
(2014) 08 GAU CK 0045
In the Gauhati High Court
Case No : W.P.(C) No. 3834 of 2012

Rajani Phukon and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-08-2014

Acts Referred:

Evidence Act, 1872 — Section 114(g)

Citation : (2014) 5 GLT 340

Hon'ble Judges : Tinlianhang Vaiphei, J

Bench : Single Bench

Advocate : T. Chutia, S. Borpatragohain and K.K. Handique, Advocates for the Appellant; N. Borah, C.G.C, Advocates for the Respondent

Judgement

Tinlianhang Vaiphei, J.—The five petitioners herein jointly filed this writ petition challenging the recruitment process for filling up the post of Operator Radio Line (ORL), Havildar (Clerk), Plumber, Electrician, etc. in the Assam Rifles. The facts of the case, as projected by the petitioners, are that in response to the advertisement issued by the Director General Assam Rifles, Shillong (Record Branch), Laitumkharh posts, Shillong inviting applications from interested persons for the Assam Rifles Recruitment Rally being held at different places such as Dimapur, Nagaland and Guwahati from 14th September, 2011 onwards in respect of the aforesaid post, they applied for some of such posts. The total number of posts for which the recruitment rally was at Dimapur (Nagaland) was 373, whereas the total number of posts for the recruitment rally at Guwahati was limited to 408. The petitioner No. 1 passed HSLC examination and belongs to Other Backward Classes (OBC) and applied for the technical trade post of Operator Radio Line (ORL), whereas the petitioners No. 2, 4 and 5, who also passed HSLC examination and also belong to Other Backward Classes, applied for technical trade post of Havildar Clerk (CLK). The petitioner No. 3 has also passed HSLC examination and belongs to OBC and was applying for the technical trade post of Painter. All the petitioners were issued the letter advising them to report to the Presiding Officer, Recruitment Selection Board of Assam Rifles Training

Centre, Dimapur on 19.09.2011 at 5.00 AM along with their original documents. All the petitioners were also issued the Admit Cards individually for appearing in the said recruitment rally being held at Dimapur. The petitioners duly appeared in the running/physical test held on the recruitment rally on the aforesaid dates and they thought that they did quite well and qualified in the running test. After they qualified in the running test, they appeared in the written test and qualified in the written test. They were accordingly informed about their having been qualified in the written examination by the Colonel/Lt. Col. vide letter dated 11.11.2011 and were directed to report to the Medical Officer at the venue, date and time mentioned in the said letter, which they did so. The petitioners No. 2, 3, 4 and 5 passed the medical test but their names were not shown among the successful candidates of the result sheet, whereas the merit list contained the names of certain candidates, who were not apparently and visibly physically fit. For example, Laishram Tomba Singha (Respondent No. 5) shown in Sl. No. 4 of the merit list dated 2nd July, 2012 has bent back bone and Bitopan Loying (Respondent No. 8) in Sl. No. 111 of the same merit list dated 2nd July, 2012 has a bent hand. According to the petitioners, the names of the selected candidates shown in the final result sheet are not the permanent residents of that State viz. Manoj Sonowal (shown in Sl. No. 9 of the Final Result Sheet, September, 2011) is not a permanent resident of Arunachal Pradesh but his name is shown as such in Sl. No. 9 of final result sheet. Similarly, Jakir Hussain, whose name is found at Sl. No. 14 of the merit list is shown to be a domicile of the State of Nagaland, but he has a dubious permanent residency certificate.

2. It is the case of the petitioners that the respondent authorities manipulated the select list after the recruitment rally by marking the names of some blue eyed candidates with pencil in order to choose their favourite candidates and the entire process of selection of the candidates was vitiated by bias and irregularity from the very beginning. The petitioner No. 2, 3, 4 & 5 objected the selection procedure by submitting a memorandum but no action has been taken till now. The petitioner No. 1 was not found fit due to Haemorrhoid. Aggrieved by this, he preferred an appeal before the Record Medical Branch, Shillong. His appeal was accepted whereupon he was advised to report to MI Room, Assam Rifles Construction and Maintenance Company, Laitkor, Shillong on 26th March, 2012. The Medical Examination Board after conducting the medical examination found the petitioner No. 1 to be qualified in the medical test, but his name was not shown in the second merit list published on 2nd July, 2012. The grievance of the petitioners is that the entire selection process wherein some physically handicapped persons were selected is vitiated by discrimination, illegality and biasness and is thus not free from the influence of favouritism and bribery. According to the petitioner, they are physically fit and are otherwise qualified in every manner, but they were not recruited. Being aggrieved, the petitioners have filed this writ petition for appropriate remedy.

