

**(2003) 05 P&H CK 0039**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No. 13027 of 2001

Sandeep Kumar

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 20-05-2003

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation :** (2003) 135 PLR 108

**Hon'ble Judges :** Surinder Singh, J; S.S. Nijjar, J

**Bench :** Division Bench

**Advocate :** T.S. Dhindsa, for the Appellant; Gurpreet Singh, Addl. Central Govt. Standing Counsel for Respondent Nos. 1 to 3 and Sanjiv Pandit, for the Respondent

**Final Decision :** Dismissed

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## Judgement

S.S. Nijjar, J.—The petitioner is the ward of an ex-serviceman. He has filed the writ petition under Articles 226/227 of the Constitution of India seeking a writ of mandamus directing the respondent-authority to enroll him in the Army in trades where there is no restriction of height or in trades where there is a provision for relaxation of height.

2. The respondents had floated a scheme in consultation with the Sports Authority of India known as National Sports Talants Contestants Scheme. The ultimate objective of the scheme was to reach excellence in sports at National and International level. Therefore, the Army had joined hands with the Sports Authority of India to nurture the development of talented boys in the Army, which was terminated in the year 1976. The scheme had been floated to make use of the efficient administration and disciplinary environment, which was necessary and available for sports training in various Regimental Centres in the Army. In order to select the best talent, a selection procedure was provided in the scheme. Centre Commandants of Army Regimental Centres were to send out "talent hunting" tenns to adjoining area and inter-school competitions. It was

also provided that in case of outstanding talent, an exception in physical attributes may be made with the approval of the Director General, Sports Authority of India. The petitioner was selected by one of those talent hunting teams at the time when he was 12 years and 3 months of age. He was enrolled in the Boys Sports Company of the Jat Regimental Centre, Bareilly on 20.7.1993. His chosen sport was wrestling. He excelled in the sport. As a part of the scheme, the boys were put in the Regimental Schools, which were to be affiliated to CBSE, so that they can complete 10th standard, which is the minimum qualification for recruitment in the Army, Vocational training was also to be given so that the boys, who do not wish to pursue normal education, can be recruited to various trades in the Army. The emphasis on the training was to be mainly on the sports specialization alongwith the basic education and military training so that on attaining 16 years of age, they can be inducted into the Army as regular soldiers. The parents were to give an undertaking that if the boy fails to join the Army when selected, they would have to reimburse the cost of the training to the Army authorities. It was also provided that the boys, who do not qualify the laid down sports standard at the end of two years will be weeded out. On the successful completion of education and the training, 15% to 20% boys, who make the grade to Junior National teams and are members of the Services Teams were to be enrolled direct as Havaldars. They were to join the Armed Forces Sports College for further training. It was also provided, that others, who have succeeded in the training and have been selected will be enrolled in the Army Ranks provided they are fit in all other respects. There was even an opportunity for the boys, who passed the Senior Secondary school examination having the requisite aptitude, to join NDA to become commissioned officers.

3. From the aforesaid provisions of the scheme, it becomes apparent that an effort was being made by the respondents to improve the standard of sports in India. It can also be seen that incentives have been given for boys, who join the Army, provided they fulfill the necessary criteria. Those who were found to be unworthy, were to be weeded out after a period of two years. The petitioner claims that he had completed the sports programmes. He had excelled in the sport of his choice. Even then he had been discharged from the scheme on 23.9.1996. Against the aforesaid discharge order, the father of the petitioner had made a representation, which was accepted and he was re-inducted into the training programme. Subsequently, again on 4.12.1999, the petitioner was directed to be discharged. The father of the petitioner again made a representation on 22.12.1999. Since no decision was being taken on the representation, the petitioner was compelled to file Civil Writ Petition, No. 12434 of 2000. The writ petition was disposed of on 14.9.2000 with a direction to the respondents to decide the aforesaid representation. Now again, order dated 22.11.2000, Annexure P-10 has been passed rejecting the representation. A letter dated 1.5.2000 has been attached with the aforesaid order, in which it was stated as follows:-

"Your petition for enrolment of your son Master Sandeep Kumar has been

considered sympathetically and rejected as your son lacked a 8 cms and 6cms for enrolment in Jat Regt in Soldier (GD) and Tradesman categories respectively."

4. In letter dated 22.11.2000, it is stated that the candidature of the petitioner had been rejected, as he lacked in physical standard.

