
(2015) 07 GAU CK 0007
In the Gauhati High Court
Case No : WP(C) No. 6673 of 2014

Amrit Barman and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 07 GAU CK 0007

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : P. Barman and S. Changkakoti, for the Appellant; S.C. Keyal, Assistant Solicitor General of India, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Ujjal Bhuyan, J—By filing this petition under Article 226 of the Constitution of India, petitioners seek quashing of orders dated 10.10.2014 rejecting their candidature for the post of Constable (General Duty) in the Assam Rifles on being found medically unfit.

2. Case of the petitioners is that an advertisement was issued by the Directorate General, Assam Rifles, which was published in the Employment News in its issue dated 21-27 August, 2010. As per the said advertisement, a recruitment rally was scheduled at Rangia (Assam) from 06.12.2010 to 11.12.2010 to fill up 150 vacancies in different trades in the post of Constable in the Assam Rifles, out of which, 132 vacancies were earmarked for Constable General Duty/General Duty (Driver). Though in the advertisement, it was mentioned that the recruitment rally was intended for recruitment of Bodo youths of Kokrajhar, Chirang, Baksa and Udalguri districts of Assam, the breakup of various categories were mentioned as follows:--

It was stated that candidates should be between the age group of 18 years to 23 years as on 01.08.2010 with upper age limit relaxable by 3 years in case of OBC

candidates and 5 years in case of SC/ST candidates.

3. Though petitioners did not belong to Bodo tribe, they nonetheless responded to the said advertisement and appeared in the recruitment rally as scheduled. According to the petitioners, they had qualified in the physical standard tests and physical efficiency test. They were medically examined and having been found fit, they were allowed to appear in the written test, which consisted of OMR based objective type multiple choice question paper of 100 marks. Petitioners subsequently came to learn that 118 candidates, all belonging to Bodo tribe were selected and consequently appointed. Petitioners were not selected. At this stage, petitioners approached this Court by filing WP(C) No. 2921/2011, which was disposed of on 09.05.2012 by directing the Assam Rifles authorities to consider the case of the petitioners against the remaining 32 vacancies as per their merit position. Assam Rifles filed Writ Appeal No. 263/2012, which was disposed of by a Division Bench of this Court vide order dated 27.08.2012 clarifying that the 32 remaining vacancies should be filled up in accordance with law by considering petitioners as well as other eligible candidates as per their merit.

4. Thereafter, petitioners were asked to appear in Appeal Medical Board Examination vide notices dated 01.11.2012. Accordingly, petitioners appeared before the Assam Rifles authority for their Appeal Medical Board Examination.

5. By separate communications dated 18.02.2013 petitioners were informed that their case for recruitment in Assam Rifles was considered in terms of this Court's order. It was stated that the petitioners had attended the recruitment rally from 06.12.2010 to 13.12.2010 at Rangia, but their candidatures were rejected at that time as they were found medically unfit. Petitioners were informed that following their re-medical examination on 10.12.2012, they were again found to be medically unfit. Accordingly their candidatures were rejected.

6. This led the petitioners to approach this Court again by filing WP(C) No. 2064/2013. This Court by order dated 11.08.2014 disposed of the writ petition by remanding the matter back to the Assam Rifles for re-examination of the petitioners by a duly appointed Medical Board, which should associate an expert/specialist in the area in which petitioners were earlier found to be medically unfit.

7. Thereafter notices dated 28.06.2014 were issued to the two petitioners asking them to report to the Assam Rifles Hospital at Shillong on 15.09.2014 at 08.00 a.m. for their review medical examination in terms of the aforesaid order of this court dated 11.08.2014. It appears that review medical examination was held on 01.10.2014. Accordingly, both the petitioners appeared in the Assam Rifles Hospital on the re-scheduled date and time for their review medical examination. Petitioners were medically examined by the Review Medical Examination Board. However, vide the impugned letters dated 10.10.2014, issued from the office of the Directorate General, Assam Rifles, petitioners were informed that they were subjected to review medical examination, but they had again been found to be

medically unfit by the Review Medical Examination Board. Hence, their candidatures were rejected.

