

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

113+251

CWP-25893-2021 (O&M)
Date of decision: 23.04.2024

SUKHDEEP SINGH

....PETITIONER

Vs.

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Sardavinder Goyal, Advocate and
Mr. Sarwinder Goyal,
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 setting aside of order dated 26.08.2021 (Annexure P-8) whereby Senior Superintendent of Police, Bathinda has rejected his claim for issuance of certificate for claiming reservation under the category of 'Wards of Police Personnel'.
2. The petitioner, pursuant to advertisement No. 2/2021 dated 16.07.2021 (Annexure P-1) applied for the post of Constable. By notification dated 11.06.1996 (Annexure R-1), the respondents have reserved 2% posts for wards of deserving policemen.
3. As per said notification, a policeman who has taken part in at least 3 encounters with terrorists, would be considered as deserving policeman and his wards would be eligible for reservation. The relevant extracts of the notification are reproduced as below:-

"2. The Governor of Punjab is pleased to accord sanction to reserve 2% posts for the wards of deserving policemen for

recruitment as Constables, Asstt. Sub-Inspectors and Inspectors out of direct recruitment quota only in respect of active field posts, which were previously meant for handicapped persons:-

The term "deserving" will cover wards of the following police personnel:-

1) Who have suffered casualties of one or more of the following relatives:-

a) Father

b) Mother

c) Sister/Brother

d) Son/daughter

e) Any other dependent family member.

OR

(ii) Who has suffered permanent disability on account of action against terrorists or attack by terrorists.

OR

iii) Who has been awarded president's Police Medal For Gallantry or police Medal for Gallantry for showing bravery in actions against terrorists.

OR

(iv) Who has taken part in atleast 3 encounters with terrorists.

OR

v) Who otherwise in the opinion of the Director General of Police has been in the forefront of the fight against terrorism.

The "Wards" proposed to be covered would be dependent son, dependent daughter, dependent brother, dependent sister or any other dependent family member."

4. The father of the petitioner was a policeman who participated in operations against terrorists. There is no dispute with respect to his participation in two encounters with terrorist. The petitioner claims that his father had participated in three encounters with terrorists whereas respondents are claiming that he had participated in two encounters and his role in third encounter cannot be considered as participation.

5. The petitioner, for the purpose of claiming reservation under the category of 'Wards of Police Personnel', applied for issuance of certificate. The

respondent by impugned order has rejected his claim on the ground that his father did not participate in third encounter.

6. Mr. Sardavinder Goyal, Advocate submits that respondents have failed to consider the intent and purpose of aforesaid notification. The requirement is not to actually participate in the encounter. Everyone, whose name is recorded in FIR which is outcome of an encounter, falls within definition of deserving police personnel. The father of the petitioner did not face terrorist in third encounter, however, his name was recorded in FIR because he was connected with official work of the said FIR. Thus, it cannot be held that father of petitioner did not participate in three encounters with terrorists.

7. Per contra, Mr. Aman Dhir, DAG, Punjab submits that in every encounter, a number of persons directly or indirectly participate. A person, who has not actually participated in the encounter, cannot be considered as deserving police personnel. The petitioner in the case of third FIR was concerned with delivery of documents. Thus, it cannot be said that he had participated in the third encounter with terrorists.

8. I have heard the arguments of learned counsel for the parties and perused the record.

9. The respondent, by notification dated 11.06.1996 framed a policy whereby 2% posts were reserved for the wards of police personnel who participated in three encounters with terrorists. The State by said notification expressed its intention to protect wards of those police personnels who had suffered at the hands of terrorists. The respondent has contemplated different categories of officials who had faced wrath of terrorist. The claim of the petitioner is confined to Clause-IV of Paragraph 2 of the notification. For the sake of convenience and at the cost of repetition, the said Clause is reproduced as below:-

“(iv) Who has taken part in atleast 3 encounters with terrorists.”

10. The respondents to implement aforesaid notification has issued circular dated 12.09.2016 (Annexure P-9) whereby procedure for issuance of certificate has been prescribed. In paragraph 3 of the said circular, it has been provided that in case all the 3 FIRs relating to encounters are registered in the same district, the concerned District Senior Superintendent of Police/Commissioner of Police would be required to certify that the concerned police officer has actually taken part in those encounters. The relevant extracts of the circular dated 12.09.2016 are reproduced as below:-

“3. In order to streamline the cases for grant of 2% reservation in Direct Recruitment to the wards of Police Personnel, the following guidelines are required to be followed:-

xxx xxx xxx

(iv) in cases covered under (iv) above, the following procedure will be followed:

a) In case all the 03 FIRs relating to the encounters with terrorists had been registered in the same district, the concerned District SSP/CP would be required to certify that the concerned Police Officer had actually taken part in those encounters and report the same to the Range DIG and the DIG Range concerned would be the competent authority to issue the certificate to the concerned Police Officer claiming 2% reservation in quota for 'Wards of Police Personnel' the DIG Range will exercise due diligence and caution before issuing such certificate.”

xxx xxx xxx

11. From the conjoint reading of notification dated 11.06.1996 and circular dated 12.09.2016, it is evident that in case of registration of all the 3 FIRs relating to encounters in the same district, it is Senior Superintendent of Police/ Commissioner who has to certify that official concerned has actually taken part in three encounters. In the case in hand, the Senior Superintendent of

Police has reported that father of petitioner actually participated in two encounters with terrorists and in third case, he did not participate in the encounter. His role was confined to delivery of documents.

12. From the perusal of FIR No. 109 dated 11.06.1993, it comes out that police party under the leadership of jurisdictional SSP initiated an operation against terrorists. The father of the petitioner was not present at the time of operation against terrorists. His name is mentioned in FIR at the end and it is simply noted that special report is being sent through constable Gurtej Singh 1941. The name of the petitioner's father is indubitably recorded in the FIR, however, it is very much clear that he was not part of the operation initiated against terrorists. His role was confined to delivery of documents which was post registration of FIR. If the contention of petitioner is accepted, every policemen who was even remotely concerned with operation against terrorists would be eligible to the benefit which has been extended to those brave officials who had fought against terrorists. It would give undue benefit to those people who had not actually participated in operations against terrorists. It would rather amount to discrimination with those officials who had actually participated and faced the consequences of terrorist attack.

13. In the wake of above discussion and findings, this Court does not find substance in the contention of the petitioner. The petition being bereft of merit deserves to be dismissed and accordingly dismissed.

14. Before parting with judgment, it would be relevant to notice that petitioner during the course of argument has pointed out that respondents while filling up vacancies in police department are not complying with mandate of Employment Exchange (Compulsory Notification of Vacancies) Act, 1959. The respondents are duty bound to comply with every statutory provision enacted by competent legislature.

15. Pending miscellaneous application(s), if any, shall also stand disposed of.

23.04.2024
manoj

[JAGMOHAN BANSAL]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No