

GAHC010040852021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1446/2021

SOPNA PEGU
D/O SRI NOBIN PEGU
RESIDENT OF VILLAGE LEM CHAPORI PO BAHGURI, PS DERGAON, DIST
GOLAGHAT, ASSAM 785614

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, NEW DELHI
110001

2:STAFF SELECTION COMMISSION
BLOCK NO. 12
CGO COMPLEX
LODHI ROAD
NEW DELHI 110003
REPRESENT BY ITS CHAIRMAN

3:STAFF SELECTION COMMISSION
NER
DISPUR
HOUSEFED COMPLEX
GUWAHATI 781006
KAMRUP M ASSAM REPRESENTED BY ITS REGIONAL DIRECTOR

4:CENTRAL RESERVE POLICE FORCE
GROUP CENTRE GS ROAD
9TH MILE
AMERIGOG
GUWAHATI 781023
ASSAM
REPRESENTED BY ITS SPECIAL DIRECTOR GENERAL

5: PRESIDING OFFICER
ARCH
SUKHOVI CENTER
DIMAPUR
797115
NAGALAN

Advocate for the Petitioner : MR. S CHAKRABORTY

Advocate for the Respondent : ASSTT.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

20-09-2023

Heard Mr. S. Chakraborty, learned counsel for the petitioner. Also heard Mrs. S. Baruah, learned CGC for the respondents.

2. This petition is filed by the petitioner being aggrieved by the rejection of her of candidature for the recruitment of Constable (GD) in Central Armed Police Forces (CAPFs) like NIA, SSF and Rifleman (GD) in the Assam Rifles Examination, 2018. The petitioner submitted her online application by filling all particulars as required and indicated her gender as '*female*'. She was issued the admit card where her gender was shown as '*male*'. She thereupon submitted an e-mail on 01.07.2019 bringing the discrepancy to the notice of the concerned authorities. She however appeared before the concerned authority and she was allotted a center for male candidates where she appeared in the written

examination. Thereafter, she again received another e-admit card for physical test for the PST/PET test which was scheduled on 16.08.2019. In the said admit card also her gender was shown as '*male*'. The petitioner was shown to be qualified the physical test. In the format which was filled up by the petitioner for the physical test, she had correctly indicated her gender as '*female*'. The results of the physical test which was communicated to the petitioner through the Department also reflected that the gender of the petitioner as '*female*'. It is mentioned that pursuant to the physical test the petitioner also appeared for the medical test and she had successfully completed the medical test. However, the petitioner was not selected. She was shown to be medically unfit. The petitioner is aggrieved by the fact that in spite of successfully clearing all the tests she was declared to be medically unfit. Upon making enquiries, she was informed that she had incorrectly filled up her form giving incorrect information in respect of her gender and instead of female she had filled up her gender as '*male*'.

3. Learned counsel for the petitioner submits that the petition has been filed by the petitioner being aggrieved by the rejection of her candidature on the ground of being found medically unfit. It is submitted that there was no fault on the part of the petitioner and it is her firm belief that she had successfully cleared all the tests, including medical tests, but for the fault on the part of the respondents whereby her gender was wrongly reflected as '*female*', the

petitioner was declared to be medically unfit.

4. Mrs. S. Baruah, learned CGC for the respondents submits that the respondent no.3 has filed his affidavit-in-opposition and in paragraph-16 of the affidavit-in-opposition it has clearly mentioned therein that "*as per the report received from the Concern CAPF (Assam Rifles), the petitioner was declared FIT in both PET/ PST and DME*".

5. It is further averred in the affidavit-in-opposition that the gender of the petitioner was recorded as '*male*' in the Commission data base. According to the respondent no.3, this data was automatically populated and stored by the system, and due to the mismatch of the gender status, the petitioner was rejected during DV. It is further averred in the affidavit-in-opposition that the request for change or correction of any particulars in the application form once submitted will not be entertained under any circumstances. It is submitted that the candidature of any candidate can be rejected at any stage if and when discrepancy comes to the notice of the Commission and selection of such candidate with discrepancy will open the *Pandora Box* and also open floodgates to thousands of similar claims.

