
(2004) 10 UK CK 0032
In the Uttarakhand High Court
Case No : C.W.P. No. 522 of 2004 (S/S)

Mohd. Arshad

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-10-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 1 AWC 286 : (2005) 104 FLR 326 : (2004) 2 UC 1417 : (2004) 2 UD 557

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : B.S. Khanka, for the Appellant; V.B.S. Negi, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioner has sought mandamus commanding the respondents to give him joining in the Army as G.D. soldier.

2. Brief facts of the case, as narrated in the writ petition, are that the respondents got published advertisement for recruitment of G.D. soldiers in the month of September, 2003 in response to which, since the petitioner fulfilled the minimum qualification, he reached at the recruitment centre on 29.9.2003 and underwent medical and physical tests and cleared the same. On the same day, the petitioner appeared for the written examination, and was declared successful in the written test as well. In response to the selection letter dated 28.11.2003 (copy Annexure-3 to the writ petition), the petitioner submitted his documents for verification before the Branch Recruiting Office at Almora, which included the character certificate, caste certificate and domicile certificate (copy Annexure-4 to this writ petition). At the time of verification of documents, the respondents demanded certificate of permanent residence for 40 years which was not the requirement in the advertisement. As such the petitioner has alleged that he is deprived from joining the Indian Army illegally and arbitrarily hence the writ

petition.

3. A counter-affidavit has been filed on behalf of the respondents in which it has been stated that the Branch Recruitment Office, Almora organized a recruitment fair for the recruitment of certain posts in the Indian Army. As per the standards laid down by the Army authorities, there is requirement of minimum height of a candidate as per the letter A/62518/Rtg. 5 (O.R.) (A.) dated 27th July, 1995. Further, candidates from Western U. P. region are required to be at least of 170 cm. height. However, for Kumaonies and Garhwalis, it is 163 cm. For the purpose of identifying Kumaonies and Garhwalis as per the Army guidelines, Hindus, who are habitual residents of Kumaon and Garhwal region of Uttaranchal are said to be the Kumaonis and Garhwalis. Earlier there used to be the physical standards based upon the class of and caste but now entire country has been divided into six regions and the physical standards are based there for. Vide Army Headquarters letter No. A/5262/Rtg. 5 (O.R.) (A.) dated 6th January, 1984, a person who shifts his domicile from region of one standard to another standard will have to settle there and produce certificate of residence at the shifted place for two generations to take benefit of lower standards of that region. In the counter-affidavit it has been admitted that the petitioner did appear in the written examination and cleared the same. However, it is stated that his height was found to be 168 cm. which was short of minimum required standards. When petitioner claimed for relaxation on the ground that he is a Kumaoni, he was given opportunity by the respondents to produce either two generation certificate or 40 years domicile certificate at the time of final document verification. It is further stated in the counter-affidavit that the petitioner failed to produce the required certificates as such his candidature was rejected. The medical test which the petitioner states he has qualified was in fact a preliminary medical test for enrolment for a written test and medical test. A supplementary affidavit has also been filed on behalf of the respondents stating that letter No. 62518/Rtg. 5 (O.R.) (A.) dated 14th August, 2003 (copy Annexure-S.A. 2 to the Supplementary Affidavit) was still applicable for lower standards of the various regions.

4. I heard learned counsel for the parties and perused the affidavit, counter-affidavit and rejoinder-affidavit along with the annexures annexed thereto.

5. The short question for consideration before this Court is whether, the petitioner is wrongly denied from joining in the Indian Army by the respondents.

