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

CWP-23346-2021 (O&M)
Date of decision: 13.09.2024

Rahul

...Petitioner.

Versus

State of Haryana and others

...Respondents.

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Jasbir Mor, Advocate for the petitioner.

Ms. Palika Monga, DAG, Haryana,
for respondent Nos.1 to 5.

Mr. Parvesh K. Saini, Senior Panel Counsel,
for respondent No.6-UOI (through VC).

Respondent Nos.7 to 15, 17, 19 to 28, 31 to 33
proceeded *ex parte* vide order dated 03.12.2021.

CWP *qua* respondent Nos.16, 18, 29, 30 & 34
withdrawn vide order dated 10.10.2023.

Mr. Parveen Sharma, Advocate,
and Mr. Rajbir Singh, Advocate,
for respondent No.35.

MAHABIR SINGH SINDHU, J.

CM-18264-CWP-2022

Application for placing on record replication to the reply
filed on behalf of respondent Nos.1 to 3 is allowed as prayed for, subject
to all just exception.

Registry to do the needful.



CM-4011-CWP-2023

Application for preponing the date of hearing in the main case.

Learned counsel for the applicant/petitioner, on instructions, does not press the instant application and submits that the same be disposed off, as such.

Ordered accordingly.

CM-12980-CWP-2024

Application for placing on record Annexures P-39 & P-40 and exemption from filing certified copies of the same is allowed as prayed for, subject to all just exceptions.

Registry to do the needful.

CM-13219-CWP-2024

Application for placing on record the Application Form; Battle Casualty Certificate; and Eligibility Certificate as Annexures R-35/1, R-35/2 & R-35/3, respectively, is allowed as prayed for, subject to all just exceptions.

Registry to do the needful.

Main case

Present writ petition has been filed under Article 226 of the Constitution, *inter alia*, with the following prayer:-

- (i) Issue a writ in the nature of mandamus directing the respondent Commission to consider the petitioner under Dependent of Ex-servicemen disabled category (beyond 50% disability) in general category for selection and appointment on the post of Sub Inspector (Male) of Police against the advertisement no.3/2021 dated 15.6.2021 (Annexure P/1), category no.1, and



place the petitioner in the merit list/result dated 31.10.2021 (Annexure P/22) at the appropriate place under the ESM category (ESM-Disabled) as he secured more marks (57.00 marks) to the last selected candidate with 35.2 marks under his ESM/DESM Disabled- General category on the post of Sub Inspector and further recommend the name of the petitioner for appointment on the aforesaid post to the police department under ESM-Disabled (Gen.) Category as the petitioner is entitled for preference and selection in view of note 12 of the advertisement dated 15.06.2021 (Annexure P/1) being the dependent of beyond 50% disabled ex-servicemen [who suffered Battle casualty (Annexure P/4) during OPERATION PAWAN at Sri Lanka], and boarded out of the service on account of his disability, and also duly explained by respondent no.5 vide letter dated 16.09.2021 (Annexure P/29);

- (ii) issue any other appropriate order or direction which the Hon'ble High Court may deem fit and proper in the peculiar facts and circumstances of the case.

2. **Brief facts:**

2.1 Haryana Staff Selection Commission (for short, 'Commission'), issued an advertisement No.3/2021 dated 15.06.2021 (P-1) for recruitment of 400 posts of Sub Inspector (Male) and 65 posts of Sub Inspector (Female) under Group C, for Police Department, Haryana. For reference, the break-up of 400 posts of Sub Inspector (Male) is recapitulated as under:-

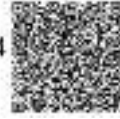
"2.1 Details of Posts & Qualifications"

POLICE DEPARTMENT, HARYANA

Cat. No. 1 400 Posts of Sub-Inspector (Male) (Re-advertised)

Gen=144, SC=72, BCA=56, BCB=32, EWS=40, ESM-

GEN=28, ESM-SC=8, ESM-BCA=8, ESM-BCB=12)"



2.2 Apart from physical parameters, the educational qualifications for the above posts, which is not in dispute, would be as under:-

“Educational Qualifications for Category No. 1 above:-

- i) *Graduation from a recognized university or its equivalent.*
- ii) *Matric with Hindi or Sanskrit as one of the subject or higher;”*

2.3 Criteria for selection/examination and syllabus has been stipulated under Clause 2.3 of the advertisement. Under this clause, certain weightage were provided under different heads which are not relevant for adjudication of the matter in controversy.

