

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

2025:PHHC:059748-DB



Reserved on : 06th March, 2025
Date of Pronouncement: 07th May, 2025

1. LPA No. 680 of 2022 (O&M)

Harvinder Singh Nain		... Appellant
	Versus	
State of Haryana and others		... Respondents

2. LPA No. 681 of 2022 (O&M)

Harvinder Singh Nain		... Appellant
	Versus	
State of Haryana and others		... Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. D. S. Patwalia, Senior Advocate assisted by
Mr. Gaurav Rana, Advocate, for the appellant.

Ms. Shruti Jain, Senior Deputy Advocate General, Haryana.

SANJEEV PRAKASH SHARMA J.

Present appeal has been filed assailing the judgment dated 31.05.2022 passed by the learned Single Judge, whereby CWP No. 6025 of 2014, preferred by the writ-petitioner/appellant, was dismissed.

2. Learned Senior counsel appearing for the appellant has submitted that the appellant, after having completed his +2 qualification and Graduation, did his LLB and participated in the selection process for appointment as Assistant Superintendent Jails in pursuance of advertisement issued on 14.08.2010 by the Haryana Public Service Commission. He submitted that out of 29 posts, 12 posts were kept for

General Category and 17 posts were reserved for SC/BC/Ex-Servicemen. The appellant was from General Category. The criteria of selection was laid down in the advertisement, providing for marks under the various heads. In the writ petition, the appellant had taken a specific ground regarding the conduct of interview/viva-voce by single member of the Commission.

3. Learned Senior counsel limited his arguments to the aspect relating to Rule 7 of the Punjab Jails Department State Service (Class-III Executive) Rules, 1963 (for short, 'the Rules'), which governs the mode of appointment. As per Note 2 under Rule 7, appointment to the post in service in case of Assistant Superintendents would be by direct appointment or by transfer or deputation from any other service of the State or by promotion from amongst Sub-Assistant Superintendent and Assistant Probation Officers. Further as per Note 2 preference was to be given to those persons who are sportsmen and are otherwise eligible for appointment in accordance with the provisions of the rules.

4. Learned counsel further submits that so far as the appellant is concerned, since he possesses the eligibility for the post and had participated in the selection, he was to be given preference over others. Learned counsel has taken this Court to various order-sheets of the learned Single Judge when the writ petition was pending to highlight that the learned Single Judge had asked time and again the reasons for deviation from the Rule as the advertisement did not refer to the preference to be given to the Sportsman and the marks awarded for the sports activities. He

submits that the State was asked to produce the record to show that if any person got extra marks being a sports person at the time of interview.

5. Learned Senior counsel further submits that the respondents were asked to get instructions regarding claim of the appellant for appointment to the post of Assistant Superintendent of Jails, an order was passed on 20.05.2016 wherein upon examination of his case it was noticed that an error had crept in the advertisement, as the advertisement did not mention note 2 of the Rule 7 of the Rules of 1963. The advertisement did not refer to the preference to be given to those persons who were sportsmen and otherwise eligible for appointment in accordance with the provisions of the Rules. Resultantly, the appellant was not given any marks for the sports activities. Learned counsel submits upon having obtained information under the RTI Act, it is apparent that the candidates who were selected were given 10 marks more than the appellant in viva-voce.

6. Learned senior counsel submits that a person who is outstanding sportsman cannot be expected to be academically also outstanding as he has to devote more time towards his sports activities. It is for this reason that note 2 was appended to the 1963 Rules giving special preference to a sportsman. The post of Assistant Superintendent of Jails was, therefore, essentially carved out sportsman.

7. Learned Senior counsel further submits that while the learned Single Judge noticed that the appellant was an outstanding sportsperson being a Cricketer of national level but the same was not considered as sufficient for granting him preference. He submits that there are posts lying

vacant and the appellant ought to be considered for appointment.