3. The respondent authorities contested the writ petition and filed their affidavit-in-opposition. The case of the answering respondent is that the petitioners did

appear in the recruitment rally, but they were not selected for the enrolment due to low-in-merit. The petitioner No. 1 was found unfit in the final medical test held at ARCH, Sukhovi, Dimapur on 12.12.2011. The appeal filed by him was for re-medical examination whereupon the Medical Board declared him to be fit, but he could not be selected due to low-in-merit. The vacancies are allotted as per Recruitable Male Population of State and further distributed amongst SC, ST, OBC & General category as per the policy issued by Ministry of Home Affairs. The vacancies are very limited and only those candidates who come on merit as per their written marks were selected. According to the answering respondent, the petitioner No. 2, 3, 4 and 5 successfully completed all the tests but they could not be selected due to low-in-merit. No fundamental or legal right of the petitioners has been infringed and there is no legal infirmity whatsoever in the action taken by the respondent, and the petitioners have failed to make out a case for issuance of any writ/direction by this Court, and the writ petition is, therefore, devoid of merit and is liable to be dismissed.

4. The petitioners filed their affidavit-in-reply wherein they have pointed out that the respondent authorities have tactfully remained silent about the selection of the physically unfit person viz. Laishram Tomba Singha (Respondent No. 6) shown in the Sl. No. 4 of the merit list dated 2nd July, 2012 with a bend back bone as well as Bitupan Loying (Respondent No. 8) in Sl. No. 11 of the same merit list having a bent hand. They also pointed out that the respondent authorities also remained silent about the selection of persons who have dubious permanent residency certificate. According to the petitioners, the respondent authorities failed to explain on what basis the petitioners have been categorised as low-in-merit. The respondent authorities have violated the scheme/policy dated 15.6.2009 by not declaring the percentage of marks obtained in the written test by the petitioners and also never clarified the legal and tangible basis to show that the deponents are low-in-merit.

5. The respondent authorities have filed their additional affidavit wherein it is pointed out that as per the policy laid down vide Para-2 sub Para XIII and XVI (2) of Ministry of Home Affairs dated 25.06.2009, the merit lists of each category namely General, OBC, SC, ST and Ex-Servicemen is prepared separately in respect of each State/UTs on the basis of aggregate marks obtained in the written test. The final selection of the candidates is made in order of merit in each category. The cut off percentage of marks for passing is 35% for General and Ex-serviceman whereas for the SC, ST and OBC is 33 %. The final merit list in each category has been prepared on the basis of aggregate marks obtained by the candidate in the written test. The petitioner No. 1 appeared for the post of Operator Radio Line (ORL) and he could not be selected due to low-in-merit having secured lesser marks than the selected candidate. He was rightly not selected for the enrolment in the Assam Rifles. The main contention of the respondent authorities is that all the petitioners were found low in merit securing less mark than the selected candidates and could not, therefore, be selected for appointment. These are the some substance of the respondent authorities.

6. Before proceeding further, it may be profitable to refer to the relevant provisions of the Revised Scheme for Recruitment of Constables in Central Para-Military Forces, which is annexed to Annexure-1 of the affidavit-in-opposition of the respondents. It is thus seen that the recruitment is to be done by the Regional Selection Board which is to comprise of an officer of the rank of Commandant/Second-in-Command with two officers not below the status of Assistant Commandant and at least one Medical Officer. An SC/ST officer and officer belonging to the minority may be co-opted into the Board. At the beginning of the recruitment process, candidates whose applications are found to be in order will be asked to go through height test followed by five kilometre race, if he qualifies the height test, and then will be subjected to modern biometric methods to obviate impersonation by the candidate, and if he passes all these tests, there will be physical standard test, physical efficiency test (PET). The candidates who qualify in the PET will be required to appear in the written test. After the written test, there shall be medical examination to assess their physical and medical fitness as prescribed by the eligibility conditions. The candidates who are found to be medically unfit by the Medical Board at the rally site may appeal before the appeal medical board. Such appeal must reach the Headquarters, DGAR (Record Branch), Shillong within 15 days of their rejection by the confirmatory medical board along with the certified copy of the rejection slip. If the candidate is medically found fit by the Appeal panel, the candidate will be recruited against wastage. Merit list in case of each category, namely, Gen., SC, ST, OBC and ex-servicemen will be drawn separately in respect of each State/UT on the basis of aggregate marks obtained in the written test. The final selection is to be made in order of merit in each category. The cut-off percentage of marks for appointment will be 35% in the case of General Ex-Servicemen and 33% in the case of SC/ST/OBC.

