

Serial No. 26
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 464 of 2022

Date of Decision: 22.03.2024

No.G/5010542M/Rfn/GD
Sri. Pramod Kumar Patra
S/o Sri. Kartick Patra,
20 Assam Rifles, PIN No. 932020
C/o 99 APO and permanent resident of
Kasimpur Village, Odisha

::::Petitioner

-Vs-

1.Union of India,
Represented by the Secretary to the
Govt. of India, Ministry of Home
Affairs, New Delhi – 110001

2.Mahanideshalaya Assam Rifles,
Directorate General, Assam Rifles,
Shillong – 793010, Meghalaya

3.Director General, Assam Rifles
Record Branch (ADMN-IV) at
Shillong – 793011, Meghalaya

::::Respondents

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Ms. P. Agarwal, Adv.

For the Respondent(s) : Dr. N. Mozika, DSGI with
Ms. S. Rumthao, Adv.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

JUDGMENT AND ORDER (ORAL)

1. The writ petitioner being aggrieved with his non-remusteration, against the post of Store Keeper Technical (Engineer), despite having the qualifications and providing the service as SKT(Engr.), in addition to his General Duty since 2016, only on the ground of his being over-aged, has preferred this writ petition for directions to issue for remusteration to SKT (Engr.).

2. It has been submitted that, the petitioner in the course of his service as Rifleman (GD), had been sent for a diploma in Store Management

Course for Class-III, as Store Keeper Technical (Engr.), a course of 6(six) months, which the petitioner completed in 2010, and issued diploma accordingly, and thereafter, the petitioner was then selected to undergo a course of Class-II of SKT (Engr.) of 1(one) month in 2016, which was also completed. The petitioner it is submitted then in the year 2016-17, in addition to his GD duty, was also tasked with the duty of SKT (Engr.), but was not appointed fully as SKT (Engr.), since no post existed or was created, at that point of time, but was assured that, he would be accommodated against the same, if such post would be created.

3. Learned counsel submits that an advertisement was floated in November 2021, for 7(seven) vacancies against the post of SKT (Engr.), which was followed by another advertisement on 15.06.2022, where the numbers of vacancies were increased to 9(nine). The petitioner however, it is submitted inspite of having all the requisite qualifications and performing the duties of SKT (Engr.) since 2016-17, was not favoured with appointment, as he had crossed the upper age limit of 35 years. It is further submitted that, for the other vacant post, the 8(eight) other candidates who are yet to attain qualifications, have been selected, and the petitioner though well qualified, was left out, just on account of the age bar. It has been contended that, the notification dated 15.06.2022, prescribing the upper age bar of 35 years, as on 01.08.2022, is not applicable in the case of the

petitioner, inasmuch as, the petitioner had discharged the duties of SKT (Engr.) from the year 2016-17.

4. In reply thereto, it has been contended on behalf of the respondents that, the upper age limit for remusteration, was fixed as 35 years, as on 01.01.2022, as per the Recruitment Rules of 2015, and as per the General Instructions for Remusteration issued by the Assam Rifles for filling up the vacancies of Havildar/Store Keeper Technical (Engineer). It is submitted that, after proper review, the cut off date for the calculation of age was fixed as 01.08.2022 instead of 01.01.2022, and a total of 9(nine) vacancies of SKT (Engr.) were notified. In the screening process, out of 10(ten) candidates, 2(two) candidates including the petitioner were found to be over-aged, and as such, ineligible, as on the cut off date, the petitioner was found to be 36 years 4 months and 9 days old, even though, the petitioner was found to possess all other qualitative eligibility criteria for remusteration. It has also been submitted that, the attendance of Technical courses and passing of Technical Trade Test by the petitioner would in no way confer upon him, the right of remusteration, as the same is subject to availability of vacancies and fulfillment of eligibility criteria, on the date of vacancy or date of selection fixed by the department. It is therefore submitted that, the petitioner not being eligible by virtue of being over-aged, he is not entitled to any relief, as claimed.

5. Having heard the learned counsel for the parties, it is seen that the only point in issue in the instant petition is whether considering the facts of the case, and the qualifications and experience of the writ petitioner as SKT (Engr.), he was in any way entitled to, or vested with any right to be considered for remusteration, as the rejection was only on account of his being over-aged, by just about over a year.

6. It is correct notwithstanding any situation, relaxation of age cannot be claimed, as a matter of right, moreso, with there being no inbuilt provision for relaxation and also on the terms, being governed by the Recruitment Rules. The case of the petitioner however, viewed from a different perspective, is a very compelling case for reconsideration taking into account, the peculiar facts surrounding his case. First, is the undisputed point which is with regard to the diploma and training he has received as Store Keeper Technical, and the fact that, he has in addition to his other duties discharged the functions of a SKT (Engr.), since 2016-17. Secondly, at the relevant time though qualified there were no vacancies of SKT (Engr.), for the petitioner to apply against for remusteration. At this point, it is pertinent to note that, the vacancies were first advertised on 12.11.2021, wherein, he was over-aged by only 7(seven) months, considering that his date of birth is 22.03.1986. Thirdly, the persons selected for remusteration, at the time of selection did not possess the required qualification, but were

not rejected, as it was decided by the competent authority to allow such candidates to acquire their requisite qualifications after the selection for remusteration.

7. In this backdrop of these facts and circumstances, wherein, any deficiency in meeting the criteria cannot be attributed to the petitioner, and his rejection being solely on the ground of his being over-aged, this Court to balance the equities, especially considering the fact that, no vacancies existed to enable him to apply, when he was still of age, and the vacancies arising, one could say on his just having crossed 35 years of age, and also the fact that, and the other candidates were not rejected due to lack of qualifications, and a concession made to allow them to acquire the same after selection; it is deemed fit to direct as follows.

8. The respondents shall therefore re-consider the candidature of the petitioner for relaxation of the upper age limit for remusteration as SKT (Engr.), taking into account the facts as spelt out above, subject to him fulfilling the other conditions of remusteration, as a one-time exercise, which shall not serve as a precedent for any future cases. The entire exercise should be completed within a period of 8(eight) weeks from the date of receipt of this order.

9. As ordered above, this writ petition is allowed to the extent indicated above, and is accordingly disposed of.

Judge

Meghalaya
22.03.2024
"D.Thabab-PS"