8. Per contra, learned counsel for the State supports the judgment passed by the learned Single Judge. He points out that the appellant secured 23.06 marks for his academic qualifications and 10 marks in viva-voce and, thus, secured only 33.06 marks in aggregate, while the last candidate selected scored 44.11 marks in the aggregate. The candidate under the BC (B) Category scored 36.87 marks.

9. We have carefully considered the submissions and gone through the facts of the case and noticed the judgment passed by the learned Single Judge.

10. The qualifications required for appointment on the post of Assistant Superintendent of Jails are laid down under Rule 7 and 8 and Appendix-A to Rule 8 of 1963 Rules, which provides as under:-

“7. METHOD OF APPOINTMENT:— *Appointments to posts in the Service shall be made as under:—*

(1) In the case of Probation Officers, by promotion from amongst the Assistant Superintendents or Welfare Officers or Probation Officers appointed under the Probation of Offenders Act, 1958 or Sub-Assistant Superintendent or Assistant Probation Officers having an experience of working on any of these posts for a minimum period of three years;

(2) In the case of Assistant Superintendents/Welfare Officers:—

(i) by direct appointment;

(ii) by transfer or deputation from any other service of the State or;

(iii) by promotion from amongst sub-Assistant Superintendents and Assistant Probation Officers having an experience of

working on any of these posts for a minimum period of three years:

Provided that not less than 75 per cent of the posts will be filled in the manner specified in sub-Clause (i) and not more than 25 per cent in the manner specified in sub-clauses (ii) and (iii);.....

Note – 1 – xxx xxx xxx

Note – 2 Preference will be given to those persons who are sportsmen and are otherwise eligible for appointment in accordance with the provisions of these rules.

8. Conditions for direct appointment – No person shall be eligible for direct appointment, unless he –

(i) Possesses the educational qualifications prescribed for the post as shown in column 6 of Appendix ‘A’ to these rules; and

(ii) has the following physical standard:-

(a) In the case of Assistant Superintendents or Welfare Officers or Probation Officers appointed under the Probation of Offenders Act, 1958 – Height – 5’7” (5’-5” in case of Dogras and Gurkhas), Chest -33” unexpanded – 34½ expanded.

(b) In the case of Selection Grade Warders/Ordinary Grade Warders – Height – 5’6” (5’-4½” in case of Dogras and Gurkhas), Chest girth – 33” (minimum) Vision – Normal in both eyes.

Note: The above noted physical standard shall not be applicable in the case of women candidates.”

APPENDIX-A

Sr.No.	Designation of the Post	Number of Posts			Scale of Pay	Authority competent to make appointment	Minimum qualifications for direct recruitment	Age for direct appointment
		P	T	Total				
1	2	3			4	5	6	7
SECTION I SUPERVISORY EXECUTIVE STAFF								
(a)	Probation Officers under the Good Conduct Prisoners Probational Release Act	2	..	2	Rs. 150-10-250/15-370	Inspector-General	No direct appointment	

(b)	Assistant Superintendents of Welfare Officers or Probation Officers appointed under the Probation of Offenders Act, 1958	46	15	61	100-10-200/ 10-300	Ditto	A degree in Arts, Science, Agriculture and Commerce from a recognized University (I) from 21 years to 25 years (II) in case of Government servants who have not less than 5 years service under Government upper age limit shall be 35 years.
		Note – 4 posts of Senior Assistant Superintendents carry a special pay at Rs.25 per mensem.				Ditto	Preference will be given to candidates having experience or additional qualifications in social and correctional works, Social Sciences, Penology, Psychology or Criminology. 2. Other things being equal preference will be given to a candidate who has himself worked for the cause of National Independence or has rendered some outstanding social or public service. ((iii))

