



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 16th FEBRUARY, 2024

IN THE MATTER OF:

+ **W.P.(C) 7874/2023 & CM APPLs. 30318/2023, 52785/2023**

KAREENA KAUSHIK

..... Petitioner

Through: Mr. Vijay Singh and Mr. Ashwini
Kumar, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Ashok Kumar Kashyap, Sr. Panel
Counsel with Mr. Kabir Kumar
Hazarika, GP for UOI.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has filed the instant writ petition challenging notice dated 10.05.2023 selecting Respondent No.2 as Head Constable/General Duty in Central Reserve Police Force in the sports quota against one vacancy for women in the 56 kg weight category and not selecting the Petitioner, who was an aspirant for the said post.
2. Material on record indicates that an advertisement was issued on 29.10.2022 by the Central Reserve Police Force (CRPF) inviting applications from eligible Indian citizens (Male & Female) for filling up 322 vacancies for non-Gazetted & non-Ministerial posts of Head Constable/General Duty in Group-C category on temporary basis (likely to be made permanent) in the CRPF against the sports quota.



3. For the sports of Wushu, the vacancies for the Men and Women reads as under:-

Sl. No.	Team Event	Vacancies		Total Vacancies	
		Men	Women	Men	Women
24.	Wushu :-				
	Shanshu (48 Kg)	02	01	24	03
	Shanshu (52 Kg)	02	01		
	Shanshu (56 Kg)	02	01		
	Shanshu (60 Kg)	02	---		
	Shanshu (65 Kg)	02	---		
	Shanshu (70 Kg)	02	---		
	Shanshu (75 Kg)	02	---		
	Shanshu (80 Kg)	01	---		
	Shanshu (85 Kg)	01	---		
	Taulu(Nanquan/Nandao/Nangun)	02	---		
	Taulu(Chanquan/Daoshu/Gunshu)	02	---		
	Taulu(Taijiquan/Taijijian)	02	---		
	Taulu(Qiangshu/Jianshu)	02	---		
Total				257	65

4. A perusal of the table indicates that there was one post reserved for Women candidates in each of the categories being under 48 kg, under 52 kg and under 56 kg category. The Petitioner and Respondent No.2 were aspirants for the said category. It is stated that trials were conducted in different centres.

5. Clause 6 of the advertisement gave the procedure by which marks were to be allotted to the aspirants. The Petitioner is a Wushu player who won medals in various National Championships. It was stated that she has won Gold Medals in the 20th and 21st Junior-Youth National Championships in the year 2021 and 2022 held at Punjab and Kerala respectively. She has also won Gold Medal in Khelo India Women Wushu League in Srinagar. She also participated in the Inter-University Games, Patiala and won in the



18th & 19th Junior Wushu Championships held on Chandigarh in 2019 and Haryana in the year 2021.

6. The Petitioner applied to be considered for the post reserved for Women under 56 kg category for the sport of Wushu. It is stated that the selection process under the sports quota was conducted and marks were awarded as per the performances of the various candidates. It is stated that during the trials in the under 56 kg category, the Petitioner defeated a candidate Bulbul Chaudhary in the semi-finals and another candidate Purna in the finals in the under 56 kg category finals and was undefeated which made her eligible for the said post. It is stated that surprisingly Manisha Bhati, i.e., Respondent No.2 herein, who had applied for 52 kg category and had given trials for 52 kg category only, had been selected in the 56 kg weight category.

7. It is the contention of the Petitioner that since Respondent No.2 had applied in the under 52 kg category and did not participate in the under 56 kg category, Respondent No.2 cannot be selected for a post reserved under 56 kg category.

8. Notice was issued in the writ petition on 31.05.2023 and counter affidavit has been filed. In the counter affidavit, it has been categorically stated that Respondent No.2 had also contested in the under 56 kg category because there was no candidate available in the under 52 kg category and Respondent No.2 was a participant in the under 56 kg category.

