

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

**CM-17837-CWP-2023 in/ and
CWP-5207-2022 (O&M)
Reserved on: 15.11.2023
Pronounced on : 11.12.2023**

Deepshikha Garg

..... Applicant-Petitioner

Versus

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present: Mr.D.S. Patwalia, Senior Advocate with
Mr.Sehar Navjeet Singh Sandhu, Advocate
for the applicant-petitioner

Mr.Ramandeep Singh Pandher, Sr.DAG, Punjab.

Deepak Sibal, J.

1. Through advertisement No.14 dated 08.12.2020 the Punjab Public Service Commission invited applications for appointment to several posts including 02 posts of Block Development & Panchayat Officers (for short- BDPO). In the break-up of posts given in the advertisement one of the 02 posts of BDPOs was reserved for the Scheduled Caste category and the other for a sportsperson. The last date to apply was 30.12.2020. The petitioner being a graded “B” sportsperson by the State of Punjab applied within time for consideration of her candidature against the one post of BDPO advertised be filled up from sportspersons.

2. After having appeared in the preliminary and then the main examinations as also in the interview the petitioner figured at serial no.3 in the final merit list published for the 01 post of BDPOs reserved for sportspersons. All the candidates who figured on the merit list were called for

counselling on 17.12.2020. The candidate who figured at merit no.1 namely, Simranpreet Kaur opted out of the race as she accepted appointment as Assistant Registrar Cooperative Societies, Punjab. The candidate at merit no.2, namely, Navanjot Singh accepted the offer of appointment to the post of BDPO but only “at that stage” and subject to the outcome of a writ petition already filed by him and pending before this Court. Nonetheless, through letter dated 07.01.2022 Navanjot Singh was offered appointment as BDPO on the terms and conditions mentioned in the said letter. Subject to his acceptance of the terms and conditions contained in the said letter offering him appointment, he was required to join within 15 days of the receipt of the letter. Navanjot Singh did not do so. Rather, he sought extension for a further period of 21 days to join. Even after the lapse of the extended period he sought more joining time but ultimately did not join as BDPO. The petitioner being next in merit staked her claim on the post in question but the respondents did not offer her appointment purportedly relying on Rule 10(A) (10) of the Punjab State Civil Services (Appointment by Combined Competitive Examination) (First Amendment) Rules, 2019 (for short – 2019 Rules), as per which, if a candidate who during the course of counselling accepts the allocated service and in pursuance thereof is issued an appointment letter but fails to join within the time specified in the appointment letter or expresses his unwillingness to join the offered post, then such post is required to be carried forward to the next recruitment process.

3. It is in the above circumstances that the petitioner has knocked the doors of this Court seeking appointment as a BDPO after reading down by this Court the relevant provisions of Rule 10(A) of 2019 Rules in her favour

or in the alternative striking down sub-Rule (10) of Rule 10(A) of the 2019 Rules being ultra vires Articles 14 and 16 of the Constitution of India.

4. Mr.D.S.Patwalia, learned senior counsel appearing for the petitioner urged before us that under Rule 10A(3) of the 2019 Rules, after a candidate is allocated the service as per his/ her merit-cum-preference, the candidate is to be offered appointment to that service which he/ she is required to accept or reject during the counselling session; if the candidate who is offered the allocated service refuses to conclusively accept the same then under Rule 10A(4) the next person in merit is to be offered appointment to the service in question; Navanjot Singh who was the only candidate higher in merit than the petitioner did not conclusively accept the BDPO's post which was offered to him during counselling because when he was offered such post he sought to accept the same conditionally and subject to a writ petition filed by him in this Court; such acceptance was against the spirit of Rule 10(A) (3) and therefore should have been outrightly rejected; consequently, as per Rule 10(A) (4) the petitioner, who was next in merit should have been offered the post in question and that in the facts of the present case the reliance of the State on Rule 10(A) (10) is misconceived as Rule 10(A) (10) would apply only when a candidate, during the counselling session, unconditionally accepts the offered post and then on the issuance of the appointment letter refuses or fails to join.

5. Per contra, Mr.Ramandeep Singh Pandher, learned Sr.DAG Punjab who appeared for the State relied on Rule 10(A) (10) of the 2019 Rules to justify denial of appointment to the petitioner as according to him, Navanjot Singh who was higher in merit than the petitioner, at the time of counselling, had accepted the offered post of BDPO on the basis whereof

appointment letter dated 07.01.2022 was also issued to him and when in response to such letter Navanjot Singh failed to join then Rule 10(A) (10) came into play and accordingly, the State rightly decided to carry forward the post in question to the next recruitment process.

6. Sub-Rules (3), (4) and (10) of Rule 10(A) of the 2019 Rules fall for our interpretation. They read as under:-

“10(A) (1)

(2)

(3) After a candidate is allocated the Service, such candidate shall be given an offer of appointment to that Service by such officer as has duly been authorised by the Appointing Authority, which the candidate has to accept or reject, during the counselling session held for the purpose.

(4) If a candidate, who has been offered appointment to a Service, expresses his unwillingness to accept the offer of appointment so made or fails to give his acceptance during the counselling session, in that case such post (which had been offered to the candidate), shall be treated as vacant and shall be offered to the next eligible candidate, as per merit and preference.

