

(2001) 06 PAT CK 0037
In the Patna High Court
Case No : C.W.J.C. No. 3735 of 2001

Kumar Anand Mishra

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-06-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2001) 3 PLJR 287

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shiva Kirti Singh, J.—Heard the parties.

2. Through this writ application Petitioner, who is a candidate for selection/enrolment as an Airman, seeks quashing of re-medical examination certificate dated 19.12.2000 (Annexure-5) as well as of letter dated 10.1.2001 (Annexure-8) by which Petitioner was informed that his appeal before the Medical Board against certificate of unfitness will not be considered because on 14.1.2001 the Petitioner had crossed the age of 20 and had become over-age for the enrolment as an Airman.

3. It is not in dispute that the Petitioner was eligible for being selected as Airman in terms of advertisement dated 15.5.1999 wherein the last date of filing application was 14.6.1999. Petitioner's date of birth being 14.1.1991, he was eligible to apply and his application was entertained. In November, 1999 he was selected for enrolment and was found medically fit. According to the call letter dated 20th June, 2000 (Annexure-2) the Petitioner was to join training by 1st. August, 2000. but for administrative reasons the call letter was withdrawn vide letter dated 17th July, 2000 (Annexure-3) but a fresh call letter for enrolment was issued on 13.11.2000 (Annexure-4).

4. In the call letter contained in Annexure-4 it was mentioned that the Petitioner

will have to undergo re-medical reexamination because more than six months had lapsed since the last medical examination and hence enrolment on 14th December, 2000 was to be subject to medical fitness.

5. Petitioner was unfortunately declared temporarily unfit as per medical unfitness certificate dated 9th December, 2000 (Annexure-5). Petitioner, as per rules and regulations declared his intention to file an appeal and complied with the formality for appeal by Annexure-6 on 9th December, 2000 itself. Petitioner claims that he availed of some "medical help in the meanwhile and as per doctor"s certificate dated 2/1.2001 (Annexure-7) Petitioner was medically fit. The Appeal Medical Board was not constituted prior to 14.1.2001 and hence by impugned communication contained in Annexure-8 dated 30th January, 2001 the Petitioner was informed that he cannot be enrolled because he became over-age on 14.1.2000 for this reason the Respondents refused to consider Petitioner"s claim for Appeal Medical Board.

6. On behalf of Petitioner it was submitted that Petitioner"s eligibility has to be decided on the basis of advertisement contained in Annexure-1 which mentions the required age in the column 2 of the eligibility heading that candidate should have been born between 1.11.1980 and 1.11.1983. There is no dispute that Petitioner fulfils the said age criteria as laid down in the said advertisement. It was next submitted that appeal in such case must be held within a reasonable time so that in case medical unfitness certificate requires interference, it may be done without loss of time and without causing any legal injury to a candidate for no fault of his, otherwise an eligible candidate may be made ineligible for no fault of his and only due to inaction or late action of the Respondent authority. Such a situation would be clearly arbitrary, unreasonable and impermissible under Articles 14 and 16 of the Constitution of India.

7. On the other hand, learned Counsel for the Respondents showed internal rules of recruitment to emphasis that enrolment as an Airman is required to be before crossing the age of 20 years. According to him, in view of such a rule the Respondent authorities have no choice but to deny the Petitioner his right to appeal against Annexure-5.

8. Having considered the rival submissions this Court finds sufficient force in the submission advanced on behalf of the Petitioner. The facts of this case clearly show that Petitioner is eligible for the transaction of recruitment in terms, of advertisement contained in Annexure-1. Such eligibility, in absence of anything to the contrary in the advertisement shall continue till the process of selection attains finality. Such finality is not possible unless Petitioner is allowed to avail his claim for Appeal Medical Board which has been denied for a reason mentioned in Annexure-8 which cannot be sustained in law. Allowing such a reason would also lead to arbitrariness and uncertainty regarding eligibility. An eligible candidate, if the plea of the Respondent is accepted, may become unfit for enrolment on account of an erroneous medical certificate of unfitness or on account of inordinate delay in organizing an Appeal Medical Board. Hence,

considering all the facts and circumstances of the-case this Court finds the reason given in Annexure-8 for refusing to refer Petitioner's case for Appeal Medical Board to be illegal and erroneous and hence the said decision is quashed and the Respondent authorities are directed to consider Petitioner's case for Appeal Medical Board treating him to be of eligible age for enrolment and in case the Appeal Medical Board finds the Petitioner medically fit he should be allowed for enrolment notionally treating him to be a candidate of the batch with which he was required to undergo training had he been found medically fit at the time of issuance of Annexure-5. The writ application is allowed to the aforesaid extent but without costs.