2.4 Under Clause 2.4 of the advertisement, a Note is appended and relevant paragraphs of the same read as under:-

“Note:-

1 to 11.

12. For Disabled ESM/Dependent of Killed/Disabled in action reservation will be as per Haryana Govt. instructions contained in letter No. 945-GS-II 72/6451, dated the 6th March, 1972. The reservation for ESM will be utilized in the order given below:

- i. *Disabled ex-servicemen with disability between 20% to 50%.*
- ii. *Up to two dependents of Service personnel killed/disabled beyond 50%*
- iii. *Other ex-servicemen.*

Note:- *Such benefit is not allowed to the ex-Serviceman and their dependents who is released in the normal course after the completion of their terms and is available to those who are boarded out of service by the defence department on account of their disability (vide Govt. Circular letter No. 8047-4GSII-73/1549, dated 21st January 1974.)*

13. Disabled ex-servicemen will mean ex-servicemen who, while serving in the Armed Forces of the Union were disabled in operations against the enemy or in disturbed areas.



14. *The dependents will include besides wife/widow, dependent sons/daughters. The dependents of ESM who fulfil all conditions of qualifications, age, etc. prescribed for posts will be considered on merit for the posts reserved for ESM to the extent of non-availability of suitable ESM candidates.*

15. *DESM candidates of Haryana claiming benefit must have valid eligibility certificate on last date of submission of online application form, upload the same with application form and will have to produce the valid Eligibility Certificate from the concerned Zila Sainik Board when called upon to do so by Haryana Staff Selection Commission. Mere dependent certificate will not be entertained. ESM candidates should also produce attested photo copy of Identity Card issued by concerned Zila Sainik Board & Discharge Book whenever required.”*

2.5 Clause 3.1 of the advertisement talks about documents to be uploaded with the application form; whereas Clause 3.2 talks about scrutiny of documents. For reference, both these clauses are recapitulated as under:-

“3.1 Documents to be uploaded with Application Form

- 1. Scanned Copy of Essential Academic Qualifications i.e. Matriculation Certificate showing Date of Birth and other relevant details.*
- 2. Scanned Copy of SC/BCA/BCB/EWS/ESM/DESM/DFP certificate along with Haryana domicile Certificate issued by competent authority.*
- 3. Scanned copy of Certificate claiming weightage/marks under socio-economic criteria and experience along with Haryana domicile Certificate issued by competent authority.*
- 4. Scanned Photo duly signed by the Candidate.*
- 5. Scanned signatures of the Candidate.*
- 6. Scanned copy of all documents showing higher qualification, experience etc. on which basis candidate claim marks.*
- 7. Documents which are uploaded shall be considered at the time of scrutiny.*

3.2 Scrutiny of Documents:- Only those document which are uploaded by the candidates shall be considered. If there is any variation in the document uploaded and produced at the time of scrutiny, candidature



shall be liable to be cancelled. If any application is found without uploading requisite supporting documents and other relevant information, the candidate himself/herself shall be responsible for that and his/her candidature would be liable to be cancelled due to lack of proper or correct documents/information.”

2.6 Petitioner completed his Bachelor of Science (Hons. Course) in the year 2015 and Master of Science – Operational Research in June 2017, respectively, from University of Delhi. Therefore, considering himself eligible for the post of Sub Inspector (Male), he applied for consideration being the ‘Dependent of Ex-servicemen disabled beyond 50%’ in terms of Haryana Government Instructions dated 06.03.1972 as mentioned in para 12 of the Note appended under Clause 2.4 of the advertisement.

