

**(2009) 11 DEL CK 0410**

**In the Delhi High Court**

**Case No : Writ Petition (C) 7053 of 2009**

Naveet Kumar Tiwari

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

**Date of Decision : 12-11-2009**

**Acts Referred:**

**Citation :** (2010) 166 DLT 80 : (2010) 3 SLJ 116 : (2010) 1 SLR 129

**Hon'ble Judges :** Suresh Kait, J; Pradeep Nandrajog, J

**Bench :** Division Bench

**Advocate :** R.K. Saini, for the Appellant; Amandeep Joshi, for the Respondent

**Final Decision :** Disposed Off

## **Judgement**

Pradeep Nandrajog, J.—Pertaining to the same process of recruitment for employment to the post of CT/Driver under the General Category, claim of Rakesh Kumar Mishra, the writ petitioner of WP(C) No. 6733/2008, was decided vide order dated 05.11.2008 passed by a co-ordinate Division Bench of this Court. The order reads as under:

R-2 issued a public notice in the Employment News inviting applications for 63 posts of CT/Driver under the General Category. One of the eligibility conditions prescribed for recruitment was a minimum height of 170 cms.

The petitioner applied in pursuance to the said advertisement and underwent the process laid down in the advertisement and was thereafter issued an offer of appointment dated 29.01.2007 intimating to the petitioner that he has been selected in the recruitment process so initiated. The petitioner was asked to join on or before 01.03.2007.

The petitioner claims to have reported for duty but was not permitted to join only on account of the fact that his height was less than 170 cms, which was one of the essential conditions in the public notice/advertisement. The representations made by the petitioner including communications dated 15.04.2008 were of no

avail.

It is the case of the petitioner that his father was thereafter taken seriously ill and was suffering from the disease of cancer and ultimately succumbed to the disease on 10.07.2008.

The representation of the petitioner was rejected on 30.04.2008. The petitioner got himself again medically examined in the Office of the Chief Medical Superintendent, District Hospital, Deoria on 25.08.2008 where his height was found to be 170.30 cms which was well above the minimum prescribed height. The petitioner even forwarded a representation along with a certificate but to no avail. The petitioner also brought to the notice of the respondents a decision in WP(C)5324/2007 Naresh Kumar v. Union of India and Ors. where also the respondents had taken a person into service after it was found that his height met the requisite criteria.

The matter was taken up on 22.09.2008 when we deemed it appropriate with the consent of the learned Counsel for the parties to send the petitioner to the Health Centre & Medical Unit, Delhi High Court ("the said Medical Unit" for short) to measure his height. The said Medical Unit certified that the height of the petitioner is 170 cm and 3 mm - same height which was found by the Chief Medical Superintendent, District Hospital, Deoria.

Learned Counsel for the respondents, however, took some time to verify the position as to whether that was the only impediment in the case of the petitioner to join the service or there may be other factors, which may not have come on record. We thus admitted the petition and granted the respondents time to file the counter affidavit within three weeks. We also directed that a vacancy should be kept reserved for the petitioner till the disposal of the writ petition. No counter affidavit has been filed nor is any other factor brought to our notice other than the deficient height of the petitioner. This plea does not stand in view of the fact that before the case of the petitioner was processed and letter issued to him, he would have to meet the essential requirements including the parameters of height. The petitioner, in fact, went to join the respondents in pursuance to the offer of appointment dated 29.01.2007 at which stage the height of the petitioner was found to be deficient. The Government hospital at Deoria certified that the height of the petitioner was 170.30 cms and this fact is confirmed by the said Medical Unit. There is thus no impediment in the appointment of the petitioner.

A writ of mandamus is issued directing the respondents to appoint the petitioner and allow him to join in pursuance to the appointment letter dated 29.01.2007 within one month from today. The petitioner to report to the Addl. Deputy Inspector General of the Police, Group Center, CRPF, Gwalior, A.B.Road (Madhya Pradesh) - 474001 where he was supposed to report earlier. The petitioner would naturally have to get all pay and allowances only from the date of his joining, but we deem it appropriate to grant costs to the petitioner on account of the

unreasonable actions of the respondents which has deprived the petitioner of his emoluments over this period of time. The costs are quantified at Rs. 10,000/- to be also paid within one month from today.