8. Aggrieved, present writ petition has been filed.

9. Respondent Nos. 1, 2 & 3 have filed a common affidavit. Stand taken in the affidavit is that the recruitment rally was conducted at Rangia (Assam) for recruitment of only Bodo youths from the four districts of Assam. However, petitioners attended the recruitment rally and though they were successful in the physical tests, they were found to be temporarily medically unfit in the medical examination. Though they were allowed to appear in the written examination subject to obtaining medical fitness certificate, since the recruitment was made only for Bodo tribal youths, petitioners were not selected for enrollment in the Assam Rifles. Subsequently, the Gauhati High Court directed to consider the case of the petitioners against the remaining 32 vacancies according to their merit position in the select list. In appeal, the Appellate Court modified the said order to the extent that case of the petitioners should be considered along with other eligible candidates as per their merit. In compliance to the Court's order, call letters were issued to 18 eligible candidates for re-medical examination based on their performance on merit in the written examination. Results of the 18 candidates who appeared in the re-medical examination on 10.12.2012, including the petitioners, were declared. Six candidates had cleared the medical examination and were selected for enrollment in Assam Rifles. Six candidates, including the petitioners, were found medically unfit and other six candidates were absent. Following a subsequent order of this Court dated 11.08.2014, petitioners were called for Review Medical Board Examination, which was conducted on 01.10.2014. The two petitioners were found unfit for the following reasons:--

10. Since the petitioners have been found to be medically unfit, question of selecting the petitioners and appointing them in Assam Rifles does not arise. Assam Rifles is an armed force of the Union of India and mainly deployed in counter insurgency operations. Personnel belonging to the Assam Rifles must, therefore, be of sound health. However, respondents in their affidavit have annexed the results of review medical examination of the two petitioners dated 01.10.2014. In respect of petitioner No. 1, it is stated that he was reviewed by an Orthopaedician at NEIGRIHMS and found to be fit. However, he was declared unfit on account of overage. In respect of petitioner No. 2, he was found to be medically unfit on account of secondary hypertension due to renal parenchymal disease and renal cyst.

11. Petitioners have filed rejoinder-affidavit through petitioner No. 1. It is stated that as per review medical examination, petitioner No. 1 has been found to be medically fit; therefore, non-selection of petitioner No. 1 and consequential denial of appointment to him is not justified. Petitioner No. 1 belongs to OBC category, and as per the advertisement, the upper age limit of 23 years is relaxable by 3 years for OBC candidates. This means that for an OBC candidate

permissible upper age limit would be 26 years. Date of birth of petitioner No. 1 being 25.07.1985, he was 25 years 6 days as on 01.08.2010 and thereby eligible. Therefore, question of rejection of candidature of petitioner No. 1 on the ground of being over-aged does not arise.

12. Heard Ms. P Barman, learned counsel for the petitioners and Mr. SC Keyal, learned Assistant Solicitor General, who has also produced the record.

13. Since submissions made by learned counsel for the parties are on pleaded lines, detailed reference to the same is considered not necessary. However, submissions made have been considered and the record produced has also been perused.

14. Certain facts though not disputed may however be set out afresh for an effective adjudication of the case.

15. As per the advertisement, recruitment rally was organized to fill up 150 vacancies in various posts of Constable, including Constable (General Duty) in the Assam Rifles. The recruitment was intended for youths belonging to Bodo tribe. Though candidates belonging to the Bodo tribe belong entirely to ST(P) category, nonetheless, in the advertisement, the breakup for various categories, such as, SC, ST, OBC and General were mentioned. Petitioner No. 1 belongs to Rajbongshi community (certificate of which has been placed on record as Annexure-1 to the rejoinder-affidavit) thus being OBC category and petitioner No. 2 belongs to General category. They had responded to the said advertisement and participated in the recruitment. In the recruitment, petitioners were declared to be medically unfit, though they were short listed for participating in the written test in which they had participated. 118 candidates belonging to the Bodo community were finally selected. This leaves 32 vacancies. When the matter was brought to this Court, this Court finally held that the 32 vacancies be filled up by considering the candidature of all eligible candidates, including the petitioners, as per their merit position. Petitioners were thereafter subjected to Appeal Medical Examination, but they were found to be medically unfit again. Accordingly, their candidatures were rejected. This led to filing of WP(C) No. 2064/2013 by the petitioners. This Court disposed of the said writ petition vide order dated 11.08.2014 with the direction that petitioners should be re-examined by a duly appointed medical board associating an expert/specialist of the field in which the petitioners were earlier found to be medically unfit.

16. However, by the impugned communication dated 10.10.2014, petitioners were informed that they were subjected to medical examination again by a Review Medical Examination Board on 01.10.2014 and, since, both of them were found to be medically unfit, their candidatures had again been rejected.

17. A perusal of the record produced by Mr. Keyal, learned Assistant Solicitor General shows that the two petitioners were declared to be medically unfit in the medical examination on 10.10.2012. As per the primary medical report of the two petitioners dated 13.12.2012, petitioner No. 1 was found to have abnormal

gait with tattoo marks on right forearm and hence, he was found to be medically unfit. In case of petitioner No. 2, it was found that he had primary hypertension and thus declared medically unfit.

