

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

CWP No.4919 of 2019 (O&M)

Date of Decision:11.08.2023

Mahavir

...Petitioner

Vs

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sunil K. Nehra, Advocate
for the petitioner.

Mr. Tapan Kumar Yadav, DAG, Haryana.

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HARSIMRAN SINGH SETHI J. (ORAL)

1. The present petition has been filed with the prayer that the physical measurement test of the petitioner should be conducted again afresh, as the same has not been done in a proper manner and the petitioner has been ousted from consideration for the post of Forester by wrongly stating that the petitioner did not clear the physical measurement test in respect of parameters set out for expansion of his chest.

2. Certain facts need to be mentioned for correct appreciation of the issue in hand. The respondents invited applications vide Advertisement No.12/2015 dated 10.12.2015 for 112 posts of Forester in the Department of Forest, Government of Haryana. Eligibility conditions were given in the said advertisement and out of total 112 posts of Forester advertised, there were total 24 posts to be filled in the category of Ex-servicemen.

3. The petitioner, who was working with the Indian Army, had already been ordered to be discharged w.e.f. 31.08.2016 with the clear intent that the Army has no objection in case the petitioner applies for any civil employment after 30.10.2015. It may be noticed that the advertisement was issued in

December, 2015 by which date, the petitioner was fully eligible to seek civil employment.

4. The petitioner competed for the post in question and cleared the written test after which, the petitioner was called for scrutiny of documents-cum-physical measurement test and walking test, which was prescribed for the post of Forester. The petitioner appeared for the said scrutiny of documents-cum-physical measurement test on 30.01.2019 and all his documents showing his eligibility for participating in the selection process for the post of Forester were found in order but, in the physical measurement test, petitioner was declared ineligible on the ground that he could not get his chest expanded by 5 cm, which was a minimum requirement to be declared fit in the physical measurement test. As the petitioner was already selected in Indian Army and that too, after undergoing a physical test as well as the fact that prior to the physical measurement test and walking test undertaken on 30.01.2019, the petitioner had already undertaken same physical test for appointment as Constable in Delhi Police, which was also cleared by him, the petitioner approached this Court with a grievance that he has wrongly been ousted from the zone of consideration for appointment being declared medically unfit, hence, his Physical Measurement Test should be undertaken again.

5. By an interim order dated 25.02.2019, a direction was given by the Coordinate Bench that Physical Measurement Test of the petitioner will be done again on 01.03.2019 and in case, he is found fit, he will be allowed to participate in the walking test as well. It is a matter of record that the petitioner appeared for the Physical Measurement Test on 01.03.2019 before the respondents and he was found fit as, on the said date, he could expand his chest more than 5 cm. Thereafter, the petitioner was allowed to participate in the Walking Test, which

he also cleared and vide order dated 02.05.2019. Keeping in view the fact that the petitioner cleared the physical measurement test as well as walking test, the Coordinate Bench directed the respondents to allow the petitioner to participate in the interview provisionally and his result was to be kept in a sealed cover. Before proceeding further, it may be noticed that on instructions from Mr. Manjeet Singh, Assistant, the State counsel conceded the fact that one of the advertised post of Forester in the category in which the petitioner is competing, is still lying vacant.

6. Learned counsel for the petitioner argues that once in a subsequent re-measurement done by the respondents, the petitioner has been found eligible and he has cleared the Physical Measurement Test, the petitioner is entitled to be considered for appointment to the post of Forester, in case, he is within the merit list keeping in view the number of posts advertised in the category in which the petitioner is competing. It may be noticed that the provisional result of the petitioner was called so as to ascertain whether the petitioner is within merit keeping in view the number of posts of advertised, and it transpired that the petitioner had secured more marks than the last selected candidate in the Ex-Servicemen Category, hence, the present petition survives to be decided on merits.

7. Learned counsel for the petitioner further argues that as the petitioner has already been allowed to participate in the selection process, and he has secured more marks than the last selected candidate, there is no reason with the respondents for not considering the petitioner for appointment by placing reliance upon the first physical measurement test and ignoring the subsequent physical measurement test. Once in a subsequent physical measurement test,

petitioner has shown the expansion of his chest by 5 cm, he needs to be treated as eligible to compete for the post in question.

