

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

CWP-27185-2018 (O&M)

Date of decision: November 14, 2022

Karambir

.....Petitioner

versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ravinder Malik (Ravi), Advocate for
Mr. Jagdish Manchanda, Advocate for the petitioner.

Mr. R.K.S. Brar, Additional AG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Mandamus directing the respondent-Commission to consider the candidature of the petitioner for the post of Conductor in BCA category and not under sports category.

2. First, succinct factual background as pleaded in the writ petition. Petitioner being eligible applied for the post of Conductor against advertisement dated 18.05.2017 (Annexure P-1) in ESP-BCA category. He appeared in the written test conducted by Haryana Staff Selection Commission on 10.09.2017 and result of written examination was published on 01.09.2018 (Annexure P-5). He appeared before the Committee for scrutiny of documents on 16.09.2018 where he was informed by the respondents that his candidature will be considered in sports category only and not under BC-A category. Pursuant thereto he moved representation (Annexure P-7) before the Commission that as per the sports certificate uploaded by him inadvertently, he is not eligible under

the sports category, and his candidature be considered under BCA category.

Hence, the present petition.

3. In pursuance of order dated 23.10.2018 and 14.12.2020 passed by this Court, petitioner was interviewed provisionally and result of petitioner was kept in sealed cover.

4. I have heard rival contentions of learned counsel for the parties and gone through the case file.

5. Matter was heard earlier on 26.04.2022, when following order was passed:

“Prima facie, from a bare perusal of very first page of Annexure R2/3, which is the application form of the petitioner, it appears that he had very clearly on the first page in the appropriate column mentioned that he had applied for the post in question under BCA category. There is though certain confusion qua the same on the next page, where both the categories are mentioned i.e., Outstanding Sports Person (OSP) where there is an oblique line between the other category of BCA. In any case, there too BCA category has not been struck off while filling the form. Notwithstanding, for some inexplicable reasons it was taken as if petitioner applied under OSP category resulting in non-consideration of his candidature in BCA category.

Having seen the application form, it appears that petitioner was not at fault as he had clearly opted BCA in column No.2 on its first page, where category column is mentioned.

Confronted with the situation, learned State counsel seeks time to get instructions if petitioner's candidature, at this stage, can be considered under BCA category since he had immediately filed writ petition upon being declared ineligible in BCA category at the initial stage of selection process and writ petition has been pending ever since.

This Court is conscious that all the posts may have been filled up by now. Petitioner being more meritorious than the last selected candidate, in case his candidature is to be considered at this stage, the last selected candidate in BCA category may have to make way, who is not a party before this Court.

Petitioner is at liberty to take steps for impleadment. It is expected of the respondents to consider the possibility of creating a supernumerary post.

Post it on 01.06.2022.”

6. *Apropos*, on resumed hearing today, learned State counsel on a Court query states that he is unable to readily give any information with regard to vacancy existing pursuant to the original advertisement *qua* which the selection was carried out in the year 2018.

7. Be that as it may, I find no reason to depart from the *prima facie* observations made in my order dated 26.04.2022. The same are made absolute. In the premise, writ petition is allowed with the direction to the respondents that subject to the availability of post as on today in BCA category, the petitioner's candidature shall be considered in the said category subject to his being found more meritorious or equivalent to the last selected candidate as per the merit list. In that case, the petitioner shall be given benefit of appointment from the date service benefits were given to appointees in the same selection. However, he shall not be entitled to any monetary benefit, but will be given all other notional benefits arising therefrom.

In case, vacancy is not available, petitioner shall be adjusted in future vacancy as and when it arises. If during the pendency of the writ proceedings, petitioner has crossed the upper age limit as per the eligibility criteria, the same shall not be held against him since the matter has been pending in this Court.

8. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

November 14, 2022
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No