

* IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Reserved on: 9th January , 2023
Pronounced on: 15th Feburary, 2023*

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W.P.(C) 8983/2020 & CM APPL.28998/2020

YOGENDRA KUMAR YADAV

..... Appellant

Through: Mr. Ankur Chhibber, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Harish Vaidyanathan Shankar,
CGSC with Mr. Srish Kumar
Mishra, Mr.Sagar Mehlawat and
Mr. Alexander Mathai, Advocates
for UOI. SI Prahlad Devenda and
SI Amit Kumar, CISF

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J

1. A petition under Article 226 of the Constitution of India for issuance of Writ of Certiorari for quashing of Order dated 15.10.2020 whereby selection of the petitioner for the post of Constable/DCPO has been cancelled and for issuance of Writ of Mandamus for directing the

respondents to treat the Driving License of the petitioner as valid and issue Appointment Letter and permit him to join the training along with other candidates with all consequential benefits.

2. The facts in brief are that an advertisement in the month of February, 2018 for filling up temporary post of Constable/ Driver cum Pump Operator (DCPO) in Central Industrial Security Force (CISF) was issued. The petitioner being eligible as per the criteria prescribed in the advertisement, applied for the post in the category of OBC. Recruitment process consisted of Height Bar Test (HBT), Physical Endurance Test (PET), Physical Standard Test (PST), Documentation, Trade Test, Written Test and the final was the medical examination. After examining eligibility of the petitioner by taking note of the eligibility conditions prescribed in the Advertisement, petitioner was issued Admit Card and was called for Height Bar Test, Physical Endurance Test on 17.09.2018 which was cleared by the petitioner. Thereafter, he was issued an Admit Card for the written examination which was held on 17.02.2019. After successfully cleared all the examinations, he was declared provisionally selected subject to the medical examination. The list of provisionally selected candidates was published on 16.04.2019 and the name of the petitioner was reflected at Sr. No.328. His medical examination was also conducted and was found fit. He was verbally informed that he would have to report to CISF, Bhilai, Chattisgarh. The petitioner accordingly visited Bhilai, where he was informed that the recruitment process is still underway and the final list shall be declared pursuant to which he would be called for joining. The revised result of provisionally selected candidates was published, wherein the names of all the candidates who

were found medically fit on review were supposed to appear, but to the shock and surprise of the petitioner, his name was not included in the list.

3. The petitioner filed W.P. (C) No.9723/2019 titled as Vikram Singh & Ors. Vs. Union of India which was allowed by this Court vide judgment dated 24.10.2019 with the following directions :

“15. Even otherwise with the Respondents having advertised 447 vacancies, there appears to be no logical reason for not preparing a reserve list. The contention of learned counsel for the Respondents, on the basis of averment in the counter affidavit, that candidates from the reserved list may miss out on the training already being imparted to the 372 selected candidates overlooks the fact that there have been numerous instances where there is a large batch of candidates qualifying in a selection, all of them may not be able to be sent for training at the same time but are further split into groups and sent for training in batches. In any event of the present case, the fault entirely lies with the Respondents for not adhering to the settled legal position explained in the above decisions of the Court interpreting OM dated 13th June, 2000 and underscoring the need to prepare the reserve list of candidates.

16. Consequently, the Court directs that the Respondents will now prepare a reserve list of candidates pursuant to the result already declared on 29th August, 2019 taking into account the reservations provided in terms of the

advertisement. Those figuring in the reserve list, including the Petitioners if they do figure in such reserved list, will be sent offers of appointment. This exercise be completed not later than 8 weeks from today. The petition is allowed to the above terms. The pending application is also disposed of. No order as to costs.

17. A copy of this order be given dasti under the signatures of the Court Master.”

4. Despite the above judgment and the directions contained therein, the respondent did not comply with the same, which led the petitioners to file a Contempt Petition No.24/2020 against respondents in W.P. (C) 9723/2019 for wilful disobedience of the Judgment dated 24.10.2019. The Union of India had also filed a SLP before the Supreme Court bearing *SLP (C) Diary No.4086/2020* but the same was dismissed vide order dated 02.03.2020. Thus, the judgment of this Court dated 24.10.2019 attained finality.

