

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

(223)

CWP-2701-2022

Date of decision: - 21.02.2024

Atul and another

....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. R.S. Dhull, Advocate
for the petitioners.

Mr. Amandeep Joshi, DAG, Haryana.

VIKAS BAHL, J. (ORAL)

1. This is a petition under Article 226/227 of the Constitution of India for the issuance of an appropriate writ, order or direction, especially in the nature of certiorari for quashing the impugned final result dated 31.12.2021 (Annexure P-8) vide which the petitioners have not been included in the final select list. A further prayer has been made for issuance of a writ in the nature of mandamus directing the respondents to provide 5 marks to the petitioners on account of their height.

2. Learned counsel for the petitioners has submitted that earlier an advertisement dated 11.02.2016 (Annexure P-1) was issued by the Haryana Staff Selection Commission inviting applications for the post of Constable (Male) for Commando Wing. It is further submitted that the said advertisement was withdrawn vide notice dated 21.06.2017

(Annexure P-2) and thereafter, a fresh advertisement No.2/2021 (Annexure P-3) was issued by the Haryana Staff Selection Commission on 09.06.2021, inviting applications for direct recruitment for 520 posts of Male Constable in Commando Wing (Group-C). It is stated that petitioner No.1-Atul had applied under the SC category and petitioner No.2-Mohit Kumar had applied under the BCA category and had scored 61.8 marks and 66.6 marks, respectively, whereas, the cutoff with respect to the SC category was 66.2 marks and for the BCA category was 70.4 marks. It is further stated that in case five marks with respect to height of the petitioners are granted to them, then, they would come in the selection zone. For the said purpose, learned counsel for the petitioners has submitted that the advertisement (Annexure P-3) should be read along with the advertisement (Annexure P-1) and that a reading of the said two advertisements together would show that the petitioners who belonged to the SC and BCA categories were required to be given a relaxation of 2 cm in height and chest and once the said relaxation had been given, then, the petitioners should have also been given five marks as were given to the candidates, whose height was 175 cm. It is further submitted that the height of petitioner No.1-Atul is 173.9 cm and that of petitioner No.2-Mohit Kumar is 173.1 cm and the said height was within 2 cm of 175 cm, thus, entitling the petitioners to the said relaxation and five marks.

3. Learned State counsel has opposed the present writ petition and has submitted that petitioners have completely misconstrued the advertisement (Annexure P-3), inasmuch as, as per the said advertisement, it is clear that only a relaxation of 2 cm in height and chest

was to be given to the SC/ST and BC category, which had been given in the present case, on account of which the petitioners have not been eliminated, but there was no provision, which provided for giving five marks to the petitioners whose height was less than 175 cm. It is stated that the earlier advertisement which was withdrawn is irrelevant and it is only the advertisement (Annexure P-3) which is relevant as it is under the said advertisement under which the petitioners had applied and the selection had been made. It is further stated that since both the petitioners got lesser marks than the last selected candidates in their respective categories and also to the persons in the waiting list, thus, the petitioners have not been selected. It is argued that the petitioners never challenged the advertisement (Annexure P-3) before participating in the same and thus, are estopped from challenging the terms of the said advertisement, after having participated in the same and after having remained unsuccessful. It is further argued that as the last selected candidates have not been made parties, thus, the present writ petition deserves to be dismissed on the ground of non-joinder of the necessary parties also.

4. This Court has heard learned counsel for the parties and has gone through the paper-book.

5. It is not in dispute that petitioner No.1 applied under the SC category and petitioner No.2 had applied under the BCA category and petitioner No.1 had got 61.8 marks, whereas, cutoff marks of the last selected candidates in the said category was 66.2 and in the waiting list cutoff was 65.6 marks. Petitioner No.2-Mohit Kumar had scored 66.6 marks, whereas, the cutoff of the last selected candidate under the said

category was 70.4 marks and for waiting list cutoff was 69.2 marks. It is also not in dispute that the height of petitioner No.1-Atul was 173.9 cm and that of petitioner No.2-Mohit Kumar was 173.1 cm and on account of the note given in the advertisement dated 09.06.2021 (Annexure P-3), the petitioners were not eliminated from the further selection process although their heights were less than 175 cm. The relevant portion of the advertisement (Annexure P-3), which is sought to be highlighted by both the learned counsel for the petitioners as well as learned State, is reproduced herein-below: -

“2.3 Criteria for Selection, Examination & Syllabus.

a) Physical Measurement :-

<i>PMT-Height (Advantage Score)</i>	
<i>Height</i>	<i>Marks</i>
<i>175 CM</i>	<i>05</i>
<i>Above 178 CM</i>	<i>06</i>
<i>Above 181 CM</i>	<i>08</i>
<i>From 184 CM and above</i>	<i>10</i>

Note:- Candidates less than 175 CM would not be qualified.

i) Chest:- 83 cms plus a minimum expansion of 4 cm.