(5) to (9)

(10) If a candidate, who has been issued the letter of appointment, fails to join within the specified time (unless extended by the Appointing Authority under relevant rules or instructions, as the case may be), or expresses his unwillingness to join on such post, in that case such post (which had been offered to such candidate), shall be carried forward to the next recruitment process, and no candidate from the current merit list shall be considered for appointment to such post.”

7. After having carefully read and examined the afore quoted sub-rules of Rule 10(A) of the 2019 Rules we are of the opinion that as per Rule 10(A) (3) a candidate who, in terms of his merit-cum-preference, is allocated and then offered appointment to a service then such candidate is required to exercise his option during the counselling session itself. Such acceptance or rejection has to be conclusive and clear. A conditional acceptance is neither

contemplated under Rule 10A(3) nor would further the purpose behind offering of appointments through the process of counselling.

8. If during the process of counselling the candidate expresses his unwillingness to unequivocally accept the offered post then in terms of Rule 10(A)(4) the post in question is to be treated as vacant and consequently offered, during the same counselling session, to the next eligible candidate as per merit-cum-preference.

9. Only if a candidate, who during the process of counselling, unconditionally accepts the allocated service and in pursuance thereof is also issued a letter of appointment, fails to join the offered post within the specified joining time or thereafter expresses his unwillingness to join the said post, would Rule 10(A)(10) come into play and resultantly, the post in question would be carried forward to the next recruitment process.

10. The above interpretation given by us would also be in line with the primary object behind offering of appointments through the process of counselling which is that where there are multiple posts on offer and appointments are required to be made on the basis of merit-cum-preference from the eligible candidates, then the acceptance or refusal of the offered post to a candidate at the time of counselling has to be definite. It cannot be conditional or provisional. Any interpretation to the contrary would lead to a situation where the process of allocation of the services/ posts on offer, in terms of merit cum preference of the eligible candidates, would not attain finality and could also lead to chaos.

11. In the light of the above let us now determine as to whether in the facts of the present case the respondents were justified in denying appointment to the petitioner.

12. For the only post of BDPO advertised to be filled up from sportspersons the petitioner stood at merit no.3. At merit no.1 was Simranpreet Kaur who admittedly opted out of the race. At merit no.2 was Navanjot Singh who at the time of counselling was offered the post of BDPO which he conditionally accepted because his acceptance came along with a representation by him through which he stated that he was accepting the offered post “at that stage” and subject to the decision of a writ petition filed by him which was pending adjudication before this Court. The gist of Navanjot Singh’s representation made by him at the time of counselling reads as under:-

“I, Navanjot Singh, do hereby submit that I appeared in the PCS (Executive Branch) and Allied Services Competitive Examination 2020, wherein the Preliminary Examination was conducted on 13.02.2021, and being successful therein I appeared in the Main Examination in April, 2021 and in the Interview on 31.05.2021.

At present as per my merit in the sportsperson category I am eligible to be selected to the post of Block Development and Panchayat Officer (BDPO). However, I have preferred a Civil Writ Petition bearing CWP No.2741 of 2021 which is pending for adjudication and is listed on 25.01.2022, with a prayer to incorporate backlog of reserved vacancies of sportsperson quota in the present selection in PCS (Executive Branch) as per Punjab Recruitment of Sportsment Rules, 1988.

It is further submitted that in the sportsperson category, my merit petition is at Merit No.2, and I am thus sanguine of my success in being appointed to the PCS (Executive Branch) against the sportsperson category.

Therefore, I hereby accept the offer of appointment to the post of BDPO at this stage, subject to outcome of pending writ petition being CWP No.2741 of 2021, and do hereby reserve my right to being appointed to PCS (Executive Branch) against sportsperson category.” (emphasis supplied)

13. A bare reading of Navanjot Singh’s afore quoted representation given by him at the time when he was offered the post of BDPO during the counselling session could not be considered to be his acceptance as the same

was conditional and thus, not as per Rule 10(A)(3) of 2019 Rules as also against the object behind finalization of appointments being offered through the process of counselling. Therefore, it is then and there that the State should have rejected his conditional acceptance. By acting to the contrary the State violated its own rules. Navanjot Singh’s conditional acceptance to the offered post was required to be ignored and thereafter, in terms of Rule 10(A)(4) of 2019 Rules, the petitioner, who was next in merit, during the process of counselling itself, should have been offered the post in question.

14. In the light of the above discussion we declare the action of the State in not offering appointment to the petitioner to be in violation of its own Rules and therefore, illegal. Having held so, we do not find the necessity to delve into the alternative issue raised by the petitioner qua the challenge to the vires of Rule 10(A)(10) of 2019 Rules.

15. Resultantly, the petition is allowed and the respondents are directed to consider appointing the petitioner against the post of BDPO which was reserved for sportspersons advertised to be filled up through advertisement no.14 dated 08.12.2020. On being appointed to the said post she is also held entitled to consequential seniority and notional benefits with regard to pay fixation. The needful be done within 04 weeks.

16. No costs.

(Deepak Sibal)
Judge

11.12.2023
gk

(Sukhvinder Kaur)
Judge

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No