

(2021) 11 GAU CK 0012

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 5813 Of 2017

Mangalu Nath

APPELLANT

Vs

Union Of India And 6 Ors

RESPONDENT

Date of Decision : 08-11-2021

Acts Referred:

Citation : (2021) 11 GAU CK 0012

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : R. Mazumdar, H. Bezbarua, U. Sarma, B. Sarma

Final Decision : Allowed

Judgement

1. Heard Mr. R. Mazumdar, learned advocate for the petitioner and Ms. B. Sarma, advocate, appearing as learned CGC for the respondents.

2) The case canvassed by the petitioner is that a recruitment/ employment advertisement was published in Rozgar Samachar dated 24.01.2015, issued by the Staff Selection Commission to fill up the posts of Constable/ General Duty in various Central Armed Police Forces (CAPFs for short), NIA, SSF and Rifleman (GD) in Assam Rifles. Accordingly, the petitioner had participated in the said recruitment process. After successfully clearing all stages of recruitment process, the petitioner was issued an admit card for appearing in his medical examination on 27.05.2017, where the petitioner was found to be medically fit. It is projected that copy of the medical certificate was never provided to the petitioner. Thereafter, the name of the petitioner appeared in the list dated 02.02.2017 of candidates selected by the Staff Selection Commission for being appointed in various CAPFs. On the basis of marks obtained, the coordinating agency, i.e. the Central Reserve Police Force (hereinafter referred to as 'CRPF' for short) published a list dated 06.02.2017, thereby allocating the selected candidates to particular CAPFs. The petitioner was allocated in CRPF as Constable/ General Duty. Thereafter, the office of the Deputy Inspector General of Police, CRPF,

Dayapur, Silchar had issued an office order dated 17.05.2017 for appointment of the petitioner, directing the petitioner to report for joining on or before 05.06.2017. Accordingly, the petitioner claims that he had reported for joining on the appointed date along with all documents as mentioned in the offer for appointment. The petitioner was asked to appear for medical examination by a Medical Board in Composite Hospital, CRPF. However, by a report dated 19.06.2017, the Medical Board had declared the petitioner as unfit owing to "Polydactyl Right hand". The Medical Officer had referred the case of the petitioner to the Review Medical Board and the Review Medical Board had examined the petitioner on 16.08.2017 and the said Review Medical Board had also declared the petitioner to be unfit due to "Polydactyl Right hand with fixed flexion deformity of accessory digit". It is alleged by the petitioner that he was not provided with a copy of both the aforesaid medical reports/opinions. However, by the impugned order dated 16.08.2017, the petitioner was informed that the case of the petitioner was rejected by the Review Medical Board and that due to the medical report dated 16.08.2017 and the candidature of the petitioner for the post of Constable/ General Duty in CRPF was cancelled.

3) The learned advocate of the petitioner has submitted that the entire exercise carried out in respect of the petitioner leading to rejection of the petitioner's candidature was in violation of the "Uniform Guidelines for Medical Examination Test (MET) for Combined Recruitment of Constable GD in Central Armed Force and Assam Rifles", which came into force on and from 13.07.2011 and was in force when the petitioner had participated in the selection process and was given an offer for appointment. It is submitted that the petitioner had successfully cleared all stages of recruitment process and that despite having the said medical condition, as per the admit card issued to the petitioner, he was examined on 27.05.2017 in course of the recruitment process and the CRPF doctors had found the petitioner to be medically fit. It is submitted only after the petitioner was found medically fit in the recruitment process, that the petitioner was given offer for appointment. Hence, it is submitted that the alleged deformity was not of such nature, which would take away the source of livelihood of the petitioner. By referring to the medical certificate dated 03.05.2016 (Annexu-8), given by a civilian doctor it is submitted that the petitioner can carry out his all normal activities with his right hand and grip strength is normal. In support of his submissions, the learned advocate for the petitioner has placed reliance on the following cases, viz., (i) Suchitra Sethi vs. Union of India & ors., [W.P.(C) 16120/2016 decided by Orissa High Court on 17.08.2017], reported in 2017 Legal Eagle 225: 2017 SCC OnLine Ori 538, which relates to the same selection process; and (ii) Tarini Talukdar vs. Union of India & ors., 2004 (2) GLT 678: 2004 Legal Eagle 274.

4) Per contra, the learned CGC has opposed this writ petition. It is submitted that in clause-(x) of the offer letter, it was clearly stated that the joining initially for the post of Constable/ General Duty was subject to fulfilling all eligibility conditions including medical fitness. It is also submitted that the non-applicability

of the "Guidelines for Recruitment Medical Examination in Central Armed Force and Assam Rifles" (revised as on May, 2015) and approved on 20.05.2015 and notified on 26.05.2015, was not the pleaded case of the petitioner in the writ petition. It is submitted that the medical examination of the petitioner was done on 19.06.2017 and the Review Medical Board had examined the petitioner on 16.08.2017, as such, the revised guidelines was rightly followed. It is also submitted that the Director General, CRPF, by a communication dated 07.04.2014 (Annexure-4 of Affidavit-in-opposition), had made it mandatory to have a candidate medically examined in cases where there was delay between conduct of examination and date of appointment and it was provided that the unfit candidate would not be given the offer for appointment. Accordingly, by referring to clause nos. 6(20) and 6(27) of the said guidelines, it is submitted that no illegality was committed in issuing the impugned order, thereby rejecting the candidature of the petitioner on account of his medical disability.

5) It is seen that in the case of Suchitra Sethi (supra), which was decided by the Orissa High Court, except for the nature of disease stated to be suffered by the writ petitioner therein and that in the said case candidature of the petitioner was rejected in recruitment process, the facts of the said case relates to the same recruitment process as in the present case, which was initiated by Staff Selection Commission vide advertisement dated 24.01.2015 to fill up 62,390 General Duty Constable vacancies (both male and female) in different categories, i.e., SC, ST, OBC and Un-reserved category in CAPFs like BSF, CISF, CRPF, SSB, ITBP, Assam Rifles, NIA, SSF. In the said case, it was held that the revised guidelines issued on 20.05.2015 did not form a part of the notification issued for recruitment of CAPFs and accordingly, the rejection of the candidature of the petitioner therein was interfered with and direction was issued to appoint the petitioner therein. The relevant portion of paragraph nos. 1, 8, 11, 12 and 15 (as extracted from 2017 Legal Eagle 225)are quoted below:-

"1. The Staff Selection Commission, Government of India released a notification on 24.01.2015 to fill up 62390 GD Constable vacancies (both male and female) in different categories, i.e., SC, ST, OBC and Un-Reserved in Indian Armed Forces like BSF, CISF, CRPF/CAPF, SSB, ITBP, Assam Rifles, NIA, SSF. ...

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8. As it appears from the counter affidavit, the recruitment notice was issued on 24.01.2015, but a revised Uniform Guidelines for Medical Examination Test (MET) For Recruitment in CAPFs, NSG & AR was issued on 20.05.2015, i.e., four months after the publication of notice. By issuing such uniform revised guidelines, the authorities have changed the norms and conditions prescribed in the advertisement issued on 24.01.2015 which is also not permissible. ...

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11. In A.A. Calton v. The Director of Education, AIR 1983 SC 1143, the apex Court held that law as it stood at the point of time when the process of selection

commenced will be the law according to which the selection has to be completed. Similar view has also been taken by the apex Court in *P. Mahendran v. State of Karnataka*, AIR 1990 SC 405.

12. In view of the law discussed above, there is no dispute that after the advertisement was issued on 24.01.2015, the Uniform Revised Guidelines was issued on 20.05.2015, which does not form part of the notification issued for recruitment in CAPFs, NSG & AR. As such, the action taken pursuant to the said Uniform Revised Guidelines, as has been admitted in paragraph-3 of the counter affidavit that on the basis of the revised guidelines for medical examination for recruitment of Gazetted Officers (GOs) and Non-Gazetted Officers (NGOs) in CAPFs & AR issued by the Ministry of Home Affairs vide letter dated 20.05.2015 the petitioner was declared medically unfit by the Medical Board, cannot sustain in the eye of law. Furthermore, the action taken on the basis of subsequent Uniform Revised Guidelines, without bringing the same to the notice of the candidates, is arbitrary, unreasonable and hit by the principle "once game is played the rule of game cannot be changed in the midst".

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15. In view of the factual and legal analysis made above, this Court is of the considered view that the review medical examination report Annexure-6, whereby the petitioner has been declared unfit on the basis of the Uniform Revised Guidelines for Medical Examination Test (MET) for Recruitment in CAPFs, NSG & AR dated 20.05.2015 which was issued four months after the notice of recruitment dated 24.01.2015, cannot sustain in the eye of law. Accordingly, the same is hereby set aside and the authorities concerned are directed to act upon the medical certificate issued by the Medical Board, City Hospital, Cuttack [Annexure-V, Form No. 3 CAPFs-Constable (GD) 2005] dated 21.05.2016 in Annexure-4 and consequentially issue necessary appointment order to the petitioner, by declaring her medically fit to hold the post of Constable GD in Assam Rifles."

6) That in the case of *Tarini Talukdar* (supra), this Court had also held that where appointment order has been issued and the petitioner had accepted the same by reporting for duty, subsequent medical examination report cannot make the petitioner ineligible for appointment.

7) In view of the well settled legal position as discussed herein above, the case of the petitioner is found to be squarely covered by the ratio thereof. Moreover, it is seen that in the case of *Suchitra Sethi* (supra), the selection process was initiated by advertisement dated 20.01.2015, which is the same advertisement as in the present case and in the said case, the action taken pursuant to subsequent guideline dated 20.05.2015 was held to be forbidden, impermissible and accordingly, the rejection of candidature of the petitioner was interfered with. Therefore, as the petitioner herein is on the same footing as the petitioner in the case of *Suchitra Sethi* (supra), this writ petition deserves to be allowed

and it is ordered accordingly.

8) The order/letter No. A.VI.1/2017-EC-V dated 26.08.2017, issued by the Commandant, Group Centre, Central Reserve Police Force, Dayapur, Silchar under authority of the Deputy Inspector General of Police, Silchar, thereby cancelling the candidature of the petitioner for the post of Constable/ General Duty is set aside and quashed. Consequently, the respondent authorities, specifically, the respondent nos. 5 and 7 are also directed to declare the petitioner to be medically fit in accordance with the medical examination report as carried out as per admit card for medical scheduled to be held on 27.05.2015 (Annexure-4), which must be available with the respondent authorities and they shall pass consequential orders to reinstate the petitioner in service, which shall be done within the outer period of 45 (forty five) days from the date of service of a certified copy of this order in the office of the respondent no. 7.

9) The writ petition stands allowed to the extent as indicated above. There shall be no order as to cost.