

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

Date of decision: 01.06.2022

(1)

CWP No. 2980 of 2021

Neeraj Sharma

..... Petitioner.

Versus

Haryana Vidyut Prasaran Nigam Limited and others

..... Respondents.

AND

(2)

CWP No. 4736 of 2021

Abhishek

..... Petitioner.

Versus

The State of Haryana and others

..... Respondents.

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. Animesh Sharma, Advocate for the petitioner
in CWP No.2980 of 2021.

Mr. Vikram Singh, Advocate for the petitioner
in CWP No.4736 of 2021.

Mr. B.R. Mahajan, Senior Advocate with
Mr. Padamkant Dwivedi, Advocate
for respondents No.1 to 4 in CWP No.2980 of 2021 and
for respondents No.2 to 5 in CWP No. 4736 of 2021.

Mr. Kapil Bansal, DAG, Haryana.

ANUPINDER SINGH GREWAL, J. (ORAL)

1. The petitioner (Neeraj Sharma) has sought quashing of the list of rejected candidates dated 29.01.2021 (Annexure P-8) whereby his candidature has been rejected for the post of Assistant Engineer (Electrical)

under EWS category. He has also challenged the merit list dated 29.01.2021 (Annexure P-7), whereby the selected candidates have been called for document verification.

2. A Coordinate Bench of this Court, while issuing notice of motion on 10.02.2021, had allowed the petitioner (Neeraj Sharma) to provisionally participate in the selection process as per his GATE-2019 marks. As a consequence thereof, the appointment of the last candidate in the merit list, namely, Abhishek was not finalized and he, thereafter, preferred writ petition bearing CWP No.4736 of 2021 challenging Note No.1 in the final result (Annexure P-4) whereby one post of Assistant Engineer (Electrical) in UHBVN under EWS category has been kept vacant. He has also sought a direction to the respondents to issue appointment letter for the said post, as he is an eligible and a successful candidate in the merit list under the EWS category. Therefore, both the petitions involve similar questions of fact and law and hence, are being taken up and decided together.

3. Learned counsel for the petitioner (Neeraj Sharma) submits that the petitioner had secured 66.33 marks out of 100 in Graduate Aptitude Test in Engineering ('GATE'), 2019 and his overall rank was 3674 which was valid from 17.03.2019 to 16.03.2022. He had secured 52 marks out of 100 in GATE-2020 and his overall rank had improved to 2596 even though he had secured lower marks. This score was valid from 18.03.2020 to 17.03.2023. The advertisement issued by the respondents on 04.12.2020 for the post of Assistant Engineer (Electrical and Civil) has given an option to the candidates to apply for the posts either on the basis of GATE-2019 or GATE-2020 score whichever is higher. The petitioner is also entitled to ten

marks as per socio-economic criteria, as none of his family members was in service in any Department/Board/Corporation/Company/ Commission etc. in the Government of Haryana. He further submits that the petitioner was unaware as to which of his performance either under the GATE-2019 or GATE-2020 was better and he had thus submitted two applications on the basis of the two scores. The second application of the petitioner whereby he had applied on the basis of score of GATE-2020 examination had been considered while the earlier had been rejected. The reason for rejection is that in the advertisement, it is set out that in case of duplicate applications, the latest would be considered and the previous one would be rejected. This clause in the advertisement is ambiguous and has led to an anomalous situation where although the petitioner is entitled to apply on the basis of either of the two scores but his second application on the basis of GATE-2020 score has been considered arbitrarily. In the event of his first application on the basis of score in GATE-2019 being considered, he would have secured more marks than the last selected candidate under EWS category and would have been eligible for appointment. He also submits that he is more meritorious than Abhishek, who is the last selected candidate in the category and merit should be the primary consideration. In support of his submissions, he has relied upon the judgment of the Supreme Court in the case of **Dr. C. Mathew and others versus State of Kerala and another, 1980 (2) SCC 752**, the judgments of this Court in the cases of **Haryana Staff Selection Commission through its Secretary versus Sarla and others**, passed in LPA No.320 of 2019, decided on 22.02.2019 and **Rohit Kumar versus Union of India and another**, passed in CWP No.13730 of 2012,

decided on 27.07.2012 and the judgment of the Telangana and Andhra Pradesh High Court in the case of **The Union of India, Ministry of Personnel, Public Grievances and Pensions, North Block, New Delhi rep. by its Secretary and others versus Guduru Raja Surya Praveen s/o G. Venkateswara Rao and another, 2017(1) Andh LD 596.**

4. Learned senior counsel for the respondents/Haryana Power Utilities submits that it had been specified that in case of multiple applications, the latest application would be considered and the previous would be rejected. The petitioner (Neeraj Sharma) having applied twice and, therefore, his first application was rejected. He also submits that once the petitioner had participated in the selection process without any demur, he is not entitled to challenge the criteria for selection. In support of his submissions, he has relied upon the judgments of the Supreme Court in the cases of **Madan Lal and others versus State of Jammu & Kashmir and others, 1995(3) SCC 486, K.A. Nagamani versus Indian Airlines and others, (2009) 5 SCC 515, Manish Kumar Shahi vs. State of Bihar and others, (2010) 12 SCC 576, Madras Institute of Development Studies and another versus K. Sivasubramaniyan and others, (2016) 1 SCC 454 and Ashok Kumar and another versus State of Bihar and others, (2017) 4 SCC 357.** He also submits that the entire result had been finalized and appointments had been issued except for one seat under EWS category which has been kept vacant in view of pendency of these petitions. He also submits that after taking into consideration the marks obtained by both the petitioners, the final score is as under:-

Name of candidate	GATE Score 2020 (Normalized GATE marks)	Weightage of GATE Exam as per Advertisement (80% of Normalized GATE marks)	Marks under Socio-Economic Criteria and Experience	Total
Neeraj Sharma	52	41.60	10	51.6
Abhishek	48	38.40	20	58.4

5. Learned counsel for the petitioner (Abhishek) submits that he was the most meritorious candidate. He had obtained 58.40 marks out of total marks which are higher than the petitioner-Neeraj Sharma. He had obtained a total of twenty marks under the ‘socio-economic criteria and experience’ with ten marks awarded under clause 13(2)(a), as none of his family members was in service of any Department/Board/Corporation/ Company/Commission etc. in Government of Haryana and apart thereof, as per clause 13(2)(b), he had obtained ten extra marks under this criteria as he had been orphaned at the age of around 14 years when his father had expired.

Heard.

6. The petitioners had applied for the post of Assistant Engineer (Electrical) in the Haryana Power Utilities under EWS category in pursuance to the advertisement issued on 04.12.2020 (Annexure P-1) according to which 80 marks were to be awarded on the basis of score in GATE examination while 20 marks were for ‘socio-economic criteria and experience’. It has been mentioned in clause 13 of the advertisement that the applicant is required to fill up the normalized marks (out of 100) obtained in

GATE-2019 or GATE-2020, whichever is higher. Clause 13 of the advertisement is reproduced hereunder:-

“13. Selection Process:

(i) The candidates who have acquired the essential qualification as mentioned at Sr. No.3 above and must have qualified the GATE-2019 or GATE-2020 (Graduate Aptitude test in Engineering-2019 or 2020) as the case may be, conducted by designated IIT in corresponding paper i.e. Electrical Engineering (EE), Mechanical Engineering (ME) and Civil Engineering (CE) shall only be eligible to be considered for selection.

(ii) The selection of the candidates in each category would be done by the HPUs from the eligible candidates as given in para-(i) above, on the basis of result of the GATE-2019 or GATE-2020 (Graduate Aptitude test in Engineering-2019 or 2020) & Socio-economic criteria and experience, in the respective discipline as per requirement of HPUs.

(iii) xxxxxxxxxxxx

(iv) The scheme of marks in respect of selection to Assistant Engineer (Group B) post shall comprise of total 100 marks, which is detailed below:-

1. Weightage of GATE exam- 80 marks [the normalized GATE marks (out of 100) would be converted/scaled out of 80 marks by multiplying with 0.8]

2. Socio-economic criteria and Experience: 20 marks

The marks for experience and some objective socio-economic criteria are to be allocated as follows:-

(a) If neither the applicant nor any person from among the applicant's family viz. father, mother, spouse, brother, and son is, was or has been a regular employee in any Department/Board/Corporation/Company/Statutory/Body/Commission /Authority of Government of Haryana or any other State Government or Government of India.

(10 marks)

(b) If the applicant is :-

(a) a widow; or

(b) the first or the second child and his father had died before attaining the age of 42 years; or

(c) the first or the second child and his father had died before the applicant had attained the

age of 15 years.