5. Thereafter, the respondents issued a list of 72 provisionally selected candidates from the reserved list, as directed by this Court in its Order dated 06.10.2020. The petitioner figured at Sr. No.29 with the remark “*fit in medical examination*”. Despite figuring in the list of selected candidates, no letter/ offer of appointment was issued to him. Instead he received a letter dated 10.10.2020 wherein it was directed that he should submit his HMV or Heavy Motor Vehicle Driving License in order to be eligible for selection. The petitioner accordingly forwarded his Driving License along with relevant application via e-mail dated 12.10.2020. The respondents issued the letter dated 15.10.2020 informing that the

candidature of the petitioner has been cancelled since the Driving License submitted by him at the initial stage of selection validated his driving for “*Trans driving license*” w.e.f. 08.11.2019 for which the petitioner had submitted valid learners license for “*Trans*” vehicles which was issued for the period 23.05.2019 till 22.11.2019. Since the closing date for submitting applications as per advertisement was 19.03.2018, the license forwarded by the petitioner was invalid and could not be considered for his application and, therefore, the selection of the petitioner stood cancelled.

6. It is asserted that the relevant criteria as regards the Driving License mentioned in the advertisement for the post of Constable/ DCPO was as follows :

“*c) Driving License:*

The candidate should have a valid driving license for

(i) Heavy Motor Vehicle or Transport Vehicle;

(ii) Light Motor Vehicle;

(iii) Motor cycle with gear.”

7. It is claimed that “*Tans*” or “*Transport Vehicle*” is equivalent to *HMV or Heavy Motor Vehicle* and the advertisement clearly stipulated that the candidate should hold a Driving License for a “*Heavy Motor Vehicle or Transport Vehicle*”. The petitioner had a valid License to drive Transport Vehicles w.e.f 08.11.2019. His earlier copy of Driving License was issued on 09.02.2012, the copy of which was forwarded to the respondent vide e-mail dated 12.10.2020. It had the endorsement that it was valid for the petitioner to drive ‘*TR: LMV-GV*’ or (*Transport: Light Motor Vehicle-Goods Vehicle*) which was valid upto 29.10.2016.

Thereafter, the license was duly renewed till 29.10.2019. The petitioner was thus, holding a valid driving licence and was authorized to drive 'Trans' vehicles up to 29.10.2019. It was only to ensure that he did not face any obstacle that he applied for Licence for Heavy Motor Vehicle which was authorized w.e.f 08.11.2019. The petitioner has claimed that he was holding a valid license for Transport vehicles as on 29.10.2019 and he was an eligible candidate on the date of closing of the application as per the advertisement, despite which his selection was cancelled on 19.03.2018.

8. The petitioner has asserted that due to inadvertent error he did not attach copies of previous driving licenses. For such minor technical and inadvertent error, his appointment cannot be terminated when he has successfully completed all the other steps of selection process. The petitioner had placed reliance on East Coast Railway vs. Mahadev Appa Rao & Ors. (2010) 7 SCC 678; Delhi Subordinate Services Selection Board & Anr. Vs. Neeraj Kumar & Anr. 2012 SCC OnLine Del 1160; Union of India & Ors. Vs. Pradeep Tomar 2015 SCC OnLine Del 8699; and Union of India & Ors. Vs. Sumit Kumar 2017 SCC OnLine Del 10138 to argue that in the matters of fundamental rights, no impediment which is more in the nature of technicality, should be allowed to play a substantive role resulting in denial of such rights.

