

GAHC010106422011



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

Case No. : WP(C)/1257/2011

DHANESWAR BARMAN
S/O SENAPATI BARMAN, R/O VILL. DHARAMTALA, P.O. BAMUNKUCHI,
P.S.PATACHARKUCHI, DIST BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM AND ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
FOREST DEPTT, DISPUR GHY-6

2:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM

FOREST DEPTT
DISPUR
GHY-6

3:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS AND HEAD OF
FOREST FORCE

REHABARI
GHY-8
DIST KAMRUP M
ASSAM

4:THE CHIEF CONSERVATOR OF FORESTS

REHABARI
GHY-8
DIST KAMRUP M
ASSAM

5:THE SELECTION COMMITTEE

REP. BY ITS CHAIRMAN O/O PRINCIPAL CHIEF CONSERVATOR OF

FORESTS
REHABARI
GHY-8
DIST KAMRUP M
ASSAM

6:BIKRAM NARAH

S/O HOMESWAR CHAINGYA
R/O VILL. BALIJAN
P.O.BHIMPARA BALIJAN
DIST LAKHIMPUR
ASSA

Advocate for the Petitioner : Mr. N. Kalita, Advocate

Advocate for the Respondents : Mr. D. Gogoi, Advocate for Forest Department

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 21-07-2023

1. The present writ petition has been filed by the Petitioner being aggrieved by the non-selection to the posts of Constable of the 2nd Battalion, Assam Forest Protection Force.

2. The facts involved in the instant case as could be discerned from a perusal of the pleadings is that the Principal Chief Conservator of Forest, Assam had issued an advertisement dated 27.02.2009 published in the Assam Tribune in its issue dated 28.02.2009 for filling up of 702 numbers of posts of Constable in Assam Forest Protection Force and Cook for Battalion Head Quarter. The last date for submission of the form was on 25.03.2009. The

advertisement further stipulated eligibility criteria as regards educational qualification, physical measurement, weight, age etc. In the said advertisement, it was further mentioned that there shall be a physical fitness test and those candidates who qualify for the physical fitness test would be called for viva-voce/interview.

3. The Petitioner had in pursuance to the said advertisement applied for the post of Constable in the Assam Forest Protection Force. He received a call letter dated 08.11.2009 to appear in the verification of physical standards and physical fitness test which was scheduled to be held on 05.12.2009 at 14th APBN Campus, Daulasal, Barpeta. The Petitioner thereupon went through the physical fitness test and on 09.07.2010, the Respondent Authority issued a call letter to the Petitioner directing him to appear before the selection board on 27.09.2010 at 9 A.M. for interview/viva-voce test which was to be held at Battalion Headquarter of Assam Forest Protection Force, Basistha, Guwahati.

4. It has been stated in the writ petition that almost 12,000 candidates were called for filling up of 702 posts which was more than 17 times of the vacancies to be filled and more than 250 numbers of candidates were interviewed per day which was not a normal practice. It was alleged that during the interview, only 2-3 questions were asked and the Petitioner had duly answered to the said questions and was expecting that he would be duly selected in the said selection process. However to the shock of the Petitioner, a select list was published on 08.02.2011 which was circulated and published in the English daily newspaper "The Assam Tribune" in its issue dated 12.02.2011. In the said Select List, the Petitioner did not find his name and being aggrieved therefore has filed the instant writ petition challenging the

selection process.

5. Upon the writ petition being filed on 24.02.2011, this Court had issued notice on 04.03.2011 and observed that if any appointment is made to the post in question, the same shall be subject to the final order(s) to be passed in the instant writ petition.

6. From the records, it reveals that on 15.11.2011, an affidavit-in-opposition was filed by the Respondent No.3. In the said affidavit-in-opposition, it was mentioned that on receipt of Government of Assam, Finance (SIU) Department approval communicated vide Government letter dated 27.02.2009 for the sanctioned vacant posts of Constable, 2nd A.F.P.F. Battalion, Assam, an advertisement was issued in English and Assamese local dailies on 28.02.2009 inviting application for recruitment of 702 numbers of Constable, 2nd A.F.P.F. Battalion and 24 numbers of Cook. M/S AMTRON, a Government of Assam undertaking was entrusted with the task for sending calling letters to the candidates to appear before the selection board for physical efficiency test and call letters to the candidates for viva-voce/interview before the selection board who had qualified in the physical efficiency test. It was further stated that various committees were constituted for smooth conduct of the recruitment process viz. physical efficiency test and the selection board for conducting viva-voce/interview for selection of candidates for the appointment of Constable and Cook of 2nd A.F.P.F. Battalion. After the scrutiny of the applications, the candidates were called for the Physical Efficiency Test held in different centers. The examinations were held at different centers on account of administrative convenience. The Petitioner appeared in the Physical Efficiency Test of Constable, A.F.P.F. Battalion held in 14th APBN Campus, Daulasal, Barpeta. It

