

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

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CWP No.7377 of 2022 (O&M)
DATE OF DECISION: 27th JULY, 2022

Deepak Kumar

.... **Petitioner**

Versus

**Union of India through Secretary, Ministry of Home Affairs,
Government of India and another**

.... **Respondents**

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Sharad Chaudhary, Advocate,
for the petitioner.

Mr. Amit Arora, Advocate,
Senior Panel Counsel,
for the respondents-UI with
Mr. Karam Singh Thakur, Deputy Commandant,
Staff Officer (2) (Recruit) Assam Rifles.

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RAJBIR SEHRAWAT, J. (Oral)

This is a petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing of the impugned corrigendum dated 03.03.2022 issued vide Memo No.I. 12016/Rect. Cell/2021-22/93 (Annexure P-5), with certain other prayers made in the present petition.

In compliance of previous order dated 18.07.2022, short affidavit on behalf of respondent Nos.1 and 2 is filed in the Court. The same is taken on record. As per the affidavit, the counsel for respondents has specifically pointed out that; a person holding the post of Riflemen (Cook) has never been posted on general duty requirements, nor shall a

Riflemen (Cook) would ever be posted on general duty. Hence, it is clear that the duties and responsibilities of Riflemen (Cook) are restricted to the job assignment of the post as a Cook or ancillary duties.

The main submission of the counsel for the petitioner in this case is that earlier the respondents had made a provision for 5 marks as weightage in determination of the merit for selection; for those candidates who were having NCC 'C' certificate. However, the said weightage has been withdrawn during the process of selection. The respondents could not have changed the criteria of selection midway the process of selection. Hence, the action of the respondents is not in consonance with the law. The counsel for the petitioner has relied upon the judgment rendered by Division Bench of this Court in the case of ***Rohtash Kumar and others Versus State of Haryana and others, LPA No.1787 of 2018, decided on 05.10.2020.***

On the other hand, the counsel for the respondents being assisted by Mr. Karam Singh Thakur, Deputy Commandant, has submitted that the benefit of 5 marks for the persons possessing NCC 'C' certificate was extended by an inadvertent mistake qua the post of Riflemen (Cook), in contravention of the order dated 19.03.2020 issued by the Ministry of Home Affairs. As per that order, the benefit of 5 marks for NCC 'C' certificate is to be extended only to the post of Constable (GD) and Sub Inspector (GD), which is in consonance with the functional requirements of those posts which are meant for the general duty personnel. The impugned corrigendum is only for correction of an inadvertent mistake. Hence, there is no illegality in the action adopted by the respondents.

Having heard the counsel for the parties, this Court does not find any substance in the arguments raised by the counsel for the petitioner. It is not even in dispute that in the instant process of selection the benefit of the NCC 'C' certificate was extended on the basis of pre-existing instructions of the Government of India. However, while extending the said benefit, it was extended even qua the post of Riflemen (Cook) to which the benefit was not provided under the instructions issued by the Government of India. Hence, the extension of benefit of weightage of 5 marks in the process of selection for the post of Riflemen (Cook) was without any authority; from the very beginning. By withdrawing that benefit qua the particular post of Riflemen (Cook), only an inadvertent mistake has been corrected. This does not amount to change of criteria of selection, as such, in the process of selection. Needless to say that the petitioner is entitled to be considered at par with any other person who is participating in the process of selection of the said post. The benefit of NCC 'C' certificate is not the part of the main criteria of selection qua everybody. This was a benefit for a restricted category of candidates claiming NCC 'C' certificate. Therefore, the benefit has to be restricted to the posts for which it is so authorized by the instructions issued by the Government of India. Qua the post of Riflemen (Cook), this benefit is not admissible under the instructions, therefore, this benefit has been withdrawn uniformly qua all the candidates who had applied for the post of Riflemen (Cook). Hence, there is not even any discrimination qua the petitioner in particular.

Although, the counsel for the petitioner has submitted that the criteria of selection could not have been changed midway the process

of selection and has relied upon the judgment rendered by Division Bench of this Court in the case of ***Rohtash Kumar (supra)***, however, this Court finds that the said judgment is of no help to the case of the petitioner. In that case, the condition of eligibility, *per se*, was sought to be changed midway in the process of selection which had rendered certain persons totally ineligible for the post involved in that case. That action of the Selecting Agency had not found favour with this Court. Hence, the said action was held to be illegal. In the present case, the conditions of eligibility have not been altered by the respondents, by any means. It is only the additional weightage in the process of selection which was extended without authority of the government and which has been uniformly withdrawn qua all the candidates who have applied for the post of Riflemen (Cook). Therefore, the action of the respondents is not even in violation of the principle of not altering the conditions of eligibility during the process of selection. Otherwise also, an employer has every right to withdraw even the entire process of selection and to re-advertise the posts for filling up the posts as per the provisions governing the cadre. Even if the selection is completed, as per the settled law, the selected candidate does not have any right to seek appointment. Therefore, the very principle of not altering the criteria or conditions during the process of selection is of aesthetic value only except in those cases where change is against the existing rules governing the conditions of eligibility or existing statutory criteria of selection, if any. If the employer is otherwise entitled to end the game itself, then there is nothing to stop the employer from changing the rules of the game midway the proceedings of that game. In any case, in the present case,

the eligibility of the candidates is not being affected. The petitioner had no statutory right to get the weightage, as such. The same was only by way of concession which was extended by mistake earlier and which has now been withdrawn; uniformly qua all the candidates who have applied for the post of Riflemen (Cook). Therefore, the action of the respondents cannot be held to be in violation of any statutory provisions or in violation of principle of any law, nor can the same be branded as unreasonable, by any means.

In view of the above, finding no merit in the present petition, the same is dismissed.

The pending miscellaneous application, if any, is also disposed of as such.

27th JULY, 2022
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes