
(2009) 01 JH CK 0119
In the Jharkhand High Court

Baleshwar Mahto

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 09-01-2009

Acts Referred:

Citation : (2009) 2 JCR 289

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—In response to an advertisement issued by the State of Jharkhand in the year 2004 inviting applications from eligible candidates for appointment to the post of constables in the Jharkhand Armed Police-8, the petitioner had submitted his application. After being allotted roll number 8128, he was called upon to appear at the prescribed tests. He appeared at the test, which included measurement of his height and chest. He also possessed the requisite educational qualifications. He was declared successful in the entire tests and having thus come within the zone of consideration, a call letter was issued to him on 24.7.2005. In response to the call letter, he appeared before the Commandant, Jharkhand Armed Police-8 (Respondent No. 5) but the Commandant did not accept his joining. Rather, his height was re-measured and recorded 1 centimeter less than what was recorded during the earlier measurement.

Being aggrieved, he filed his representation before the Chairman, Selection Board for acceptance of his joining but such acceptance was not given to him. Aggrieved by the conduct of the respondents in refusing to appoint him in the post of constable, the petitioner has filed the instant writ application praying for a direction to the respondents to consider his case for his appointment on the post of Police Constable.

2. A counter affidavit has been filed on behalf of the respondents.

3. Heard learned Counsel for the petitioner and learned Counsel for the

respondents.

4. Assailing the respondents' act of refusal to appoint the petitioner on the post of constable, learned Counsel for the petitioner submits that admittedly when the petitioner had appeared at the tests before the Board constituted for selection of candidates, the petitioner's height was measured at 168 centimeters and the corresponding marks based on the measurement of his height was accorded. On being fully satisfied that the petitioner possessed all the qualifications including educational qualification and the requisite physical standards, the Board had declared the petitioner as successful in the test and had issued appointment letter. The finding of the Board, according to the learned Counsel for the petitioner, cannot be called for reassessment by the Commandant. Referring to the judgment of this Court in the case of *Lalan Prasad Thakur v. State of Bihar and Ors.* vide C.W.J.C. No. 1398 of 1997, learned Counsel submits that an identical issue came up for consideration before this Court in the aforementioned case in which even after the Selection Board had assessed the measurement of height and other requisite qualifications and had declared the candidate as successful, a fresh physical verification of the candidate was conducted at the Police Lines by the concerned police officers when the candidate reported for joining duty and by such fresh physical verification the candidate was sought to be disqualified on the ground that the measurement of his height was different from what was earlier recorded by the Selection Board. This Court had held that in absence of any authority vested in him, the concerned senior Police Officer could not have conducted a fresh physical verification of the candidate at the time when he reported for joining, after the Selection Board had accorded its satisfaction that the candidate possessed the minimum requisite physical standards and other qualifications.

5. The stand taken by the respondents in their counter affidavit, as explained by the learned Counsel for the respondent, is that though the petitioner had appeared at the tests held and his name was included in the third merit list prepared by the Chairman, Selection Board and a call letter sent to the petitioner to appear before the Commandant, JAP-8, Palamau (camp Bokaro) with all the original documents, but such call letter cannot be considered as a letter of appointment. Learned Counsel explains that through the call letter the petitioner was merely called upon to appear before the concerned authorities along with all the relevant documents pertaining to his educational qualifications, in original and also to face the Medical Test and as such, the final decision for appointment, was subject to verification of the documents and the result of the Medical Test. Learned Counsel explains further that after declaration of the results, it was detected later that the measurement of height of several candidates was incorrectly recorded resulting in awarding inflated marks to several candidates though they did not deserve the same and upon such detection, a general circular was issued by the Chairman of the Selection Board for a fresh verification of the physical measurement of the several candidates to whom call letters were issued. The petitioner's height was also measured afresh and it was found that

his height measurement stood at 167 centimeters only whereas the entry in the records prepared indicated a measurement of 168 centimeters and on the basis of such measurement, the corresponding marks were allotted to the petitioner. It is further explained that the decision to conduct a fresh verification of the physical standards was issued by the Chairman of the Selection Board itself and the decision not to appoint the petitioner on the ground of the discrepancies of the measurement of his height, was also by the order of the Chairman, Selection Board. Learned Counsel explains that the petitioner cannot therefore argue that the earlier decision of the Selection Board was altered unilaterally by the Commandant (Respondent No. 5) without any authority. Learned Counsel refers to in this context to Annexure-B which is a notification issued by the Commandant-cum-Chairman of the Selection Board containing names of as many as 31 candidates, including the name of the petitioner, whose physical measurement, on fresh verification were found to be discrepant.

6. From the rival arguments, it appears that the petitioner has relied entirely upon the so called "Appointment Letter" dated 24.7.2005 (Annexure-2). On a bare perusal of the contents of this letter, it transpires that it is a call letter indicating that the petitioner was provisionally selected for his appointment to the post of constable and that he was asked to appear along with all the documents pertaining to his educational and other qualifications, in original, for verification and also for his medical examination, on 5.8.2005. This letter cannot therefore be construed as a letter of appointment. It is apparent from the letter that the petitioner was provisionally selected and his final appointment was subject to the final verification not only of his documents but also of his medical examination.

Admittedly, the documents produced by the petitioner were found to be genuine but on fresh measurement of his height it was found that his actual measurement stood 1 centimeter less than what was recorded earlier by the Selection Board.

The petitioner has challenged the authority of the Commandant in conducting a fresh physical verification. The annexures produced by the respondents indicate to the contrary that such verification was conducted pursuant to a direction of the Selection Board itself thereby vesting the Commandant with authority to conduct a fresh physical verification. The petitioner cannot therefore claim any right merely because of the issuance of the call letter to him. Since the difference in the, height measurement leads to a difference in the allotment of marks to him, the natural consequence is that his position in the merit list also would stand altered.

7. In the light of the above discussions, I do not find any merit in this application. However, considering the fact that even though by recording the petitioner's height at 167 centimeters, the respondents have not claimed that such height is below the prescribed standard, the obvious inference is that the petitioner even by his height of 167 centimeters together with his educational

and other qualifications, does qualify for his appointment to the post of constable.

8. Under such circumstances, the respondents are directed to consider the petitioner's case afresh and if he is found eligible in all other respects including the physical standards, then to consider his appointment to the post of constable against any existing or future vacancy.

With these observations, this writ application is disposed of.

Let a copy of this order be given to the learned Counsel for the respondents.