
(2009) 11 AHC CK 0262

In the Allahabad High Court

Case No : Review Petition No. 125932 of 2007 in Special Appeal No. 518 of 2007

Ghanshyam Rai and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-11-2009

Acts Referred:

Citation : (2013) 136 FLR 71

Hon'ble Judges : Rajes Kumar, J; Dilip Gupta, J

Bench : Division Bench

Advocate : Ashok Khare and P.N. Ojha, for the Appellant;

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—By means of present application, the applicants are seeking review of the order dated 25.4.2007. Sri Ashok Khare, learned Senior Advocate, appearing on behalf of applicants submitted that the First Medical Board found physical measurements of the applicants in full conformity which was stipulated in advertisement. The same was also approved by the Second Medical Board. However, the applicants were subjected to physical measurements by the Third Medical Board wherein the applicants physical measurements were not found in conformity with the prescribed measurements. He submitted that the reference to the Third Medical Board for physical measurements was unjustified. He submitted that before the learned Single Judge the only submission made was that the applicants may be permitted to appear before the Medical Board and this contention was not accepted, against which Special Appeal No. 518 of 2007 was filed. He submitted that the special appeal has been decided on a wrong premises and, therefore, the order dated 25.4.2007 be recalled/reviewed.

2. We do not find substance in the argument of learned Counsel for the applicants.

3. This Court has dismissed the special appeal with the following observations:

Heard Sri. Ashok Khare, learned Senior Advocate appearing on behalf of appellants and learned Standing Counsel.

In our view, the issue involved in the present special appeal is squarely covered by the Division Bench decision of this Court in the case of State of U.P. and others Vs. Param Hansh Singh, . The Division Bench of this Court has observed as follows:

Sri Ashok Khare has next submitted that there was a very minor deficiency in the height or chest measurement of the writ petitioners and there can be variation in measurement if different methods are adopted by different people. It is not the case of the, writ petitioners that the measurement done by the team of doctors at the Head Quarters at Allahabad on 20.10.1996 was not correct. In fact, no such contention was raised either before the learned Single Judge or before us in the appeal that the measurements noted by the team of doctors was not accurate. The language used in the second proviso to Rule 13 contains the words should not be less than. The Rule has fixed the minimum height and the measurement of chest (expanded and unexpanded) and there is no scope for any kind of variation in the same. If a candidate is unable to meet the prescribed standard even by a slight margin he has to be held as unqualified. If any deviation from the Rule is permitted, it will lead to complete certainty, as the extent to which such deviation may be allowed will give rise to arbitrariness and nepotism. The requirement of a Rule regarding initial recruitment to a service must be strictly construed otherwise, it will lead to arbitrariness and will also give scope for corruption.

In the present Special Appeal, learned Counsel for the appellants fairly conceded that on physical tests, height and chest of the petitioners were found different than the prescribed measurement. The submission is that the difference was very minor and therefore, the appointment of the petitioners should not be cancelled. This aspect of the matter has been dealt by the Division Bench of this Court in the case of State of U.P. and others v. Param Hansh Singh referred hereinabove and rejected the contention of the petitioners.

4. The aforesaid judgment was dictated in open Court and in presence of learned Counsel for the applicants. No objection has been raised in respect of the narration of fact and submissions referred in the judgment. Therefore, it cannot be accepted that the Counsel for the applicants has not made the submissions stated in the order and has submitted that the appellants may be permitted to appear again before the Board. Even otherwise, a perusal of the order of the learned Single Judge shows that the reference to the Third Medical Board had not been challenged, inasmuch as the petitioners had participated in the physical measurements taken by the Third Medical Board. Learned Counsel for the applicants is not able to show any Rules or Regulations by which the applicants are entitled to another attempt. Further, learned Single Judge has rightly rejected the prayer on the ground that after 6-7 years now allowing the applicants to appear before the Medical Board could not only be arbitrary but

cumbersome to the State Authority. In view of the above, we do not see any reason to recall or review the order dated 25.4.2007. The review petition is accordingly dismissed.