2.7 Father of the petitioner suffered injuries from a rocket launcher during military operation (Operation Pawan) in the year 1995 (Sri Lanka), and his both hands were damaged, resulting into permanent disability to the extent of 90% and consequently, he was discharged from the Army Service.

2.8 Petitioner was issued Roll No.3211004777 under General-Dependent of Ex-servicemen (Killed in Action/disability beyond 50%). Written test for the post in question was held on 26.09.2021; PST (Physical Screening Test) on 23.10.2021; and PMT (Physical Measurement Test) on 25.10.2021. Final result was declared on 31.10.2021. Last selected candidate, namely, Siddharth Singh-respondent No.35, under DESM-Disabled category secured 35.2 marks; whereas, under ESM General category, last selected candidate got 58.4 marks. Petitioner secured **57 marks**.



2.9 Petitioner has been denied the right of consideration under DSM (Disabled) on the premise that he did not attach a valid certificate at the time of filling the application form; hence, he has been considered in General ESM category.

3. **Contentions on behalf of the petitioner:**

3.1 It is contended by learned counsel for the petitioner that reservation for ESM is to be utilized in the following order of preference:-

- i. Disabled ex-servicemen with disability between 20% to 50%.
- ii. Up to two dependents of Service personnel killed/disabled beyond 50%
- iii. Other ex-servicemen.

3.2 Further contends that father of petitioner suffered 90% disability on account of the injury suffered by him on 01.06.1989 due to 'Blast Injury Both Hands' by Rocket Launcher during Operation Pawan and he was issued casualty certificates dated 18.11.1995/25.06.2021 & 07.08.2021 (P-4 & P-28, respectively).

3.3 Specifically contended that petitioner was issued eligibility certificate dated 18.11.1995/25.06.2021 (P-4) by the District Sainik and Ardh Sainik Welfare Officer, Charkhi Dadri. Again contended that during scrutiny of documents, petitioner was shown under General-Dependent of Ex-servicemen (killed in action, disability beyond 50%) and that was duly verified by the authorized officer of the Commission on 25.10.2021. But despite that, he has been denied the valuable right of consideration and as a result thereof, respondent No.32 was selected



& appointed; and he usurped the post meant for petitioner due to the illegalities committed by the Commission.

3.4 Lastly contended that action of the respondent-Commission is in violation of Articles 14 & 16 of the Constitution; hence writ petition deserves to be allowed.

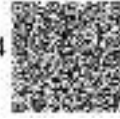
4. **Contentions on behalf of the respondents:**

4.1 *Per contra*, learned State counsel vehemently opposed the prayer while submitting that petitioner did not attach the requisite eligibility certificate meant for Dependent of Ex-servicemen (disabled beyond 50%), rather he simply attached the certificate being dependent of an Ex-serviceman. Thus, Commission has rightly considered the petitioner being dependent of ESM. While supporting the above contention, learned State counsel has made a reference to the eligibility certificate appended by respondent No.35, which indicates him as 'dependent of ESM (disabled beyond 50%)'.

4.2 Further submitted that action of the respondent-Commission is perfectly in consonance with the Haryana Government instructions dated 06.03.1972, as well as the advertisement (P-1), hence does not warrant any interference by this Court while exercising jurisdiction under Article 226 of the Constitution.

4.3 Learned counsel for respondent No.35 has also supported the pleas raised by learned State counsel and prays for dismissal of the writ petition.

5. Heard parties at length and perused the original records produced by the Commission.



6. **Findings and Observations**

6.1 It transpires that on 17.11.2021, the then Coordinate Bench while issuing notice of motion, passed the following order:-

“Learned counsel inter alia contends that selection to the post of Sub-Inspector (Male) in Haryana Police for the dependent’s of disabled ex-servicemen has been made in derogation of the instructions contained in letter No.945-GS-II-72/6451 dated 06.03.1972.

Notice of motion.

Mr. Tapan Kumar, DAG, Haryana accepts notice on behalf of respondent Nos.1 to 5.

