
(2018) 08 UK CK 0002

In the Uttarakhand High Court

Case No : Writ Petition No. 1401 (SS) of 2017

Pancham Singh

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 01-08-2018

Acts Referred:

Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome
(Prevention and Control) Act, 2017 — Section 3
Shashastra Seem Bal Combatized Sub Inspector (General Duty) Group B Non Gazetted
Posts Recruitment Rules, 2009 — Rule 8

Citation : (2018) 08 UK CK 0002

Hon'ble Judges : ALOK SINGH, J

Bench : Single Bench

Advocate : Vinay Kumar, Pankaj Chaturvedi

Final Decision : Dismissed

Judgement

ALOK SINGH, J.

1. Petitioner is working as Assistant Sub Inspector (General Duty) in Shashastra Seema Bal. Vide order dated 10.03.2017 petitioner was promoted to

the post of Combatised Sub Inspector (General Duty) but till date he has not been given the promotion on the ground that petitioner's medical

category is SHAPE 2 and for promotion, he has to regain medical category SHAPE 1 by 31.03.2018. Feeling aggrieved, petitioner has approached

this Court.

2. Heard Mr. Vinay Kumar, Advocate for the petitioner and Mr. Pankaj Chaturvedi, Standing Counsel for Union of India / respondents.

3. Mr. Vinay Kumar, Advocate for the petitioner submits that petitioner is a HIV positive. He was selected and completed the training for the post of

Combatized Sub Inspector (GD) but he has not been promoted because petitioner's medical fitness status is P2 (P) i.e. SHAPE 2. He further

submits that though petitioner's CD4 count with ART is 589 but it creates no hindrance in performing his duties. He while placing reliance on

Section 3 of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act 2017 (Act No. 16 of

2017) submits that respondents cannot discriminate on the basis of his disease.

4. Rule 8 of the Shashastra Seem Bal Combatized Sub Inspector (General Duty) Group B Non Gazetted Posts Recruitment Rules, 2009, provides for

medical fitness. As per Rule 8, only those persons who are in medical category SHAPE 1 shall be eligible for appointment under the provisions of

these Rules.

5. Section 3 of Act No. 16 of 2017 reads as under:

"No person shall discriminate against the protected person on any ground including any of the following namely: (a) the denial of termination from

employment or occupation unless in the case of termination the person, who is otherwise qualified, is furnished with a

(i) a certificate.

(ii) a certificate.

(b) the unfair treatment in, or in relation to, employment or occupation."

6. I do not find any force in the submission of Mr. Vinay Kumar, Advocate for the petitioner. Rules itself provide that persons, who are in medical

category SHAPE 1 shall be eligible for promotion. Admittedly, petitioner's medical fitness category is SHAPE 2. This Court cannot grant

concession to petitioner. So far Section 3 of Act No. 16 of 2017 is concerned, this Section itself mandates that a person cannot be discriminate, if he is

otherwise qualified. Medical fitness is mandatory requirement for promotion on the post of Combatized Sub Inspector (GD), which petitioner does not

fulfil, therefore, it cannot be said that petitioner is discriminated on the basis of his disease.

7. In view of the above discussion, I do not find any merit in the petition. Writ petition fails and is hereby dismissed. No order as to costs.