

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

CWP-7864-2021

Date of decision: 11.10.2022

BALKAR SINGH SAINI

...Petitioner

VS

HARYANA STAFF SELECTION COMMISSION AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. U.K.Agnihotri, Advocate and
Mr. Rajiv Kumar Saini, Advocate
For the petitioner.

Mr. Narender Singh Behgal, AAG, Haryana.

Mr.Rohit Nagpal, Advocate,
For respondents No.3 and 4.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of certiorari quashing the impugned notice/announcement dated 25.03.2021 (Annexure P-11), Corrigendum dated 25.03.2021 (Annexure P-10) and Impugned order 26.03.2021 (Annexure P-12) vide which petitioner has been ousted from the selection list for the post of Excise Inspector (ESM-BCB) Category No.1, advertised vide advertisement No.11/2015 (Annexure P-1).

2. Succinct facts as pleaded in the petition. Haryana Staff Selection Commission published an advertisement No.11/2015 vide which 20 posts of Excise Inspector were re-advertised. Out of a total of 20 posts, 3 posts have been reserved for candidates belonging to ESM-BCB Category. Petitioner applied in ESM-BCB category and appeared in written examination as well in scrutiny of documents. On the basis of result dated 13.09.2018, candidates

were called for interview which was scheduled to be held on 25.09.2018. Thereafter, some candidates aggrieved by the above result approached this Court and in compliance of order dated 06.01.2021 passed in CWP No.1375-2020, result was revised by the Commission on 12.02.2021. Consequently, Petitioner has now been put in the ESM BCB waiting list. One selected candidate, namely, Joginder Singh Saini, has given an affidavit that he does not want to join on the post as he is serving in the department of School Education, Haryana on the post of PGT in Political Science and therefore petitioner became the sole candidate left in the waiting list and was offered appointment vide appointment letter dated 25.03.2021 (Annexure P-9) at 11:00 a.m. In the meanwhile, respondent No.1-Commission formed a new Committee which took charge in the afternoon on 25.03.2021 and changed the earlier result issued on 12.02.2021. Thereafter, Commission issued corrigendum at 7 p.m. whereby respondents No.3 and 4 were selected and name of above said candidate Joginder Singh had been put into waiting list and petitioner was thus ousted from the waiting list. In compliance of appointment letter, petitioner approached to join at Excise and Taxation Commissioner (Excise) at Ambala but was not allowed to join. Hence, the instant petition.

3. I have heard learned counsel for the parties and gone through the case file.

4. What emerges from the pleadings thus is very short controversy qua the applicability of Instructions dated 06.03.1972 (Annexure P-20) issued from the office of Chief Secretary to all the Heads of Department in the State of Haryana with respect to restrictions of Ex-Service personnel and

dependents of those killed/disabled in action. For better appreciation, the relevant of the 1972 Instructions, *ibid* is reproduced hereinbelow:

“I am directed to refer to Haryana Govt. letter No.4741-4-GS-II-71, dated 13.09.71 and to say that the question of the rehabilitation of disabled ex-service personnel (disability between 20% to 50%) and dependents of personnel killed/disabled beyond 50% had been under consideration and it has been decided as follows:

a) Reservation

The existing reservation in respect of civil posts for ex-servicemen should be utilized in the under given below:

- i) Disabled ex-servicemen with disability between 20% to 50%.*
- ii) Up to two dependents of Service personnel killed/disabled beyond 50%*
- iii) Other ex-servicemen.*

Note:-Disabled ex-servicemen will mean ex-servicemen who, while serving in the Armed Forces of the Union, were disabled in operations against the enemy of in disturbed areas.

Note 2:- The dependents will include besides wife/widow, dependent sons/daughters.”

5. In the light of aforesaid Instructions, an advertisement dated 01.12.2015 (Annexure P-1) was published vide which 29 posts of Excise Inspectors were to be filled up which, *inter alia*, included two posts in the category of ESM/BCB. Since the interpretation of the advertisement clause is also subject matter of petition herein, the relevant part thereof is also being reproduced hereinbelow for ready reference:

“For Disabled ESM/Dependent of Killed/Disabled In action reservation will be as per Haryana Govt. instructions contained in letter No.945-GS-II 72/6451, dated the 6th March, 1972.

