

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

112

CWP-23602-2016 (O&M)
Date of Decision : 25.04.2024

GURMEET SINGH

... PETITIONER

Versus

STATE OF PUNJAB AND ORS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Anil Kumar Bhardwaj, Advocate and
Mr. Kuldeep Sharma, Advocate
for the petitioner.

Mr. Aman Dhir, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking directions to the respondents to appoint him on the post of Constable.
2. The petitioner is an Ex-serviceman. He, pursuant to an advertisement dated 31.05.2016, applied for the post of Constable with Punjab Police. The last date to file application was 21.06.2016 and he applied on 18.06.2016. At that point of time, he was working with Indian Army, thus, he obtained 'No Objection Certificate' (NOC) dated 14.06.2016 from the competent authority. The petitioner was initially not selected, thus, he did not apply for discharge certificate. After some litigation, the respondent issued final list dated 20.05.2017. The petitioner received a call from respondent on

08.06.2017 for medical examination. He sought leave from the Army and appeared for medical examination on 15.06.2017. The respondent formed an opinion that 21.06.2017 is last date to join, however, he was not informed about the said date, thus, he did not apply before the said date to his parent department for discharge certificate. He applied for discharge certificate on 29.06.2017 and was issued said certificate on 31.03.2018. The respondent waited for him for a quite long time and finally vide order dated 02.03.2018 passed by Commissioner of Police, Ludhiana, cancelled his candidature on the ground of non-joining.

3. Mr. Anil Kumar Bhardwaj, Advocate submits that there was no fault on the part of petitioner. He was initially not selected, thus, he could not apply for discharge certificate. He applied for discharge certificate on 29.06.2017 and there was delay on the part of Indian Army. Discharge certificate came to be issued on 31.03.2018. He has left his parent department and respondents are not permitting him to join, thus, he has lost opportunity to serve with Indian Army as well as Punjab Police. He requested for extension of time till 01.05.2018 and respondent did not consider his request.

4. Per contra, Mr. Aman Dhir, DAG, Punjab, submits that the petitioner was finally selected on 20.05.2017. He was called for medical examination. He appeared for medical examination on 15.06.2017 which indicates that he came to know about his joining within reasonable time. The date of discharge by Indian Army was 31.03.2018 and this fact was very well known to him. He applied for the post on 18.06.2016 whereas his date of discharge was 31.03.2018. As per Punjab Recruitment of Ex-servicemen Rules, 1982 (for short, '1982 Rules'), a person working with Armed Forces may apply for re-employment one year before the completion of specified terms of engagement.

The engagement of petitioner was till 31.03.2018, thus, he could not even apply on 18.06.2016. He in his application form had disclosed that his date of relieving is 03.01.2017 whereas his date of discharge was 31.03.2018.

5. I have heard the arguments of learned counsel for the parties and perused the record with their able assistance.

6. The conceded position emerging from the record is that the petitioner applied for the post of Constable on 18.06.2016 and on the said date, he was working with Indian Army. In the application form, he disclosed that his date of relieving is 03.01.2017. He got NOC from his parent department on 14.06.2016. The respondent prepared final list on 20.05.2017. The name of petitioner figured in the final list dated 20.05.2017. The petitioner was medically examined on 15.06.2017 and he applied for discharge certificate to Army on 29.06.2017. The discharge certificate was issued on 31.03.2018. The petitioner sought extension on 09.08.2017. He was seeking extension till 01.05.2018. For all purposes on the said date, he came to know that he has been selected. He applied to his parent department for discharge certificate on 29.06.2017 and ultimately received said certificate on 31.03.2018. The respondent multiple times called on his mobile Nos. 8119978450 and 7986372051.

