

(2012) 10 P&H CK 0151

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 13990 of 2011

Ashok Kumar

APPELLANT

Vs

Haryana Vidyut
Parsaran Nigam
Limited and Another

RESPONDENT

Date of Decision: Oct. 30, 2012

Acts Referred:

- Constitution of India, 1950 - Article 309

Hon'ble Judges: Rakesh Kumar Garg, J

Bench: Single Bench

Advocate: Ashwani Verma, for the Appellant; Mohnish Sharma, Advocate for Respondent
No. 1, Ms. Aakanksha Sawhney, D.A.G., Haryana, for the Respondent

Judgement

Rakesh Kumar Garg, J.

As per the averments made, the petitioner passed Matriculation examination in the year 1986 and thereafter, Senior Secondary Examination (10+2) from the recognized Board in the year 1988 and joined Indian Army as a Clerk in the trade of Infantry on 26.08.1990. During his service period he worked as a Computer System Administrator in the Indian Army. Ultimately, after rendering more than 18 years of service the petitioner was retired from service of Indian Army. During this period, he also passed B.A. Part III examination from Rani Durgavati Vishwavidyalaya, Jabalpur. In addition to that, the petitioner was also issued Graduation certificate on 07.01.2010 by the Armed Force Services and as per the Government of India, the Ex-serviceman having the aforesaid Graduation certificate is to be considered eligible for appointment to any reserved vacancy in Group-C posts for which the essential qualification is Graduation. As per the further averments made in this petition, on the requisition of respondent No. 1, the Haryana Staff Selection Commission advertised 308 posts of Lower Division Clerks, out of which 20 posts were reserved for Ex-servicemen (General). By way of a corrigendum issued by

respondent No. 2, the posts of LDCs were increased from 308 to 336. Accordingly, the posts reserved for ESM (General) were also increased from 20 to 22.

2. As per the aforesaid advertisement, the qualifications prescribed for the posts of LDCs are mentioned as under:

Qualification: 1. 10+2/10+2 (Vocational) with atleast 50% marks or equivalent and above (for ex-servicemen 10+2 only) or graduate from any Board/University recognized by the government of Haryana with working knowledge of computer covering the following topics: (a) Computer Fundamentals (b) Operation of Internet/E-mail (c) MS Office (MS Word, Excel and Power Point).

2. Passed type test in Hindi at the speed of 25 w.p.m. or in English at the speed of 30 w.p.m. respectively and data punching speed of 8000 keys depressions per hour on computer.

3. It is the further case of the petitioner that in response to the aforesaid advertisement, he being fully eligible applied for the post of LDC in the category of ESM (General). After scrutinizing the application forms of eligible candidates including the petitioner, respondent No. 2 conducted the type test, for which the petitioner was also called. The petitioner appeared in the type test on 07.01.2010 under Roll No. 2868 in the category of ESM (General). Result of the aforesaid type test was declared in the newspaper and name of the petitioner figured in the list of successful candidates for the purpose of calling them for interview for the post of LDC. Accordingly, the petitioner was called for interview and data punching test on computer vide letter dated 20.04.2010, in which he faired very well and was hopeful of his selection in the category of ESM (General) for the post of LDC. The result of successful candidates for appointment to the post of LDC was declared on 27.07.2010. As per the aforesaid result, against 22 posts reserved for ESM (General), only 17 candidates were selected and 5 posts remained vacant due to non-availability of suitable candidates. The petitioner was shocked to find that he was not selected.

4. In these circumstances, the petitioner filed CWP No. 23405 of 2010, which was disposed of vide judgment dated 24.12.2010. The said order reads thus:

Notice of motion. Mr. Mohnish Sharma, Advocate appearing for Mr. Narender Hooda, Advocate who is present in Court has been asked to accept notice on behalf of respondent No. 1 and Mr. R.D. Sharma, D.A.G., Haryana who is present in Court has been asked to accept notice on behalf of respondent No. 2. Keeping in view the prayer made and with the consent of learned counsel for the parties, this petition is disposed of at motion stage.

Respondent no. 2 invited applications for posts of L.D.C. As many as 308 posts were advertised. Out of which 20 posts were reserved for Ex-servicemen (General) Category. Subsequently, the number of vacancies were increased to 336. The posts

for ESM (Gen.) Category were also increased from 20 to 22. The petitioner also applied for the said post under the ESM (Gen.) Category. The petitioner appeared in the Type Test and was also called for interview. The final result was declared on 27.7.2010 vide Annexure P-6. On declaration of final result, it was notified that five posts under ESM (Gen.) Category are still lying vacant. The grievance of the petitioner is that he is one of the candidates who performed well and is eligible, but he has not been considered for selection/appointment. There is nothing in the writ petition as to what is the merit position of the petitioner.

The petitioner has made a representation/legal notice (Annexures P-7 and P-8), but no decision has been taken thereon. Learned counsel for the petitioners submits that the petitioner would be satisfied if respondents are directed to take decision on his representation/legal notice.