Issue notice to respondent Nos.6 to 35 for 03.12.2021.

Dasti only.

In the meantime, selection, if any made would be subject to the outcome of the writ petition.”

6.2 As already noticed, despite service, none appeared on behalf of respondent Nos.7 to 15, 19 to 28 & 31 to 33; therefore, they were proceeded against *ex parte*; whereas, writ petition qua respondent Nos.16, 18, 29, 30 & 34 was not pressed.

6.3 As per Instructions dated 11.10.2001, issued by the Secretary, Rajya Sainik Board, Haryana vide letter No.50/4/96-SE-I/RSB, an eligibility certificate is to be issued simplicitor as per the proforma (Appendix C) attached therewith to the Ex-servicemen/their dependents for employment by Zila Sainik Board. In the said proforma, there is no such column to the effect that any exclusive certificate is to be issued for the category of Dependent of ESM (Disabled). Thus, the Eligibility Certificate attached by the petitioner at the time of filling the online application was valid and moreover, he cannot be penalized, if at all, there is any fault on the part of the issuing authority. Apart that, even



respondent No.4-Sainik Board in their reply have acknowledged that there is no such provision to issue an Eligibility Certificate as Dependent of ESM (Disabled).

6.4 Since entire controversy is substantially based on the construction of Government Instructions dated 06.03.1972, therefore, the same are extracted here as under:-

“English version of circular letter No. 945-GS-II-72/6451, dated the 6th March, 1972 from the Chief Secretary to Govt., Haryana to all Heads of Departments etc.

ENGLISH VERSION OF THE SUBJECT MATTER

Subject :— Rehabilitation of disabled ex-service personnel and dependents of those killed/disabled in action.

I am directed to refer to Haryana Govt., letter No. 4741-4-GS-II-71, dated 13-9-71 and to say that the question of the rehabilitation of disabled ex-service personnel (disability between 20% to 50%) and dependents of personnel killed/ disabled beyond 50% had been under consideration, and it has been decided as follows:—

(a) Reservation

The existing reservation in respect of civil posts for ex-servicemen should be utilized in the under given below:—

- (i) disabled ex-servicemen with disability between 20% to 50%.*
- (ii) Up to two dependents of Service personnel killed/disabled beyond 50%.*
- (iii) other ex-servicemen.*

Note:— Disabled ex-servicemen will mean ex-servicemen who, while serving in the Armed Forces of the Union, were disabled in operations against the enemy of in disturbed areas.

Note 2:— The dependents will include besides wife/widow, dependent sons/daughters.

(b) Maximum age limits

The maximum age limit prescribed for appointment to any service or post may be relaxed in favour of disabled ex-servicemen (disability between 20% to 50%) to the extent of their military service added by three years. In respect of the wife/ widow, the maximum age limit will be 45 years. In the case of dependent sons/ daughters



relaxation in age may be given as considered appropriate by the appointing authority.

(c) Procedure for appointment

(i) Class III and IV posts

As and when a vacancy reserved for ex-servicemen arises, intimation will be sent to the employment Exchange (Special Cell for employment of Ex-servicemen) by the appointment authority. It will be indicated therein that only names disabled servicemen (disability between 20% to 50%) and the dependent of those killed/ disabled beyond 50% in action should be recommended for that post. The appointing 362 Compendium of Instructions on Career Development—Vol. IV authority will also intimate to the Employment Exchange the relaxed qualifications, if any, fixed by the appointing authority in that particular case.

If the names of above two categories are not available with the Employment Exchange and the appointing authority has no application of these categories pending with it, then the names of other ex-servicemen will be called for to fill that post.

The appointment of disabled ex-servicemen (disability between 20% to 50%) and of the dependents of those killed/disabled beyond 50% in action will be made on adhoc basis in the first instance and later their cases will be referred to the Haryana Subordinate Services Selection Board for regular appointment.

