IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

283+118 **CWP-20048-2024**
Date of Decision: 10.02.2025

Deepak and others **…Petitioners**

Versus

State of Haryana and others **…Respondents**

And

CWP-275-2025

Jitender Kumar **…Petitioner**

Versus

State of Haryana and others **…Respondents**

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. Rajat Mor, Advocate and
Ms. Surya Dhanda, Advocate for the petitioners
(in CWP-20048-2024)

Mr. Pardeep Sehrawat, Advocate and
Ms. Priyanka Chaudhary, Advocate for the petitioner
(in CWP-275-2025)

Ms. Shruti Jain Goyal, Sr. Deputy Advocate General, Haryana

Ms. Nikita Goel, Advocate for respondent No.3
(in CWP-20048-2024)

Ms. Prince Singh, Advocate for respondent Nos.3 and 4
(in CWP-275-2025)

Mr. Arvind Seth, Advocate for respondent No.5
(in CWP-275-2025)
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JAGMOHAN BANSAL, J. (Oral)

1. As common issues are involved in both the captioned petitions, with the consent of both sides, the same are hereby disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from *CWP-20048-2024*.

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2. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking setting aside of notice dated 12.08.2024 (Annexure P-12) whereby respondent has shortlisted candidates from ex-servicemen category for written test to be held on 17.08.2024 and 18.08.2024.

3. The petitioners are dependents of Ex-servicemen. They are eligible for reservation under ex-servicemen category. The respondent conducted Common Eligibility Test (for short '**CET**') on 05.11.2022 & 06.11.2022. The result was declared on 10.01.2023. The name of the petitioners figured in the list of qualified candidates. It is apt to notice that petitioners had applied under Reserved Category, thus, they were required to secure minimum 40% marks. Apart from the petitioners, disabled ex-servicemen and their dependents participated in the test. The respondent vide advertisement dated 28.06.2024 invited applications for different posts. As per advertisement, the respondent had to select four times of advertised posts amongst CET qualified candidates. The respondent category wise selected candidates four times of advertised posts. In case of candidates belonging to ex-servicemen category, the priority was assigned to disabled ex-servicemen and their family members at the stage of shortlisting of candidates amongst ex-servicemen. The petitioners are dependents of ex-servicemen and respondent as per its opinion selected disabled ex-servicemen and their dependents despite their lower merit in the CET.

4. The list of shortlisted candidates was uploaded on the official website of the respondent on 12.08.2024. Amended list was uploaded on 14.08.2024. The petitioners approached this Court on 14.08.2024 and following interim order came to be passed: -

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"Learned counsel for the petitioners has submitted that it is a case where the petitioners had applied in the category of dependent of Ex-Servicemen and by virtue of Clause 7.7 of the conditions at the time of shortlisting, no prioritization can be made and he referred to Clause E & H of the aforesaid conditions and has also referred to the instructions issued by the Chief Secretary to Government of Haryana which is Annexure P-6 dated 09.03.2022 and these instructions have been incorporated in the advertisement itself. He further submitted that the prioritization can only be done at the time of final selection and not at the time of shortlisting and in case the shortlisting is done at the initial stages, then the zone of consideration is narrowed down and the petitioners will be debarred even from participating in the selection process. He further submitted that the written examination will be conducted on 17th and 18th August, 2024.

Notice of motion.

Ms. Shruti Jain Goel, Senior DAG, Haryana accepts notice on behalf of the respondent-State and prays for some time to file reply.

Adjourned to 24.09.2024.

It is directed that the petitioners shall be permitted to participate in the process provisionally. However, it is made clear that the aforesaid interim order will not create any equitable right in favour of the petitioners at the time of final disposal of the present petition.

5. In view of aforesaid interim order, the petitioners participated in the written test conducted pursuant to advertisement dated 28.06.2024. Final result has been declared on 17.10.2024. *CWP No.275-2025* was filed on 18.12.2024 i.e. after declaration of the result. The petitioner of this petition did not participate in the written test.

6. Mr. Rajat Mor, learned counsel for the petitioners submits that respondent with respect to reservation of ex-servicemen issued instructions

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dated 09.03.2022 (Annexure P-6) which are part of aforesaid advertisement. The instructions clearly provide that priority list shall be prepared only at the time of final selection list and not at the time of preliminary test, main test or interview. Despite categoric condition of the advertisement, the respondent prepared priority list at the time of shortlisting of candidates amongst CET qualified. The priority has to be considered at the time of final merit list and not at earlier stage.

