

122.

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

CWP-10252-2022

Date of Decision: 13.05.2022

ANIL KUMAR

.... Petitioner

Versus

STATE OF HARYANA AND OTHERS

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. G.S.Gopera, Advocate,
for the petitioner.

JAISHREE THAKUR.J (Oral)

This is a petition that has been filed under Article 226/227 of the Constitution of India for issuance of an appropriate writ, order or direction especially in the nature of certiorari quashing the impugned order dated 13.04.2022 (Annexure P-16) whereby respondent No.3-Haryana Staff Selection Commission has rejected the representation of the petitioner dated 02.11.2021 (Annexure P-8) for consideration of his claim under the Dependent of Ex-serviceman (for short "DESM") category, for the post of Male Constable in Commando Wing of Haryana Police.

The petitioner applied for the post of Male Constable (Commando Wing) under the General category, pursuant to advertisement No.2/2021, dated 09.06.2021. The petitioner participated in the selection process in the same category. The petitioner cleared the physical measurement and physical screening tests and thereafter he was called for the written examination, which was held on 14.11.2021. It is pleaded that the

petitioner is the dependent of an Ex-serviceman but he could not apply under the DESM category for the reason that he could not get the required Eligibility Certificate at the time of applying for the said post. That very certificate he obtained only on 18.08.2021 (Annexure P-7) and thereafter, he requested the respondents vide his application/representation dated 02.11.2021 (Annexure P-8) to change his category from General to DESM category. He was called for scrutiny of documents on 09.12.2021 and he produced all the required documents including the dependent and eligibility certificates. The updated final result was published on 31.12.2021 wherein the petitioner could not find place.

It is contended that the respondent-authorities declared the result without taking into consideration his representation (Annexure P-8), which was submitted well before the written examination. It is also submitted that the petitioner approached this Court by way of CWP No.614 of 2022, which petition was disposed of vide order dated 01.02.2022 with a direction to the competent authority/respondent No.3 to consider and decide the representation dated 02.11.2021 (Annexure P-8) in accordance with law as expeditiously as possible preferably within 6 weeks from the date of that order. However, respondent No.3, vide order dated 13.04.2022, rejected the representation dated 02.11.2021 (Annexure P-8) seeking his candidature under the DESM category. Aggrieved against the said order, the petitioner has preferred the instant writ petition.

Learned counsel appearing on behalf of the petitioner would submit that though the petitioner was eligible for applying under the DESM category but due to Covid-19 pandemic, he could not get the Eligibility

Certificate at the time of applying for the said post. It is further submitted that the petitioner secured 69.20 marks whereas as per the final result, the cut off marks for General category and the DESM category were 76.2 and 54 respectively and in case he would have been considered under the DESM category, he would stand selected keeping in view the marks secured by him.

I have heard learned counsel for the petitioner and have gone through the file.

If one goes through the advertisement, it would clearly be made out that it is not open to a candidate to seek change of category at a belated stage. The petitioner, having first participated in the selection process till the process of scrutiny as a General Category candidate, was not entitled to seek change of category. It has been held by the Supreme Court in *J & K Public Service Commission Versus Israr Ahmad and others, 2005(1) SCC 498*, that once a candidate has chosen to opt for the category to which he is entitled, he cannot later change the status and make a fresh claim. Admittedly, the petitioner, in his application form submitted pursuant to advertisement No.2/2021, dated 09.06.2021, has stated his category to be 'General' and not DESM. It has been specifically mentioned in the advertisement that no document, no application/request for change of any particular, which has not been uploaded, shall be entertained. The Eligibility Certificate Annexure P-7, relied upon by the petitioner, itself is issued after the date of closing of application. Thus, the petitioner was not even eligible for applying under the DESM category on the last date of application. It is a condition mentioned in the advertisement that any candidate claiming reservation under any category was required to upload requisite certificate in

support of such a claim.

In similar circumstances, coordinate Bench of this Court has rejected the similar claim in CWP No.5733 of 2019, titled as ***Neelam Kumari Versus State of Haryana and others***, decided on 02.03.2022.

The writ petition is dismissed being devoid of merit.

13.05.2022

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**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No