6. Learned counsel for the parties have been heard and the pleadings have been carefully perused.

7. It is evident from the document available at Annxure-9 of the petition that

the petitioner was considered to be unfit in the DME/RME result and in the medical test also she was declared to be unfit, however, this is contradicted by the averment made in paragraph-16 of the affidavit-in-opposition filed by the respondent no.3. The relevant paragraphs of the affidavit are extracted below:

“15. That, with regard to the averment made in paragraph No 4 of the writ petition, the answering deponent humbly submits that the representation for change/correction of the gender status form ‘Male’ to ‘Female’ was received from the petitioner vide e-mail dated 01-07-2019, The matter was referred to SSC HQ along with a copy of the petitioner's application form (wherein the gender was indicated as ‘Female’) vide e-mail dated 26-07-2019. SSC HQ after due scrutiny informed that there was no change in data, meaning there by the ‘gender’ that appeared in the Admit Card is the same as captured from the application and is being stored in the Commission data base, The response received from SSC HQ was conveyed to the Petitioner vide e-mail dated 08-08-2019, Therefore, it is clear that the candidate had filed her gender in her online application as ‘Male’ instead of ‘Female’.

16. That with regard to the statement made in paragraph 5, 6 and 7 of the Writ petition the answering deponent respectfully states that the PET/PST and DME/DV was conducted by the CAPF i.e. Assam Rifles in accordance with para 1 (IV) & (V) of the recruitment notice. As per the report received from the concerned CAPF (Assam Rifles), the Petitioner was declared FIT in both PET/PST and DME.

17. That with regard to the statement made in paragraph no 8, 9 and 10 of the Writ Petition the answering deponent begs to state that it is reiterated that the ‘gender’

of the Petitioner is recorded as 'Male' in the candidate's data available with the Commission. The data of all the candidates are automatically populated and stored by the system from the inputs of the candidate while filling the application form. Due to this mismatch in the «ender status, the Petitioner was rejected during DV. As per Examination Notice — CT-GD 2018 dated 21.07.2018 under Para 17 Important Instruction to Candidates of sub para 15, it is stated that "Request for change Correction in any particulars in the Application Form, once submitted, will not be entertained under any circumstances". Following this policy uniformly, all requests made by other candidates such as this, were all rejected. Accordingly the request of this applicant too was rejected. The candidature of any candidate can be rejected at any stage if and when discrepancy comes to the notice of the Commission as selection of 'wrong candidates' or candidates with such discrepancy would lead to opening of the proverbial 'Pandora Box' and open the floodgates to thousands of similar claims from others candidates."

8. In the affidavit there is an enclosure which is a copy of an email dated 26.07.2016 issued by the Deputy Secretary (NER), Staff Selection Commission (NER), Government of India, to the Confidential Section of the concerned Department. In the said email, it is clearly mentioned that the petitioner has correctly written her gender as 'female' in the online application form, but she qualified PST/ PET under male category. In the said e-mail it is also reflected that as per the Data stored in the system in the result/ mark sheets of the petitioner, her name is included in the *male* list. However, data as per the online

application form submitted by the petitioner, her gender is reflected as '*female*'. Further, in the remarks column it is specified that the data received from Headquarters (HQ) as 'male' instead of 'female'. From a perusal of the above e-mail it is evident that the petitioner has indeed correctly filled up her application form reflecting her gender as '*female*'.

9. The said data was recorded before the competent authority's data storage system as 'male' instead of 'female'. The admit card issued to the petitioner allowing her to appear in the written examination, physical test, medical test, etc. wherein the petitioner had appeared but under the male category. However, it is not understood as to how in the Final Medical Status the petitioner was declared to be 'unfit' and the same is controversial in view of the paragraph-16 of the affidavit-in-opposition filed by the respondent no.3.

10. Taking all the submissions into consideration as well as the pleadings, it is evident that there was no mistake or error on the part of the petitioner in filling up her application form where she had correctly reflected her gender as '*female*'. This error somehow kept in the system of the selection authority or the employer. This finding of the Court is in view of the e-mail dated 26.07.2019 issued by the Deputy Secretary (NER), Staff Selection Commission (NER), Government of India, which is enclosed to the affidavit-in-opposition filed by the respondent no.3.

11. In that view of the matter, the prayer of the petitioner deserves to be allowed.

12. By order dated 08.03.2021, this Court had directed not to fill up one post of Constable (GD) and the interim order has been extended from time to time. Accordingly, the concerned respondent authorities will consider the case of the petitioner in a suitable post in respect of the recruitment conducted under the Constable (GD) in Central Armed Police Forces (CAPFs) like NIA, SSF and Rifleman (GD) in the Assam Rifles Examination, 2018 by considering the petitioner to be fit in respect of all categories and her gender be reflected as a '*female*'. Necessary rectification to that effect is required to be undertaken by the respondent authorities, more particularly, in respect of the data which is stored in the Headquarters of the competent authorities. The directions of this Court shall be carried out as expeditiously as possible preferably within the outer limit of 3 (three) months from the date of receipt of a certified copy of this letter. The authorities will consider the directions of this Court, in respect of the petitioner, in terms of the above.

13. With the above observations, the writ petition stands disposed of.

JUDGE

Comparing Assistant