

(2007) 03 KAR CK 0064
In the Karnataka High Court
Case No : Writ Petition No. 27439 of 2005

Ex. Recruit Raju

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 02-03-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 3 KCCR 151 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : Manjunath Meled, for the Appellant; M. Narayana, ACSG for R1-4, for the Respondent

Judgement

N.K. Patil, J.—The petitioner, assailing the correctness of the impugned communication dated 29.10.2005 bearing No. CHQ:WP-10262:05:1:ST1(Discp) vide Annexure-A, has presented this writ petition. Further, petitioner has sought to direct the respondents to examine the petitioner by an independent medical expert or anybody or authority not under the control or authority of third respondent.

2. The undisputed facts of the case are that; petitioner earlier had filed a Writ Petition before this Court in No. 9195/2005 assailing the correctness of the discharge order dated 6.3.2004 issued by the 3rd respondent vide Annexure-A therein. The said writ petition had come up for consideration before this Court on 9th August 2005. This Court has allowed the said writ petition in part and a direction was issued to third respondent therein to subject the petitioner to a medical test by an expert or group of experts so as to ascertain the correct height of the petitioner and if it is found that the height of the petitioner qualifies him for being considered for the post in the lower trade, he shall be reinstated into service afresh. After disposal of the said writ petition, in compliance of the directions issued by this Court, the matter has been referred to Experts Committee of the third respondent, consisting of Presiding Officer and other

three members i.e. the Board of Officers comprised of the Senior Officer and a Medical Officer to ascertain the exact height of the petitioner. They have examined and carried out the measurement (height) of the petitioner and found the height of the petitioner as 164 Cms., at 11.00 hours on 24.10.2005. In the light of the report submitted by Experts Committee, third respondent has issued the impugned communication dated 29 October 2005 vide Annexure-A, informing the petitioner that "Board of Officers carried out his height measurement in the presence of his Advocate and Board found his height to be 164 Cms i.e. below the permissible height for candidates hailing from Maharashtra for enrolment into the lower trade". Being aggrieved by the impugned communication vide Annexure-A as referred above and seeking appropriate relief, petitioner felt necessitated to present this writ petition.

3. I have heard learned Counsel appearing for petitioner and learned Standing counsel appearing for respondents.

4. After careful perusal of the grounds urged by petitioner, stand taken by respondents in their objections, including the impugned communication vide Annexure-A, it emerges that, third respondent herein has not committed any error or illegality in issuing the said communication in compliance of the direction issued by this Court on 9th August 2005 in W.P.No. 9195/2005, wherein this Court has directed third respondent herein to subject the petitioner to a medical test by an expert or group of experts so as to ascertain the correct height of the petitioner and if it is found that the height of the petitioner qualifies him for being considered for the post in the lower trade, he shall be reinstated into service afresh. It is significant to note that, the Board of Officers competent under the mandatory provisions of the Defence Act, consisting of four members have examined and verified the measurement (height) of the petitioner on 24th October 2005 and found the height of the petitioner as 164 Cms., at 1100 hours. The said medical test has been carried out in the presence of the counsel representing the petitioner one Sri. Mallagouda S. Patil, and he has put his signature to the report prepared by the Board of Officers vide Annexure-R1 produced by the respondents along with their statement of objections. On the basis of the report submitted by the Board Officers vide Annexure-R1, third respondent herein has issued the impugned communication vide Annexure-A dated 29th October 2005 informing the petitioner that, "Board of Officers carried out his height measurement in the presence of his Advocate and Board found his height to be 164 Cms i.e. below the permissible height for candidates hailing from Maharashtra for enrolment into the lower trade". The said reasoning given by third respondent in the impugned communication is on the basis of the report of the experts/Board Officers. Therefore, I do not find any error or illegality has been committed by the competent authority in issuing the impugned communication. The same has been communicated to the petitioner in compliance with the direction issued by this Court. Therefore, interference by this Court is not justifiable. Nor I find any good grounds to entertain this writ petition by exercising extra ordinary jurisdiction under Article 226 of the Constitution of

India. However, in the interest of justice and having regard to the facts and circumstances as stated above and since it is not in dispute that, petitioner has been selected earlier in clerical trade and since he could not pass the departmental exams he has been posted for lower trade i.e. (Soldier trade) subject to medical fitness and when the medical fitness is carried out, petitioner's height is less than the required height, it would suffice for this Court to permit the petitioner submit his representation requesting the third respondent to consider his request for appointment for non-commandant trade. Accordingly, petitioner is permitted to submit his representation to the third respondent within two weeks from the date of receipt of a copy of this order. Third respondent herein is directed to receive the same and pass appropriate orders considering the request of the petitioner for appointment in non-commandant trade and dispose of the same, as expeditiously as possible, within eight weeks from the date of receipt of the representation submitted by the petitioner, without being influenced by the earlier directions or orders passed by third respondent.

With these observations, the instant writ petition filed by petitioner stands disposed of.