7. *Per contra*, Ms. Shruti Jain, learned State counsel submits that in case priority list is not made operational at the stage of shortlisting, there are possibilities that primarily dependents of ex-serviceman are shortlisted as there are chances of securing higher marks by them in CET than disabled ex-serviceman. The respondent had shortlisted candidates category wise like BC candidates have been shortlisted in their own category. There is further bifurcation of BC candidates as BC-A and BC-B. The candidates who have applied as BC-A, they are shortlisted in their own category. The object of reservation would be defeated if priority list is not implemented at the stage of shortlisting of CET qualified candidates.

In support of her contentions, she relies upon judgment of Supreme Court in ***Dilwan Singh v. State of Haryana, 1996(8) SCC 369***, Division Bench of this Court in ***Rajesh Kumar Tahlan v. State of Haryana and others, 2000 SCC OnLine P&H 1407***.

8. I have heard the arguments of learned counsel for both sides and perused the record with their able assistance.

9. The respondent by notification dated 05.05.2022 issued a detailed procedure with respect to CET. The said notification clearly

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provides that for Group C & D posts, the aspirants would be required to qualify CET. A candidate can apply for the post, if he has qualified CET. In clause 7, a detailed procedure has been prescribed. The relevant extracts of notification dated 05.05.2022 are reproduced as below: -

> *"No. 42/119/2019-5GS-I.— Whereas fair and reasonable process of selection to posts subject to the norm of equality of opportunity under Article 16(1) of the Constitution of India is a constitutional requirement.*
>
> *Whereas with a view to secure and sustain the confidence of the public in general and to ensure credible and trustworthy recruitments to Government posts, the Government of Haryana proposes to introduce a Common Eligibility Test to simplify and standardize the recruitment process for Government employment to all direct recruitment to Group C posts including the posts of Police service, Prisons and Home Guards etc. but excluding the teaching posts and all direct recruitment to Group D posts other than the posts where minimum educational qualification is below Matriculation in the Haryana Group D Employees (Recruitment and Conditions of Service) Act, 2018 (5 of 2018). This test shall be held once every year or as decided by the Government from time to time. In supersession of Haryana Government, General Administration Department (in General Services-I Branch), Notification No. 42/119/2019-5GS-I, dated the 10th September, 2021, the State Government is pleased to declare the following policy for recruitment through the Common Eligibility Test, namely:-*
>
> *1. SHORT TITLE AND APPLICABILITY.*
>
> *(i) This policy may be called the Policy for Recruitment to Group C and D posts through Common Eligibility Test, 2022.*
>
> *(ii) It shall apply to direct recruitment to Group C posts including the posts of Police service, Prisons and Home Guards etc. excluding the teaching posts and*

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Group D posts other than those posts where minimum educational qualification is below Matriculation in the Haryana Group D Employees (Recruitment and Conditions of Service) Act, 2018 (5 of 2018), in the departments of State Government or any Board, Corporation, statutory body or any other agency owned and controlled by the State Government other than any University established by or under a State Act.

XXXX XXXX XXXX XXXX

5. REGISTRATION FOR CET :

(i) All applicants shall register on a designated portal i.e. onetimeregn.haryana.gov.in by such last date to be published by an advertisement issued by the Commission, providing all particulars relating to the identity of the applicant and uploading all the required documents relating to any claim including claim for reservation, educational qualifications, experience and socio-economic criteria weightage and such other details as the Government or the Commission may seek, from time to time, for the purpose of recruitment.

(ii) The Parivar Pehchan Number enables the recruiting agency to verify the applicant's claims in respect of residence, educational and other qualifications, caste and experience certificate, family income/assets, status of parents (if any parent is deceased the verification of death certificate is involved), marital status of female applicant, separation certificate of legally separated women, disability certificate, sports gradation certificate, denotified tribe/Vimukt Jati certificate, certificate of ex-serviceman, dependent of ex-servicemen certificate, dependent of freedom fighter, FIR copy etc.

