

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-22316 of 2010 (O&M)

Reserved on: 03.05.2023

Date of Order: 21.08.2023

Sukhdeep Singh Sandhu

.Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajiv Atma Ram, Sr. Advocate, with
Ms. Sanah Sahni, Advocate,
for the petitioner.

Mr. R.K.Kapoor, Addl. A.G., Punjab.

Mr. H.S.Saini, Advocate
for respondent no.6.

Mr. Vipin Mahajan, Advocate
for respondent no.7.

Mr. Jasdeep Singh Gill, Advocate
for respondent no.8.

ANIL KSHETARPAL, J

1. The petitioner prays for the issuance of a writ in the nature of mandamus to consider and appoint him as a Excise and Taxation Inspector (Group-C) in the Sports Category.

2. The petitioner belongs to the General Category. He has sought appointment in the Sports Category. The applications for 160 posts of Excise & Taxation Inspectors were invited through the recruitment notice dated 13.08.2008. The Punjab Recruitment of Sports Persons Rules, 1988 notified by the State of Punjab provide for the reservation to the extent of 3% to the sports persons. On 09.01.2017, the following order was passed:-

“At the time of hearing, an affidavit dated 09.1.2017 of Sh. Parneet Shergill, Addl. Excise & Taxation Commissioner (Admn), Punjab has been filed on behalf of respondent Nos.1 & 2 in Court today, a copy of which has been furnished to the counsel opposite. The same is taken on record.

From the pleadings, it transpires that four posts reserved for Sportsmen Category falling at Roster Point No.441, 500,523 and 541 were required to be filled up for appointment to the post of Excise and Taxation Inspectors by way of direct recruitment. Although in the Advertisement, the selection was to be conducted based on the result of the written examination, however, learned State counsel, on instructions from Sh. Krishan Pal Sharma, Sr. Assistant, Excise and Taxation Department, states that the inter se merit of the Sportsmen is determined as per the gradation Certificates granted by the Sports Department. It is further stated that one post out of aforesaid four was to be filled up from the Scheduled Caste Category falling at Roster Point No.441, as is evident from Annexure P.23-A. The relevant position in this respect is depicted between pages 207 to 211 of the paper book whereby Ms. Sonika would concededly consume the Roster Point No.441 reserved for Sportsman (Scheduled Castes Category) whereas the remaining three roster posts would be filled up from the Sportsman (General) Category. From the reading of Annexure P.23-A at page 207, it is revealed that the backlog for vacancies belonging to the Scheduled Castes and Backward Class stood completed by filling up the same till Roster Point 422 and 435.

It transpires that Jasalpreet Singh and Jaspreet Singh belonging to the Sportsmen (General Category) and possessing Gradation A Certificates have been

appointed against the remaining two vacancies/roster points.

It is the contention of the petitioner in CWP No.22316 of 2010 that he belongs to the Sportsmen (General Category) and possesses A Grade Certificate and is at least entitled to be appointed against 3rd Roster Point falling to the share of Sportsmen (General Category), although he has also laid challenge to the Gradation 'A' Certificate issued to Jasalpreet Singh. The petitioner-Sukhdeep Singh Sandhu has also concededly obtained more marks in the written test than Jasalpreet Singh and Jaspreet Singh.

The petitioner-Jagpreet Singh Sidhu in CWP No.962 of 2011 appears to be ineligible as per Sub Clause (b) of Clause (d) of Rule 2 of the Punjab Recruitment of Sports Persons Rules 1988 (for short "1988 Rules") as he does not possess any Certificate of having won any National Championship in the Team or individual event while representing the State of Punjab.

The stand of the State is not clear as to whether this condition of eligibility as per 1988 Rules was ever amended or not. From the contradictory affidavits filed, the position regarding appointment of Sportsmen (General Category) against the four reserved Roster Points is also not clear. It is not explained as to how one of the Roster Points reserved for Sportsmen (General Category) could be diverted to the B.C Category in the absence of any backlog or a provision for carryforward.

This Court is, therefore, constrained to summon the Secretary, Excise and Taxation, Punjab to be personally present in Court for assistance. However, he is at liberty to file his affidavit explaining the aforesaid position.

Ordered accordingly.

List on 25.1.2017 for further consideration.

A photo copy of this order be placed on the connected file.”