5. Mr. T.S. Dhindsa, learned counsel for the petitioner has vehemently argued that the decision of the Army authorities is arbitrary, un-reasonable and violative of Articles 14 and, 16 of the Constitution of India. He has submitted that the petitioner is certainly entitled to be considered for absorption on the post of a clerk, as he fulfils the necessary height criteria for the aforesaid post. This fact is admitted in the last lines of para 15 of the written statement. Learned counsel further submitted that the Army authorities are mis-interpreting the provisions of the scheme to deny the benefit of Army service to the petitioner. According to the learned counsel, it is not necessary to possess the requisite physical standards which are required for a General Duty Soldier for appointment as a clerk.

6. Mr. Gurpreet Singh, learned counsel appearing for the respondents has submitted that the petitioner was actually ordered to be weeded out on 30.9.1996. In May, 1997 after approximately one year of the discharge of the petitioner on his parents request, the Army Headquarter directed that the petitioner be given one more chance on the ground of tender age. He was, therefore, re-admitted in the course on 3.8.1997. It is not denied that the petitioner has passed the 10th class examination. However, he has been denied enrolment in the Army, as he has lacked height criteria by 8 cms for General Duty Soldier and 6 cms for tradesman category. Learned counsel, therefore, submitted that the petitioner is not entitled to be considered in the scheme at all. According to the learned counsel, this is evident from the bond executed by the parents of the petitioner, Annexure R-1/3 that in order to be enrolled in the Army, he had to be suitable in all respects. Even this enrolment was subject to availability of the vacancies. According to the learned counsel, no promise had been held out to the petitioner that in the event of his failure to be selected as General Duty Soldier, he will be considered for appointment on the alternative traders.

7. We have considered the submissions made by the learned counsel for the parties.

8. We are of the opinion that the respondents had not mis-interpreted the provisions of the scheme. A perusal of the various clauses makes it abundantly clear that the boys were to be given physical training and specialised training in their particular sports so that the over all level of competitive competence of India is enhanced. Once these boys reached certain standards, they were given incentives depending on the standard reached. For example, it is provided that those boys, who make Junior National teams will be enrolled directly as Havaldars and they were also permitted to join the Armed Forces Sports College

for further training. An individual boy after having been recruited as Havaladar and with his constant improvement in performance in the field of International Sports is to be given out of turn promotion to the rank of Naib Subedar and Subedar. The boys who passed the Senior Secondary education and have an aptitude, were to be given an opportunity to join NDA so that they can become commissioned officers. On the other hand, it is provided that the boys, who failed in the sports standard, will be weeded out. The boys who do not meet the sports standard, will be weeded out within a period of two years. It is a matter of record that the petitioner was discharged on 30.9.1996. He was re-admitted on the representation of his father on 3.8.1997. It is also not disputed that the petitioner does not fulfil the minimum height requirement for a General Duty Soldier. It is also not disputed that he does not fulfil the minimum height requirement for a tradesman. He cannot be considered in these categories, as relaxations in the minimum standards of fitness or other physical requirements, cannot be permitted in recruitment of Defence Personnel. Such relaxations would clearly compromise the efficiency of the Defence Services. Therefore, there must be a strict adherence to the minimum requirements laid down in the relevant rules. Any relaxation in these rules, on any misguided notions of compassion, would do much more harm to the Defence Services of this country than any illusory gain that may accrue to the individual concerned, who would be recruited by relaxation of the minimum criteria. The only way, the petitioner can now hope to join the Army, is if an opportunity is given to him to become a clerk. Undoubtedly, the petitioner fulfills the minimum height requirement for the post of a clerk. However, we are of the opinion that even this post cannot be offered to the petitioner merely on the basis of the successful completion of the education and the sports training under the scheme. The scheme is specialised and has been evolved to bring into the Army excellent sportsman, who fulfills the requisite physical standards. The scheme is not meant to be used as a back door entry to the post of general category clerk. The post of general category clerk would have to be filled by adopting appropriate selection procedure by open completion, The petitioner will be at liberty to apply for such a post, if advertised, for the general category. He cannot be permitted to be appointed on the post of a clerk without the post even being advertised. In this view of the matter, we find that the petitioner has failed to make out any case for the issuance of a writ of mandamus.

9. Dismissed.

Sd/- Surinder Singh Grewal, J.