11. It is an admitted position that in the advertisement the Commission was legally obliged to include Note 2 of Rule 7 which has been admitted by the respondents to have not been taken note of. In the ordinary course, we would have set aside the entire advertisement which goes contrary to the provisions of the Rules. Any part of the Rule not included in the advertisement results in the advertisement being vitiated in law. But we find that the same need not be taken into consideration as none of the candidates, except the appellant, has claimed preference on the basis of being a sportsman. The selection conducted by the respondents is not under challenge before us on the said basis. We also noticed that the candidates who had been selected, had no lis with the appellant as the appellant falls in different category being sportsman.
12. As regards Note-2 appended to Rule 7 of the Rules of 1963, admittedly, the same does not find mention in the Advertisement Annexure

P-5 issued by respondent No.3-Haryana Staff Selection Commission (for short, 'the Commission') but the question arises as to whether this omission has adversely affected the claim of the appellant or not. Undisputedly, the appellant secured 33.06 marks, in aggregate, out of total 75 marks, i.e 50 marks for the academic qualification and 25 marks for viva-voce/interview whereas the last selected candidate in General Category, under which the candidature of the appellant also falls, secured 44.11 marks. Thus, there is a considerable difference between the marks obtained by them. It has categorically been pleaded in para No.3 in the preliminary submissions in the written statement filed by respondent No.2, DG (Prisons), Haryana that a waiting list of 17 candidates had been prepared. It goes undisputed between the parties that the name of the appellant did not find mention even amongst those 17 candidates. In such circumstances, if the appellant is granted the relief of appointment on the afore-mentioned post, there is every possibility that the candidates, who had secured the marks lesser than the last selected candidate but higher than those of the appellant and might also be having the relevant documents to claim appointment on the basis of being sportspersons, may get deprived of the same relief which may, at this juncture, lead to another round of litigation on the basis of parity with the appellant, in the teeth of the eventuality that sufficient vacancies might not be available/existing in the concerned Department to accept/allow their claim.

13. Even otherwise, advertisement Annexure P-5, inviting the applications for appointment to the above-referred post, was issued on

14.08.2010 and as per Annexure P-6 issued on 17.03.2012, the Physical Measurement Test was conducted during the period from 03.04.2012 to 26.04.2012 and the result thereof was declared and the call for interview had been sent to the eligible candidates vide Annexure P-7 issued on 20.07.2012. As per the version of the appellant himself, he had appeared for the interview on 22.09.2012. Then, the final result Annexure P-9 was declared on 22.04.2013. However, there is nothing on the record to show that the appellant had ever challenged the non-inclusion of Note-2 of Rule 7 of the Rules of 1963 in advertisement Annexure P-5 throughout during the above-mentioned period of almost two years and eight months, i.e from the date of publication/issuance of the advertisement till the declaration of the final result. It being so, he cannot be allowed to raise the afore-said plea or to challenge the entire selection process on subsequently finding that the result did not favour him. He could have challenged the advertisement on the ground of omission on the part of the Competent Authority to include Note-2 of Rule 7 therein, immediately after the publication/issuance thereof. To add to it, he has claimed his selection/appointment on the basis of being a sportsperson but he has not placed even an iota of the material on the file to show that he had annexed the relevant certificates/ documents in this regard, along-with his Application Form.

14. Though, the appellant has alleged that the record pertaining to the selection process in question had intentionally been destroyed by the HSSC so as to defeat his lawful claim to the above-mentioned post but it is worth-while to mention here that in his affidavit dated 14.11.2018 (annexed

at pages 267 to 272 in the paper-book), the Secretary Legal of the HSSC has specifically deposed that the Confidential Branch had reported that the record qua Member-sheet/Advisor-sheet/Attendance-sheet, interview slip and applications etc. has not been preserved by the Commission and the same had been destroyed on 12.03.2014, as per the procedure laid down in Resolutions dated 27.07.1992 and 01.10.1994. Both these Resolutions have been submitted as Annexures R-3/6 and R-3/7 respectively and a perusal of the same reveals that in view of the judgment passed by this Court in ***CWP No.7748 of 1990*** titled as ***Suresh Kumar Taneja and others Vs. State of Haryana and others***, the record of selection (except the criteria, selection list and recommendations) was resolved to be destroyed after six months from the declaration of the result and subsequently, this period was reduced to three months in view of the orders passed by the Apex Court in ***S.L.P. No.7798-807/92 (Civil Appeal No.5027-36 of 1994 Prit Pal Singh and others V/s State of Haryana)***. As mentioned earlier, the final result had been declared by the HSSC on 22.04.2013 whereas the record in respect of the same had been destroyed on 12.03.2014, i.e about 11 months thereafter and the writ petition bears the date 25.03.2014, meaning thereby that the record had been destroyed much after the prescribed period and before the filing of the writ petition by the appellant.

