
(2004) 06 GAU CK 0040
In the Gauhati High Court
Case No : Writ Petition (C) No. 7878 of 2002

Tarani Talukdar and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-06-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 310, 311

Citation : (2005) 3 GLR 780 : (2004) 2 GLT 1678

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : M. Pathak, D. Baruah and J. Das, for the Appellant; C. Choudhury, for the Respondent

Judgement

B.K. Sharma, J.—Apathy on the part of the respondents in the matter of appointment even after selection and offering of appointment and reporting for duty, what has been alleged in this writ petition seeking a direction to the respondents to allow the petitioners to join their duty.

2. The facts as narrated in the writ petition are in a narrow conspectus. Pursuant to a recruitment rally conducted by the respondents which included physical and medical check up, written and viva-voce test, the petitioners were selected for appointment as constable. The selection tests were conducted on 6th, 7th and 8th of February, 2002 and the team which conducted the test included the Commandant and Chief Medical Officers along with others.

3. The petitioners were offered appointment by letter of appointment dated 9.9.2002 and they were appointed as Constable (GD) in the establishment of 17th Bn. Kohima in the scale of pay of Rs. 3050 -4590/-. As per direction contained in the letters of appointment the petitioners reported for their duty on 25.9.2002. Upon such reporting for duty, they were referred to the hospital at the Group Centre, SSB, Kohima for medical check up on 26.9.2002. The attending Doctor there, advised the petitioners to get certain tests such as X-ray, P.A. view test, Chest EGG, VDRL test, blood test, urine test etc. The

petitioners submitted themselves for all the medical tests and the medical reports furnished to them were duly deposited to the authority at Kohima on 27.9.2002.

4. However, without assigning any reason the petitioners were refused joining when they reported for the same on 27.9.2002 itself. Their persuasions for the same failed and nothing was intimated to them in writing. Situated thus, they had no option than to come back. According to the petitioners when they could successfully complete the physical and medical tests conducted during selection, nothing could prevent them from joining their duties and that too in absence of anything adverse to their such joining which otherwise would have been intimated to them in writing. Be it stated here that the physical tests, which the petitioners has undergone during the selection, included their height test/measurement also.

5. Failure to receive any response from the respondents as to the reason or reasons for not allowing the petitioners to join their duties towards materialising their appointment eventually forced the petitioners to invoke the writ jurisdiction of this Court by filling the writ petition.

6. The respondents have responded to the writ petition by filling their affidavit-in-opposition. The stand of the respondents while admitting all other material fact is that both the petitioners upon examination by the Medical Officer of the concerned Battalion found to be deficient in their height by 1 (one) Commissioner. As per the report of the Medical Officer, both the petitioners having not fulfilled the requisite physical standard (height) for recruitment as Constable (GD), their appointment was not considered by the Commandant of the 17th Bn. According to the respondents the minimum height required for the purpose for the candidates belonging to Assam is 162.5 and the petitioners height reported by the Medical Officer at Kohima to be of 161.5 i.e. one centimetre short than the minimum standard height.

7. According to the respondents the aforesaid position led to the forfeiture of the appointment of the petitioners and the Head Clerk of the 17th Bn, SSB, Kohima in the office had briefed them of the same.

8. Ms. M. Pathak, learned Counsel appearing for the petitioners strenuously argued that the entire episode leading to refusal to allow the petitioners to join their posts smacks malafide and colourable exercise of power. She submitted that the petitioners having been selected on the basis of their eligibility which included the physical test which naturally also included the requirement of minimum standard of height, the Medical Officer at Kohima could not have declared the petitioners as not fulfilling the requisite physical standard (height). She further submitted that the apathy shown by the respondents is writ large on the face of it inasmuch as even after the selection of the petitioners by a high-powered Recruitment Committee which included the Chief Medical Officer and their appointment, the petitioners were not intimated anything even after they

had reported for their duties. She submitted that the appointment made in favour of the petitioners could not have been negated and/or rendered infructuous in that manner by the respondents in gross violation of the principles of natural justice. She placed reliance on the decision of the Apex Court as reported in *Tagin Litin Vs. State of Arunachal Pradesh* and another,