3. Thereafter, an affidavit of Additional Chief Secretary was filed explaining the position in the following manner:-

3. That the whole position is explained as under:-

(i) That 160 posts of Excise and Taxation Inspectors were advertised vide advertisement dated 13.08.2008. As per instructions dated 21.08.1997 of Department of Personnel and Administrative Reforms the category wise reservation is as under:-

Category	Percentage
SC	25%
BC	12%
ESM	13%
Handicapped	3%
Sportsman	3%
Freedom Fighter	1%

Therefore, 3% of 160 posts in the category of Sportsman would be four posts. Instructions dated 21.08.1997 are attached herewith as Annexure R-IV.

(ii) That it is pertinent to mention here that in this recruitment Roster point 426 to 585 were to be filled. As per instructions dated 21.08.1997 roster point number 441, 500, 523 and 541 are to be filled by Sports Category and further two roster points are for Sports (General Category) and two are for Sports (SC Category) i.e. 441 and 541 is to be filled by Sportsman (General Category). It is further submitted that against the

Roster point meant for Sportsman Category, category-wise selection, merit and gradation is as under:-

Sr. No.	Name	Category	Marks Obtained	Sports Gradation	Roster point
1.	Sonika	SC	39	B	441
2.	Jasal Preet Singh	General	34	A	500
3.	Jaspreet Singh	General	59	A	523

So far as roster point No. 541 is concerned that is also meant for SC Category.

(iii) That so far as selection of Sportsman is concerned the merit of all the candidates is sent to the Sports Department alongwith their Gradation certificates and the Sports Department send the result as per Gradation Certificates of the candidates after following the Punjab Recruitment of Sportsman Rules 1988 and Sports Gradation Policy dated 10.12.1997. Relevant portion of Punjab Recruitment of Sportsman Rule 1988 is reproduced as under:

"(b) In the case of recruitment to reserved vacancy in class III posts:-

(i) That he belongs to the State of Punjab; and

(ii) That he has won first, second and third position in team or individual events while representing the State of Punjab in a State Level Championship in any of the discipline affiliated to the Punjab Olympic Association organized by the State Level Federation,"

Relevant portion of Sports Gradation Policy 10.12.1997 is reproduced as under:-

"4 For certification, Sports Department Punjab only considered the cases who fulfil the following requests:-

vi) In the matter of rating interse, the preference in the same grade will be given in the following descending order :-

(i) Winner

(ii) Runner Up

(iii) Third position holder

(iv) Number of Participations

Regarding Senior and Junior Tournaments/Championship Senior shall have precedence over junior in the same performance i.e. for example Gold Medalist in senior category shall have precedence over Gold Medalist in Junior category over silver Medalist in senior category and so on which implies that participation in grade 'B' Category in the same orders of medalists, if after considering the performance criteria's mentioned above, the candidate having higher marks obtained in the examination which is considered for admission will decide the seniority from highest to lowest marks obtained by the candidate."

(IV) That so far as petitioner-Jagpreet Singh Sidhu in CWP No. 962 of 2011 is his gradation certificate is 'B' (Grade), for participation in National Judo Championship 1991- 1992. It is further submitted that gradation policy dated 10-12- 1997 is amended vide Memo No. 47/26/83-ISS/1457 dated 18-08- 2008 which is attached herewith as annexure R-V.

That a bare perusal of amended gradation policy dated 18-08-2008 reveals that Gradation certification should be awarded only to the first three position holders of the Senior National Championships, National Games, Junior world Championship, All India Inter Universities competitions/National Championships under 19, National School Games under 17/All India Rural Sports and to the first three position holders of Nationals Games where the competition held amongst eight or more than eight teams.

Therefore, as per amendment dated 18-08-2008 petitioner Jagpreet Singh Sidhu in CWP No. 962/2011 is not even eligible for appointment in sports category.

(V) That in view of the position explained in above paras no roster point reserved for sportsman (General Category) was ever diverted to B.C category. It is further pertinent to mention here that Social Welfare department inadvertently communicated Roster point No.441 to be given to B.C. Category whereas when clarification was called for it was clarified that Roster point No.441 is meant for S.C. Sports category.

In view of the above Roster point No.541 is meant for sportsmen (S.C category). Therefore, the petitioner being in general category cannot claim any right against this Roster point.”