The reservation for ESM will be utilized in the order given below.-

- i) Disabled ex-servicemen with disability between 20% to 50%.*
- ii) Up to two dependents of Service personnel killed/disabled beyond 50%*
- iii) Other ex-servicemen.*

Note:-1.Disabled ex-servicemen will mean ex-servicemen who, while serving in the Armed Forces of the Union were disabled in operations against the enemy or in disturbed areas.

Note:-2.The dependents will include besides wife/widow, dependent sons/daughters.

The dependents of ESM who fulfill all conditions of qualifications, age etc. prescribed for posts will be considered on merit for the posts reserved for ESM to the extent of non-availability of suitable ESM candidates (emphasis supplied)

ESM/DESM candidates of Haryana claiming benefit must have valid eligibility certificate on last date of submission of online application form and will have to produce the valid Eligibility Certificate from the concerned Zila Sainik Board at the time of interview. Mere dependent certificate will not be entertained. ESM candidates should also produce attested photo copy of identity Card issued by concerned Zila Sainik Board & Discharge Book at the time of interview.”

6. As already noted hereinabove, subsequently, the corrigendum dated 15.02.2017 (Annexure P-2) was issued vide which ESM-BCB posts were increased from 2 to 3 and even eligibility date was also extended and the applications were to be filled up online from 16.02.2017 to 28.02.2017 and the closing date for deposit of fee was re-determined as 02.03.2017.

7. Learned counsel for the petitioner has vehemently argued that both respondents No.3 and 4, who are DESM of a killed defence personnel, were not eligible as on the cut-off date since they acquired the eligibility certificates Annexures P-7 and P-8 subsequent to the cut-off date as per the advertisement.

8. However, I am not convinced qua the said argument. Perusal of the certificate reveals that not only both respondent No.3 and 4 were eligible but even otherwise what is to be seen is that the date of action when an ex-serviceman had been killed in action on which dates the rights of DESM stood crystalized by virtue of losing their father in action who martyred himself for the cause of the country. Mere procedural formalities of issuance

of the certificate does not confer any eligibility on the DESM and it is the actual martyrdom which confers the eligibility.

9. Learned counsel for the petitioner has rather over laboriously laid stress on Instructions dated 20.03.2007 (Annexure P-27) to emphasize that it is only when an ESM candidate is not available that benefit of the reservation in the ESM category is to be given to the DESM. In this context, he relies on the following abstract of the Instructions, *ibid*:

“Subsequently vide Govt.Circular No.12/37/79-2GS-II,dated21.11.1980, while indicating the eligibility conditions for being considered as a dependent of Ex-Serviceman, the departments were directed to keep in view the position stated therein in regard to the term "dependent" while considering the dependent sons and daughters of Ex-Servicemen for appointment against the posts of Ex-Servicemen.

Further, while disposing of Civil Appeal No. 6887 of 1996- Dilwan Singh &Ors. etc. V. State of Haryana &Ors. etc.alongwith Civil Appeals Nos. 6888-90 of 1996, the Hon'ble Supreme Court has laid great stress upon the point that Selection Board should first consider the claims of the Ex-Servicemen and have their eligibility considered independently in the first instance before the claims of dependent children of Ex-Servicemen are considered. If they are found eligible and selected, for the balance unfilled posts, the selection should be done from amongst the dependent children of the Ex-Servicemen. Besides, the Hon'ble Court has also directed that Selection Board can not abdicate its function of observing of proper care to know the authenticity by merely relying on certificates issued by the Sainik Board, certifying that the certificate holder, is a dependent of the Ex-Servicemen. It may be accepted only as a prima-facie evidence of the claim of holder as such. It would be for the Board to examine the fact and in the case of any doubt it should call upon the candidate to satisfy itself that the candidate is a bonafide dependent and fulfils the requirements prescribed in the guidelines.