9. Mr. C. Choudhury, learned Senior CGSC on the other hand supported the action of the respondents in terms of the stand taken in the affidavit. He submitted that the mere offer of appointment did not cloth the petitioner with any vested right and their such offer of appointment was explicitly subject to production of certificate regarding medical fitness from the competent Medical Authority. In this regard he referred to the terms and conditions of the appointment orders, more particularly Clause 1 under the head "THE APPOINTMENT WILL BE FURTHER SUBJECT TO".

10. It is in the aforesaid back drop of the case, the question for determination is as to whether the action on the part of the respondents can be said to be conforming to the requirement of not to act arbitrarily in such a matter. The petitioners were subjected to rigorous physical test followed by medical test conducted by the duly constituted Selection Committee, which amongst others was comprised of the Commandant and the Chief Medical Officer deputed for the purpose. The petitioners were found eligible and suitable in both the test, which naturally included the test of physical standard which also included the minimum standard of height. As against the minimum required standard of 162.5 Cm, the petitioners were found to be of 163.00 Cm and 162.5 Cm, by the Medical Board constituted for the purpose. This is evident from the own stand of the respondents in their affidavit. In this connection the averments made in paragraph 6 of the affidavit-in-opposition are quoted below :

As regards their actual height, the fact is best known to both the petitioners. During the preliminary Medical Examination of, the recruitment test that was held from 06.02.2002 to 09.02.2002 the Medical Board measured the height of the petitioner No. 1 as 163.00 Cm and 162.5 Cm for the petitioner No. 2. It is not understood how and why the height of the petitioners No. 1 and 2 were measured 163.00 Cm and 162.5 Cm respectively by the Medical Board of the recruitment test held at Group Centre, SSB, Bongaigaon. During final Medical Examination conducted by the Medical Officer of the 17th Bn SSB, Kohima the height of both the petitioners were measured as 161.6 Cm only falling short by 1 (one) Cm to the prescribed height for candidate belonging to Assam.

11. From the above averments made in the affidavit, it is abundantly clear that the petitioners were found to be of minimum standard height by the duly constituted Medical Board at the time of selection. However, the respondents in their affidavit have themselves questioned the same as to why the height of the petitioners were measured as such. It is not understood as to what they have meant by the expression, "final Medical Examination", purportedly conducted by the Medical Officer of the 17th Bn, SSB, Kohima. The petitioners were never

informed of any such final medical examination to be conducted to ascertain their height and that too by a single Medical Officer i.e. the Medical Officer of the 17th Bn. SSB, Kohima. Thus as against finding the petitioners to have conformed to the requirement of minimum standard height by a duly constituted Medical Board, they were declared to be not so by the Medical Officer who purportedly carried out further measurement of the petitioners as regards their height. Thus it is a case of rejection of the height recorded by the duly constituted Medical Board and preferring the one purportedly recorded by a Medical Officer at the place of posting of the petitioners.

12. The aforesaid revelations have been made only in the affidavit. The petitioners were never informed of any deficiency in the minimum standard of height at any point of time. The arbitrary action in a sensitive matter like appointment in these hard days of employment is writ large on the face of it. The petitioners had undergone the rigorous test of selection comprised of physical and medical test followed by written and viva voce test. It was only after they came out successful in the selection they were given individual appointment orders incorporating the terms and conditions there. They were never made known that their such appointment was subject to further verification of their height by the Medical Officer at the place of posting and that such verification would be given preference than the verification made by the Medical Board at the time of selection. It is true that in the appointment orders a clause was incorporated to the effect that the appointment would be further subject to production of certificate regarding medical fitness from the competent medical authority. At the same time the appointment orders also contained clauses like -- to be in service for minimum three years after training, requirement of bringing Rs. 800 in connection with initial messing and other charges, to bring light bedding, production of original certificates, taking oath of allegiance and faithfulness of the Constitution of India etc. The appointment also contained the clause of termination of service by giving one month's notice by either side.

