

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH.

CWP No. 9117 of 2019

Decided on:16.03.2022

Subhash Chander

... Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. D. S Matya , Advocate
for the petitioner.

Mr .Tapan Kumar Yadav the DAG Haryana.

JAISHREE THAKUR J. (ORAL)

1. By way of the instant writ petition filed under Article 226/227 of the Constitution of India, the petitioner seeks appointment to the post of Sub Inspector (Male) under the ESM – disabled category by contending that his name has not been reflected in the final merit list prepared, despite having secured 42.40 marks as against the last selected candidate, who secured 38.40 marks.

2. In brief the facts as stated are, that pursuant to an advertisement No. 3/2018 published by the Haryana Staff Selection Commission on 16.4.2018, the petitioner applied under Category No.4 for the post of Sub Inspector (Male) in Haryana Police under Ex Serviceman General Category. The petitioner who is Ex-serviceman with 50% disability, *tried* to apply under the disabled category, but due to a glitch in the software could not do so, and therefore applied under the category ESM-General. However the

disability Certificate was uploaded with the application. An admit card was issued for the examination to be held on 19.11. 2018 and the petitioner cleared the written examination and thereafter, the petitioner qualified the physical examination. The result was declared and the petitioner was shocked to see that his name was not mentioned in the final list even though the cut-off for the post of ESM-General in disabled category was 38.40. It is contended that the petitioner herein had obtained 42.40 marks and therefore, having higher marks should have been given an appointment letter.

3. Mr. D.S. Matya, learned counsel for the petitioner vehemently argues that the petitioner has a 50% disability certificate as issued by the Army Authorities, which injury is attributable to military service. He had sustained injury which is 'Fracture Distal End Radius (LD) OPTD'. It is contended that the petitioner ought to have been considered in the category of **ESM General *disabled category*** by taking into account his disability certificate as issued by the Army authorities. If he is considered under the said category, he has the necessary marks to be given appointment under the said advertisement to the post of Sub Inspector in the Haryana police. It is contended that persons with disability in the Ex-servicemen (ESM) General Category, who have scored a minimum of 38.40 marks have been kept in the final list, whereas the petitioner with 42.40 marks has been ignored.

4. Per contra Mr. Tapan Kumar Yadav, DAG Haryana submits that the very basis of the writ petition is not sustainable as in fact Haryana Staff Selection Commission had invited online applications for direct recruitment for various posts in Police department and the petitioner had applied under the ***General ESM category*** with role No. 3184080833 and not

in the disabled category. The last selected candidate in General ESM category has secured 47.20 marks and the total marks obtained by the petitioner is 42.40 marks which is much lower than the last selected candidate in his category. It is contended that 400 posts of Sub Inspectors were re-advertised out of which 184 posts were to be filled up from the General Category, 72 posts were to be filled up from the SC category, 56 posts were to be filled up from BCA category, 32 posts were to be filled up from BCB category, 28 posts were to be filled up from ESM General category, 8 posts were to be filled up from ESM-SC category, 8 posts were to be filled up from ESM-BCA category and 12 posts were to be filled up from the ESM-BCB category. It is further argued that no posts were advertised for the Ex-servicemen (ESM) Disabled Category, as the State Government vide memo No. 22/92/205-3GS-111, dated 22.12.2005 has exempted the Police Department for reservation of posts of physically handicapped candidate.

5. I have heard the counsel for the parties and find that there is no merit in the writ petition.

6. The counsel for the petitioner herein claims that the petitioner tried to apply for the post of Sub Inspector pursuant to the advertisement issued under the category of disabled Ex-servicemen (ESM) on the basis of his disability certificate. However, he could not apply under the said category on account of a glitch in the software and therefore, applied under the general category of Ex-servicemen (ESM). It is contended that a disabled person having lesser marks than him has found mention in the final list.

7. A perusal of the advertisement dated 16.4.2018 would reflect that no post for a disabled Ex-servicemen had been advertised, and therefore, it cannot be argued that the petitioner tried to apply under the said category online. It is an admitted fact that the petitioner applied as a General Candidate in the ESM category and the admit card mentioned his category as such. He obtained 42.40 marks which is lesser than the last selected candidate. The argument raised that a disabled person under the said category has been allocated marks is again not sustainable, as a reading of the advertisement itself would reflect that the reservation for the post of ESM is to be utilized in the order given below i.e (i) upto two dependents Service personnel killed/disabled beyond 50% and (ii) and other Ex-servicemen (ESM). In fact, only two dependents of Service personnel who had either been killed or had suffered disability beyond 50% would be eligible under the said advertisement besides the Ex-servicemen themselves. It is abundantly clear that there is no category for the post of Ex-serviceman with disability in the posts advertised.

8. Therefore, the claim of the petitioner to have higher marks than the last selected candidate in the ESM disabled category is not sustainable. He participated in the category of Ex-serviceman General and has not scored higher marks than the last selected candidate.

9. Consequently this petition is devoid of merit and is dismissed as such.

(JAISHREE THAKUR)
JUDGE

March 16, 2022

Pankaj*

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No