will be considered for appointment to any Group 'C' post in these departments. The above Games/ Championship/ Cup should be recognized by the concerned International Association/Body/ Federation for the games."

8. A perusal of the un-amended Sports Policy of 2013 vis-à-vis amended Sports Policy of 2014 would reflect that as far as Bronze Medal Winners in Asian Games or equivalent thereof, there is no change except for the fact that a caveat was inserted in 2014 that the Games/ Championship should be recognized by the concerned International Association/ Federation for the games.

9. Notwithstanding that the petitioner is a Bronze medalist, he still did not hear for more than a year, compelling him to approach the CM Window by filing a complaint in May, 2015. Complaint was responded vide status response dated 25.05.2015. Vide a reply dated 05.02.2016 (Annexure P-8) he was informed that a meeting has been convened by the Principal Secretary, Sports and final decision shall be taken by the office of Chief Secretary. It is only thereafter, that the petitioner would be offered appointment. Being sanguine, the petitioner yet again continued to wait.

10. Time went past and petitioner kept on running from pillar to post. He pleads that every time he was given assurance that very shortly he would get the confirmation about his appointment. In September-2018, when the petitioner visited offices of the respondents, he was informed that a new policy has now been notified on 05.09.2018 (Annexure P-9), known as Haryana Outstanding Sportspersons (Recruitment and Conditions of Service) Rules- 2018 (for short, 'the 2018 Sports Rules). Old policies have been rescinded, therefore, petitioner was asked to submit his application afresh under the new policy.

11. The relevant Rule 6 (4) read with Rules 1 and 3 of the Haryana Outstanding Sportsperson (Recruitment and Conditions of Service) Rules, 2018 are reproduced herein below:-

Rules 1 and 3.

1. (1) These Rules may be called the Haryana Outstanding Sportsperson (Recruitment and Conditions of Service) Rules, 2018.

(2) They shall come into force from the date of their publication in the Official Gazette.

(3) They shall apply to all Departments, Boards, Corporations, Authorities, Commissions, Agencies, Universities and Tribunals substantially funded by the Government or under the control of the Government.

2. xxx xxx xxx

3. (1) Sports disciplines to be considered for appointment in the case of World Championship, Asian Championship, Commonwealth Championship and World University Games shall be as provided under sub-rules (2) and (3).

(2) Sports disciplines included in Olympic Games only shall be considered for appointment under category numbers 2, 5A, 6A or 7A of either Schedule-I or Schedule-II.

(3) Sports disciplines not included in Olympic Games, but included in either Asian Games or Commonwealth Games, shall be considered for appointment under category numbers 5B, 6B or 7B of either Schedule-I or Schedule-II.

Rule 6 (4).

6. (4) The age of the sportsperson shall not be less than the minimum age specified for appointment to the post and not above fifty years on the date of receipt of valid application. (emphasis supplied).

12. Petitioner states that being virtually blind and trusting the words of the respondents, without realizing that he was being misguided and misled by the department, he submitted a fresh application on 26.09.2018

(Annexure P10). On 26.11.2018 (Annexure P-11), a communication was received from the office of respondent no. 2, whereby he was informed that since he does fulfill the parameters provided under the policy of 2018 (Annexure P-10), therefore, his application stands rejected. Hence, the writ petition.

13. In the joint return filed on behalf of the respondents, it is not disputed that the petitioner first applied for job in 2014 and then later in 2018 applied for government job under notification dated 05.09.2018 for his achievement i.e. Bronze Medal in 9th Far East and South Pacific (FESPIC) Games held in Kuala Lumpur (Malaysia) from 25.11.2006 to 01.12.2006 in the office of the answering respondents on 26.09.2018 (Annexure P-10). The answering department examined his application and found that the petitioner is not eligible for job under the said 2018-Rules. The petitioner was accordingly informed so vide letter dated 26.11.2018 (Annexure P-11). Petitioner was also informed vide letter dated 09.01.2019 (Annexure P-13) that as per Rule 6(4) of the notification dated 05.09.2018, the maximum age limit has been prescribed as 50 years. Petitioner being more than 50 years of age on the date of receipt of valid application, is not eligible. Besides, the tournament where he won Bronze medal is not covered under the notification dated 05.09.2018. His rejection is thus stated to be justified for these multiple reasons.

14. Having heard the rival contentions, I am of the view that the petition merits acceptance and I shall now proceed to record my reasons for the same.