7. Having acquainted myself with the extant procedures for the recruitment, I will now proceed to examine the case of the petitioners. It may be noted that the petitioner No. 1 belongs to OBC and applied for the technical trade post of Operator Radio Line (ORL), and was initially disqualified on medical ground as he was found to be suffering from Hemorrhoid. However, on the appeal preferred by him before the Appeal Medical Board, he was found by the Board to be qualified in the medical test. Yet, his name was not shown in the 2nd Merit List published on 2.7.2012. According to the respondents, though the petitioner was declared fit by the Appeal Medical Board, he was not selected due to low-in-merit. In the case of the petitioner No. 2, 3, 4 and 5, though they have no problem in their medical tests, they were nevertheless not selected on the ground that they are "low-in-merit". As the averments made by the respondents were found to be vague, this Court by the order dated 6.8.2013 directed the respondents to file additional affidavit disclosing therein the marks obtained by the last selected candidate in each of the categories and the marks obtained by the petitioners. They were also directed to produce the relevant record of selection on the next returnable date. The additional affidavit was promptly filed by them, but this

affidavit also makes a pathetic reading. The respondents "disclosed" the marks obtained by the petitioners vide Annexure-R/2 but not the marks obtained by the last selected candidate in each of the categories. No record pertaining to the impugned selection process has ever been produced by the respondents either.

8. It may be noted that the recruitment procedure at Annexure-I to the affidavit-in-opposition clearly provides that a candidate found fit by the Appeal panel will be recruited against wastage vacancy. The petitioner No. 1 was found fit by the Appeal Medical Board, but he is not recruited. It must be remembered that those who have qualified in the written examination were allowed to undergo medical examination, which always follows the written test and not the other way round. At this stage, it may be noted that the other allegation of the petitioners is that the respondent No. 6 (Laishram Tomba Singh) and the respondent No. 8 (Bitopan Loying), whose names are shown at Serial No. 4 and Serial No. 111 of the Merit List dated 2.7.2012, are having bended back bone and bended hand respectively; they are apparently and visibly physically unfit. No whisper of statement was made by the respondents in respect of such serious allegation in their affidavit. Noticing this, this court by the order dated 2-6-2014 asked the Director-General, Assam Rifles to cause production of the medical examination reports of these two respondents on the next date for perusal of this Court. No such reports are made available to this Court. Even in their detailed additional affidavit dated 31-10-2013, no such statement was made by them. Moreover, no materials are produced by the respondents to show that the petitioners scored lesser marks than the last selected candidates in the respective categories.

9. The law of pleadings is that where no specific denial has been made to the facts asserted in certain paragraphs of the writ petition, the facts asserted by the petitioner in that particular paragraph will be deemed to have admitted. That apart, Section 114(g) of the Evidence Act, 1872 provides that the Court may presume that evidence, which could be and is not produced, would, if produced, be unfavourable to the person who withholds it. The non-production of the marks obtained by the last selected candidates in each category and the record pertaining to the impugned recruitment process before this Court despite the requisition to that effect was so made, has, therefore, entitled this Court to draw an adverse inference against the respondents. Thus, in my judgment, the petitioners have been unduly denied of selection for the respective posts applied for by them even though they had obtained more marks than the selected candidates such as the private respondents in the written examination. Moreover, the respondents No. 6 and 8, who are indisputably found to have bent back bone and bent hand respectively and are, therefore, visibly physically unfit, should not have been appointed to any posts. Thus, in view of my above findings, the entire recruitment process, in so far as the respondents No. 5, 6, 7 and 8 are concerned, suffers from the vice of arbitrariness, illegality, favoritism and non-application of mind. The question as to whether a writ court can issue a positive direction when no other reason is assigned by the respondent authorities for denying the appointments is no longer *res integra*. In *Union of India Vs. Anglo-*

Afgan Agencies, AIR 1968 SC 728, the Apex Court held that when the range of choice before the executive authority is reduced to such an extent that only one choice is possible, a writ court can issue positive direction. The offshoot of the foregoing discussion is that this writ petition succeeds. The selection and appointment of the respondent No. 5, 6, 7 and 8 to the post of Technical Grade are hereby quashed. The respondent authorities are, therefore, directed to appoint the petitioner No. 1 to the post Operator Radio Line. The respondent authorities are also directed to appoint the petitioners No. 2, 4 and 5 to the posts Havildar Clerk (CLK). The respondent authorities are further directed to appoint the petitioner No. 3 to the post of Technical Grade of Painter. Their appointments are, however, made subject to police verifications. The directions shall be carried out by the respondents within a period of two months from the date of receipt of this judgment. The parties are, however, directed to bear their own costs.