8. Learned State counsel, on the other hand, submits that under the Rules for appointment on the post in question, no second chance is to be given for appearing in the Physical Measurement Test and it is only under the orders of the Court that the petitioner has been allowed to undergo second Physical Measurement Test, hence, keeping in view the scheme of selection, the second Physical Measurement Test of the petitioner, which has been done under the orders of this Court, no relief of the said second test can be granted to the petitioner, as the department is under obligation only to take into account the first Physical Measurement Test of the petitioner for considering his eligibility wherein it is conceded position that the petitioner failed to clear the first physical measurement test, hence, the present petition is liable to be dismissed.

9. Learned State counsel further submits that the physical measurement test undertaken by the petitioner while competing for the post of Constable in the Delhi Police is not on record though, the factum that the petitioner was selected in Delhi Police, is not denied, hence, merely that he was selected in Delhi Police does not mean that the petitioner is deemed to have cleared the physical measurement test even while competing for the post of Forester in the department of Forest.

10. I have heard learned counsel for the parties and have gone through the record with their able assistance.

11. It is matter of record that the petitioner was a Soldier, who has been discharged by the Indian Army. The petitioner had undergone Physical Measurement Test before being recruited in the Indian Army, which is on the same lines as being done for the post of Forester. Further, for the post of

Constable in the Delhi Police, the petitioner had cleared the Physical Measurement Test, which was held prior to the Physical Measurement Test conducted by the respondents in January, 2019. It is a fact that no Constable is recruited without qualifying the Physical Measurement Test. That being so, it cannot be stated that the petitioner was not medically/physically fit while undertaking the Physical Measurement Test in January, 2019, rather when the respondents again took the same Physical Measurement Test of the petitioner on the direction of this Court, they themselves found the petitioner medically fit. That being so, it does not lie in the mouth of the respondents that the petitioner has not been able to clear the Physical Measurement Test as required for selection and appointment to the post of Forester.

12. The argument of the learned State counsel that the petitioner cannot be allowed to undergo the second Physical Measurement Test, as the same is not envisaged under the scheme of selection process, cannot be accepted in the facts and circumstances of the present case when, the petitioner disputed instantly that his chest expansion was less than 5 cm, which was the minimum required as being alleged by the respondents. That is why, keeping in view the fact that the petitioner is a retired Soldier and had also cleared the physical measurement test while competing for the post of Constable in Delhi Police, the Coordinate Bench in order to avoid any ambiguity had directed the respondents to re-assess the physical capabilities of the petitioner as required under the Physical Measurement Test. When the petitioner was again examined by the same authorities, the petitioner cleared all parameters, hence, it cannot be stated that the petitioner cleared the physical measurement test in the second attempt. The physical endurance of the petitioner cannot get changed within a period of one month, so as to clear the physical measurement test especially when, he is a retired soldier

and had cleared the similar physical test while competing for the post of Constable in the Delhi Police, hence, the argument raised by the respondents to deny the benefit of eligibility to the petitioner on the ground that the petitioner cleared the physical measurement test in second attempt, cannot be accepted and is accordingly rejected.

13. Once the petitioner has already cleared all the required parameters for selection as cleared by other candidates, who were competing along with him and the petitioner is within merit keeping in view the post advertised, the petitioner becomes entitled for selection to the post of Forester against the post in the Ex-Serviceman Category, which is lying vacant even as of now. Consequently, the petitioner is held eligible for competing for the post of Forester and the respondent-Commission is directed to declare the result of the petitioner, which is provisional as of now and in case, the petitioner makes the cut-off marks i.e. has secured more marks than the last selected candidate in the Ex-Servicemen Category, name of the petitioner be recommended to the department for consideration for appointment against one of the advertised post, which is lying vacant.

14. Learned counsel for the petitioner at this stage, submits that in case the petitioner is appointed by the respondents, he be given seniority and other benefits according to his merit, which he has obtained during the selection and the petitioner will not claim any actual financial benefits though, benefits be given to him notionally upto the date of appointment. The offer given by the petitioner is very fair in the facts and circumstances of the present case, hence, the respondents are directed to conclude the consideration of appointment of the petitioner within a period of two months of the receipt of certified copy of this order and in case, the petitioner is found entitled to be selected and consequently,

appointed, the petitioner be given the benefits according to his merit obtained in the selection process by giving him the deemed date of appointment from the date the candidate having lesser marks than the petitioner was appointed, though notionally upto the date of appointment and no arrears are to be granted.

15. The writ petition is allowed in above terms.

C.M. No.6808-CWP of 2019

Application is also disposed of as such.

(HARSIMRAN SINGH SETHI)
JUDGE

August 11, 2023

Pankaj*	Whether speaking/reasoned	Yes
	Whether reportable	Yes