In view of the above, this petition is disposed of with a direction to respondent No. 2 to decide the representation/legal notice within a period of three months from the date a certified copy of this order is served upon the competent authority. Needless to say in the event the claim of the petitioner is to be rejected, it shall be by a reasoned and speaking order.

Sd/- (PERMOD KOHLI)
JUDGE

24.12.2012

5. In compliance to the aforesaid order, respondents passed an order dated 12.05.2011 vide which the claim of the petitioner was declined stating that the Commission short-listed the candidates for type test/interview keeping in view large number of candidates on the basis of essential qualifications and vide notice dated 24.11.2009 the minimum of 50% marks were prescribed for ESM (General) category. The petitioner had actually possessed 37.25% marks in 10+2 and 41.83% marks in Graduation certificate issued by Rani Durgawati Vishwavidyalaya, Jabalpur and was not eligible. However inadvertently, he was short-listed on the basis of his marks in Diploma in Computer Application, which was not the essential qualification as per the advertisement and therefore, his candidature was rejected for the post of LDC.

6. By filing this writ petition, the petitioner has challenged the aforesaid order dated 12.05.2011 (Annexure P-11), whereby the claim of the petitioner to the post of LDC has been rejected. The petitioner has further prayed that a writ of mandamus be issued directing the respondents to appoint him on the post of LDC with all other consequential benefits.

7. I have perused the averments made in the writ petition as well as the documents produced before this Court and have also heard learned counsel for the petitioner.

8. At the outset, it may be noticed that no challenge has been made to the procedure adopted by the respondents for making selection. The petitioner has also

not disputed the fact that his marks in the essential qualifications on the basis of 10+2 or Graduation (BA) were less than the cut-off limit of 50%. It is also not the case of the petitioner that any person lower than the prescribed cut-off marks of 50% has been selected.

9. In these circumstances, no exception can be taken to the selection of the candidates to the post of LDC under the category of ESM (General) in response to the advertisement (Annexure P-4). Moreover, on these very facts the petitioner had come to this Court by filing CWP No. 23405 of 2010 and after considering the facts and circumstances of the case this Court had disposed of the said writ petition only with a direction to respondent No. 2 to decide representation of the petitioner for appointing him against the post, which had been left vacant due to non-availability of suitable candidate in ESM (General) category.

10. A perusal of the impugned order 12.05.2011 (Annexure P-11) would show that the petitioner did not possess minimum cut-off percentage. While passing the impugned order, respondent No. 2 had rightly not considered the certificate of Graduation issued by the Indian Army on 07.01.2010, as the same was issued to him after the cut-off date for submitting the application forms for the relevant post.

11. At this stage, a reference is made to the special instructions as given in the advertisement which are reproduced herein below:

The prescribed essential qualification does not entitle a candidate to be called for interview. The Commission may short list the candidates for interview by holding a written examination or on the basis of a rationale criterion to be adopted by the Commission. The decision of the Commission in all matters relating to acceptance or rejection of an application, eligibility/suitability of the candidates, mode of, and criteria for selection etc. will be final and binding on the candidates. No inquiry or correspondence will be entertained in this regard.

12. It may further be noticed that the State Govt. has issued a Notification dated 28.01.1970 as amended from time to time under Article 309 of the Constitution of India. Para 6(d) of the said Notification reads as follows:

6(d) Method of recruitment and the principles to be followed in making appointments to the Group C and D posts under the State Govt. The Commission shall devise the mode of selection and fix the criteria for selection of posts for which a requisition is sent to it by a Department or an office, as it may deem appropriate and the criteria for the selection of posts fixed earlier by the Board/Commission shall be deemed to have been fixed under this sub-paragraph.

13. Thus, the respondent-Commission has fixed the criteria dated 24.11.2009 (Annexure P-12) for short listing the candidates for interview for the post of LDC on the basis of advertised qualification i.e. 10+2, prescribed for the said post, in accordance with the condition of advertisement and para 6(d) of the Haryana Govt.

Notification dated 28.01.1970 as amended from time to time which is quite legal and justified.

14. It may further be noticed that this Court vide judgment dated 23.05.2001 passed in CWP No. 15885 of 2000 titled as "Jawahar Lal Goel and others V. State of Haryana and others" after going through the relevant para 6(d) of the Haryana Govt. Notification dated 28.01.1970 has held that the Commission had the power to fix the criteria which they had done and published for general information. Furthermore, the Commission has devised the uniform and definite criteria for all the candidates including the petitioner and as such no prejudice has been caused to the petitioner.

15. Thus, the Commission was fully competent to devise the criteria dated 24.11.2009 (Annexure P-12) as per condition of advertisement, para 6(d) of the Haryana Govt. Notification dated 28.01.1970 and the well settled law of this Court vide its judgment dated 23.05.2001 rendered in CWP No. 15885 of 2000 titled as "Jawahar Lal Goel and others V. State of Haryana and others".

16. It may also be noticed that the petitioner was short-listed inadvertently, thus, no right has vested in him to be appointed against the said post of LDC.

17. No merit. Dismissed.