The petition is allowed in the aforesaid terms. Dasti.

2. Mr. Naveet Kumar Tiwari, the writ petitioner of WP(C) No. 7053/2009 i.e. the instant petition has a similar problem.

3. He responded to the advertisement in question and applied for being appointed to the post of a CT/Driver in the General Category.

4. Pertaining to the physical attributes of the candidates, the stipulated height requirement was minimum 170 cms.

5. The petitioner was subjected to the rigours of the tests which had to be conducted and he successfully cleared the same. Letter of appointment was issued on 29.01.2007. As per the appointment letter the petitioner was to report for duty on 01.03.2007, but before that, he received a letter dated 23.02.2007 informing him that since his height was less than 170 cms, the letter of appointment dated 29.01.2007 was withdrawn.

6. The petitioner visited the District Hospital at Deoria, UP, where the doctor concerned, after measuring the height of the petitioner, certified that the height of the petitioner was 170.60 cms.

7. Armed with the certificate aforesaid, in January 2008, the petitioner submitted a representation to the respondents praying that the letter withdrawing his appointment be withdrawn.

8. Finding no response instant writ petition was filed.

9. As per the petitioner he claims to be 170.60 cms tall. As per the respondents his height is 169 cms.

10. We have referred the petitioner to the Ortho Medical Officer attached to the Medical Health Centre of the Delhi High Court.

11. Dr. Pawan Kumar, MS (Ortho), Ortho Medical Officer attached to the Medical and Health Centre of the Delhi High Court has measured the height of the petitioner today itself and has informed the court that the petitioner is found to be 171 cms tall.

12. We have asked the petitioner who is present in court as to at what point of time, during the day, his height was measured by the respondents. The petitioner informs that his height was measured at around 4:00-5:00 PM, when he was being subjected to a physical test by the respondents.

13. We have on record 3 height measurements of the petitioner. The first is the height measured by the respondents, being 169 cms; the second is the height measured at the District Hospital, Deoria UP, being 170.60 cms and the third is

the height measured today being 171 cms.

14. How is it happening?

15. It is known to medical jurisprudence that as the day passes the height of every individual shortens by a few millimeters. It is recognized by medical jurisprudence that the maximum height of a person is when he gets up early morning and takes the measurement for the reason, sleeping in a horizontal position in the bed all night, loosens the limbs and in particular the vertebra of the person. Rising out of the slumber at dawn and commencing normal activity, by standing on the feet, due to gravitation pull downward, the vertebra and the other joints in the body tend to compress.

16. This explains the variation in the height of the same person if his measurements are taken during early hours of the morning and in the afternoon and late evening; 3 measurements would surface.

17. We are informed that large number of writ petitions have been filed in this Court pertaining to the issue of height. Relatable to the instant employment, this is the third writ petition filed in this Court.

18. We have penned a slightly long order wasting government stationery hoping that the respondents would take some remedial action so that private stationery is not wasted in the future i.e. writ petitions are not filed.

19. The respondents would be advised to take note of the aforesaid medical jurisprudence and in relation to a physical standard pertaining to the height, would specify some variation.

20. The reason is obvious. All candidates are not measured simultaneously and at the same time when recruitment process is on.

21. As regards the instant writ petition, in view of the order dated 05.11.2008 in WP(C) No. 6733/2008; noting the fact afore- noted, a Mandamus needs to be issued to the respondents.

22. The writ petition stands disposed of issuing a Mandamus directing the respondents to give effect to the appointment letter dated 29.01.2007 within one month from today. The petitioner shall report to the Additional Deputy Inspector General of Police, Group Centre, CRPF, Gwalior, A.B. Road (Madhya Pradesh)-474001 i.e. the place where he was to report in terms of the letter of appointment.

23. The petitioner will be paid pay and allowances with effect from the date he joins and is given work, but for purposes of pay fixation and purposes of pensionary benefits as also increments, the date of appointment of the petitioner would be reckoned as 01.03.2007.

24. We clarify that in respect of the pay and pensionary benefits, it would mean the length of service for grade fixation and increments without any monetary

impact between the date 01.03.2007 and the date when the petitioner joins.

25. No costs.

26. Dasti.