15. Seen from yet another angle also, the above-referred note-2 appended to Rule 7 reads as under:-

“Note-2 Preference will be given to those persons who are sportsmen and are otherwise eligible for appointment

in accordance with the provisions of these rules.”

If the contention raised by learned counsel for the appellant qua the interpretation of this note is to be accepted, the same would mean that the appellant, being a sports-person, has to be given preference over and above all other candidates, who might not to be sports-persons, despite the fact that they were having the scores higher than that of the appellant. Had it been the intention of the Competent Authority framing these Rules, the element of preference would not have been appended merely as a Note to the main Rule enumerating the conditions of eligibility of the candidates for their selection and appointment to the afore-said posts and rather, the same would have been inserted as a part of the main Rule itself. Total Twenty nine (29) posts of the Assistant Superintendent Jails, had been advertised vide Annexure P-5. If 29 candidates or more happened to be the sports-persons and Note-2 is interpreted in the manner as contended by learned counsel for the appellant, then the right of the candidates, who were not sports-persons, to be considered for selection to the above-mentioned post would get scuttled at the very threshold of the process despite the fact that they might be better qualified than the appellant.

16. In **State of U.P. and Another Vs. Om Prakash and others** **2006 (6) SCC 474**, the Apex Court while relying upon its earlier verdicts rendered in ***Secretary (Health), Deptt. of Health & F.W. vs. Dr. Anita Puri, 1996(4) SCT 321*** and ***Secretary, A.P. Public Service Commission vs. Y.V.V.R. Srinivasulu, 2003(2) SCT 920*** has categorically observed as under:-

“16. In the instant case, the requisite academic qualification for the post of homeopathy as prescribed in the advertisement was a recognized degree in Homeopathy or a recognized diploma in Homeopathy. A proviso has been added that preference will be given to degree holders. This would mean that a recognized diploma in homeopathy prescribed in the advertisement is also a required minimum educational qualification with which they are entitled to compete with those candidates possessing the degree. The word preference would mean that when the claims of all candidates who are eligible and who possess the requisite educational qualification prescribed in the advertisement are taken for consideration and when one or more of them are found equally positioned, then only the additional qualification may be taken as a tilting factor, in favour of candidates vis-a-vis others in the merit list prepared by the Commission. But preference does not mean en bloc preference irrespective of inter se merit and suitability.”

In the light of the afore-quoted observations, it becomes explicit that the element of preference, as envisaged under Note-2 of Rule 7 is to be applied only in the eventuality when two or more candidates have equal scores and only one is supposed to be chosen out of them. As discussed earlier, the marks secured by the appellant in the selection process are much less than the last successful candidate in the above-referred selection process and his name does not even figure in the waiting

list. In these circumstances, the factum of his being a sports-person cannot be pressed into service to extend any relief to him and consequently, it has to be held that the omission on the part of the Competent Authority in mentioning Note-2 of Rule 7 in advertisement Annexure P-5 would not cause any prejudice to the appellant.

17. As a sequel to the fore-going discussion and in view of the findings as recorded by learned Single Judge, we are of the considered opinion that there is no cogent and valid reason/ground to interfere with the impugned judgment. Resultantly, the appeals in hand, being *sans* any merit, stand dismissed accordingly.

18. All the pending miscellaneous applications also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

7th May, 2025
vs/pooja

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>