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7. CET EXAMINATION AND MARKS FOR GROUP C POSTS:

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(i) An applicant who intends to apply for direct recruitment to any applicable Group C post shall have to appear in CET for Group C posts.

(ii) The Commission shall issue an advertisement for Group C posts based on requisition received from the Departments of State Government or any Board, Corporation, statutory body or any other agency owned and controlled by the State Government stating its intent to conduct the CET.

(iii) An applicant who does not possess the CET minimum educational qualification specified for CET before the last date of registration for CET on the designated portal but is due to appear for the examination to attain the appropriate educational qualification during the year in which the CET is conducted, shall also be eligible to appear in the CET:

Provided that the name of such applicant shall not be considered for skill and/or written examination for the advertised posts until he acquires the minimum essential educational qualification and/or experience, if any, specified for that post by the last date for attaining such minimum qualification specified in the advertisement issued by the Commission for the conduct of skill and/or written examination.

(iv) An applicant who has not attained the minimum age or who has crossed the maximum age limit prescribed by Government for entry into Government service for Group C post as on the last date fixed in the advertisement published by the Commission for registration for CET shall be ineligible to appear in CET. The relaxation in upper age limit to the applicants of Scheduled Castes, Backward Classes and other categories and of experience shall be admissible as per rules or instructions issued by Government from time to time.

(v) Every applicant, who appears in the CET, shall be given marks based on his performance in the CET. An

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applicant of general category shall have to obtain minimum 50% marks in CET (excluding the socio-economic criteria weightage) to be eligible for skill and/or written examination of second stage, however, an applicant of reserved category (both vertical and horizontal) shall receive concession @ 10%, for the purpose of eligibility for CET, i.e. the minimum cut-off for such candidates shall be 40% (excluding the socio-economic criteria weightage). An applicant of any category who obtains less than the minimum marks in CET, shall have to re-appear in CET in the next or any subsequent attempt.

(vi) The CET marks of applicants shall be declared on the website of the Commission.

(vii) An applicant shall be eligible to reappear in CET whenever conducted on a subsequent date and the CET marks shall be revised if the applicant improves it in the next or any subsequent attempts.

(viii) There shall be no restriction on the number of attempts to appear in the written examination component of the CET. If an applicant who has already qualified the CET for Group C post will have the option to appear again in CET to improve his CET marks in the next or any subsequent occasion, if he so desires.

(ix) The CET marks obtained by an applicant shall be valid for a period of three years from the date of declaration of the result of CET. Provided that if an applicant improves his CET marks in the next or any subsequent attempt, then the fresh period of validity of three years will commence from the date of declaration of result of such attempt.

For clarification on validity of CET marks, see Illustration No. 1 at Annexure-C of this policy.

(x) For calculation of CET score of an applicant, the marks obtained in the CET shall be added to the score. if any, on account of socio-economic criteria weightage to arrive at the CET score of the applicant.

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The calculation methodology for arriving at the CET score has been illustrated at Illustration No. 2 at Annexure-C.

(xi) CET marks and the marks of socio-economic criteria weightage, if any, shall be declared on the website of the Commission in respect of the applicants who have achieved the specified cut-off as per sub-clause (v) above."

10. From the perusal of above quoted clauses, it is evident that that respondent-State with intent to shortlist candidates for Group-C & D posts has notified CET. This is first stage of selection process. A candidate may participate in CET as many times as he wants. The minimum educational qualification has been prescribed for participating in CET. It has been further provided that a candidate belonging to General Category would stand qualified if he attains 50% marks and 40% in case he belongs to reserved category (both vertical and horizontal).

11. The respondent issued advertisement No.1/2024 dated 12.02.2024 inviting applications for different posts. The said advertisement was cancelled on account of orders of this Court. The respondent issued public notice dated 28.06.2024 while issuing fresh advertisement inviting applications for afore-stated posts. In the public notice, it was made clear that applicants who had already applied pursuant to advertisement No.1/2024 shall not be required to apply afresh. Public notice dated 28.06.2024 is reproduced as below: -

"PUBLIC NOTICE

In view of Hon'ble High Court judgment dated 31.05.2024 in LPA 1037/2023, the Commission has uploaded the revised result of CET Group-C vide public notice dated 25.06.2024. Now, in further compliance to Hon'ble High Court directions in said judgment, the fresh advertisement is to be issued. Online portal for

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calling of fresh applications for Police Constable Posts from CET Group-C qualified candidates after re-advertising these posts has been made live. Candidates are advised to apply for these posts by visiting the link given. https://adv062024.hryssc.com/ from 29.06.2024 to 08.07.2024 till 11.59 P.M. Thereafter link will be disabled.