15. First and foremost let us examine as to when did the petitioner first apply for out of turn job on the basis of his sports achievements and which sports policy was holding the field at the relevant time as well as the retrospective applicability of the 2018 Sports Rules. The applicability of the 2018 Sports Rules undoubtedly is with effect from the date of their publication in the Official Gazette as stated in the Rule 1(2) of the 2018 Sports Rules itself. Now advertent to the petitioner's application seeking appointment. Concededly in response to the complaint bearing registration No. CMOFF/N/2015/55785 in CM Window, the department in its status report dated 25.05.2015 (Annexure P-8) stated that as per the New Sports Policy of the government, for giving an employment to outstanding sportsperson, issue is under consideration of the government, as and when final decision is taken, case of Sh. Joginder Singh son of Sh. Om Parkash, will be considered for giving employment as per policy. Further more respondent no. 2- Director, Department of Sports and Youth Affairs, Haryana, addressed a letter dated 05.02.2016 informing the petitioner that a meeting dated 04.01.2016 was held under the Chairmanship of Principal Secretary, Sports and the minutes of the proceedings have been sent for approval of the Chief Secretary and upon sanction/ receipt thereof further intimation will be sent. What emerges thus, is that the petitioner had indeed applied for out of turn appointment on the basis of his sports achievements some time in early part of the year 2014, exact date of his application though not clear. Be that as it may, it leads us to next issue in hand i.e. as to which sports policy would govern the claim of the petitioner.

16. As already held, the petitioner had submitted his candidature for the first time in the year 2014. But the same seems to have been given a

complete short shrift while rejecting his candidature which was considered only in the year 2018. That apart in the year 2014 when he had originally applied, the relevant policy holding the field was as per Annexure P-6 and P-7 of the year 2013 and 2014, respectively. A perusal of the aforesaid policies reveals that there was no upper age limit prescribed for giving appointments to the candidates. In this context, therefore, the logic that the petitioner has since attained the age of 48 years in the year 2014 is completely arbitrary. Particularly, when the policy simply says that it is based on the achievements regardless of the age. As regards the event participation of the petitioner, the same is not disputed and neither it is disputed that the tournament, which was held in Kuala Lumpur in 2006, is equivalent to Asian Games.

17. A perusal of the RTI information (Annexure P-16) reveals that the tournament of 2006 which was held at Kuala Lumpur, there was a specific endorsement that the said event is equivalent to Asian Games, coupled with the fact that one Rajesh Kumar who has also participated in the same tournament was granted employment in a Group C Post way back in 2014. Therefore, rejecting the candidature of one and accepting the candidature of the other, for the persons who are equally placed, does smack of an element of red tapism, perhaps nepotism and most certainly discrimination. A perusal of RTI information dated 09.05.2019 wherein in response to query no. 2 seeking the office noting qua pending application submitted by petitioner Joginder Singh reveals that his candidature as an outstanding sportsperson, in fact, was rejected way back on 28.04.2014 stating that though he is eligible for appointment but as on 28.04.2014 he being 48 years old is ineligible on ground of over age. Intriguingly, there is

nothing on record to show that said rejection was ever conveyed to the petitioner. It is also his grievance that had he been conveyed the same, he would have taken his remedy at the right time and it was only in May 2019 on seeking RTI Information that he got to know of the aforesaid rejection/ineligibility on the ground of over age.

18. Even otherwise, the petitioner being an Ex-serviceman and the prevalent policy of the government, which is applicable to the Ex-servicemen, is that they are entitled for relaxation in age to the extent of their military service added by three years provided that they had rendered continuous military service for a period of not less than six months before their release and had been released otherwise than by way of dismissal or discharge on account of misconduct or inefficiency. As is apparent from the discharge book annexure P-4 of the petitioner, his service career had been meritorious throughout, he was discharged on account of medical disablement and that too after rendering service of almost 22 years. In terms of this policy the petitioner is entitled for relaxation in age by giving him benefit of service of 21 years 07 months and seven days added by 3 years. Thus, the petitioner is entitled for relaxation of 24 years 7 months and 7 days, by taking into account the period of service rendered in army. Calculated in this manner, after relaxation, the age of the petitioner comes to around 24 years, which certainly is within prescribed parameters. Thus, the petitioner was fully eligible and is entitled for appointment. The policy of the government regarding the age which the petitioner got under RTI Act is appended as Annexure P-18.