6. Admittedly, the petitioner appeared for written test in the recruitment process held by Branch Recruitment Office, Almora. It is also admitted that the petitioner cleared the written test. The dispute relates to the medical test and domicile certificate. Question of requirement of domicile certificate for a period of 40 years or for two generations certificates arose because of the fact that according to the respondents, petitioner's height was found 168 cm., which is short by 2 cm. of the required 170 cm. From the perusal of the Annexure-C.A. 1 to the counter-affidavit it is clear that for the candidates of western Himalayan region

minimum required height is 163 cm. This region includes Kumaon and Garhwal regions. The same document dated 27th July, 1995 further shows that for the western plains region, which included western U. P. (earlier Uttaranchal was part of western U. P.), the minimum required height was 170 cm. It appears that on the date of physical test, petitioner's height was found short there by 2 cm. He claimed to be Kumaoni on which he was asked to produce 40 years domicile certificate or two generations domicile certificate. The petitioner has a certificate of the category of other Backward Class which is Annexure-5 to the writ petition and the domicile certificate of resident of district Udham Singh Nagar of Uttaranchal, which is Annexure-6 to the writ petition. The said certificate shows that the petitioner belongs to village Umru Khurd, Tehsil Khatima, district Udham Singh Nagar. Undoubtedly, he could not produce certificate showing 40 years domicile or two generation domicile, but of course he did produce certificates showing the petitioner is a permanent resident of district Udham Singh Nagar and belongs to the other Backward Class as he is a Muslim Phakeer.

7. Udham Singh Nagar or its tehsils cannot be said to be part of western Himalayan region. Now the question is whether the petitioner is a Kumaoni? For the purpose of relaxation in the height neither it is sufficient to be a Muslim O.B.C. nor that he belongs to a district of Udham Singh Nagar. The relaxation in the height in Uttaranchal is provided only to Kumaonies and Garhwalies. As per the domicile certificate of the petitioner, he belongs to Tehsil Khatima, district Udham Singh Nagar which lies in the area after the foot hills of Himalayas. Since the petitioner has sought relaxation available to the Kumaonies, it is pertinent to see the definition of "Kumaoni". The Kumaonies are the inhabitants of "Kumaon". As per the Edwin T. Atkinson in The Himalayan Gazetteer, Volume Three, Part Two, "Kumaon" lies between North Latitude 28°-14'-45" and 30°-50'-0" ; east longitude 76°-6'-20" and 80°-58'-15", with an estimated area of 36,80,000 acres. As per the said Gazetteer, "it is bounded on the north by Tibet (Tibbat) ; on the east by Nepal ; on the west by Garhwal, and on the south by the Tarai". Tehsil Khatima lies in Tarai as such the area to which the petitioner belongs is south of Kumaon (not in Kumaon). Though district Udham Singh Nagar is part of Kumaon Commissionerary Division but for the purpose of the physical standards fixed for the Army, the definition of the area of Kumaon, the one defined in the aforesaid Gazetteer is the most appropriate one. In the opinion of this Court in the district of Udham Singh Nagar Sikhs are also living after independence but they cannot be said to be Kumaonies, nor the Bengalis, who have settled in the district of Udham Singh Nagar for last 30 years. In fact, relaxation in height given to the inhabitants of western Himalayan region and eastern Himalayan region are meant for those who normally do not attain the higher physical standards (being inhabitants of hilly region) unlike their counterparts in plains. Therefore, the guidelines and policies laid down by the Indian Army regarding requirement of 40 years domicile or two generation domicile for migrants to these regions cannot be said to be unreasonable for availing the relaxation meant for Kumaonies and Garhwalies of western Himalayan region.

8. Learned counsel for the petitioner drew my attention to the Annexure-R.A. 1 to the rejoinder-affidavit in which it has been certified in 2004 by Dr. R. S. Jani, Superintendent C.H.C., Khatima, Udham Singh Nagar, that the petitioner's height is 170 cm. At the age of 17-18 years, it is well-known fact that growth of height does not come to an end. As such it cannot be said that the height recorded earlier by Army was not correct. If the petitioner has really attained the height now more than the required standard, he can make another attempt in the next recruitment process. But in the circumstances, respondents cannot be said to have wrongly deprived the petitioner from joining the Army.

9. In view of the above discussions, the petition is liable to be dismissed. Writ petition is accordingly dismissed. No order as to costs.