

2025:PHHC:008590



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.219**

219

**CWP-31566-2019 (O&M).
Date of Decision: 21.01.2025.**

KAMAL YADAV

... Petitioner(s)

Versus

UNION OF INDIA AND OTHERS

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Sarvjit Singh Khurana, Advocate,
for the petitioner.

Mr. Harneet Singh Oberoi, Senior Panel Counsel,
for the respondents/Union of India.

VINOD S. BHARDWAJ, J. (ORAL)

Aggrieved of the non-disclosure of any reasons by the respondents for not empaneling the petitioner as a Constable/RPF against Employment Notice No.Constable/RPF-01/2008 (Group A), the petitioner has approached this Court by way of the present writ petition.

2 Learned counsel appearing for the petitioner contends that an Employment Notice bearing no. Constable/RPF-01/2018 was published by respondent no. 3 for the recruitment of Constable in Railway Protection Force and Railway Protection Special Force in Level 3 of 7th CPC Pay matrix. The

2025:PHHC:008590



date of opening of online registration was 01.06.2018 at 10:00 hrs and date of closing of online registration was 30.06.2018 at 23.59 hrs. The entire recruitment process involved online Computer Based Test (CBT) and the candidates qualifying the Computer Based Test had to undergo Physical Efficiency Test (PET) and Physical Measurement Test (PMT) followed by Document Verification (DV). The PET/ PMT were qualifying in nature and no marks were to be awarded for that. The merit was to be drawn on the basis of online Computer Based Test (CBT) and the appointment letter was subject to verification of the documents to be undertaken.

3 Pursuant to the aforesaid Employment Notice, the petitioner applied on 11.06.2018 for Constable in the Railway Protection Force (Railway Zonal Group A) in the OBC (Non Creamy Layer) Category with registration no. 1110164504. The petitioner received an E-Call letter for Computer Based test on 22.01.2019 with Roll No. A/OB/11220042688 having Exam Centre at Faridabad in Batch 2 with reporting time of 11:15 hrs. The petitioner appeared in the above-mentioned Computer Based Test on 22.01.2019 and a list of candidates shortlisted for PET, PMT and DV was published. The name of the petitioner was shown at serial no. 9496 as shortlisted for PET, PMT and DV. A normalized cut off marks of different category of candidates in all groups was also published wherein the normalized cut off marks for OBC category in Group A for male candidates was shown to be 93.5%. Hence, the petitioner is presumed to have scored the marks above the cut off i.e. 93.5%. Accordingly, the petitioner received a

2025:PHHC:008590



Call letter for PET, PMT and DV for Constable Group-A, Railway Protection Force having date of test on 21.04.2019 at Chennai-Tamil Nadu. The petitioner appeared therein and qualified both PET and PMT tests and his documents were also successfully verified. Final Cut off marks was thereafter uploaded for the all groups of candidates but no cut off marks were shown for OBC Male Category candidates in 'Group A'. A final list of candidates empanelled for appointment as Constable/RPF was uploaded and name of the petitioner was not there. The petitioner submitted numerous representations to the respondents requesting to disclose the reasons for not empanelling the petitioner for the post of Constable, but no reply was given.

4 Counsel for the petitioner contends that there were 32 posts reserved for other backward classes and three posts were reserved for ESM category as per the Note I and II. Clause 2.0, Note I and II of advertisement is extracted hereinafter below:-

"Note 1: As per Govt of India instruction, the reservation for Ex-servicemen (ESM) shall be 10% of the combined vacancies of male and female of each group of zones.

Note II: Since the reservation for ESM and Female are horizontal in nature, vacancies remaining unfilled for want of suitable ESM and Females during recruitment shall be filled up by the suitable Male candidate as per existing guidelines."

Note I and II of the aforesaid advertisement to clause 2.0, prescribed that the reservation for the ESM and Female are horizontal in

2025:PHHC:008590



nature and that in the event of the posts remaining unfilled for want of suitable Female ESM, the same were to be filled up by the suitable Male candidate as per the existing guidelines.

5 Counsel for the petitioner contends that as per the response dated 23.10.2019 purportedly sent to the petitioner by the respondents it has been informed that the number of candidates shortlisted for PET/PMT was 10 times of the number of vacancies in the group category-wise and that after PET/PMT and DV, the candidates in order of merit were selected for empanelment and that the marks of the petitioner are not high enough to be placed in the final merit list, hence, he has not been empanelled. He contends that while filing reply by way of affidavit on behalf of the respondents, it has been stated that the available OBC Male Vacancies were filled by OBC ESM and therefore, no candidate other than OBC ESM can be empanelled in the OBC Category. As such, no cut off marks for final merit in the Male OBC Category was available. It is vehemently argued by the counsel for the petitioner that not only the response filed by the respondents is at variance from the reasons given by them in their letter dated 23.10.2019, the said reasons are also not legally tenable.

6 Learned counsel appearing on behalf of the respondents, however, vehemently argues that the reservation for ESM was horizontal in nature and each Group of categories would carry 10% of the combined vacancies. Therefore, even amongst the candidates having both ESM and OBC reservation, preference has to be given to candidates who were higher

2025:PHHC:008590



in merit. It is argued that after the CBT, the answer sheets of each candidate were uploaded on the website for candidates to raise objections about the wrong answers and on resolving thereof, the list of candidates was prepared by the Ministry of Railways. About 17855 male candidates were shortlisted to appear in PET/PMT (Physical Efficiency Test) and (Physical Measurement Test) and the cut off marks for the OBC Candidate were 93.55. He submits that in Phase II, candidates 10 times of the vacancies were called and since the score of PET/PMT were only qualifying in nature and give no right for empanelment. Hence, the petitioner cannot claim that he should be empanelled. It is submitted that after PET, PMT and DV, the final merit list was drawn following the reservation for ex-servicemen and other categories. Against vacancies for empanelment of male candidates, initially all 173 male ex-servicemen candidates were placed horizontal in the merit order in the panel and then they were placed against their respective categories of male vacancies and as per this procedure which is claimed to align with the Government instructions, the male vacancies in 'Group A' left out was 631. There were zero vacancies in the OBC category i.e. the category to which the petitioner belonged. Hence, no candidate other than OBC ESM could be empanelled in that category. Consequently, the claim of the petitioner could not be considered. It is further contended that the cut off marks of the final merit list of the unreserved category were 83.82 and that the marks of the petitioner were not high enough for empanelment against the UR vacancies and therefore, the petitioner has rightly not been empanelled.