4. Subsequently, on 16.12.2022 the information with regard to the utilization of the roster points was explained in the following manner:-

“In terms of the same, record of the office was perused and also the Rule 3/2) of Punjab Recruitment of Sports Rules 1988 was taken into consideration. It is respectfully Submitted that Punjab Recruitment of Sports Rules 1988 were implemented with effect from 01-02-1988 and at that time the started point of Roaster of this office was no. 238 which was meant for unreserved category, the same was filled on 27-07-1988 after the Implementation of Sports Rules. There after Roaster point no 243, 300, \$23, 400, 423, 500523, 600, 623, 700, 723 were marked for sportsman (General) and Roaster point no. 341, 441, 541, 641 and 741 were marked for Sportsman (SC) Category. In the year 1988, the advertisement was given by the department for the recruitment of Excise Inspector and Taxation Inspector. Applications were called from the candidates for the fulfilment of 16 and 31 posts respectively There was not specific recruitment for sports quota The selected candidates who were recruited on the said posts are still performing duties with the Department.

5. From 1989 to Year 2009 the Department did not conduct any direct recruitments except compassionate appointments which were given to the dependent members of employees who had died in harness.

6. It may be mentioned here that prior to the year 1999, there were two cadres in the department i.e. one of Excise Inspector and other one was of Taxation Inspector. In the year 1999 both the cadres mentioned above, were merged as per Government letter dated 14-05-1999. According to this letter only one cadre of Excise and Taxation Inspector was created and appointments were made for these posts according to this cadre only. After 2009 for Direct Recruitment to Cadre of Excise and Taxation Inspector, sportsman category started from Roaster Point no. 441.

7. The Department has followed the Sportsman Rules, 1988 at the time of the appointments which were made in the Year 2009. The following are the points filled till date. The chart is as under:-

Sr.No.	Roaster Point	Name	Point given	Remarks
1.	441-SC	Sonika SC	441	Against 441
2.	500	Jasalpreet Singh	500	Against 500
3.	523	Jaspreet Singh	583	Adjusted against point no.523
4.	541-SC	Rakesh Kumar SC	641	Against 541
5.	600	Amritpal Singh	600	Against 600
6.	623	Karandeep Singh	700	Against 623
7.	641-SC	Sumitpal Kaur-SC	-	Against 641
8.	700	Pankaj Kumar	-	Against 700
9.	723	Ena Arora	-	Against 723

8. As per said Rules, the vacancy consumed by sports persons after 1999 were mentioned as per roaster point

no441, 500, 523541, 600, 623, 641700, 723 which have already been filled. However, as per latest instructions of Department of Welfare (Reservation Cell), Government of Punjab Circulated vide letter no. 8/24/2009-RS1/1544, Dated 22-10-2009 and Letter No 1/55/2016-RS2/903710/1 dated 03-01-2017, in case there is no suitable candidate available from the category Scheduled Caste (Ex- Service man) or Scheduled Caste (Sports), the post remaining vacant is to be filled from amongst eligible Scheduled Caste Candidate only. At this Stage only one point of Sportsman (Scheduled Caste) Candidate is lying vacant which is the roaster point no. 741. The petitioner belongs to General category (Sports), thus cannot be appointed against roaster point No. 741.”

5. On further information sought, an affidavit dated 05.01.2023 has been filed by the Taxation Commissioner, relevant part whereof reads as under:-

“3. In terms of the same, record of the office was perused and also the Rule 3(2) of Punjab Recruitment of Sports Rules 1988 was taken into consideration It is respectfully Submitted that Punjab Recruitment of Sports Rules 1988 were implemented with effect from 01-02-1988 and at that time the started point of Roaster of this office was no 238 which was meant for unreserved category, the same was filled on 27-07-1988 after the implementation of Sports Rules. There after Roaster point no 243, 300, 323, 400423, 500523, 600, 623, 700723 were marked for sportsman (General) and Roaster point no341, 441, 541, 641 and 741 were marked for Sportsman (SC) Category. In the year 1988, the advertisement was given by the department for the recruitment of Excise Inspector and Taxation Inspector. Applications were called from the

candidates for the fulfilment of 16 and 31 posts respectively. There was not specific recruitment for sports quota. The selected candidates who were recruited the said posts are still performing duties with the Department as per the chart which is as under:-