9. It is claimed that the impugned Order dated 15.10.2020 of the respondents is arbitrary and untenable in law. The petitioner had fulfilled the criteria as mentioned in the advertisement for the post of Constable/ DCPO. Therefore, directions may be issued quashing the impugned order dated 15.10.2020 and direct the respondent to treat the Driving License of

the petitioner as valid and to offer the relevant post to the petitioner as part of the provisional list of 72 candidates issued in the year 2019 and to permit him to join the training tentatively scheduled to start from 21.12.2020.

10. The petitioner in his written submissions, has reaffirmed his assertions as contained in the petition.

11. The **respondent in its oral and written submissions** has admitted that pursuant to the advertisement dated February, 2018 the petitioner had appeared and was declared qualified for PET/PST/Documentation/ Trade Test held on 17.09.2018 and 18.09.2018. He was declared qualified in the written examination and he was also found medically fit in his medical examination conducted on 17.05.2019. However, upon scrutiny of documents, the petitioner was found to be having a Driving License for *Non-Transport: Light Motor Vehicle, Motor Cycle with Gear* issued on 09.02.2012 and Driving License for *Transport: LMV-GV* on 13.10.2013. Since there was no entry with respect to *Heavy Motor Vehicle or Heavy Transport Vehicle*, the petitioner was directed to produce the same within ten days vide Group Commandant, Group HQs Letter No.4992 dated 17.05.2019. The petitioner submitted the Learner's License for *TRANS (i.e. Transport)* valid from 23.05.2019 to 22.11.2019 issued by Sub Officer, Rajasthan.

12. It is further asserted that WP No.7335/2019 was filed before the Allahabad High Court and it was confirmed that the answer to one question in the Answer Key of written examination was incorrect. The result was revised and fresh list of 447 candidates was drawn. In this revised result, the ten candidates including the petitioner who had secured

a place of merit in the previous list, were eliminated and did not find mention in the revised Merit List. Since, the petitioner was not selected, the issue in regard to production of HMV or Transport Vehicle license has become otiose.

13. In compliance of the Order dated 24.10.2019 of this Court in WP No.9723/2019, a Reserve list of 72 candidates for recruitment to the post of Constable/ Driver and DCPO-2017 was drawn from the combined reserve list which was issued on 03.10.2020. The petitioner was one of these 72 candidates whose name featured at Sr. No.29 of the reserve list. He was directed to produce a valid HMV/ Transport Vehicle license along with a copy of the license as specified in the Notification for recruitment in CISF to NZ-I Hqrs by 14.10.2020. The petitioner sent his application along with the copy of the Transport HMV license on 12.10.2020. Upon scrutiny, it was found that *HMV/TR License* was issued on 08.11.2019 which was beyond the closing date of 19.03.2018. Despite opportunity having been afforded to petitioner, he was unable to produce a valid HMV/TR license and his candidature was rejected about which he was intimated vide letter dated 15.10.2020.

14. It is submitted that candidate should have possessed driving license for all the three categories as mentioned in paragraph 4(c) on or before the closing date of application i.e. 19.03.2018. The category of *Heavy Motor Vehicle or Transport Vehicle* is a category completely different from *Light Motor Vehicle*. The petitioner was not having a license for Heavy Motor Vehicle or equivalent Transport Vehicle on 19.03.2018 and was therefore, not qualified.

15. It is further argued that if the petitioner was indeed fulfilling all

the criteria of the Notification on the date of closing of application i.e. 19.03.2018, there was no need for him to file subsequent Learner's License having a category of *TRANS* w.e.f. 23.05.2019 in furtherance of the Group HQs Letter No.4992 dated 17.05.2019. It is asserted that the petitioner had furnished false information and submitted a false experience certificate during the recruitment process and did not fulfil the eligibility criteria for the post in CISF and his candidature has been cancelled in accordance to the criteria laid down in the Notification.

16. **Submissions heard.**

17. The short controversy in the present case is whether the petitioner had the requisite Driving License for the LMV/ Transport Vehicle or Heavy Motor Vehicle on the closing date of 19.03.2018 as per the advertisement. It would be relevant to quote the relevant eligibility criteria as stated in the Advertisement which is as under :

“4.(1)ELIGIBILITY CRITERIA

.....

(c) Driving License:

The candidate should have a valid driving license for

- (i) Heavy Motor Vehicle or Transport Vehicle;**
- (ii) Light Motor Vehicle;**
- (iii) Motor cycle with gear.”**

18. There is no dispute or challenge in regard to the petitioner having a valid driving license for *LMV and Motor Cycle with Gear*. The entire controversy hinges on whether he had a valid driving license for “*Heavy Motor Vehicle or Transport Vehicle*” on the last date of submission of

application i.e. 19.03.2018.

19. There is no denial or challenge that the driving license of the petitioner was issued on 09.02.2012 which was valid for *Light Motor Vehicle/ Motor cycle with Gear*. Thereafter, the endorsement for *Transport: LMV-GV* was made on 20.10.2013 which was valid till 29.10.2016. Thereafter, the Driving License was renewed till 29.10.2019 *vide* endorsement made in 2016. The advertisement provided for “**Heavy Motor Vehicle or Transport Vehicle**”. The petitioner was thus, having the valid Driving Licence for Transport Vehicle which met the Criteria as specified in the Advertisement.

20. The controversy now raised by the respondents is that though the petitioner was having a Transport Licence but it did not include Heavy Motor Vehicle and thus, the petitioner was not qualified for the post. Before considering whether the Petitioner fulfilled the requisite criteria it would be worth the while to refer to the definitions under Motor Vehicle Act, 1988.

21. Section 2(47) of The Motor Vehicles Act, 1988 defines the **Transport Vehicle** as under :

““*transport vehicle*” means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.”

22. The Transport Vehicle thus includes a *public service vehicle* and a *private service vehicle* aside from a *goods carriage* or an *education institution bus*.

23. Section 2(35) **public service vehicle**:

““*public service vehicle*” means any motor vehicle

used or adopted to be used for the carriage of passengers for hire or reward, and includes a maxicab , a motorcab, contract carriage, and stage carriage.”

24. Section 2(33) **private service vehicle:**

““Private service vehicle” means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes.”

25. Section 2(14) **goods carriage:**

““goods carriage” means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods.”

26. Section 2(11) **educational institution bus:**

““educational institution bus” means an omnibus, which is owned by a college, school or other educational institution and used solely for the purpose of transporting students or staff of the educational institution in connection with any of its activities”.

27. From the aforesaid definition of transport vehicle, it is evident that it is valid for goods carriage, and for any motor vehicle used or adapted to be used for carriage of goods for hire or reward or any private vehicle used by the owner for its own business/ trade purpose. The Transport vehicle essentially is for carriage of passengers or goods and has an element of commerce / business.

28. The scheme of Motor Vehicle Act in addition to classifying the driving licenses as for Non-Transport or Transport Vehicle, also categorizes the vehicles as *Light Goods Vehicle* and *Light Passenger Vehicle* as defined under Section 2(21) and 2(22); *Medium Goods Vehicle and Medium Passenger Vehicle* as defined under Section 2(23) and 2(24); and *Heavy Goods Vehicle and Heavy Passenger Vehicle* as defined under Section 2(16) and 2(17) of the Motor Vehicle Act. Essentially, the Transport vehicles having an unladen weight of 12000 Kilograms or above are classified as Heavy Motor Vehicle, while the transport vehicles having an unladen weight not exceeding 7500/- Kilograms are classified as Light Motor Vehicle and the vehicles in between 7500 Kilograms and 12000 Kilograms unladen weight may be considered as Medium Motor Vehicles (goods or passenger). The classification of Light, Medium and Heavy Transport Vehicle is, therefore, done on the basis of the unladen weight of the vehicles.

29. From the definitions as mentioned above, it is evident that Heavy Transport Vehicle, Medium Transport Vehicle and Light Transport Vehicle, all come within the umbrella of Transport Vehicle.

30. The petitioner's Driving License was valid for *Transport license for LMV/ Goods Vehicle*. The advertisement provided for "**Heavy Motor**

Vehicle or Transport Vehicle” i.e. the candidate should be holding either a Heavy Motor or a Transport Vehicle license. Undeniably, the category of Heavy Motor Vehicle as Transport Vehicle is different as has also been submitted by the respondent, but the advertisement only specified for a driving license for Transport Vehicle **or** heavy motor vehicle. It nowhere stated that the candidate was required to have a driving license for HTV as well as for Transport Vehicle.

31. Once the advertisement clearly stipulated that the petitioner must have a valid *Transport License or Heavy Motor Vehicle*, it cannot be now contended by the respondents that the transport license should have also been valid for Heavy Motor Vehicle. The conjunction “*or*” between the two categories unambiguously leads to only one interpretation that the license should have been valid for Transport or HTV in the alternative. It cannot now be contended that the Transport Vehicle should have also been valid for Heavy Transport Vehicle.

32. The approach adopted by the respondents is hyper-technical, pedantic and also contrary to its own advertisement. The petitioner pursuant to the letter dated 17.05.2019 of the respondents, may have applied to get the driving license for HTV but that was not because he lacked requisite qualification as provided in the impugned advertisement but only pursuant to subsequent communication dated 17.05.2019 as he did not want any obstacle to his appointment.

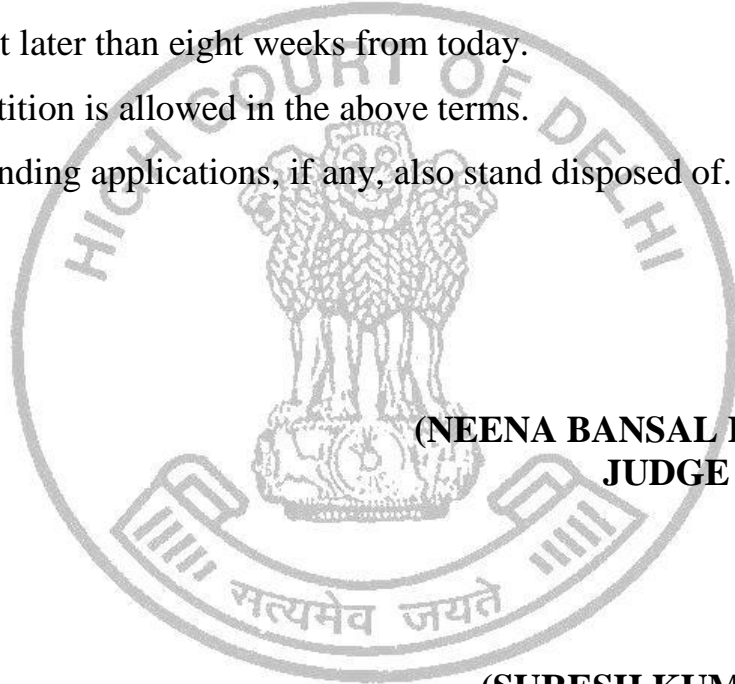
33. The contention of the respondents that petitioner was disqualified as he was not holding a valid Driving License for HTV on the last date of submission of the application i.e. 19.03.2018, is arbitrary, without any basis and contrary to its Advertisement. The petitioner was holding a valid

Driving License for Transport Vehicles, Light Motor Vehicle and Motor Cycle with gear and was thus, qualified for selection to the advertised post of Constable/DCPO.

34. Consequently, we direct the respondents to reconsider the candidature of the petitioner since he had the requisite valid Driving License on the date of the advertisement subject to the condition of his being selected in the Reserve List of 72 candidates, as per the result declared on 29.08.2019, with all consequential benefits. This exercise be completed not later than eight weeks from today.

35. The petition is allowed in the above terms.

36. The pending applications, if any, also stand disposed of.



**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

FEBURARY 15, 2023

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