Class I and II posts

- (iii) For Class I and II posts of which recruitment is not made through competitive examination, the appointing authority while forwarding the requisition to the Haryana Public Service Commission will also forward a copy to the Director, employment, Haryana (special cell for employment of Ex-servicemen). If the names of disabled ex-servicemen (disability between 20% to 50%) and dependents of those killed/ disabled beyond 50% in action are available with the Employment Exchange, then those names will be sent by them to the Haryana Public Service Commission within 10 days. On the receipt of the names from the Director of Employment, the Haryana Public Service Commission will first interview those persons and*

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if any among them is found suitable he will be appointed to the post. In case no name is sent by the Director Employment out of the above two categories, or if out of the names sent by the Director Employment no one is found suitable by the Commission then other ex-servicemen will be considered for the post.
(The procedure for recruitment of other ex -servicemen will continue to remain as at present)

2. It is requested that these instructions may please be brought to the notice of all concerned for strict compliance and the receipt of this letter may also be acknowledged.”

6.5 Perusal of Clause (a) reveals that posts reserved under the ESM category shall be utilized in the following order of preference:-

- (i) disabled ex-servicemen with disability between 20% to 50%.*
- (ii) Up to two dependents of Service personnel killed/disabled beyond 50%.*
- (iii) other ex-servicemen.*

6.6 It is not in dispute that petitioner while submitting his application form specifically claimed to be a candidate under the aforesaid category and for reference, relevant clause of the application form from the original record is extracted as under:-

“Category : General

<i>:: ESM/DFP/DESM</i>
<i>Dependent of Ex-serviceman (Killed in Action/disability beyond 50%): Yes, Certificate No: 157/2021, Issuing Authority: Welfare Officer, Charkhi Dadri, Date of Issue: 25/06/2021, Issued District: Charkhi Dadri</i>

6.7 Also noteworthy that petitioner was issued Roll No.3211004777 under the above category and he duly participated under this category at all stages, i.e. Written as well as PST & PMT. Again

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noteworthy that during scrutiny of documents on 25.10.2021, the authorized officer of the Commission, duly verified the candidature of petitioner under this category and for reference a screen-shot (relevant) of the same from original records is recapitulated as under:-

HARYANA STATE SELECTION COMMISSION
Bays No. 67-70, Sec-2, PANCHKULA

Attendance Sheet for Scrutiny of Documents for the post of Sub-Inspector (BALT) against Advt. No. 232821, Cat. No. 84 of Police Department, Haryana
Place of Scrutiny of documents :- Parade Ground, Sector-3, Panchkula

Inspector :- _____ Date of Scrutiny :- 25/10/2021

Sl. No.	Applicant Name	Category	Age	Marital Status	Education	Qualification	Experience	Physical Fitness	Medical Fitness	Character Reference	Signature	Remarks
1	Sub-Inspector (BALT) (General)	General	25-35	Yes	12th Pass	12th Pass	12th Pass	12th Pass	12th Pass	12th Pass	12th Pass	12th Pass
2	Sub-Inspector (BALT) (General)	General	25-35	Yes	12th Pass	12th Pass	12th Pass	12th Pass	12th Pass	12th Pass	12th Pass	12th Pass
3	Sub-Inspector (BALT) (General)	General	25-35	Yes	12th Pass	12th Pass	12th Pass	12th Pass	12th Pass	12th Pass	12th Pass	12th Pass
4	Sub-Inspector (BALT) (General)	General	25-35	Yes	12th Pass	12th Pass	12th Pass	12th Pass	12th Pass	12th Pass	12th Pass	12th Pass
5	Sub-Inspector (BALT) (General)	General	25-35	Yes	12th Pass	12th Pass	12th Pass	12th Pass	12th Pass	12th Pass	12th Pass	12th Pass

Full Name with Signature of HSSC Official

6.8 Although, learned State counsel as well as respondent No.5 tried to defend the action of the Commission on the premise that Eligibility Certificate of the petitioner was meant only for consideration as Dependent of ESM, but the same is liable to be rejected for the following reasons:-

- (i) As per Instructions dated 11.10.2001 (R-1), Dependent Certificate to Ex-servicemen and/or their dependents for employment is to be issued in a proforma prescribed under Appendix C and for reference paragraph 3 of the above instructions as well as Appendix C are recapitulated as under:-

“3. A format of eligibility certificate is given at Appendix ‘C’ attached.”