19. Petitioner being Ex-serviceman is entitled to age relaxation in any case. The relevant part of Ex-servicemen age relaxation policy dated 26.08.2014 issued by the State of Haryana is reproduced herein below:-

“..... the general upper age limit prescribed at present under rule 3.6 of Punjab Civil Services Rules, Vol. 1, Part-I, is 40 years. Consequent upon raising the age of superannuation from 58 to 60 years of the Government Employees and 62 years in case of Group-D employees, it has been decided to raise the upper age limit for every into Government Service from 40 years to 42 years for all categories.

- (a) The existing instructions in regard to the relaxation of 5 years in the upper age limit in respect of Scheduled Castes, Scheduled Tribes and Backward Classes for appointment to gazetted as well as non-gazetted services or posts will continue to be in force.
- (b) The relaxation in upper age limit for recruitment in respect of ex-servicemen as contained in Haryana Government Circular letter No. 4710-5GS-70/18998, dated the 15th July, 1970, will continue as heretofore. In other words, the candidates of this Category may be recruited upto the age of 42 years plus continuous military service added by three years, and
- (c) If in certain service rules, the upper age limit higher than 42 years is permissible on account of special grounds or in certain circumstances those provisions shall continue to remain in force.”

20. Apart from the above Ex-servicemen policy, to be noted that relaxation in the maximum age limit has been in vogue as far back in the year 1970. Same is borne out from Circular No. 4170-5GS-70/18998 dated 15.07.1970 issued from the office of Chief Secretary to Government Haryana to all the Heads of Departments whereby the Government had decided to liberalize the concessions admissible to Ex-servicemen in regard to maximum age limit by amending para 6(i) of the earlier Circular dated 21.04.1966, as below:-

“6 (i) Maximum age – limit and minimum qualifications – The Maximum age limit prescribed for appointment to any service or post, shall be relaxed in favour of a person who has rendered military service to the extent of his military service added by three years provided he had rendered continuous military service for a period of not less than six months before his release further provided that he had been released otherwise than by way of dismissal or discharge on account of misconduct or inefficiency.”

21. There is another aspect of the matter, though being noticed in the parting but, not to be overlooked. It is, that the petitioner is 70% disabled, which is not disputed by the department. In view thereof, concededly he is entitled to the special benefit of age relaxation as envisaged under the Rights of Persons with Disabilities Act, 2016. As regards the same, the office of Chief Secretary of State of Haryana vide circular dated 25.04.2018 (Annexure P-21) instructed to all the Heads of Departments in head note ‘J’ thereof gave following **unambiguous** instructions:-

“J. RELAXATION IN AGE LIMIT.

i) Upper age limit for persons with disabilities shall be relax able (a) by ten years (15 years for SCs/ BCs) case of direct, recruitment to Group ‘c’ and ‘D’ posts (b) by 5 years (10 years for SCs/ BCs) in case of direct recruitment to Group ‘A’ and Group ‘B’ posts where recruitment is made otherwise than through open competitive examination; and (c) by ten years (15 years for SCs/ BCs) in case of direct recruitment to Group ‘A’ and Group ‘B’ posts through open competitive examination.

ii) Relaxation in age limit shall be applicable irrespective of the fact whether the post is reserved or not, provided the post is identified suitable for persons with disabilities.”

22. A collective reading of the aforesaid instructions read with the Ex-servicemen policy leaves no manner of doubt that on both counts i.e. Ex-serviceman and the Disability, the petitioner was entitled to age relaxation

and the same has been wrongly denied to him. Therefore, rejection of his candidature on the ground of being over age is not tenable.

23. As an upshot of my discussion above, the impugned orders do not stand the judicial scrutiny and are accordingly set aside. Petitioner is directed to be given the benefit of appointment as per notification dated 20.08.2013 (Annexure P-6) commensurate with his achievements on parity with Rajesh Kumar, who has admittedly been given appointment, for participating in the equivalent tournament while on the other hand the petitioner has been denied the similar benefits. Needful will be done within a period of two months. The petitioner shall be entitled to notional benefits with effect from the date Rajesh Kumar, the other sportsman was given the offer of appointment while the petitioner had to run around to get the same benefits. For the period he remained out of job, he shall not be entitled to get the salary on the principle of 'no work, no pay'.

24. The writ petition is allowed in above terms.

10.09. 2021

VS

(Arun Monga)
Judge

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No