Note:- Candidates having chest measurement less than 83 CM would not be qualified.

(Relaxation of 2 cms in Height and Chest will be given only to SC/ST and BC category candidates. No such relaxation is available to EWS category candidates).

ii). The candidates who fail to meet the standards prescribed for Physical Measurement Test (PMT) shall stand eliminated from further selection process.

iii). Only the candidates who qualify the standards prescribed for Physical Measurement Test (PMT) shall take part in the further process of Selection.”

A perusal of the above would show that a candidate having

175 cm height was to be awarded 05 marks and a candidate whose height was above 178 cm, was to be awarded 06 marks and similarly, a candidate whose height was more than 181 cm was to be awarded 08 marks and so on. The note under point No.2.3(a) clearly specified that the candidates whose height was less than 175 cm would not be qualified and that the candidates whose chest measurement was less than 83 cm would also not be qualified. It is under the said note that there was a provision for relaxation of 2 cm in height and chest, which was to be given to the SC/ST and BC category candidates. It was specifically stated that the candidates who failed to meet the standards prescribed of Physical Measurement Test (PMT), shall stand eliminated from further process of selection and that only the candidates who qualified the standards prescribed of Physical Measurement Test (PMT) shall take part in the further process of selection. Thus, a reading of the said advertisement clearly shows that the limited relaxation that was to be provided to the candidates belonging to the SC/ST and BC categories (up to the extent of 2 cm in height and chest) was to save them from elimination. There was no provision for providing the petitioners five marks as advantage score in case their height was less than 175 cm. Thus, the respondent authorities as per the said advertisement were not to eliminate the petitioners even if the height of the petitioners was above 173 cm, but were required to consider their score and in case their total scores were more than the cutoff marks, then, the petitioners would have been considered in the selection zone. It is not in dispute that the present selection process had taken place in pursuance of the said advertisement (Annexure P-3) and

the petitioners had duly participated in the selection process in pursuance of the said advertisement and had never challenged the said advertisement or any of the terms of the said advertisement prior to participating in the said selection process. Even in the present writ petition, no challenge has been laid to the terms of the advertisement (Annexure P-3) and thus, the petitioners are estopped from raising arguments contrary to the terms and conditions of the advertisement (Annexure P-3).

7. The argument of the learned counsel for the petitioners to the effect that the advertisement (Annexure P-3) should be read along with advertisement (Annexure P-1) dated 11.02.2016, in which, it was specifically mentioned that the reserve category candidates whose height was from 172-175 centimeters, would be given 11 marks, is misconceived and cannot be accepted. It is not in dispute that the advertisement (Annexure P-1) was withdrawn, vide letter dated 21.06.2017 (Annexure P-2) by the Haryana Staff Selection Commission and no challenge was made to the said aspect of withdrawal. Every selection is governed by the terms and conditions as stipulated in the advertisement and the terms and conditions of a particular advertisement cannot be supplemented/supplanted by the terms and conditions of another advertisement. In the first advertisement dated 11.02.2016 (Annexure P-1), the respondent authorities deemed it appropriate to grant 11 marks to the reserve category candidates with height from 172-175 cm, whereas, in the second advertisement (Annexure P-3), the respondent authorities had chosen to limit the relaxation with respect to the height and chest of the SC/ST and BC category candidates only for the purpose of saving them

from elimination and no additional marks on account of the same had been awarded. The said terms and conditions have been followed for all the persons who have been selected and thus, no fault can be found in the action of the respondent authorities. Additionally, the selection process is over and even the last selected candidates have not been made parties.

8. Keeping in view the above-said facts and circumstances, the present writ petition is meritless and deserves to be dismissed and is accordingly dismissed.

February 21, 2024
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(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes