

(2025) 01 MAN CK 1699

In the Manipur High Court

Case No : Writ Petition (C) No. 167 Of 2023, Miscellaneous Case (Writ Petition (C) No. 180 Of 2023

Khangjrakpam Netrajit Singh & Ors.

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 20-01-2025

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2025) 01 MAN CK 1699

Hon'ble Judges : A. Guneshwar Sharma, J

Bench : Single Bench

Advocate : A. Romenkumar, Ng. Jotindra, Kh. Samarjit, Captain Shireen Shukla

Final Decision : Disposed Of

Judgement

A. Guneshwar Sharma, J

(CAV)

[1] Heard Mr. A. Romenkumar, learned senior counsel assisted by Mr. Ng. Jotindra, learned counsel for the petitioners, and Mr. Kh. Samarjit, learned DSGI for the Union of India along with Ms. Captain Shireen Shukla, OIC, Legal Cell, Manipur High Court.

[2] The brief facts of the case is that the Director Recruitment, Army Recruiting Officer, Rangapahar, Dimapur issued a notification dated 04.07.2022 for conducting a Army Recruitment Rally (For Men) under Agnipath Scheme from 23.11.2022 to 05.12.2022 for all District of Manipur at Leimakhong, Manipur for the post of Agniveer (General Duty), Angiveer (Technical), Agniveer (Clerk/Store Keeper Technical), Agniveer (Tradesmen) in Army as per the rules and regulation of Indian Army/Government of India. The online registration for the said recruitment started from 05.07.2022 and closed on 03.08.2022.

[3] The petitioners passed the certificate "C" Examination held under the

authority of the Ministry of Defence, Govt. of India. The NCC "C" certificates were issued by the Addl. Director General, NCC, Shillong in favour of the petitioners and as such, they fulfilled all the essential as well as desirable qualification prescribed for Recruitment to the post of Agniveer (General Duty) in Indian Army under the Ministry of Defence, Govt. of India. The petitioners applied for the said post of Agniveer (General Duty) for the said recruitment through online as per the prescribed format given in the notification dated 04.07.2022. Thereafter, all the petitioners were allowed to attend the physical Fitness test held during 23.11.2022 to 05.12.2022 as per their respective schedule allocated by the Recruitment authorities and as per the criteria of the recruitment notification, the petitioner Nos. 1 to 5 got excellent in 1.6 Km run and qualified as Group-I having completed 10 pull ups and also qualified 9 feet Ditch (Jump) and Zig-Zag balance. Similarly, the petitioners Nos. 6 to 22, 23 to 26 and 27 to 29 were also qualified as Group – II having completed 10 pull ups, 9 pull ups and 8 pull ups respectively and they also qualified 9 feet Ditch (Jump) and the Zig-Zag balance.

[4] On completion and having qualified for physical fitness Test, all the petitioners were allowed for Medical Test on the next following day of their respective physical test as allocated by the Recruitment authorities. Having being qualified for the said Medical Test, the petitioners were issued with their respective admit cards for Common Entrance Examination (CEE) which held on 15.01.2023 at Rangapahar Military Station, Dimapur, Nagaland. On 15.01.2023 while reaching at Rangapahar Military Station, Dimapur, Nagaland, for the CEE, the petitioners were informed not to appear for the examination being NCC "C" Certificate holders since all the NCC "C" Certificate holders were exempted from appearing the CEE. Thereafter, on declaration of the result of the said recruitment by uploading in official website of the Indian Army on 27.01.2023, the present petitioners were not selected whereas some other NCC "C" Certificate holders who participated in the same recruitment were selected in the same post of Agniveer (General) Duty) and they were called for reporting to ARO Rangapahar for preliminary documentation for dispatch to Regimental Centres as per the district wise schedule given in the said result.

[5] It is submitted that the act of the respondents selecting some candidates of NCC "C" Certificate holders without considering the case of the petitioners are arbitrary, malafide and quite discriminative. In fact, the respondents acted in pick and choose manner by selecting some NCC "C" Certificate holders who are similarly situated with the present petitioners because the score obtained by all the candidates appeared in the said Recruitment test were not disclosed. Hence, the result of the Agniveer (General Duty) vide Annexure A/5 is liable to be quashed.

[6] Thereafter, being aggrieved by the said result, the petitioners filed several RTI through online and offline seeking information:

(i) to provide the criteria/mythology on which the selection of the Army recruitment (for Men) under Agnipath scheme held on 23.11.2022 to 05.12.2022

for all districts of Manipur was based.

(ii) to provide the scoring mark for exemption of NCC "C" Certificate holders from appearing CEE.

(iii) to provide the reasons for not giving options to appear at the CEE to NCC C certificate holders in case of failure to allot the maximum mark for the said CEE to them.

(iv) to provide the particulars of selected candidates in respect of the State of Manipur alongwith their respective score obtained in the said recruitment process under Agnipath scheme.

(v) to provide the score obtained by the applicant in this regard.

[7] The respondents authority did not provide the information sought through RTI as yet. Hence, the particular and details of the selected candidates could not be trace out as yet.

[8] In the said recruitment notification dated 04.07.2022, it is clearly mentioned that the candidates who have passed NCC "C" certificate holders are exempted from Written/CEE. In fact, the petitioners have passed their Physical fitness Test & Medical Test and they were also exempted for Written Test/CEE being a NCC "C" Certificate holders. Hence, they are also eligible to be recommended/selected to the post of Agniveer (General Duty) in the Indian Army as was one in case of similarly situated persons who are NCC "C" Certificate holders who appeared alongwith the petitioners in the same capacity. It is submitted that the petitioner Nos. 1 to 5 got excellent in Physical and scored outstanding mark in the aforesaid recruitment and the other petitioners have also qualified their physical and Medical Test. However, they were not declared successful in the said recruitment. Such act of the respondents is clearly a pick and choose selection which is arbitrary, malafide and discriminative because the authority did not provide the mark scored by all the candidates appeared in the said recruitment and despite RTI application. Meanwhile, a latest recruitment circular was uploaded by the Army Recruiting Office, Rangapahar on its official Website inviting from domiciles of all districts of Manipur for selection test for Agniveer intake for recruiting year 2023-2024 under Agnipath Scheme.

[9] It is submitted that most of the petitioners have become overage so that they will not get further opportunity to apply in any army recruitment called for by virtue of the prescribed age. In fact, this is the last opportunity for them to serve for the betterment of the Nation if they get selection/appointment to their applied post of Agniveer (General Duty).

[10] Being aggrieved, the petitioners submitted a joint representation dated 13.02.2023 to the concerned authorities requesting to consider the case of the petitioners' selection/appointment to the post of Agniveer (General Duty) in Indian Army under the Ministry of Defence, Govt. of India as was done in case of other similarly situated selected person particularly NCC "C" Certificate holders in

respect of the State of Manipur.

[11] The prayer in the writ petition is reproduced below:

(i) to issue a writ in the nature of certiorari, or any other appropriate writ, orders or quashing the impugned result of the selected candidates (Annexure – A/5) as malafide, arbitrary and constitutional;

(ii) to issue a writ in the nature of mandamus, or any other appropriate writs, orders or directing the respondents to consider the case of the petitioners for selection/appointment to the post of Agniveer (General Duty) in Indian Army under the Ministry of Defence, Govt of India as was done in case of the similarly situated persons particularly NCC "C" Certificate holders in respect of the Writ petition;

(iii) to pass an interim order directing the respondents to reserve 29 posts of Agniveer (General Duty) against the recruitment process vide Annexure – A/7 during the pendency of the writ petition;

(iv) to pass an interim order directing the respondents to consider and dispose of the said representations dated 13.02.2023 (Annexure – A/8) during the pendency of the writ petition;

(v) to direct the respondents for heavy costs and

(vi) to pass any further order or orders as to the Hon'ble Court may seem fit and proper for the ends of justice and equity."

[11] Respondent Nos. 1 to 4 filed affidavit-in-opposition wherein it is stated that the basic educational qualification for the selection of Agniveer (GD) is class 10 and there are no bonus marks for additional education qualification. The selection of respondent No. 5 to 7 has been done on software by master parameters fed as per para 11 of Policy letter No. 62587/Rtg 5 (OR) (A) dated 31.07.2001. Respondent No. 6 has been selected against the vacancy of a fixed class which is different than the petitioners. It is also stated that the recruitment notification dated 04.07.2022 on Joint Indian Army website includes all the information and basic criteria that are needed for registration and screening for the post of Agniveer (GD) and the notification is not the governing policy for selection of candidates. It is further stated that the recruitment in the Indian Army is based on domicile cum merit and there is no embargo/bar on any individual of any caste/creed/religion/race to be recruited in the Army, provided the individual meets the requirement of written, physical & medical parameters as well as qualifications laid down. The distribution of the Arms & Services to successful candidates are carried out by the software based on the particulars declared by the candidates, fed in the system post verification of same and subsequently on pure merit. The results have been published on Join Indian Army website and selected candidates have been despatched to training centres and the existing recruiting system provided equal opportunity to all citizens of India to join the Indian Army irrespective of their caste. It is stated that the selection of

respondent Nos. 5 to 7 as well as those incumbents mentioned in para 6 are purely based on merit and as per laid down policy of recruiting Directorate, IHQ of MoD (Army).

[12] Vide order dated 22.02.2023, this Court transferred the case to Delhi High Court to be dealt with pending cases on Agniveer Scheme in terms of the Hon'ble Supreme Court order dated 19.07.2022 in WP(C) No. 457 of 2022 and this case was registered as WP(C) No. 3175 of 2023. However, vide order dated 20.03.2023 in WP(C) No. 3175 of 2023, Delhi High Court clarified that the matters before it were confined to challenging the validity of Agniveer Scheme and the cases relating to challenge in selection process are to be dealt by the respective High Courts. Accordingly, the petitioners moved an application being MC[WP(C)] No. 145 of 2023 to recall the order dated 22.02.2023 passed by this Court transferring the case to Delhi High Court and vide order dated 19.05.2023, this Court recalled its earlier order dated 22.02.2023. Thereafter, vide order dated 02.06.2023 in WP(C) No. 3175 of 2023, Delhi High Court remanded the matter to this Court and the case is taken up for hearing. Vide order dated 03.07.2023 and in terms of the contents of para 12 the rejoinder affidavit of the petitioners, this Court recorded that the petitioners dropped relief no. (i) and would pursue only the relief nos. (ii) to (vi) for their appointment as Agniveer (GD) as done in the case of private respondent nos. 5 to 7. In the circumstances, the petitioners confined their relief for selection as Agniveer(GD) and no longer challenge the whole selection process of Agniveer in terms of Advertisement dated 04.07.2022.

[13] It is the case of the petitioners that they have been denied selection as Agniveer(GD) on the basis of some vague conditions not mentioned in the Advertisement dated 04.07.2022. It is urged that petitioner nos. 1 to 5 & 20 scored the maximum marks of 200 and no reason is given for not selecting them. It is the case of official respondents that the selection process is assessed by software and accordingly, the private respondents were selected and the petitioners could not be selected due to non-availability of vacancy (only 2 vacant posts available) and the petitioners are kept in reserved list. Petitioner No.9 is not medically fit.

[14] On the basis of the pleadings of the parties and materials on record, this Court frames the point of determination as:

"Whether the petitioner can be denied selection as Agniveer (GD) on the basis of conditions not mentioned in the Advertisement and non-availability of vacant posts, when the number of vacancies has not been mentioned in the advertisement?"

[15] Mr. A. Romenkumar, learned senior counsel for the petitioners submits that the Advertisement dated 04.07.2022 provides the whole scheme of selection of Agniveer of five categories and the petitioners have applied for Agniveer (General Duty) (All Arms), in short, Agniveer (GD). Para 15 prescribes the procedures for

selection in order: (i) Physical Fitness Test (at Rally site), (ii) Physical Measurement (at Rally site), (iii) Medical Test (at Rally site), and (iv) Written Test through Common Entrance Examination (CEE). Admit card for CEE will be issued to medically fit candidates. As per para 16(I), the candidates having NCC 'C' certificates are exempted from appearing in CEE, thereby meaning that they will get full 100 marks for CEE and all the petitioners are having 'C' certificates entitling to 100 marks automatically. Learned senior counsel draws the attention of this Court to admit cards annexed at Annexure A-4(Colly) where it is mentioned that admit card to be issued on successful completion of medical examination. In other words, the candidates who got admit cards are medically fit and it is submitted that petitioner no.9 is medically unfit cannot be sustained. Learned senior counsel refers to Annexure X-2 of the counter affidavit filed by the official respondents giving details of marks obtained by the petitioners where petitioner nos. 1 to 5 & 20 got full marks of 200 and the remaining petitioners scored marks ranging from 188 to 169. It is pointed out that no reason is disclosed by the official respondents for denying selection of petitioner nos. 1 to 5 & 20. The score of the last selected candidate is also not disclosed. It is alleged that candidates scoring less marks than the petitioners (least mark 169) have been selected and pick and choose method has been employed.

[16] Mr. A. Romenkumar, learned senior counsel refers to the following case laws to buttress his argument.

(i) Bihar State Text Book Workers Union v. State of Bihar: (2013) 7 SCC 238 @ Para 5 holding that qualification not prescribed in the advertisement or any statutory rules cannot be introduced.

(ii) Food Corporation of India v. RIMJHIM: 2019 (6) Scale 129 holding that one year experience not mentioned in the advertisement cannot be used to deny appointment.

(iii) Sachin Kumar v. Delhi Subordinate Service Selection Board: (2021) 4 SCC 631 which postulates that fair and reasonable selection process is fundamental right under Articles 14 & 16 of the Constitution of India.

(iv) Santosh Kumar v. G R Chawla: (2003) 10 SCC 513 bars introduction of pick and choose method in appointment.

(v) Sivanandan CT v. High Court of Kerala: (2024) 3 SCC 799 [5J] postulates that when the original advertisement for selection of District Judge from Bar in Kerala, the select list will be made on the basis of marks obtained in written test and viva voce and no cut off mark was prescribed for viva voce, the introduction of minimum cutoff mark in viva voce after the conduct of interview was held to be ultra vires.

[17] Relying on the above cited case laws in the factual matrix of the present case, Mr. A. Romenkumar, learned senior counsel submits that the petitioners are also entitled to be selected as Agniveer(GD) as done in the case of the

respondents nos. 5 to 7 and official respondents cannot invoke conditions not mentioned in the advertisement for rejecting the legitimate claims of the petitioners. It is further stated that the method adopted by the official respondents lacks transparency and consistency and the same amounts to pick and choose method. It is prayed that a direction be issued to the official respondents to appoint the petitioners as Agniveer (GD) and if vacant posts are not available, further direction may be issued to create adequate posts to adjust the petitioners.

[18] Per contra, Mr. Kh. Samarjit, learned DSGI on behalf of the Union of India submits that possessing NCC 'C' certificates does not automatically guarantee selection in the Agniveer Scheme and the same exempts such candidates from appearing in the CEE thereby assuring 100 marks. It is pointed out that the petitioners holder of NCC 'C' certificates were exempted from appearing in the CEE and they were credited with full 100 marks of CEE. Referring to the selection process as defined in the counter affidavit and additional affidavit (depicting in Chart- 1, 2 & 3) that the marks and other evaluation are fed into a software developed for the selection purpose (since 2009 used by Army) and considering the availability of only 2 seats, the private respondents were picked up for selection after assessment of all relevant data. It is explained that the selection process does not involve any human intervention thereby ruling out any manipulation. The petitioners, except petitioner no.9 who is found to be medically unfit, are kept as reserves. It is also pointed out that in the Advertisement, a stipulation is made at para 41 that the terms and conditions given in the notification are subject to change and should be treated as guidelines and in case of any ambiguity, the existing policies, rules and regulations of Indian Army/ Government of India will be final and details thereof are available on website www.joinindianarmy.nic.in/. It is highlighted that in case of tie of total marks, the selection has to be done in terms of existing rules and orders as available in website. It is submitted that such an endeavour does not amount to introduction of new conditions not notified, since the existing rules and orders are applicable in terms of para 41 of the Advertisement. The plea of adjustment of the petitioners in the next advertisement for the year 2023-2024 cannot be made as the petitioners are not candidates for the next recruitment of Agniveer. It is prayed that the writ petition be dismissed being devoid of any merit.

[19] This Court considers the materials on record, the submissions made at bar and the relevant law in this regard.

[20] It will be fruitful to peruse the Advertisement dated 04.07.2022 for recruitment of Agniveers including Agniveer(GD) for which the petitioners have applied for the recruitment year 2022-2023. Para 2(a) provides that the enrolment of Agniveer will be for a period of 4 years with scope for absorption as regular cadre. Para 11 prescribes minimum educational qualification of Class X with 45% in aggregate and 33% in each subject or equivalent of C2 with 17½

-23 years for Agniveer (General Duty) (All Arms). Para 12 prescribes physical standards and Para 15 stipulates Physical Fitness Test with marks allotted, Medical Test and Written Test through Common Entrance Test (CEE). It is mentioned that only those who passed medical fitness test will be given admit card for appearing in CEE. Para 17(e) & (f) exempt candidates with NCC 'C' certificate holders and also 'C' holder with participation in Republic Day Parade are exempted from appearing in CEE. Total marks in physical test is 100 and in CEE is 100. Hence, NCC 'C' certificate holders are entitled to 100 marks in CEE. The advertisement is silent on the point of selection in case of tie in the total scores out of maximum 200 marks. These are the conditions laid down in the advertisement for selection of Agniveers.

[21] Admittedly, all the petitioners (29 in numbers) are NCC 'C' certificates holders with minimum education qualification as prescribed and some of them are also graduates. In terms of Para 17 of the advertisement, they are exempted from appearing in CEE and are credited 100 marks. After successfully passing the medical test, all the petitioners have been issued with admit cards at Annexure A-4(colly) for appearing in CEE as stipulated under Para 15. It is mentioned in the admit card that the same is to be issued to the candidate who has successfully completed the medical examination. In other words, all the petitioners are medically fit. The stand of the official respondents that petitioner no.9 is found to be medically unfit cannot be accepted, as admit card has been issued to him after successful participation in medical test. The plea of the respondents to the effect that respondent nos. 5 & 7 were picked up by the software on assessment of all relevant data cannot also be accepted as the petitioner nos. 1 to 5 & 20 were not considered by the software even though they got maximum mark of 200. No material has been disclosed by the official respondents for denying appointment to such petitioners scoring 200 marks and preferring the private respondents over them. It has also not been stated by the official respondents that other petitioners scored less marks than the last selected candidates. When the advertisement does not indicate the number of posts available for selection, denying appointment to person scoring maximum marks on the plea of non-availability of posts is unfair, inconsistent and the same amounts to pick and choose method by the software and by the official respondents. The procedure adopted by the official respondents in denying the appointment to the petitioners with maximum marks is devoid of any logic and any subsequent conditions allegedly attempted to justify such practice is hit by the above cited case laws specially the Constitution Bench decision in the case of Sivanandan CT (supra).

[22] In the circumstances, this Court directs the official respondents to appoint the petitioner nos. 1 to 5 & 20 as Agniveer(GD) forthwith, as they scored maximum 200 marks and their appointment cannot be denied on the basis of conditions not mentioned in the advertisement and non existence of vacant posts. For the remaining petitioners, if candidates with lesser marks have been appointed, they also be appointed as Agniveer (GD). Adequate posts have to be

created to adjust petitioners nos. 1 to 5 & 20 and such other petitioners found eligible as directed herein above. The whole process for examination of the case of the petitioners nos. 6 to 19 & 21 to 29 has to be completed within a period of 2 months from the date of receipt of a copy of this order. It is made clear that the above directions will be confined to the petitioners alone and will not be extended to those who have not approached this Court. Writ petition is disposed of accordingly. Pending applications stand disposed of.

[23] Send a copy of this order to the respondent No.4 for information and necessary compliance.