9. It is stated that the Petitioner secured 48 marks in the trials but was awarded only 20 marks for her other achievement since she was a Gold Medalist in the Junior National Championship, thereby achieving a total of 68 marks. On the other hand, Respondent No.2 secured 45 marks in trials



and was awarded 30 marks for her achievements since she was Gold Medalist in Senior National Championship and thereby she obtained 75 marks. It is stated that marks were awarded in accordance with the guidelines given in the advertisement. It is stated that since Respondent No.2 got more marks than the Petitioner, Respondent No.2 has been selected.

10. A pen drive showing the trials has also been supplied.

11. Learned Counsel for the Petitioner states that Respondent No.2 had not applied for under 56 kg category and therefore she could not have been selected for the post which had been earmarked for candidates who fall in the under 56 kg category.

12. *Per contra*, learned Counsel for the Respondent contends that Respondent No.2 never participated in the under 56 kg weight category and she participated in the under 52 kg category weight category but since she had a medal in the Senior National Championship, she had more marks than all the other candidates in the under 56 kg category, and therefore, she has been selected to for the post reserved for women in the under 56 kg category. He contends that the selection may be irregular but not illegal.

13. Heard learned Counsel for the parties and perused the material on record.

14. The Respondent No.2 has been selected against the category for which she had not applied for.

15. Notice inviting applications from eligible Indian citizens (Male & Female) for filling up 322 vacancies for non-Gazetted & non-Ministerial post of Head Constable/General Duty in Group-C category on temporary basis (likely to be made permanent) in the CRPF against the sports quota post of Head Constables against sports quota was issued on 10.05.2023. The



advertisement indicates that in the sport of Wushu, one post was available for eligible Women applicants in the under 52 kg category and one post was available for the eligible Women applicants in the under 56 kg category. Paragraph 6(iii) and 6(v) and 7(c) of the advertisement dated 10.05.2023, which are relevant to the case reads as under:-

“6. (iii) In order to determine the merit list of sportspersons appearing for recruitment marking will be awarded for their achievements as per table given below.-

Sl No.	Competition	Marks of Gold Medal	Marks of Silver Medal	Marks of Bronze Medal	Marks for participation
1.	Olympic Games/ Summer/Winter	100	96	92	80
2.	World Championship/ World Cup	90	86	82	70
3.	Asian Games/Commonwealth Games	80	76	72	60
4.	Asian Championship/Cup/Commonwealth Championship	70	66	62	50
5.	Youth Olympic Games	60	56	52	40
6.	Youth/Junior Asian Championship & Youth/Junior Commonwealth Championship	50	46	42	---

7.	SAF Games & any International Competition recognized by Govt. of India (MYA&S) with minimum participation of 07 Countries backed by medal in National level competition.	40	36	32	---
8.	National Games and Senior National Championship				
	i) Individual Medal	30	26	22	---
	ii) Team medal in individual sports	26	22	18	---
9.	Youth/Junior National Championship				
	i) Individual Medal	20	16	12	---
	ii) Team medal in individual sports	16	12	08	---



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(v) **Order of Preference:**

i)	First Preference Candidates who have represented the country in an International Competition with the clearance of the Department of Youth Affairs and Sports.
ii)	Next Preference may be given to those who have represented a State/U.T. in the Senior or Junior level National Championships organized by the National Sports Federations recognized by Department of Youth Affairs & Sports or National Games organized by Indian Olympics Association and have won medals or positions upto 3 rd place. Between the candidates participating in Senior and Junior National Championships/games, the candidates having participated and won medal in Senior National Championship should be given preference.

Note 1 : In the event of tie, those who have secured a higher position or won more than one medal may be given the preference.

Note 2 : Participation in individual and team event/item may be given the same preference.

Note 3 : Preference may be given for winning highest medal and not for winning more than one medal/position.

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7. c. Weight:- Weight of the candidate should be proportionate to height and age as per details given below, Weight will not be disqualification at the time of PST. However, the overweight/underweight candidates will be disqualified at the time of Detailed Medical Examination/based on weight and age on the day of Detailed Medical Examination and the height as measured during Physical Standard Test.”

16. The format prescribes for the standard physical test which was to be taken up by the candidates before the selection process. The material on record indicates that the Petitioner was weighing 55.8 kg whereas Respondent No.2 was weighing 54 kg and yet she has admittedly contested in the under 52 kg category which itself is illegal in view of Clause (c) to Paragraph 7 which states that overweight/underweight candidates will be disqualified at the time of detailed medical examination.

17. Respondent No.2 being 54 kg should not have been allowed to contest



in under 52 kg category. She has been given a post which has been reserved for persons in the under 56 kg category. Even if Respondent No.2 had participated in the under 52 kg category to which she was not entitled, it was always open for the Respondents to select the candidates in the under 52 kg category especially when one post was available for that weight category. The Respondents could not have evaluated the Petitioner and Respondent No.2 in the same category despite they being in separate categories which is not permissible.

18. The Apex Court in N.T. Devin Katti v. Karnataka Public Service Commission, (1990) 3 SCC 157, has observed as under:-

“11. There is yet another aspect of the question. Where advertisement is issued inviting applications for direct recruitment to a category of posts, and the advertisement expressly states that selection shall be made in accordance with the existing rules or government orders, and if it further indicates the extent of reservations in favour of various categories, the selection of candidates in such a case must be made in accordance with the then existing rules and government orders. Candidates who apply, and undergo written or viva voce test acquire vested right for being considered for selection in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention. Generally, a candidate has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallises on the date of publication of advertisement, however he has no absolute right in the matter. If the recruitment Rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the amended Rules. Whether the Rules have retrospective effect or not,



primarily depends upon the language of the Rules and its construction to ascertain the legislative intent. The legislative intent is ascertained either by express provision or by necessary implication; if the amended Rules are not retrospective in nature the selection must be regulated in accordance with the rules and orders which were in force on the date of advertisement. Determination of this question largely depends on the facts of each case having regard to the terms and conditions set out in the advertisement and the relevant rules and orders. Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature.”

19. Similarly, the Apex Court in Tamil Nadu Computer Science B.Ed. Graduate Teachers Welfare Society (1) v. Higher Secondary School Computer Teachers Association & Ors., (2009) 14 SCC 517, has observed as under:-

“32. Prior to holding of the said test guidelines were formulated through a policy decision laying down the criteria that the minimum qualifying marks in the said test would be at least 50%. The said guidelines of recruitment as laid down through a policy decision were sacrosanct and were required to be followed for all practical purposes even if we accept that the Government could have filled up the said posts of computer instructors by holding a special recruitment



test of the aforesaid nature as one-time exception.

33. We, however, cannot hold that the subsequent decision of the Government thereby changing qualifying norms by reducing the minimum qualifying marks from 50% to 35% after the holding of the examination and at the time when the result of the examination was to be announced and thereby changing the said criteria at the verge of and towards the end of the game as justified, for we find the same as arbitrary and unjustified. This Court in Hemani Malhotra v. High Court of Delhi [(2008) 7 SCC 11 : (2008) 2 SCC (L&S) 203] has held that in recruitment process changing rules of the game during selection process or when it is over are not permissible.

34. Thus we hold and declare that those candidates who had secured more than 50% qualifying marks would be held to have qualified in the said test and the remaining candidates would be treated as unsuccessful/failed and therefore became ineligible to be permanently recruited and absorbed in government schools. However, we give liberty to the State Government to hold a fresh examination/recruitment test to fill up all the remaining posts of computer instructors as against the sanctioned and vacant posts of computer instructors, which we are told would be more than 1000, by holding a recruitment test in terms of assurance given to the High Court."

20. In view of the admitted facts that Respondent No.2 was weighing 54 kg and has participated in the under 52 kg category and she had been evaluated with candidates who were participating in the under 56 kg category, the writ petition stands allowed. The impugned notice dated 10.05.2023, insofar as it holds Respondent No.2 eligible to the appointment against one post reserved for female candidates in the sport of Wushu is set



aside. The Respondents are directed to re-conduct the selection process.

21. The writ petition is allowed. Pending application(s), if any, stand disposed of.

SUBRAMONIUM PRASAD, J

FEBRUARY 16, 2024

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