was further mentioned that the list of successful candidates who have qualified in the Physical Efficiency Test were notified in the daily newspaper in "The Assam Tribune" and "Janasadharan" on 21.06.2010 and a corrigendum dated 09.07.2010 and these candidates were directed to appear before the selection board for viva-voce on specified dates and time. The Petitioner appeared before the Selection Board for viva-voce on 27.09.2010. It was mentioned that the Selection Board continued to hold the viva-voce/interview till all the candidates who were called for the particular day were exhausted. In paragraph No.8 of the said affidavit-in-opposition, it was stated that out of the 702 numbers of posts of Constables in A.F.B.N. Battalion advertisement, 358 posts were for unreserved category, 190 posts were for OBC/MOBC category, 49 posts were for SC, 35 posts were for ST(H) and 70 posts were for ST(P). It was further mentioned that a select list was prepared on the advertised posts which was notified in the local daily newspaper "The Assam Tribune" and "Janasadharan" on 12.02.2011. Thereupon, a corrigendum was issued as regards the Roll Number "27016" which should be read as "27106" vide office letter dated 14.02.2011. In the said affidavit-in-opposition, it was mentioned that the Petitioner whose Roll Number was 15628 was of the General category and he obtained 34 marks in physical test and 22 marks in the viva voce test and the total marks obtained by the Petitioner was 56 marks. It was further mentioned that as regards the General category candidates, the cut off mark was 69; for OBC/MOBC candidates it was 56; for SC candidates it was 50.5; for ST(P) candidates it was 51.5 and for ST(H) it was 51.

7. At this stage, it is relevant to take note of that the select list for appointment to the posts of Constable in the 2nd Battalion of Assam Forest Protection Force was enclosed to the affidavit-in-opposition. All the 702

candidates' names as well as their addresses were duly mentioned in the said select list. This Court further finds it relevant to take note of that only one candidate was impleaded as the Respondent No.6 in the writ petition. It is pertinent to mention that the said Respondent No.6's Roll Number was 03498 and he belonged to the ST(P) category and he obtained 42 marks in physical test and 34 marks in the viva-voce totaling to 76 marks. It further appears that the Petitioner neither impleaded all the candidates in the select list whose names and addresses duly appeared in the select list enclosed to the affidavit-in-opposition even after the filing of the affidavit nor filed any reply to the affidavit-in-opposition.

8. I have heard the learned counsels for the parties and have perused the materials on record. The learned counsel for the Petitioner has assailed the entire selection process on the ground that about 12,000 candidates were called for interview which was more than 17 times of the advertised vacancies to be filled. It was alleged that more than 200 candidates appeared per day for viva-voce and the selection board hardly spent 2-3 minutes against each candidate and it was impossible to evaluate the personality on merit of the candidates within a short span of time. It was therefore alleged that the authority arbitrarily conducted the viva-voce test in a mere casually, superficially and sloppy manner and as such the entire selection process was arbitrary. It was further alleged that there was no mention in the advertisement regarding allotment of marks for physical test as well as for viva-voce and there was no recruitment rule that has been followed by the authority in the said recruitment process keeping the entire process in obscure.

9. On the other hand, Mr. D. Gogoi, the learned Standing counsel appearing

on behalf of the Forest Department has submitted that the Petitioner had duly participated in the said selection process knowing fully well the conditions stipulated in the advertisement. The learned Standing counsel further submitted that the Petitioner further knew very well what was asked to him during the interview which was held on 09.07.2010 but the Petitioner did not assail the same or complained about the same but it is only when he knew that he was not selected, he has filed the instant writ petition complaining about the advertisement as well as the selection process. The learned Standing counsel therefore submitted that the Petitioner having submitted to the interview process without any demur or protest, the same cannot be challenged subsequently simply because the candidate's personal evaluation of his performance was higher than the marks awarded by the panel. The learned counsel therefore referred to the judgment of the Supreme Court in the case of ***Tajvir Singh Sodhi and Others Vs. State of Jammu and Kashmir and Others reported in (2023) SCC Online SC 344.***

10. From the contentions so made as well as from the perusal of the materials on record, it transpires that the issue involved in the instant proceedings is as to whether the selection proceedings initiated on the basis of the advertisement dated 27.02.2009 and culminated with the issuance of the select list dated 08.02.2011 is required to be interfered with on the present facts.

