



2024:DHC:7689-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 03.10.2024

+ W.P.(C) 9698/2019 & CM APPL. 40033/2019
DEEPAK YADAVPetitioner
Through: Mr. A.K. Trivedi and Mr.
Dhruv Kothari, Advs.
versus
UNION OF INDIA & ORS.Respondents
Through: Ms. Arunima Dwivedi, CGSC
with Mr. Amit Dutta, Ms. S.
Jhunjhunwala, Ms. Pinky Pawar
and Mr. Aakash Pathak, Advs.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE SHALINDER KAUR****NAVIN CHAWLA, J. (ORAL)**

1. The present petition under Article 226 of the Constitution of India has been preferred by the petitioner seeking a direction to the respondents to consider the appointment of the petitioner for the post of Airmen in 'Y' Group in the Indian Air Force with all consequential benefits.
2. The petitioner, pursuant to an advertisement for recruitment to the post of Airmen in 'X' and 'Y' Group, had applied for appointment in 'Y' Group and appeared in the selection process on 03.05.2018. He qualified the written examination and was issued an admit card to appear for the medical examination on 20.09.2018, wherein he was declared medically fit.
3. For the selection process, the cut off marks for the selected candidates was fixed as 38. Even though the petitioner met the cut off



criteria, he was not offered appointment to the post, while another candidate who scored the same marks, received the offer of appointment for the said post. The petitioner, aggrieved by the same, filed the present petition.

4. Learned counsel for the respondents submits that a merit list was prepared wherein the name of the petitioner appeared at serial number 1683. She explains that the candidates are called from the merit list as per their ranking which is prepared in terms of the Policy Note/instructions dated 12.09.2016, as was then prevailing, which so far as is relevant to the present petition, reads as under:-

“2. As per the existing procedure for sorting of candidates during preparation of Sorted List and creation of AISL, the following criterias are taken into consideration in order of precedence:-

- (a) Total marks scored {Written Test + Addl Marks for NCC, SOAFP and serving NC (E)}.*
- (b) Higher Education Qualification (within eligibility criteria of Group/Trade).*
- (c) Percentage of marks scored in qualifying Educational Qualification.*
- (d) Marks obtained in English paper during Selection Test in a ST/Rally.*
- (e) Date of birth in ascending order.”*

5. The learned counsel for the respondents submits that while the petitioner met the cut off marks, as far as the educational qualification is concerned, the last selected candidate in the selection process, namely Mr. Ankur, secured 77 marks, whereas the petitioner had only scored 76 marks. Applying the above criteria in order of precedence, Mr. Ankur was, therefore, selected over the petitioner. She submits that there were, in fact, many candidates between Mr. Ankur and the petitioner who were also not selected though they had secured the cut



off marks.

6. Learned counsel for the petitioner submits that the respondents should have added the marks obtained by the candidate in English language along with the marks in the educational qualification, and should have given the benefit of the age, however, the respondents have failed to do so, which has resulted in injustice being caused to the petitioner, thus the claim of the petitioner be accepted.

7. We have considered the submissions made by the learned counsels for the parties.

8. The instructions/policy circular issued by the respondents for determining the *inter se* merit of the candidates was published well before the selection process and it laid down the criteria in order of preference to be considered by the Selection Committee. There is no challenge to the instructions/policy circular.

9. We find that the respondents have fairly adopted the said selection process/criteria and Mr. Ankur, the last candidate to be selected in the selection process, though had secured the same overall marks as the petitioner, had secured more marks for his educational qualification, thus, being rightly selected above the petitioner.

10. We, therefore, do not find any infirmity in the selection process. The petition along with the pending application is, therefore, dismissed. There shall be no order as to cost.

NAVIN CHAWLA, J

SHALINDER KAUR, J

OCTOBER 3, 2024
SU/KM/as