7. The petitioner as per Explanation of Rule 2(c) of 1982 Rules could apply one year before the completion of specified terms of engagement. The relevant extracts of Rule 2(c) of 1982 Rules are reproduced as below:

“(c) "Ex-serviceman" means a person who has served in any rank, whether as a combatant or a non-combatant, in the Naval, Military and Air Forces of the Union of India

(hereinafter referred to as the Armed Forces of the Union of India), and who has,-

- (i) retired or released from such service at his or her own request after earning his or her pension; or*
 - (ii) has been released from such service on medical grounds attributable to military service or circumstances beyond his control and awarded medical or other disability pension; or*
 - (iii) been released, otherwise than on his own request, from such service as a result of reduction in establishment; or*
 - (iv) been released from such service after completing the specific period of engagement otherwise than at his own request or by way of dismissal or discharge on account of misconduct or inefficiency, and has been given a gratuity;*
- But does not include a person who has served in the Defence Security Corps, the General Reserve Engineering Force, the Lok Sahayak Sena and the Para Military Forces, but includes personnel of the Lok Sahayak Sena of the following categories, namely:-*

- (i) pension holders for continuous embodied service.*
- (ii) persons with disability attributable to military service; and*
- (iii) gallantry award winners.*

Substituted vide Notn. No. GSR 9/Const./Arts.309,234 amd 318/Amd(5)/20036.11.2002 @Substituted vide Notification dated 22.9.1992 and 2002

Explanation. - The persons serving in the Armed Forces of the Union who on retirement from service would come under the category of 'Ex-serviceman' may be permitted to apply for re- employment one year before the completion of the specified terms of engagement and avail themselves of all concessions available to Ex- servicemen but shall not be permitted to leave the uniform until they complete the

specified terms of engagement in the Armed Forces of the Union: and”

[Emphasis supplied]

From the perusal of explanation of above-quoted Rule, it is evident that an Ex-serviceman even prior to his date of retirement may apply for the post. The gap between the date of application and completion of his terms of engagement should not be more than one year. The respondent has given concession/leverage to serving officers to apply, however, their term must complete within one year from the date of application.

8. The petitioner was medically examined on 15.06.2017 and he applied for discharge certificate on 29.06.2017. He applied for extension on 09.08.2017. Though no formal order of extension was passed by respondents, however, they impliedly extended date of joining which is evident from the fact that order of cancellation of appointment was passed on 02.03.2018. The Director General of Police, Punjab has issued instructions dated 07.02.2017 whereby it has been provided that in no case extension beyond 04 months can be granted for joining. The relevant extracts of instructions dated 07.02.2017 are reproduced as below:

“.....If, however, within the period stipulated, a request is received from a candidate for extension of the joining time, it may be considered by the DIG/Admn who upon his satisfaction, an extension for a limited period may be granted but the total period including the extensions during which the offer of appointment will be kept open, is not to exceed a period of four months. The candidates who join within the above period of four months will have their seniority fixed under the seniority rules applicable to the service/post

concerned to which they are appointed without any deterrent to their seniority.

4. In case of serving ex-servicemen candidates your attention is invited to this office memo no. 15645-88/E-1 (4) dated 07.11.2016 and it is clarified that all persons serving in Armed forces can apply one year before the completion of the specified terms of engagement. As the date of filling of application forms for District and Armed cadre (Constables) was from 31st May, 2016 to 21st June, 2016, therefore, any candidate belonging to ex-servicemen category is permitted to join police service at the unit where he stands selected by 21.06.2017. Any candidate who informs the department his incapability to join within the stipulated date should not be considered. But speaking order be passed and the vacancy be declared as vacant.”

9. The petitioner has not assailed instructions dated 07.02.2017 issued by DGP. This Court does not find these instructions ultra-virus, thus, cannot ignore. As per instructions, the petitioner was bound to join by 21.06.2017 and relaxation beyond 04 months could not be granted. The claim of petitioner fails on the ground of these instructions. In any case, no selected candidate can ask employer to wait his joining as per his convenience and suitability.

10. The petitioner was not initially selected, however, he was finally selected on 20.05.2017 and medically examined on 15.06.2017. He was asked to join on 21.06.2017. This Court can ignore his joining on the said date, however, he could not get discharge certificate even by the date of passing of impugned order. Had the petitioner received discharge certificate prior to passing of impugned order, his case could be considered. The respondent had acted in a fair, sympathetic and reasonable manner. The respondent waited

joining of petitioner till 01.03.2018 and left with no option, passed impugned order of cancellation of appointment.

11. In the wake of above discussion and findings, the present petition deserves to be dismissed and accordingly dismissed.

12. Pending miscellaneous application, if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

25.04.2024
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>