Important Note:

1. *Since in the Police Advt. 01/2024, the applications had been called from 20.02.2024 till 28.03.2024 and no further process regarding the recruitment has happened, therefore, the candidates who have applied for the Police constable posts through Advt. No. 01/2024 need not apply again. Their previous applications after removing the socio-economic criteria related claims, shall be considered for further process of recruitment.*

   However, if any candidate still wants to apply afresh, he/she may do it by visiting to above mentioned link, the latest details of such candidates shall be considered for the recruitment process of Police Constable posts.

- *If any candidate have any grievance related to online application, the same may be raised online by visiting the grievance management menu in the candidate login. No request related to any grievance shall be dealt offline by the Commission.*

2. *The other details related to the re-advertised posts have been mentioned in the respective advertisements. Candidates are advised to go through the advertisement document properly and then apply for the posts.*

Place: Panchkula *-Sd/-*
Dated: 28th June, 2024 *Secretary,*
Haryana Staff Selection Commission,
Panchkula"

12. The respondent has issued instructions dated 09.03.2022 with respect to reservation of ex-servicemen and their children. Instructions dated 09.03.2022 are reproduced as below: -

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"No. 12/15/2019-4GS-II
Haryana Government
Chief Secretary Organization
General Administration Department
(General Services-II Branch)

Dated: Chandigarh, the 9 March, 2022

To

1. *All the Administrative Secretaries to Government Haryana*
2. *All the Heads of Departments of Haryana.*
3. *All the Managing Directors/Chief Administrators of Boards/Corporations in Haryana.*
4. *All the Divisional Commissioners of the State of Haryana.*
5. *All the Deputy Commissioners of the State of Haryana.*
6. *The Registrars of all the Universities in the State of Haryana.*

Subject: Benefit of reservation to Ex-servicemen and their children.

Sir/Madam,

I am directed to invite your attention to Government instructions bearing No. 12/15/2019-4GS-II, dated 14th July, 2021 on the subject cited above.

2. On receipt of representations from various Associations of Ex-servicemen, Martyrs Family Welfare Foundations and others, the above said instructions have been reviewed by Government and after careful consideration following decision has been taken to grant the benefit of reservation to Ex-servicemen and their family members:-

(A) An ex-serviceman who himself/herself or his/her family member has already secured employment in civil service on regular basis in any Department/ Board/Corporation/University etc. under the State Government with availing the benefit of reservation-

(i) he/she himself/herself shall not be entitled to avail the benefit of reservation in civil service for any subsequent appointment in any

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Department/ Board/ Corporation/ University etc. under the State Government. However, the benefit of age relaxation for securing another employment in a higher pay scale or post shall remain continue; and

(ii) his/her family member shall also not be entitled to avail the benefit of reservation against the posts reserved for ex-servicemen.

(B) (i) An ex-serviceman who himself/herself has already secured employment in civil service on regular basis in any Department/ Board/ Corporation/ University etc. under the State Government without availing the benefit of reservation in such case he/she himself/herself or one of his/her family members (son, daughter or spouse) will be entitled to avail the benefit of reservation;

(ii) where an ex-serviceman who himself/herself is eligible to avail the benefit of reservation under these instructions but he/she does not want re-employment in civil service in such case one of his/her family members (son, daughter or spouse) will be entitled to avail the benefit of reservation.

(C) If an ex-serviceman applies for various vacancies before joining any civil employment, he/she can avail the benefit of reservation as ex-serviceman for any one of the subsequent employments. However, to avail of this benefit, an ex-serviceman as soon as he/she joins any civil employment, should give self-declaration/ undertaking to the concerned employer about the date-wise details of application for various vacancies for which he/she had applied for before joining the initial civil employment. Further, this benefit would be admissible only in respect of vacancies which are filled by direct recruitment and wherever reservation is applicable to the ex-servicemen.

