

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

212

**CWP No. 1213 of 2021
Date of Decision: 31.05.2023**

SURESH KUMAR

.....Petitioner

Vs

HARYANA STAFF SELECTION COMMISSION

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr.Ram Chander, Advocate
for the petitioner.

Mr.Tapan Kumar Yadav, DAG, Haryana.

RAJ MOHAN SINGH, J.(Oral)

This petition has been preferred under Article 226 of the Constitution of India for the issuance of an appropriate writ, order or direction, commanding the respondent to recommend the name of the petitioner as a selected candidate and appoint him against the vacancy of Male Constable Ex.Servicemen General Duty, Category No.4 of Advertisement No. 8/2015.

5000 posts of Male Constable (General Duty), Category No.1 of Advertisement No. 8/2015 were advertised along with other posts in Category Nos. 2 to 4. Petitioner secured 43.75 marks, which was the cut off in Ex.servicemen category. The petitioner also represented before the respondent in respect of ineligibility of one Suraj Bhan being a

retired personnel from Border Security Force. The candidature of Suraj Bhan was negated on being found that he was not an ex-serviceman. His candidature was rejected by treating him as a member of Border Security Force. The recommendation made in his favour was cancelled vide order dated 20.02.2018.

Learned counsel for the petitioner submits that on account of ouster of the aforesaid Suraj Bhan, the petitioner is the candidate in the merit list and is eligible for appointment, but he has not been appointed for the reasons best known to the department.

In pursuance of the notice of motion issued on 19.01.2021, initially, the reply was filed by the respondent No.1. The candidature of the petitioner was rejected being a Border Security Force personnel and not an ex-serviceman. Thereafter an order was passed by the co-ordinate bench on 09.09.2022 to the following effect:-

“Pursuant to order dated 03.08.2022, a set of copies of the documents supplied by the petitioner at the time of scrutiny to the Commission, have been produced in Court today.

The entire claim of the petitioner herein is that he stood discharged from the Indian Army and had applied under the Ex-serviceman category, however, his category has not been taken into account and his claim has been rejected treating him as a member of the Border Security Force (BSF).

A perusal of the documents would reflect that the petitioner was in the Indian Army and was the Gunner and therefore, in the prima facie opinion of the Court he would be very much a part and parcel

of the Indian Army.

Faced with this, counsel for the respondent-State seeks time to get necessary instructions in this regard.

Adjourned to 18.10.2022.

In the meantime, in case, the Commission, on reconsideration, finds that an error has occurred, let the same be rectified and necessary recommendation be made if the petitioner satisfies all other criteria.

(JAISHREE THAKUR)

JUDGE

September 09, 2022”

The respondent No.1 was directed to re-consider the factual error, if any, on the basis of documents on record which have reflected that the petitioner was in Indian Army and was a gunner and was part and parcel of the Indian Army. Thereafter, affidavit of Virat, HCS, Secretary, Haryana Staff Selection Commission was filed on 20.12.2022. Para No.2 of the affidavit reads as under:-

“That in furtherance of the above order, it is submitted that the respondent-Commission has re-examined the documents of the petitioner and the candidature of the petitioner was found eligible in ESM-General category against Advt. No.8/2015, Cat. No.04. Therefore, the Commission has considered the claim of the petitioner and the candidature of the petitioner was considered in ESM-General Category. Further, it is

pertinent to mention here that the petitioner has secured total 43.75 marks (11 in PST + 15.75 in written exam + 11 in PMT + 1 mark in higher qualification + 0 marks in NCC + 5 interview) and the last selected candidate in petitioner's category i.e. ESM-General category has also secured same mark i.e. 43.75 marks (12 in PST + 18.75 in written exam + 10 in PMT + 0 mark in higher qualification + 0 marks in NCC + 3 interview). The copy of final result dated 29.10.2016 is annexed as Annexure R-1.

Further, it is submitted that the advertised posts of Constable vide Advt. No.8/2015, Cat. No.04 are governed by the Amended Punjab Police Rules which specifically provides under Rule 12.16 Sub-Rule 10 and the relevant sub paras are (b), (c), which are reproduced as below:-

"(b) In case two or more candidates have the same aggregate score, the order of merit shall be determined by the higher score achieved in the knowledge test.

c) Whereas two or more candidates have the same aggregate score as well as the same score in Knowledge Test also, the order of merit shall be guided by the age of the candidate, i.e. the oldest being placed higher than the younger ones."

In view of the above sub-rules, it is submitted that the last selected candidate in ESM-Gen category has secured 18.75 marks in written examination, whereas, the petitioner has secured 15.75 marks. So, it is evident that the last selected candidate has secured more marks in written examination than the petitioner.

The copy of detailed result sheets of the petitioner and the last selected candidate are annexed as Annexure R-2. Hence, as the last selected candidate secured higher marks in written examination than the petitioner. Therefore, the petitioner cannot be considered in the final result dated 29.10.2016 in view of the above mentioned statutory rules being followed for the recruitment for the post in question. Hence, the petitioner is not entitled for any relief from the Hon' ble Court."

Perusal of the stand taken by the aforesaid deponent would show that the petitioner belongs to ESM General Category and has also secured 43.75 marks at par with the last selected candidate in the said category. Since the last selected candidate had secured 12 marks in PST, 18.75 in written examination, 10 marks in PMT, 0 mark in higher qualification, 0 mark in NCC and 3 marks in interview as against the marks secured by the petitioner i.e. 11 marks in PST, 15.75 in written examination, 11 marks in PMT, 1 mark in higher qualification, 0 mark in NCC and 5 marks in interview, therefore on the basis of the aforesaid assessment, the petitioner was not considered as last selected candidate on the basis of his performance in the written examination. If wrongfully selected candidate, namely, Suraj Bhan is to vacate his place, then the post has to go to the next candidate, who has secured the marks at par with last selected candidate.

As per the stand taken by the respondent, there is no other candidate between the last selected candidate and the petitioner. On 17.04.2023, the following order was passed by this Court:-

"Learned State counsel submits that the candidature of the petitioner by treating him to be an ex serviceman (General) has been considered along with the last selected candidate in terms of Rule 12.16 (10) of the Punjab Police Rules.

Learned State counsel may apprise this Court about the status of one Suraj Bhan s/o Ram Gopal resident of Village Patwan, Tehsil Loharu District Bhiwani, who was also selected in the selection and his eligibility was found to be wanting being a retired personnel from Border Security Force, which is a para military force and not the Indian Army.

Let the needful be done by the adjourned date.

List again on 15.05.2023.”

Learned State counsel, on instructions from Rupinder Singh, Legal Assistant from the respondent-Commission, has admitted the factum of ouster of Suraj Bhan from the process of selection as his eligibility was found to be wanting being a retired person from Border Security Force, which is a para military force and is not covered under ESM category.

As on date, in view of the stand taken in the affidavit of Virat, HCS, Secretary, Haryana Staff Selection Commission, there is no impediment in the appointment of the petitioner being at par with last selected candidate and in the event of Suraj Bhan being considered out of fray, the petitioner would get into the place at the tale being a last selected candidate.

In view of the aforesaid factual position, I deem it appropriate to accept the claim of the petitioner. The respondent-Commission is directed to do the needful in the context of recommending the appointment letter to the

petitioner within a month from the date of receipt of a certified copy of this order.

Petition stands disposed of accordingly.

May 31, 2023

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Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No

(RAJ MOHAN SINGH)

JUDGE