18. When the petitioners were subjected to review medical examination on 01.10.2014, the finding of the Review Medical Examination Board in so far petitioner No. 1 is concerned is that he was reviewed by an Orthopaedician at NEIGRIHMS and found to be fit. The final opinion given was that though the petitioner No. 1 was found fit on medical ground, he was unfit on account of overage. In respect of petitioner No. 2, he was thoroughly examined by members of the Review Medical Examination Board whereafter, he was found to be suffering from secondary hypertension due to renal parenchymal disease and renal cyst.

19. Taking the case of petitioner No. 2 first, it is found that he had undergone three medical examinations in connection with the recruitment process and in all the three medical examinations, he has been found to be medically unfit. This is an opinion of the experts and in a matter of this nature, Court would ordinarily defer to the views of the experts. Moreover, considering the job profile of a Constable in the Assam Rifles, physical fitness of a candidate would certainly be of paramount consideration. When the experts have declared petitioner No. 2 to be medically unfit, no direction can be issued by the Court to the respondents to consider the case of petitioner No. 2 in the face of such report of the experts. Accordingly, claim of petitioner No. 2 cannot be accepted.

20. This leaves the case of petitioner No. 1. Though in the previous medical examination, petitioner No. 1 was found to be medically unfit, in the review medical examination, he has been found to be medically fit. From the primary medical examination report, it is seen that petitioner No. 1 was found to be medically unfit on account of abnormal gait and tattoo marks on the right forearm. It may not be necessary to comment on such grounds given for declaring petitioner No. 1 to be medically unfit because of the subsequent findings of the Review Medical Examination Board dated 01.10.2014. The record discloses that petitioner No. 1 was examined by an Orthopaedician at NEIGRIHMS, a super specialty hospital at Shillong, in the course of his review medical examination and he was found to be fit. However, the Review Medical Board declared him to be unfit on account of overage.

21. Coming first to the medical fitness of petitioner No. 1, the earlier finding of the Medical Examination Board stood nullified/reviewed by the subsequent finding given by the Review Medical Examination Board. It is the final finding of the Review Medical Examination Board which will prevail. The previous finding dated 13.12.2012 that petitioner No. 1 was medically unfit would no longer survive in view of the categorical finding of the Review Medical Examination Board dated 01.10.2014 that petitioner No. 1 is fit on medical ground. Therefore, the order dated 10.10.2014 disclosing that petitioner No. 1 was found medically unfit by Review Medical Examination Board is not correct being not based on the

record.

22. Having found petitioner No. 1 to be fit on medical ground, Court is of the view that perhaps members of the Review Medical Examination Board had exceeded their brief by declaring petitioner No. 1 as unfit on account of overage. Review Medical Examination Board was constituted primarily to assess and review the medical fitness of the petitioners and not to examine their eligibility or otherwise on other counts, which was a matter to be decided by the Selection Board or by the appointing authority.

23. Coming to the question of overage of petitioner No. 1, petitioner No. 1 has stated in the rejoinder-affidavit that he belongs to the Rajbongshi community, which is a recognized caste under OBC category in the State of Assam. In support of this contention, petitioner No. 1 has annexed his caste certificate which has not been disputed. As per the advertisement, the age of the candidates should be between 18 years to 23 years as on 01.08.2010, relaxable by 3 years in case of OBC candidates and 5 years in case of SC/ST candidates. In other words, for OBC candidates, upper age limit would be extendable upto 26 years as on 01.08.2010. Date of birth of petitioner No. 1 has been disclosed to be 25.07.1985, which has also not been disputed. He was thus below 26 years of age as on 01.08.2010 and, therefore, within the prescribed age limit as on 01.08.2010.

24. Question to be considered is whether on such facts, petitioner No. 1 can be said to be over-aged.

25. The answer to the above question would be certainly in the negative, since petitioner was well below 26 years of age as on 01.08.2010, which is the extended upper age limit for OBC candidates. Review medical examination is a continuation of the recruitment process; hence a part of the recruitment process. For delay in the recruitment, which is not attributable to petitioner No. 1, he cannot be faulted. As indicated above, the crucial date to determine whether a candidate is over-aged or not is 01.08.2010. This cut off date of 01.08.2010 has been fixed by the authorities themselves and specified in the recruitment advertisement. Therefore, the question as to whether a candidate is over-aged or not has to be determined with reference to the said cut off date. On that day, petitioner No. 1 was certainly eligible being within the prescribed age limit.

26. That being the position, non-selection of petitioner No. 1 on the ground of being over-aged cannot be justified and is untenable. The same is accordingly set aside and quashed. Respondents shall now consider the case of petitioner No. 1 as an eligible candidate and based on his merit, shall consider his appointment as Constable in the Assam Rifles. This shall be done within a period of four (4) weeks from the date of receipt of a certified copy of this order.

27. Writ petition is accordingly disposed of. No costs.

28. Record produced by Mr. Keyal, learned Assistant Solicitor General is returned

back.