As the directions of Hon'ble Supreme Court impress upon Certificate Issuing and Appointing Authorities to be meticulous in their working, therefore, in furtherance of true spirit of said directions of Hon'ble Supreme Court it is also requested that Health & Sports Department may be specifically vigilant and meticulous

while issuing Physically Handicap & Sportsman Certificate respectively to certain candidates who requests for the same. All Appointing Authorities, in the lights of above, are also requested to take due and proper care in scrutinizing the correctness/genuineness of such a certificates & in case of little bit of doubt candidates may be called for & examined in person before issuing appointment letters to them.”

10. Once again, I am unable to persuade myself to agree with the aforesaid proposition, as canvassed by the learned counsel for the petitioner. Same is being noted only to be rejected. For the purpose, reference may be had to Instructions dated 07.08.2019 (Annexure R-17) issued by the office of Chief Secretary, relevant part of which is as below:

“I am directed to invite your attention to this department. instructions bearing No.12/87/79-GS-II, dated 21st May, 1979 and No. 945-GS-II-72/6451, dated 6th March, 1972 issued regarding benefit of reservation of posts for ex-servicemen and their children.

2. It has been brought to the notice of this Department by some children of killed ex-servicemen that they are not being allowed to avail the benefit of reservation of the posts of Group A and B keeping in view para (c) of this department instructions dated 6th March, 1972.

3. In this regard it is clarified here that under the instructions issued from time to time by this department in which the rate of reservation of posts of Group A & B of direct recruitment has been prescribed for ex-servicemen and/or their children, for the benefit of reservation the following criteria of priority will be adopted :-

i) Disabled ex-servicemen with disability between 20% to 50%

ii) Upto two dependents of service personnel killed/disabled beyond 50%

iii) Other ex-servicemen or one child

It is also clarified here that the benefit of reservation shall be admissible irrespective of the fact that the posts of direct recruitment are to be filled by competitive examination or otherwise.”

11. To be noted that the aforesaid Instructions are though issued to the Haryana Public Service Commission, but on a Court query, learned State

counsel submits that the same are equally applicable to the Haryana Staff Selection Commission, who in the present case is the recruitment agency for the post of Excise Taxation Inspector.

12. Being so, a bare perusal of the same leaves no manner of doubt that clearly the order of priority has been prescribed to be followed strictly and to be adopted by the recruitment agency i.e. Disabled Serviceman followed by (b) two dependents of service personnel killed in action (as is the case herein) and thereafter if any post remains vacant then an ex serviceman and/or dependent of ex-serviceman is to be taken into consideration.

13. The aforesaid Instructions are not under challenge before this Court. In the parting, I may also like to observe the argument that learned counsel for the petitioner initially had laid emphasis on Instructions dated 16.12.2019 (Annexure P-36) to contend that only those children of Ex-servicemen who died in action between 26.10.1962 and 10.01.1968 are to be given priority over the ESM. That submission also flies in the face of subsequent Instructions dated 15.07.2021 (Annexure R-19) vide which it was made amply clear that after 14.01.1983, as is the case herein qua the petitioner as well as respondents No.3 and 4, all ex-servicemen and the children of those ex-servicemen killed in action during emergency or peace time shall be eligible for the benefit of Instructions dated 06.03.1972 and the Subsequent Instructions dated 16.12.2019 confining the scope only between 1962 and 1968 stood withdrawn with retrospective effect.

14. In the aforesaid premise, on none of the counts petitioner is entitled to be given priority over respondents No.3 and 4, who have been given the benefit after revising the result since earlier erroneous result was

found to be not tenable by the Commission. I am of the view that petitioner cannot take advantage of earlier errors committed by the Commission and the revised result is perfectly in consonance with the Instructions of 1972 read with subsequent Instructions dated 15.07.2021 (Annexure R-19).

15. As an upshot of the discussion, petition lacks merit and it is accordingly dismissed. No order as to costs.

(ARUN MONGA)
JUDGE

October 11, 2022

Vandana

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