
(2006) 08 UK CK 0032
In the Uttarakhand High Court
Case No : Special Appeal No. 71 of 2006

Kuber Singh	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 28-08-2006

Acts Referred:

Citation : (2007) 1 UC 143 : (2006) 3 UPLBEC 52

Hon'ble Judges : Rajeev Gupta, C.J.; J.C.S. Rawat, J

Bench : Division Bench

Advocate : S.N. Babulkar and Anil Bisht, for the Appellant; Anjali Bhargava for Central Government, for the Respondent

Final Decision : Dismissed

Judgement

Rajeev Gupta, C.J.—Sri S.N. Babulkar, Senior Advocate with Anil Bisht, Advocate for the Appellant.

Mrs. Anjali Bhargava, Standing Counsel, Central Government for the Respondents. They are heard on admission.

2. Appellant Kuber Singh has filed this Special Appeal against the impugned judgment dated 28-07-2006 passed in Writ Petition No. 3250 of 2001 whereby the Appellant's writ petition was dismissed.

3. Appellant Kuber Singh filed the writ petition for the following reliefs:

A. Issue a writ, order or direction in the nature of certiorari to quash the impugned order/notice dated 13th June 2001 passed by the Respondent No. 39 contained in (Annexure-1).

B. Issue writ, order or direction in the nature of mandamus commanding the Respondent not to expel the Petitioner from the service during the pendency of the writ petition.

C. Issue a writ, order or direction in the nature of which this Hon'ble Court may

deem fit and proper in the circumstances of the case.

D. Award cost of the writ petition to the Petitioner.

4. The Appellant/Petitioner was appointed on the post of Constable/Orderly in SSB vide appointment letter dated 13-11-2000 (Annexure No. 2) on the assumption that he fulfilled the requirement of minimum height of 165 cms. The Unit Medical Officer while conducting medical examination of the candidates, who were being sponsored for basic training at Training Centre, Kumarsain, Shimla (Himanchal Pradesh), found that the Petitioner's height was less than 165 cms. The authorities, realizing that the Petitioner came to be appointed on account of some erroneous measurement of his height at the time of his initial medical examination, constituted a Medical Board headed by Chief Medical Officer (SG) with two other Medical Officers as members. The Medical Board again examined the Petitioner and confirmed that his height was less than 165 cms.

5. The Petitioner, as such, was not eligible for appointment. In view of the above report of the Medical Board, Petitioner's appointment was cancelled vide order dated 13-06-2001 (Annexure No. 1).

6. It is not disputed by the learned Counsel for the Appellant (Petitioner) that for appointment on the post of Constable/Orderly, the minimum height required is 165 cms. Surprisingly, the Petitioner in his writ petition has not at all pleaded that the Petitioner's height, in fact, is 165 cms. or more. In the memo of appeal too, there is no such averment about the Petitioner's height.

7. The submission of the learned Counsel for the Appellant that the Appellant is entitled to some relaxation in regard to height deserves an outright rejection as no such relaxation was pleaded in the writ petition.

8. Thus, it is apparent that the authorities have only rectified a bonafide mistake, which occurred at the time of the Petitioner's initial medical examination in the measurement of his height.

9. We, therefore, do not find any illegality in the order dated 13-06-2001, whereby the Petitioner's appointment was cancelled.

10. In this view of the matter, we do not find any infirmity in the impugned judgment, whereby the Petitioner's writ petition was dismissed.

11. The Special Appeal, therefore, fails and is hereby dismissed summarily.

12. With the above order, CLMA No. 10426 of 2006 also stands dismissed.