13. The petitioners were directed to report for duty on or before 5.10.2002 if the appointments along with the terms and conditions were acceptable to them. In response to the same the petitioners reported for duty on 25.9.2002. Thus even if the appointment made in favour of the petitioners is construed to be only an offer of appointment as was sought to be contended by the learned Senior CGSC, it became a concluded contract upon acceptance of the same by the petitioners on their reporting for duty on 25.9.2002 in terms of Clause VI under the aforesaid head "THE APPOINTMENT WILL BE FURTHER SUBJECT TO". Even in such a situation, the question that arises for determination is as to whether in view of the concluded contract upon acceptance of the offer made by the respondents, the respondents could have resiled back from their offer and that too in the manner and method in which the same has been done.

14. Strangely enough, till this very date the petitioners have not been informed anything in writing. Their appointments have also not been cancelled and yet the

same have been negated and rendered infructuous by sheer inaction and apathy on the part of the respondents. Except the disclosure made in the affidavit, the petitioners were never informed of anything as to why their appointment could not be materialised. To counter this bare and cruel truth the respondents in the affidavit have taken a stand that the Head Clerk in the office had orally informed the petitioners about the fact of their not meeting the minimum standard relating to height. This is really a sorry state of affair with a disciplined force like that of SSB.

15. In the case of *Tagin Litin (supra)* relied upon by the learned Counsel for the petitioners, the Apex Court was concerned with the stages at which the appointment can be said, to be materialised and in that context observed that in order to be effective, an order passed by the State or its functionaries must be communicated to the person who would be affected by that order and until the order is so communicated the said order is only provisional in character and it would be open to the concerned authority to reconsider the matter and alter or rescind the order. The Apex Court further observed that an appointment to a post or office postulates a decision by the competent authority to appoint a particular person; incorporation of the said decision in an order of appointment; and communication of the order of appointment to the person who is being appointed. This decision was pressed into service to contend that all the three stages were over and the acceptance of the appointment by the petitioners by reporting for duty at the place of posting culminated into a concluded contract even if the contention of the respondents that the order of appointment was a mere offer of appointment and not an appointment as such is accepted.

16. After the recruitment process was over in which the petitioners came out successful, they were formally appointed by issuing the letters of appointment indicating the terms of appointment and to signify their acceptance by reporting for duty on or before 5.10.2002. accordingly, the petitioners reported for duty on 25.9.2002. Thus the offer made was accepted by the petitioners and it became a concluded contract. In the case of *Roshan Lal Tandon Vs. Union of India (UOI)*, the Apex Court dealing with the status of an employee in the realm of contractual obligation as contended by the employee held as follows :

It is true that the origin of Government service is contractual. There is an offer of acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes

constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned.

17. The above view relating to concept of status was reiterated by the Apex Court in the decision of *Government of A.P. v. Syed Yousuddin Ahmed*. In the case of *Shyamalendu Nag v. State of Manipur* as reported in (1992) 2 SCC 1996, the Apex Court while upholding the judgment of this Court held that, in terms of the appointment letter stipulating the condition that the appointment would stand cancelled in case of failure to report for duty by the specified date of appointment stood automatically cancelled. In that case, the Government of Manipur withdrew the offer of appointment on failure on the part of the petitioner to join his duty as Judicial Officer in Manipur Judicial Service. Thus in that case upon failure of the petitioner to report for duty, the Government of Manipur withdrew the offer of appointment. The situation in the instant case is different. As per the appointment letter stipulating the reporting date for duty to be on or before 5.10.2002, it was further stipulated that in case of failure to report for duty by the prescribed date, the offer would be treated as cancelled. The petitioners in acceptance of the offer reported for their duty on 25.9.2002 and were subjected to various medical tests and thereafter nothing was intimated to them. The petitioners had no other alternative than to come back. The alleged reason for such a treatment to them has been assigned only in the affidavit-in-opposition.