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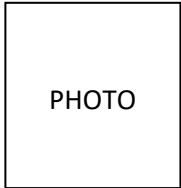


“APPENDIX ‘C’

(Refers to Para 3 of) RSB letter
No.50/4/96-SE-I/RSB.
Dated 11.10.2001.

Serial Number of the Eligibility Register-_____

ELIGIBILITY CERTIFICATE



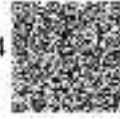
1. Number _____ Rank _____
Name _____ of the Ex-servicemen.
2. Regiment/Unit of the Ex-servicemen _____
3. Address of Ex-servicemen _____
4. Name of the dependent _____ seeking employment.
Regd No. _____
Date of Birth _____
Qualifications _____
5. Specimen Signatures of the Ex-servicemen _____
6. Specimen Signatures of the dependent of ESM _____
7. This certificate is valid only for one year from the date of issue which
will have to be renewed every year on expiry.
8. CERTIFICATES
- (i) Certified that the applicant whose particulars alongwith the particulars
of Ex-servicemen (whose dependent he/she is) are given above is eligible
employment under the State Govt Policy against the quota reserved for
the Ex-servicemen as per Haryana Govt instructions issued from time to
time.
- (ii) It is further certified that the Father/husband of the applicant is not a
State Govt/Central Govt/PSU employee.
- (iii) That this certificate has been issued to only one dependent of the Ex-
serviceman and relevant records maintained in the Zila Sainik Board
eligibility register.
- (iv) That the first eligibility certificate issued to the dependent has been
received in original and entries made in the Register before issue of the
second/third certificate to the only dependent.
- (v) I have personally perused all relevant documents and the affidavits of the
individuals and have satisfied myself for correctness before issuing the
certificate.

Name of the Secretary, ZSB _____

Station _____

with office stamp.

Date _____”



- (ii) From perusal of the aforesaid proforma, it is nowhere discernible that any separate eligibility certificate is to be issued for a person claiming the benefit as Dependent of an Ex-serviceman (Disabled); rather for the sake of repetition, it is specifically observed here that only one eligibility certificate is to be issued for claiming the benefit of reservation as DESM/DESM (Disabled).
- (iii) Despite repeated asking, learned State counsel is not able to show any instructions and/or circular that a separate Eligibility Certificate is to be issued by the Rajya Sainik Board for claiming reservation under Dependent of Ex-servicemen (Disabled) category.

7. **Conclusion**

7.1 In view of the above, this Court is of the considered opinion that respondent-Commission has grossly erred while depriving the petitioner from his lawful claim and as such, negated the Rule of Law.

7.2 The respondent-Commission has shown complete disrespect to 'a soldier wounded in action' while denying the benefit of reservation to his dependent son. The petitioner has been forced to resort avoidable litigation and fighting since November 2021. There is no quarrel that similarly situated candidates are serving for the last about three years as Sub Inspector in Haryana Police.

7.3 As a result of the above discussion, there is no option except to allow the petition.

7.4 Ordered accordingly.

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7.5 Consequently, respondent-Commission is mandated to treat the petitioner as Dependent of an Ex-serviceman (disabled beyond 50%), being duly eligible and proceed further in the matter as per law, without any further delay and necessary exercise be carried out within a period of three (03) months from receipt of certified copy of this order.

7.6 In order to emolliate the miseries of petitioner and as a deterrence for future, the Commission is burdened with exemplary costs of Rs.10,00,000/-(Rupees Ten lakh).

7.7 Costs be paid to the petitioner within 03 months from receipt of certified copy of this order.

Pending application(s), if any, shall also stand disposed off.

13.09.2024
atulsethi

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No