Sr. No.	Roaster point meant for sports quota	Date filling of the post	Name and Category	Date of Joining
1.	243	29.05.1989	Ramesh Kumar (General)	06.06.1989
2.	300	18.03.1992	Bhupinder Singh (General)	16.04.1992
3.	323	18.12.2000	Upinderjit Singh (General)	22.12.2000
4.	341	30.10.2002	Sunita Rani (Schdeuled Caste)	29.11.2002
5.	400	29.06.2009	Amardeep Singh (General)	06.07.2009
6	423	10.07.2009	Harinder Singh (Scheduled Caste)	10.07.2009

4. From 1989 to Year 2009 the Department did not conduct any direct fecruitments except compassionate appointments which were given to the dependent members of employees who had died in harness. It is further made clear that 41 persons were recruited as Excise and Taxation Inspector as per the order of Hon'ble Apex Court dated 05-03-2009 in Civil Appeal No. 1535 of 2009 (Arising out of SLP(C) 10944 of 2005). Persons mentioned at SrNo. 5 & 6 were adjusted on these roaster points against sports quota from the above said 41 persons.

5. The Department has followed the Sportsman Rules1988 at the time of the appointments which were

made in the Year 2009The following are the points filled till date. The chart is as under: -

Sr. No.	Roaster Point	Date of filling the post	Name	Date of Joining	Point given	Remarks
1	441-SC	30.09.2009	Sonika SC	12.10.2009	441	Against 441
2.	500	30.09.2009	Jasalpreet Singh	12.10.2009	500	Against 500
3.	523	30.09.2009	Jaspreet Singh	07.02.2011	583	Adjusted against point no.523
4.	541-SC	13.11.2009	Rakesh Kumar SC	01.10.2014	641	Against 541
5.	600	28.03.2012	Amritpal Singh	28.03.2012	600	Against 600
6.	623	01.10.2014	Karandeep Singh	10.12.2018	700	Against 623
7.	641-SC	01.10.2014	Sumitpal Kaur-SC	30.06.2022	-	Against 641
8.	700	10.12.2018	Pankaj Kumar	30.06.2022	-	Against 700
9	723	10.12.2018	Ena Arora	11.10.2022	-	Against 723

The detail of persons who were recruited against Sportsman quota at roaster no. 243, 300, 323, 341, 400, 423 has been given in above para no. 3 of the affidavit for the convenience of the Hon'ble Court

6. As pursuance to the Hon'ble High Court order dated 21-12-2022, and according to record the roaster point no741 is meant for Sportsman (Scheduled Caste)Sumitpal Kaur was adjusted at srno641 against backlog post which was also for sports quota. At this stage only one point of sportsman (Scheduled Caste) candidate is lying vacant which is the roaster point no. 741The petitioner belongs to General category (Sports)thus cannot be appointed against roaster point no. 741. The affidavit may be taken on record and the writ petition is disposed of accordingly.”

6. This Bench has heard the learned counsel for the parties at length and with their able assistance perused the paper book.

7. The learned senior counsel representing the petitioner while reiterating that the 3% posts are reserved for the sportspersons submits that the petitioner has been wrongly ignored. It is contended that the petitioner deserves to be appointed against the roster point of three open category.

8. On the other hand, the learned State counsel has submitted that the petitioner cannot be adjusted as explained in the various affidavits filed by the concerned officials.

9. At the outset, it is important to note that initially there were two connected writ petitions, one filed by the petitioner herein and the second filed by Sh. Jagpreet Singh Sidhu. However, only this writ petition has come up for hearing.

10. It is evident from the reading of the affidavit filed on 25.01.2017, that no roster point reserved for Sportsman(general) was ever diverted to BC category and there was an inadvertent error in the communication sent by the Social Welfare Department. The roster point no.441 is meant for the SC Sports category. Moreover, in the detailed affidavit filed on 05.01.2023 the position has been elaborately explained by the Government.

11. Keeping in view the aforesaid facts and discussion, this court does not find it appropriate to issue any writ particularly when in the affidavits, the State has justified their action on the basis of relevant rules and instructions.

12. Hence, no ground to issue the writ as prayed for is made out.

13. Dismissed, accordingly.
14. All the pending miscellaneous applications, if any, are also disposed of.

21st August, 2023
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Whether reportable

:YES/NO

:YES/NO