18. The letter of appointment, in its usual form constitutes the offer made by the employer to the prospective employee. The assent to the offer signified by such employee is the acceptance. On such acceptance the contract is concluded. The appointment to a post is not complete when the person who is appointed does not join the post at all. In such a situation the appointing authority is entitled to revoke the offer made to an employee. In the instant case, as noticed above, the petitioners accepted the offer made by the respondents. The appointment letters issued in favour of the petitioners have not been withdrawn till date. The petitioners have also not been intimated anything in writing about the withdrawal of the offer. It is only in the affidavit the stand of the respondents have been made known and that too with inherent contradiction.

19. The respondents while accepting that the duly constituted Selection Committee which included the Medical Board found the petitioners to be of standard height of 163.00 and 162.5 cm and thus conforming to the minimum

requirement of standard height, at the same time have questioned the same with the mere statement that "it is not understood how and why the height of the petitioners No. 1 and 2 were measured 163.00 cm and 162.5 cm respectively by the Medical Board of the recruitment test held at Group Centre, SSB, Bongaigaon". The respondents have given more credence to the measurement recorded by the Medical Officer of the 17th Bn, SSB, Kohima than the one recorded by the Medical Board during recruitment process. No reason has been assigned for adopting such a course of action. The question necessarily arises as to what made the respondents to believe the measurement made by a Single Medical Officer in preference to the measurement made by a Medical Board. In the appointment order apart from mentioning that the petitioners would be required to produce certificate regarding medical fitness from the competent medical authority, they were never intimated that the measurement recorded in respect of their height by the Medical Board would be further subjected to any final medical examination and that too by a single Medical Officer in preference to the Medical Board as has been now contended in the affidavit-in-opposition.

20. The petitioners were duly selected for appointment, they having qualified in all the tests including physical and medical tests which necessarily comprised of measurements relating to minimum physical standard. It was only after that, they were declared successful in the recruitment process/selection and were offered with appointment by issuing individual appointment orders stipulating certain terms and conditions there which they duly fulfilled. It was at that stage, the petitioners were refused duties even after they had reported for duty and that too without any written order to that effect. Till this very date there is no written order cancelling the appointment of the petitioners. It is in this manner how the respondents treated the petitioners abandoning the principles of natural justice and administrative fair play and adorning the principles of arbitrariness and unreasonableness. As has been observed by the Apex Court in the case of A.P. Aggarwal Vs. Govt. of N.C.T. of Delhi and Another, every state action, in order to survive, must not be susceptible to the vice or arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system, which governs us.

21. For the foregoing reasons and discussions, there is no manner of doubt that the impugned action on the part of the respondents is not only arbitrary but strikes at the very root of the principles of natural justice, A concluded contract relating to the services of the petitioners could not have been set at naught in the manner and method in which the respondents have resorted to. While depriving the petitioner of their employment/service, they have even questioned the propriety of the selection Committee in finding the petitioners to be of minimum , standard height. The petitioners were appointed by the Commandant, 17th Bn. SSB, Kohima and such an appointment could not have been cancelled without any written order and that too solely on the basis of the purported report furnished by the Medical Officer of the same Battalion without, however, apprising anything to the petitioners which eventually forced them to invoke the

writ jurisdiction of this Court.

22. It may not be out of place to mention here that the petitioners who were found to be of minimum standard height by the Medical Board during the recruitment process have also been certified to be so by the Medical and Health Officer, Sorbhog SHC in the district of Barpeta and that they have also undergone the advance training for recruitment of constable conducted by the SSB. Such training was imparted to the petitioners and they successfully completed the same which is recognised as the first step for recruitment as constable. The respondents have not denied these aspects of the matter in their affidavit.

23. In view of the above the writ petition stands allowed granting the prayers made therein. The respondents shall now take appropriate action towards implementation of the appointment of the petitioners which they have been offered by their respective appointment letters. They should be allowed to join their duties in terms of the appointment orders within two months from today.

24. Writ petition stands disposed of.