
(2014) 01 RAJ CK 0190
In the Rajasthan High Court
Case No : Civil Writ Petition No. 690/2012

Murli Manohar Chhangani

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:

Citation : (2014) 2 WLN 466

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Manoj Bhandari, Advocate for the Appellant; M.A. Siddiqui, Advocate for the Respondent

Final Decision : Allowed

Judgement

Dr. Vineet Kothari, J.—The petitioner applied for the post of Forest Guard in pursuance of selection process commenced vide Notification dt. 23.09.2010. The petitioner secured 93% marks in the written test, but was declared unsuccessful in the physical test carried out. In the impugned order dt. 08.04.2011 (Annex. 5), the reason given by the respondent - Dy. Conservator of Forest Jaisalmer is that in the physical test, the petitioner was supposed to do 26 sit-ups. However, 23rd sit-up was not completed properly and therefore, his candidature was liable to be rejected. Aggrieved by this, the petitioner approached this Court by way of present writ petition. The respondents have filed reply to the writ petition and have contested this writ petition.

2. This Court after hearing both the learned counsels for the parties on 13.11.2013 had passed the following interim order directing the respondents to file additional affidavit in the matter:

Learned counsel for the respondents is directed to file additional affidavit as to on what reasons they justify the impugned communication (Annex. 5) dt. 08.04.2011, whereby on the basis of Video Recording of examination of the Physical Efficiency test, the petitioner was found to not have done the 23rd sit-up

properly out of 25 such sit-ups; and hence, his selection was cancelled whereas the petitioner had secured 93% marks in the written examination and was, therefore, *prima facie* a bright candidate. The impugned order was passed admittedly without providing an opportunity of being heard to the petitioner.

The aforesaid additional affidavit and so also the relevant record be filed within a period of two weeks from today. The respondents will also inform the Court as to whether any such vacancy still exists with the respondents pursuant to the Selection process in pursuance of the Advertisement dt. 23.09.2010 (Annex. 1) with the respondents.

Put up after two weeks, as prayed.

3. The said additional affidavit has been accordingly filed by the respondents on 16.12.2013 and along with the same, Annex. R/5 document dt. 24.03.2011 has been produced reiterating the said reason of rejection of petitioner's candidature.

4. The learned counsel for the respondents, Mr. M.A. Siddiqui, also produced a Compact Disc (CD) having Video Recording of the said physical test exercise for perusal and satisfaction of the Court. The learned counsel for the respondents also submitted that all the posts have since been filled up and after the present selection process of the year 2011, a fresh selection process has again been held in the year 2013 and even those posts have been filled up, no vacant posts exist for considering the case of the petitioner and there is no interim order granted in the present matter directing the respondents to keep one post vacant and he, therefore, prayed for dismissal of the writ petition.

5. The Court perused the said CD in presence of both the learned counsels.

6. Having heard the learned counsels for the parties and particularly after perusal of the aforesaid CD having Video Recording of physical test, this Court is satisfied that the rejection of petitioner's candidature was improper and not sustainable and particularly looking to his high merit having secured 93% of marks in the written test. The prescribed number of 26 sit-ups were completed by the petitioner before the prescribed time of 43 seconds. In the Video Recording produced before this Court, there is only one minor jerk the petitioner suffered towards the end of the said round of sit-ups, which he immediately recouped and completed in next moment and thus, he completed all the 26 sit-ups. The said minor jerk suffered by him in the process cannot result into the rejection of his candidature altogether. The respondents were always at liberty to ask him to repeat such exercise even if they were not satisfied, on the spot. Having not done that, the respondent's claim that rejection on the said ground was proper is not sustainable. Therefore this Court is of the opinion that the present writ petition deserves to be allowed. Accordingly, the present writ petition is allowed and quashing the impugned order and the subsequent orders justifying the same, this Court directs the respondents to offer appointment to the petitioner on the post of Forest Guard by creating a super numary, post if necessary, if existing vacancies of Forest Guard are not available. The said

process may be completed within a period of three months from today. No order as to costs. A copy of this order be sent to the parties concerned forthwith.