



CWP No.1925 of 2024

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

CWP No.1925 of 2024

Decided on :22.07.2024

Kushal Singh

.....Petitioner

VERSUS

Union Territory Chandigarh and Ors.

.....Respondents

**CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present: Mr. Shiv Kumar, Advocate for the petitioner.

Mr. Lokesh Chander Aggarwal, Senior Standing Counsel
for respondents-UT.

LISA GILL, J (ORAL)

1 Prayer in this petition is to set aside order dated 19.12.2023 (Annexure P-1) passed by learned Central Administrative Tribunal in OA/528/2020, consequently setting aside order dated 24.04.2020 (Annexure A-1) whereby claim of the petitioner for appointment to the post of Constable has been dismissed.

2 It is stated that petitioner, pursuant to advertisement dated 19.11.2015, applied for the post of Constable under the General category. Advertisement dated 19.11.2015 had been issued inviting applications for 520 posts of Constables with Chandigarh Police with 106 posts for General category (Constable male). Petitioner having participated in the Selection process, it is stated scored 83.75 marks. However his name did not figure in the merit list of candidates who were selected. Waiting list of 25% of vacancies was also prepared in which too petitioner's name was not reflected despite the fact that the last selected/appointed candidate scored 83.75 marks. It is the contention of the petitioner that after



exhausting of waiting list as well, six vacancies still remained unfilled. Therefore, the petitioner having scored 83.75 marks should have been considered for appointment even though his name did not figure even in the waiting list.

3 With the said grievance, present petitioner along with two others filed OA No.528 of 2020 which was dismissed by learned Central Administrative Tribunal, vide impugned order dated 19.12.2023. It was held that the petitioner or other applicants did not figure in the merit list or waiting list which was validly prepared on the basis of Standing Order No.1/15. Therefore, no ground for affording any relief was found.

4 Aggrieved of impugned order dated 19.12.2023, present writ petition has been filed by the petitioner. The other two applicants have chosen not to challenge the impugned order.

5 Learned counsel for petitioner vehemently argued that out of 106 posts which were advertised only 100 posts have been filled, 6 of the posts are still vacant after exhausting the waiting list as well. It is urged that in this situation, petitioner who has scored 83.75 marks i.e. same marks as the last selected candidate in the waiting list, appointment should be afforded to him. Learned Tribunal has not considered this aspect in the correct perspective. Learned counsel for petitioner argued that once vacancies are available and petitioner being the next in overall merit after utilization of waiting list was required to be brought on to the main list and offered appointment. Department it is submitted is duty bound to offer appointment to candidates according to their merit. Once a qualified candidate is available there is no question of keeping the post vacant. Such a course of action is claimed to be a sheer abuse of the selection procedure. It is



thus, prayed that this petition be allowed with impugned order dated 19.12.2023 being set aside and the prayer as addressed in the OA being allowed.

6 Though formal notice of motion has not been issued in this writ petition, respondent-U.T. Administration is represented (on advance notice).

7 Learned counsel for respondents-UT Administration, submits that impugned order has been passed after due consideration of facts and circumstances of the case and calls for no interference whatsoever. The posts in question have been re-advertised in the year 2023. It is thus prayed that this writ petition be dismissed.

8 We have heard learned counsel for the parties and have gone through the file with their able assistance. However, we do not find any ground to interfere in this writ petition.

9. It is a matter of record that petitioner's name did not figure in the select list of candidates prepared pursuant to selection process in question. Selection list as well as waiting list was prepared in terms of Standing order No.1/2015 in respect to recruitment of male and female constables (Executive) in Chandigarh Police. It is clearly provided in Clause 25 of the said standing order that waiting list of candidates shall be prepared upto 25% of number of vacancies advertised subject to candidates having obtained the minimum cut off marks for their category. Method of Resolution of Ties in case of two candidates of the same category securing same marks is provided in Clause 26. Clause 25 and 26 of standing order No.1/2015 read as under:-

'25. WAITING LIST

In any recruitment, whenever felt desirable and necessary, at the time of the declaration of Merit List, a Waiting List of candidates



shall also be announced for each category and gender on the lines of Para 24.1 to 24.3, up to 25% of the number of vacancies advertised subject to having obtained, the minimum cut-off marks for their category as in para 23. In case candidates higher up in the merit list (category-wise) do not make it through the medical examination or police verification; or are unable to Join the training due to personal reasons or other exigencies, candidates of the same category from the waiting list can be appointed in the order of merit. The waiting list shall be valid for a period of three months from the date on which the candidature of any of the candidates in the main list is rejected on grounds of medical fitness, antecedent verification or any other ground of till the next recruitment for the same post is advertised, whichever is earlier. However, the total number of candidates selected in any recruitment shall not exceed the number of vacancies initially advertised.

26. RESOLUTION OF TIES:

In case of two or more candidates of the same category and gender obtain the same marks in the written examination; the following principles shall be applied one after another in the following manner till the tie is resolved:

26.1. Firstly by date of birth, the older candidate getting advantage.

26.2. Secondly by height (In PE&MT), the taller candidate getting advantage.

26.3. Thirdly by educational qualification, higher education getting advantage.'

10 By virtue of application of the criteria and Clause 27, present petitioner though having scored 83.75 marks was not reflected in the waiting list. Validity of the waiting list is admittedly for a limited period. Moreover, in the present case petitioner was not even a part of the waiting list which comprised of 25% of total advertised posts. Argument raised by learned counsel for the petitioner that present petitioner who had scored 83.75 marks should have been



subsequently included in the waiting list and thereafter offered appointment is totally devoid of merit and completely unsubstantiated, hence rejected.

11. It is pertinent to note that even in the case of a candidate who may be figuring in the waiting list is not vested with a right to seek appointment. A successful candidate does not acquire any indefeasible right to be appointed. It has been held by the Hon’ble Supreme Court in ‘The State of Karnataka & Ors. Vs. Smt. Bharathi S.’, 2023 AIR (Supreme Court) 2792, that the duty to fill up vacancies from waiting list can arise only on the basis of a mandatory rule and in the absence of such mandate, decision to fill all vacancies from waiting list is left to the wisdom of State which though cannot act arbitrarily. No such arbitrary exercise by the State has been pointed out. In the present case as noted in the foregoing paras, petitioner did not even figure in the waiting list.

12 Learned counsel for petitioner is unable to point out any illegality, infirmity or perversity in the impugned order which calls for interference. No other argument has been addressed.

13 Keeping in view the facts and circumstances as above, this writ petition is dismissed being devoid of any merit.

(LISA GILL)
JUDGE

(SUKHVINDER KAUR)
JUDGE

22.07.2024

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No