
(2003) 12 PAT CK 0018
In the Patna High Court
Case No : C.W.J.C. No. 9189 of 2003

Ajit Kumar Upadhyay

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 05-12-2003

Acts Referred:

Citation : (2004) 4 PLJR 436

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : R.C. Jha, for the Appellant; Nivedita Nirvikar, for the Respondent

Final Decision : Allowed

Judgement

R.S. Garg, J.—Heard learned counsel for the parties. Vide Annexure-2 HQ 971/T6/Trg/Rally/Jan. 03/02 dated 14.12.2002 notice was issued saying that recruitments would be made through open rally. The advertisement from the said letter did not say that what would be the age bar for the purposes of appointment of the soldiers.

2. According to the petitioner and not disputed by the other side the date of the birth of the petitioner is 5.3.1982 and as such he would complete 21 years of age on 4.3.2003. According to the advertisements the last date of submission of the application were 6.1.2003. On 19.1.2003 written test were held, the petitioner competed in the same and awaited his result. Vide index No. GM 0164 dated 24.2.2003 the petitioner was informed that he had passed the written examinations held on 19.1.2003 and he was advised to report to 3 Technical Training Regiment, Bambolim (Goa) on 25.3.2003 or earlier for his documentation, medical and physical examination prior to enrolment in Army as soldier GP category provided he is found physically and mentally fit as per the standard laid down and subject to correctness of the documents.

3. From the above referred letter, it would clearly appear that the petitioner was to report on or before 25.3.2003. Undisputedly he reported at the reporting

station on 24.3.2003. Unfortunately the petitioner was not taken into active Army mainly on the ground that on the date when he reported at the reporting station he has crossed the 21 years of age bar.

4. The petitioner has approached this Court inter alia submitting that the petitioner's entitlement is to be considered on the last date of submission of the application and not on the date of the joining as given in the said letter. He also submits that it vide letter dated 24.2.2003 the petitioner was allowed to understand that he can join or report on or before 25.3.2003 then the respondents would not be allowed to take advantage of their own wrong. It is also submitted during course of the argument that if the letter contained a further rider that he must join before completing 21 years of age then the petitioner has sufficient time to join on or before 5.3.2003.

5. Learned counsel for the respondents submitted that the petitioner was to appear or report at the reporting station on or before 25.3.2003 and he could only be enrolled as a soldier in the Army provided he was found physically and mentally fit as per the standard laid down and subject to correctness of the documents. It is sought to be submitted by the respondent that the phrase, "found physically and medically fit would include the age of 21 years.

6. Unfortunately despite as many as five opportunities the respondents have failed in providing any assistance to this Court. They have also failed in producing the standards laid down by them in relation to age or the norms that the age of 21 years should be the date on the last date of submission of the application or on the date of the joining.

7. In the ordinary service world age of the candidate is always qua the last date of submission of the application. A candidate cannot do anything beyond submitting the application because rest of the actions are to be taken by the respondents and if they delay the process then any candidate cannot be allowed to suffer on the ground that though the lapses are on the part of the establishment/employer but in the meanwhile the candidate has become over age.

8. Undisputedly on the date when the applications were submitted the petitioner was below 21 years of age. Even on the date of the test he was below 21 years and even on the date when the letters were issued to him to report at the reporting station he was below 21 years of age. Taking everything in juxtaposition, I am persuaded to take a view in favour of the petitioner. The respondents are absolutely unjustified in holding that as on the date of joining or reporting the petitioner has become over age, he cannot be appointed. The petition is allowed the respondents are hereby directed to make scrutiny in the case of the petitioner, receive his documents and examine him physically and mentally and if he passes the other test then to proceed further in the matter.