11. From the facts already stated hereinabove, it would show that in pursuance to the advertisement dated 27.02.2009, the Petitioner applied for the posts of Constable in Assam Forest Protection Force. The Petitioner very well knew the contents of the said advertisement and did not assail the said

advertisement on the ground that it did not mentioned the allotment of marks for physical test as well as for viva-voce or for that matter, the advertisement was vague. The Petitioner upon receipt of the call letter dated 08.11.2009 duly participated in the Physical Fitness Test. Subsequent thereto, when the Petitioner received call letter dated 09.07.2010 for the interview thereby asking the Petitioner to appear in the selection board on 27.09.2010, the petitioner duly participated in the said selection process. The Petitioner very well knew at that point of time that there were various candidates who were called for the interview and the Petitioner kept quite and did not challenge the same or even submitted a representation to the authority concerned as regards the procedure and manner of the viva-voce test. Thereupon, it further appears from the paragraph No.8 of the writ petition that the Petitioner was optimistic that he would be selected but upon the select list being published and having not found his name, the Petitioner has now challenged the entire selection proceedings. Therefore, the question arises is as to whether the petitioner having full knowledge that the advertisement did not prescribe a procedure for selection and having participated in the selection proceedings can be permitted now to assail the selection proceedings on the ground that there was no procedure mentioned in the advertisement. The law in this regard is well settled by various judgments of the Supreme Court starting from the case of ***DR. G. Sarana Vs. University of Lucknow and Others* reported in (1976) 3 SCC 585; *Madan Lal and Others Vs. State of J&K and Others* reported in (1995) 3 SCC 486; *Manish Kumar Shahi Vs. State of Bihar and Others* reported in (2010) 12 SCC 576; *Ramesh Chandra Shah and Others Vs. Anil Joshi and Others* reported in (2013) 11 SCC 309; *Madras Institute of Development Studies and Another Vs. K. Sivasubramaniyan and Others* reported in (2016) 1 SCC 454; *D. Sarojakumari Vs.***

R. Helen Thilakom and Others reported in (2017) 9 SCC 478 and Mohd. Mustafa Vs. Union of India and Others reported in (2022) 1 SCC 294.

12. Let this Court take into consideration some of the aforesaid judgments. In the case of ***Madan Lal (supra)***, the Supreme Court had observed that the petitioners therein having taken a chance to get himself selected at the said oral interview and only because the petitioners therein did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed the petition. It was observed by the Supreme Court that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview was not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of ***Manish Kumar Shahi (supra)***, the Supreme Court further observed that if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner therein invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name did not figure in the merit list prepared by the Commission. It was observed by the Supreme Court in the said judgment that the conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Subsequently, in the case of ***Ramesh Chandra Shah (supra)***, the Supreme Court observed that having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection.

13. This Court also finds it relevant to refer to the judgment of the Supreme Court in the case of **Tajvir Singh Sodhi (supra)** at paragraph Nos. 69 and 70 which being relevant are quoted herein below:

“69. It is therefore trite that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. In other words, simply because the result of the selection process is not palatable to a candidate, he cannot allege that the process of interview was unfair or that there was some lacuna in the process. Therefore, we find that the writ petitioners in these cases, could not have questioned before a Court of law, the rationale behind recasting the selection criteria, as they willingly took part in the selection process even after the criteria had been so recast. Their candidature was not withdrawn in light of the amended criteria. A challenge was thrown against the same only after they had been declared unsuccessful in the selection process, at which stage, the challenge ought not to have been entertained in light of the principle of waiver and acquiescence.

70. This Court in Sadananda Halo has noted that the only exception to the rule of waiver is the existence of mala fides on the part of the Selection Board. In the present case, we are unable to find any mala fide or arbitrariness in the selection process and therefore the said exception cannot be invoked.”

14. In the instant case as already observed hereinabove that the Petitioner had full knowledge that there was no procedure stipulated in the advertisement but then also had participated in the selection proceedings and having not found himself to be selected had approached this Court challenging the said selection proceedings. In the opinion of this Court, the conduct of the Petitioner disentitles the Petitioner to challenge the said advertisement as well as the selection proceedings.

15. This Court further finds it relevant to note that from the affidavit-in-opposition, it is clear that the Petitioner belonged to the General Category. The cut off mark for the General Category candidates was 69 and the Petitioner obtained only 56 marks. Nothing has been shown that the marks allotted to the Petitioner was perverse.

16. This Court further finds it also relevant to take note of another aspect of the matter. In the said selection proceedings, as many as 702 candidates were selected. A perusal of the writ petition though shows that the Petitioner has stated that he had no knowledge as to the names of the candidates as well as the addresses and as such the selected candidates could not be made parties. Be that as it may, upon the filing of the affidavit-in-opposition, the names and addresses of all the selected candidates have been stated in the select list enclosed to the affidavit-in-opposition. Then also there was no attempt made by the Petitioner to make the selected candidates parties to the instant proceedings though the Petitioner herein challenges the selection proceedings to be in violation of Articles 14, 16 and 21 of the Constitution. On this account also this Court is of the opinion that the instant writ petition is not maintainable.

17. Consequent to the above, this Court therefore is of the opinion that the instant writ petition is devoid of any merits apart from being not maintainable for not impleading the selected candidates and accordingly the instant writ petition therefore stands dismissed.

JUDGE

Comparing Assistant