(10 marks)

xxxxxxx

(v) xxxxxxxx

(vi) **The applicant is required to fill up the normalized marks (out of 100) obtained in GATE-2019 or GATE-2020, whichever is higher, during online submission of application.” (Emphasis supplied).**

7. Clause 24 of the advertisement also stipulates that a candidate can submit one application for a particular category of post and in case of multiple applications, the latest one would be considered as final and previous applications shall be rejected without any prior notice. Clause No.24 of Section 15 ‘General Information’ of the advertisement dated 04.12.2020 is set out hereunder:-

“Candidate can submit only one application for a particular category of post. In case of multiple applications from a candidate, the latest application shall be considered as final and previous applications shall be rejected without any prior notice.”

8. A bare reading of clause 24 in the advertisement indicates that the candidates are allowed to apply either on the basis of scores obtained in GATE-2019 or GATE-2020. This option had been given to all the candidates and the candidate could apply on the basis of either of the two scores and not on the basis of both the scores. In the event of multiple applications, the latest application was to be considered. The appointment is for the post of Assistant Engineers and it cannot be said that there is any ambiguity in the advertisement. It has been held by the Supreme Court in several judgments including in the case of **Madan Lal and others versus State of Jammu & Kashmir (supra)** that a candidate once having participated in the selection

process and on being unsuccessful cannot turn around and challenge the criteria of selection.

9. Furthermore, the petitioner-Neeraj Sharma may have secured more marks in the GATE-2019 examination but his second application was rightly considered in terms of clause 24 of the advertisement. Abhishek, who is the last candidate in the merit list, might have secured less marks than the petitioner in the GATE-2020 examination but 80 marks are set out for the performance in the GATE examination while 20 marks are for 'socio-economic criteria and experience'. This post of Assistant Engineer (Electrical) for which both the petitioners had applied is under EWS category. Both of them belong to this category. The petitioner-Neeraj Sharma was given 10 marks as none of his family members is in service of any Department/Board/Corporation/Company/Commission etc. in the Government of Haryana. The petitioner-Abhishek had been given 20 marks out of which ten were awarded as none of his family members is in service in any Department/Board/Corporation/Company/Commission etc. in the Government of Haryana while additional ten marks were awarded as his father had expired when he was about 14 years of age. The merit has to be determined after taking into account the marks in the GATE examination and the socio-economic criteria. The socio-economic criteria assumes importance especially when this post is meant for EWS category.

10. The judgments relied upon by counsel for the petitioner are distinguishable on facts and are not applicable to the instant case. In the case of **Dr. C. Mathew and others versus State of Kerala and others (supra)**, the candidate had obtained diploma before the last date of application but the

communication had been received from the University after the last date. In such circumstances, it was held that the candidate was eligible. In **The Union of India Ministry of Personnel and others versus Guduru Raja Surya Praveen and another (supra)**, the answer sheets could not be evaluated as there was an error in not thickening/blackening the circle which was held to be not fatal and the answer sheets were directed to be evaluated. In **Haryana Staff Selection Commission through its Secretary versus Sarla and others (supra)**, the category had been wrongly filled by a poor widow and this Court had held that this is a mere technicality which would not stand in the way of consideration of her candidature. In the case of **Rohit Kumar versus Union of India and another (supra)**, the roll number of the petitioner therein had been wrongly darkened in OMR sheet in digits although in letters he had rightly filled up the roll number and thus, he was permitted to participate in the main examination.

11. However, in the instant case clause 24 of the advertisement clearly and unequivocally stipulates that in the event of two applications, the second/latest application would be considered. In the event the candidates had been allowed to apply separately on the basis of both the scores, then that would have been specifically set out in the advertisement. In absence thereof, to hold otherwise would also lead to practical difficulties as at this stage it is stated there are several other candidates who had applied on the basis of both the scores of GATE-2019 and GATE-2020 and if both the applications have to be considered, then the entire result would have to be revised which would disturb the appointments already made.

12. In the result, I do not find any infirmity in rejecting the

candidature of the petitioner-Neeraj Sharma. He has rightly been considered on the basis of the second and the latest application. The petitioner Abhishek has obtained more marks and his name is last in the merit list of Assistant Engineer (Electrical) in EWS category. The respondents are directed to issue appointment letter to Abhishek within a period of one month of the receipt of certified copy of this order.

13. Consequently, the CWP No.2980 of 2021 preferred by Neeraj Sharma is dismissed while the CWP No.4736 of 2021 preferred by Abhishek stands allowed.

(ANUPINDER SINGH GREWAL)
JUDGE

01.06.2022
Sonia gugnani

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