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(D) The family members of martyr military personnel shall be entitled to exercise an option either-

(i) to avail the benefit of reservation upto two family members; or

(ii) to avail the benefit of compassionate appointment to one of the family members under the Ex-gratia Policy namely Compassionate Appointment to family member of Martyr Armed Forces Personnel Policy notified by Government from time to time.

(E) The priority list for recruiting agency for preparation of final list of selection/appointment of ex-servicemen or their family members against the posts reserved for ex-servicemen shall be as under:-

(i) disabled ex-servicemen, the post(s) for which they are physically fit;

(ii) failing (i), family member of disabled ex-servicemen;

(iii) failing (ii), other ex-servicemen who are eligible to get the benefit of reservation under these instructions;

(iv) failing (iii), family member of other ex-servicemen who are eligible to get the benefit of reservation under these instructions.

(F) Disabled ex-serviceman means a person who has been released from military service due to disability attributable or aggravated due to military service. An ex-serviceman shall not be treated disabled one who has been released from military service not on account of his/her disability but has been released in the normal course after the completion of his/her term or retired from military service voluntarily.

(G) Both the reservations are horizontal, therefore, a disabled ex-serviceman who is selected against the post reserved for ex-serviceman will not be counted against the post reserved for PwD.

(H) In all circumstances the benefit of reservation against the posts reserved for Ex-servicemen shall be

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admissible at the time of final selection list only and not at the time of preliminary test, main test or interview.

(I) An ex-serviceman who have been discharged from military service by way of dismissal, misconduct or inefficiency neither he/she himself/herself nor his/her family members shall be entitled to avail the benefit of reservation in civil service.

3. These instructions shall come into effect with immediate effect. These instructions may please be brought to the notice of all concerned.

Yours faithfully,
Sd/-
Under Secretary General Administration,
for Chief Secretary to Govt. Haryana"

13. Clauses 2(E) and (H) of the instructions are relevant for the adjudication of the instant petitions.

14. As per Sub-Clause (E), there would be priority to disabled ex-serviceman and their family members. Other ex-serviceman would be considered if disabled ex-serviceman and their family members are not available. Sub-Clause (H) makes it clear that benefit of reservation shall be admissible at the time of final selection list and not at the time of preliminary test, main test or interview. The State Government in the instructions has used word "only" to make it clear that benefit would be admissible at the stage of final selection list and not at the time of preliminary test, main test or interview.

15. In the case in hand, the respondent conducted CET which was preliminary test. It was followed by written test known as Stage-II or main test. The respondent, at the stage of shortlisting of candidates from CET qualified, made priority list operational. The respondent, at that stage,

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thought it appropriate to give priority to disabled ex-serviceman and their family members. The petitioners have secured more marks than disabled ex-serviceman or their family members in CET. They are higher in merit and as per procedure, the respondent has to select four times of advertised posts amongst the CET qualified. The respondent can shortlist candidates category wise, however, priority cannot be given within the category unless and until permitted by the advertisement or statutory provisions. The advertisement as well as instructions dated 09.03.2022 categorically provide that priority would be given to disabled ex-serviceman and their family members at the time of final selection list. Priority cannot be given at the time of main test. The respondent acting contrary to Government instructions and advertisement has extended priority to disabled ex-servicemen at the stage of main test. It is settled proposition of law that no party can travel beyond the terms and conditions of advertisement. If it is permitted, there would be chaos and uncertainty. Selection would be at the caprice and whims of the recruitment agency. It would be contrary to rule of law which cannot be permissible. The intention of the respondent in preparing priority list at the stage of written test may be just and fair, however, intention cannot substitute terms and conditions of the advertisement/instructions which are categoric and quite clear.

CWP No.275 of 2025

This petition has been filed after declaration of result and the petitioner did not participate in the written test, thus, his claim cannot be entertained. His petition is liable to be dismissed.

16. In the wake of above discussions and findings, this Court is of the considered opinion that *CWP No.20048-2024* deserves to be allowed and

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accordingly allowed. The respondent shall consider priority of disabled ex-servicemen and their family members at the final stage.

(JAGMOHAN BANSAL)
JUDGE

10.02.2025
Mohit Kumar

Whether speaking/reasoned	Yes
Whether reportable	Yes

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