2025:PHHC:008590



7 I have heard the learned counsel for the parties and have gone through the documents appended along with the present petition.

8 The following queries have been put to the counsel for the respondents: -

Ques: As per the recruitment process, the Phase I prescribed a Computer Based Test (CBT) and only the persons who qualified Phase I, were to be called for Phase II Physical Efficiency Test (PET) and Physical Measurement Test (PMT) and the cut off marks of CBT as per the averments contained in the preliminary submissions was 93.55%, after normalization by taking into account 24 Sessions, each with different question paper of different difficulty level and the petitioner having been called for Phase II i.e. Physical Efficiency Test (PET) and Physical Measurement Test (PMT), (petitioner scored 80.6 normalised marks) then how and under what circumstances, the averments contained in para no.8 of the preliminary submissions of the reply filed by the respondents to the effect that the petitioner scored 80.6 marks is tenable?

Ans. Counsel for the respondents submits that he is not in a position to explain the same.

2025:PHHC:008590



Ques. A specific question has also been put to the counsel for the petitioner that no marks were assigned for PET and PMT and that the merit had to be drawn on the basis of the score in the CBT test itself and hence, where was the occasion for normalization of the score after Phase II?

Ans. Counsel pleads lack of clarity in the instructions on the same.

Ques. It has been specifically put to the counsel for the respondents that as per the settled law, a candidate claiming under a horizontal reservation can be considered against the substantive category only in case his merit in the horizontal reservation is higher than the merit in the substantive category. Seemingly all 173 posts have been given to the ESM category even though only 03 posts in the OBC category have been reserved for OBC ESM without even pleading that they scored higher marks in CBT?

Ans. There is no explanation as to how all the posts have been filled up by candidates belonging to the horizontal reservation without pointing out inter se merit of the ESM category candidates vis-à-vis other candidates belonging to the OBC category especially when the stand of the

2025:PHHC:008590



respondents is that the final cut-off of unreserved category was 82.83%. He is also not in a position to explain as to how the cut off marks for the OBC candidates is 93.55% and the cut-off marks for UR category after normalization has fallen below 83.82% especially when the cut off marks for the UR category has to be higher than the reserved category under the normal process.

Ques. Counsel for the respondents has also been confronted with the response dated 23.10.2019 wherein the number of candidates shortlisted for PET/PMT stage is stated to be 10 times of the vacancies in the Group category-wise. Accordingly, in the ESM OBC category as against three vacancies reserved, only 30 persons could have been called. No explanation has been given as to how 32 vacancies meant for OBC category have been filled up from amongst the candidates who had applied for 03 posts of ESM OBC?

Ans. No response has come forth with respect to the same.

9 I find that even though all these issues were germane to the cause, the respondent authorities have seemingly chosen not to give a clear and specific response thus compelling the petitioner to approach this Court.

2025:PHHC:008590



Under the given circumstances, this Court has no option than to dispose of the present writ by issuing the following directions: -

- (i) Respondent Directorate RPF is directed to declare the category wise result of all candidates who had cleared the CBT test in Phase I. (On a specific query, it is informed that the record of the result has been preserved and has not been destroyed);
- (ii) Let the declaration of result of each candidate be done by the respondents on its official website i.e. www.indianrailways.gov.in within a period of 15 days of the receipt of a certified copy of this order. The merit list has to be uploaded after the normalization process is undertaken by them;
- (iii) The respondents shall re-draw the empanelment list of each candidate who cleared Phase I and who has also qualified the PET and PMT as well as DV on the basis of their respective merit in their category;
- (iv) Let the aforesaid exercise be undertaken by the respondents after a period of two weeks thereafter;
- (v) In the event of a person belonging to the reserved category scoring higher marks than the general category, his candidature has to be considered in the general category, as per rules;

2025:PHHC:008590



- (vi) In the event of a person claiming horizontal reservation, the merit has to be drawn from only amongst those candidates. However, which such candidate scores more than the last candidate in his vertical category, he may be transposed to the vertical category as per Rules'
- (vii) The empanelment list shall thereafter be published on the official website as aforesaid within a total period of 08 weeks of the receipt of certified copy of this order;
- (viii) In the event, the petitioner is placed higher in the order of merit, his empanelment shall be done by the respondents within a period of 04 weeks thereafter and offer of appointment shall be given to the petitioner;
- (ix) The petitioner, in the event of being appointed shall, however, not be entitled to any salary, or experience or security for promotion for the intervening period, however, other consequential financial benefits shall be available to him; and
- (x) In the event of the respondents failing to meet the timelines, the respondent No.2-Director General, Railway Protection Force, shall be liable to pay a cost of Rs.1 lakh to the petitioner and also to deposit a cost of Rs.1.5 lakhs with PGIMER Poor Patients' Welfare Fund, Chandigarh.

2025:PHHC:008590



10 The petition stands disposed of accordingly.

January 21, 2025.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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