
(2014) 04 PAT CK 0032
In the Patna High Court
Case No : CWJC No. 3750 of 2014

Ravi Ranjan Tiwari

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 25-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 3 PLJR 408

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Yugal Kishore, Om Prakash Upadhyay and Manoj Kumar Singh, Advocate for the Appellant; N.A. Shamsi and Dwivedy Surendra, Advocate for the Respondent

Judgement

Chakradhari Sharan Singh, J.—Learned counsel for the petitioner is permitted to implead Deputy Inspector General (D.I.G.P.), Group Centre, C.R.P.F., Durgapur (W.B.) as Respondent No. 3 which must be done in course of the day. Heard learned counsel for the petitioner and learned Assistant Solicitor General appearing on behalf of Union of India as well as learned counsel for the Staff Selection Commission.

2. The petitioner challenges the order dated 28.12.2013 passed by the D.I.G. (P), Group Centre, C.R.P.F., Durgapur (West Bengal) whereby the petitioner has been declared medically unfit for the purpose of appointment in the post of constable (C.R.P.F.). Pursuant to an advertisement issued by the Staff Selection Commission inviting applications for the post of constable in C.A.P.Fs. including C.R.P.F., vacancies were advertised Statewise, which included vacancies for the State of Bihar.. The Petitioner after having applied for the post participated in the process of selection and was declared successful and he was finally nominated for appointment in C.R.P.F. It is the petitioner's case that vide letter dated 20.8.2013, the petitioner was directed to join on or before 19.9.2013 and accordingly on 12.9.2013 the petitioner submitted his joining and was allotted

Force No. 13510963C 7/4D. On 18.9.2013 he was sent for medical examination before the Medical Board.

3. This is to be noted that in the letter-dated 20.8.2013 whereby the petitioner was asked to report, it was mentioned that since he was earlier medically examined more than a year ago, he would have to undergo a fresh medical examination by reporting in the office. The petitioner was examined by the Medical Board. The Medical Board found the petitioner unfit on account of:--

i. "B/L undescended Testis c Inguinal Hernia.

ii. Overweight."

4. The petitioner preferred an appeal whereafter he was referred for review medical examination. The Review Medical Board found him unfit for the following reasons:--

"Recent post operative case of B/L undescended (sic) testes with inguinal hernia."

5. Learned Senior Counsel appearing on behalf of the petitioner has drawn my attention to the report of the medical examination done on 18.9.2013 which has been brought on record as Annexure "H" to the counter affidavit to contend that in course of examination nothing was found by the Medical Officer which could be said to be a disqualification for employment in C.R.P.F. He submits that the reason recorded for petitioner's unfitness by the Medical Officer in his report, could not have been treated to be a disqualification for petitioner's employment in the C.R.P.F. and had it been so it would have been mentioned in the first paragraph itself of the report of the petitioner's medical examination as contained in Annexure-8. He submits that petitioner was wrongly declared unfit for employment in C.R.P.F. He further contends that though overweight was not a disqualification, the petitioner in order to secure the appointment reduced his weight and underwent a surgery to overcome the disease as pointed out by the Medical Officer i.e. "B/L undescended testis with inguinal hernia (left)".

6. Learned Assistant Solicitor General appearing on behalf of Union of India on the other hand has raised a preliminary objection over the maintainability of writ application on two grounds. He firstly submits that no cause of action arose within the territorial jurisdiction of this Court therefore, the writ petition is not maintainable before this Court. He further submits that in the advertisement inviting applications," it was pointed out that any dispute with respect to selection could be raised before a Court or Tribunal having jurisdiction over the said town where regional office of Staff Selection Commission is situated.

7. He has further contended that since the petitioner was found medically unfit. He submits that in the present case the Regional Office of the Staff Selection Commission is located in Allahabad and, therefore, only Allahabad Court would have jurisdiction. He further contends that since the Medical Board found the petitioner unfit for appointment in C.R.P.F., he was rightly denied such benefit.

8. Dealing with the preliminary objection raised on behalf of the Union of India as well as the Staff Selection Commission this is to be noted that the vacancies were advertised for various States including the State of Bihar and the recruitment was conducted by the Regional Office, Staff Selection Commission located at Allahabad for States including the State of Bihar. In such circumstance, it cannot be said that this Court lacks territorial jurisdiction to decide the dispute. As regards the clause of the advertisement which provided that the dispute could be raised with respect to recruitment, only before the Court, tribunal having jurisdiction of the said town where Regional Office of Staff Selection Commission is situated, I would only observe that such conditions in the advertisement would not determine the territorial jurisdiction of a High Court exercising power under Article 226 of the Constitution of India.

9. Relevant portion of Annexure "H" which is the report on the petitioner's medical examination is crucial for determination of the present dispute which is being quoted hereinbelow:--

"I hereby certify that i have examined Shri/Kumari Ravi Ranjan Tiwary Roll No. 4205507026 Age 19 yrs. son of Shri Vijay Kr. Tiwary candidate for employment in the C.R.P.F. and cannot discover that he/she has any disease (communicable or otherwise) constitutional weakness or bodily infirmity except.....do not consider this a disqualification for employment in the C.R.P.F.

(This may be filled up after examining the candidate for knock knee, bow legs, squint eyes, inability to close any (left or right) eye, inability to flex fingers properly, varicose veins or any other obvious disabilities which are likely to affect his functioning as a member of C.A.P.F.)"

10. If the doctor was of the opinion that he suffered from any other obvious disabilities which were likely to affect his functioning as a member of C.A.P.F. with reference to bodily infirmity mentioned therein, were required to be mentioned in the first paragraph itself. Therefore, the medical unfitness which were found by Medical Officer at the time of the petitioner's examination could not be said to be such as would have disqualified the petitioner for employment in C.A.P.F. Even in the Review Medical Board, it has not been found that the medical unfitness as shown was a disqualification for employment in C.R.P.F. I am of the view that the petitioner was wrongly denied his employment in C.R.P.F. on the ground of such findings.

11. I am of the considered view that unless medical unfitness found by the Medical Officer/Review Medical Board is such that it would be a disqualification for employment, persons should not be denied appointment on that ground.

12. In view of the above, I allow this writ application and direct the Respondent No. 3, D.I.G.(P), Group Centre, Durgapur, West Bengal to allow the petitioner to join the post of constable (GD) C.R.P.F. in view of the selection and do not deny him employment on the ground of unfitness as shown in the report of the medical examination or review medical examination.

13. This application is accordingly allowed. Before I pen with I must record that the result of the review medical examination (Annexure-J) appears to have not been filled by a qualified medical practitioner inasmuch as the term "Undescended Hernia has been repeatedly mis-spelt. Denying a person public employment after his selection for the post on the ground of his medical unfitness is a very serious matter and it should not be dealt with in casual and cavalier manner.