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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 21st July, 2023

+ **W.P.(C) 9625/2023 & CM APPL.36844/2023**

MAJ PARUL PARGAL (RETIRED) Petitioner

versus

UNION OF INDIA AND ORS Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Ajit Kakkar with Mr. Ankit Negi,
Advocates.

For the Respondents: Mr. Jaswinder Singh with Mr. Gurjas Singh
Narula, Advocates and Sh. Hemendra Singh,
Dy. Comdt. Law, GST.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks setting aside of the result declared on 06.04.2023 for the post of Veterinary Assistant Surgeon (Assistant Commandant) Group – A, Gazetted (Combatized) (Non-Ministerial) and further seeks a direction to the respondents to declare the result for Ex-serviceman candidates with separate cut off at par with other reserved category candidates.

2. Respondents had issued an online detailed advertisement for recruitment to the post of Veterinary Assistant Surgeon (Assistant Commandant). The total posts advertised were 20; 11 posts in the



unreserved category, 2 posts in the economically weaker Section, 3 posts in OBC and 4 posts in SC. In the remarks, it was stated that ten percent of overall vacancies were reserved for Ex-serviceman. Vacancies were subsequently increased to 36 and accordingly, 4 posts were reserved for Ex-serviceman.

3. The advertisement specifically provided that that in case there was large number of applicants, respondent BSF shall hold a written examination of 2 hours consisting of multiple choice question of 100 marks to shortlist the candidates for interview stage. The qualifying marks in the written examination were declared to be 50% for Gen/OBC and 45% for SC/ST category candidates.

4. The petitioner applied for the said post, took the examination and scored 49% marks. Petitioner was declared as unsuccessful since he did not meet the cut off of 50%. Petitioner had applied in the vertical of the unreserved category, and in the horizontal of the Ex-servicemen category. The advertisement does not specify any different cut-off for Ex-serviceman category other than the cut off mentioned for the Gen/OBC category at 50% and SC/ST category at 45%. Since petitioner does not belong to either SC or the ST category, petitioner was required to obtain 50% marks to qualify in the written examination. Since petitioner did not score cut off of 50%, he was not shortlisted for future participation in the selection process.

5. Learned counsel for the petitioner relies on Rule 6A of Ex Serviceman (Re-employment in Central Civil Services and Posts)



Rules, 1979, which reads as under:-

“6A. Lower Standard for Selection

In the case of direct recruitment, if sufficient number of candidates belonging to the ex-servicemen are not available on the basis of general standard to fill all the vacancies reserved for them, candidates belonging to the category of ex-servicemen may be selected under a relaxed standard of selection to make up the deficiency in the reserved quota subject to the condition that such relaxation will not affect the level of performance by such candidates.”

6. Learned counsel for the petitioner contends that the standard should have been lower/relaxed and the respondents should have prescribed a lower standard for filling up the vacancies. This he contends on the ground that there were only 7 Ex-servicemen candidates, who were shortlisted for the 4 vacancies. He submits that as per his instructions, only one of the 7 has qualified for further round and 6 have not qualified.

7. We are unable to accept the contention of the learned counsel for the petitioner. Rule 6A of the Ex Serviceman (Re-employment in Central Civil Services and Posts) Rules, 1979 categorically states that the candidates belonging to the category of Ex-servicemen may be selected under a relaxed standard of selection provided such relaxation does not affect the level of performance by such candidates. One mode of testing the level of performance of candidates was the written examination where the qualifying marks specified by the respondent was 50%.



8. Admittedly, petitioner did not score the qualifying marks and scored less than qualifying marks. By directing the respondents to further relax the standards and the qualifying marks would imply that the level of performance of such candidates would be required to be lowered which would militate against the said Rule 6A.

9. Further, we may note that petitioner did not impugn the fixation of qualifying marks at 50% for the categories other than SC/ST before participating in the examination. Petitioner had taken the examination on 12.03.2023, result was declared on 24.03.2023 and for the first time, petitioner raised this grievance on 28.03.2023 by giving a representation to the respondents.

10. It is settled proposition of law that the candidate, who has participated in the selection process, cannot impugn the conditions of the selection process after being declared unsuccessful. If petitioner had a grievance with regard to fixation of the qualifying marks for the unreserved category, petitioner should have impugned the same prior to participating in the selection process. Having participated and being unsuccessful, a challenge on behalf of the petitioner to the selection criteria cannot be sustained.

11. Supreme Court in ***Tajvir Singh Sodhi & Others v. State of Jammu and Kashmir and Others***: 2023 SCC OnLine SC 344 held that “it is therefore trite that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate



and reprobate at the same time.”

12. In view the above, we find no merit in the petition. Petition is, consequently, dismissed.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

JULY 21, 2023
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