

GAHC010130042023



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

Case No. : WP(C)/3484/2023

MUKESH CHANDRA
S/O- BABU RAM, VILL- PURA JANVED, P.O. KUKTHARI, P.S. PANIHAT,
DIST.- AGRA, UTTAR PRADESH, PIN- 283123

VERSUS

THE UNION OF INDIA AND 3 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI-1

2:THE DIRECTOR GENERAL
ASSAM RIFLES
SHILLONG
MEGHALAYA- 793013

3:THE DEPUTY COMMANDANT/MAJOR SO - 1(RECRUITMENT)
DIRECTORATE GENERAL
ASSAM RIFLES
SHILLONG
MEGHALAYA- 793013

4:THE PRESIDING OFFICER
WRITTEN EXAMINATION BOARD
ASSAM RIFLES TRAINING CENTER AND SCHOOL
KARBI ANGLONG
ASSAM
NRS
DIPHU PIN- 78246

Advocate for the Petitioner : MR B SINHA, MR. M HUSSAIN

Advocate for the Respondent : DY.S.G.I., MR. U K GOSWAMI

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 17-09-2024

Heard Mr. B. Sinha, learned counsel appearing for the writ petitioner. Also heard Mr. U. Goswami, learned CGC appearing for the respondents.

The order dated 29-03-2023 issued by the Major/ Dy. Commandant, i.e. the respondent No. 3 herein rejecting the candidature of the petitioner for appointment in the post of Hindi Translator has been assailed in this writ petition. By filing the present writ petition, the petitioner has approached this Court for the second time.

The facts of the case, in a nutshell, are that the writ petitioner, who is a permanent resident of Uttar Pradesh, had applied for the post of Hindi Translator in response to the advertisement notice dated 17-11-2017 issued by the respondent No. 2. Based on his application, the writ petitioner was permitted to take part in the selection process. After completion of the process, the petitioner had emerged as the candidate placed at Sl. No. 2 in order of merit having scored 51 marks, whereas another candidate, viz. Sri Satya Dev Singh, having scored 52 marks and was placed at Sl. No. 1 in the merit list. It is to be noted herein that Satya Dev Singh is a general category candidate whereas the writ petitioner had applied as OBC candidate. According to the writ petitioner, one post was available for being filled up by OBC category candidate. As such, since Satya Dev Singh was appointed as general category candidate, the vacant post meant for OBC category

candidate ought to have been given to the writ petitioner. Notwithstanding the same, by taking an objection pertaining to his height, which according to the authorities, was 169 cm, whereas the required height for a candidate as per the norms ought to be 170 cm, the petitioner was denied appointment. Being aggrieved by the same, the petitioner had approached this Court earlier by filing W.P.(C) No. 52/2019.

The contention of the petitioner before the learned Single Judge was that being the younger brother of Rfn/GD Dinesh Chandrah, who is an Assam Rifles personnel, he was entitle to relaxation of 2 cm in the height, in which event, there could have been no justifiable ground for the respondents to deny him the order of appointment in the post of Hindi Translator as a OBC candidate.

W.P.(C) No. 52/2019, was disposed of by the learned Single Judge by order dated 16-11-2022. In the order dated 16-11-2022, the learned Single Judge has observed that not being the son or daughter of the existing employee and merely being the sibling of Assam Rifles employee, the relaxation clause would not be applicable to the petitioner. However, since the authorities had permitted him to take part in the written examination by relaxing his height requirement, a reversal of the said decision would not be permissible unless the same is taken in adherence to the principles of natural justice.

The observation made in paragraph 13 of the order dated 16-11-2022 are relevant and therefore, are reproduced here-in-below for ready reference:-

“13. As the claim of the petitioner for relaxation is on the basis of his sibling who is already serving in the Assam Rifles, therefore, such relaxation would not be applicable. As the height of the petitioner had already been relaxed by allowing him to participate in the written examination any reversal of the decision would

now require at least the compliance of the principle of natural justice i.e the petitioner would be entitled to a notice. If the respondents are seriously intending to pursue with the said aspect, the petitioner may be served notice accordingly and after hearing him, appropriate order be passed."

Pursuant to the order dated 16-11-2022, it appears that a notice was issued to the petitioner on 14-12-2022 asking him to show cause. Thereafter, by the impugned order dated 22-12-2022, the petitioner's claim had been rejected by observing that he had failed to submit his show cause reply.

According to the petitioner, he had submitted his reply on 22-12-2022 which was also duly received by the authorities. Notwithstanding to the same, in the impugned order dated 29-03-2023, it has been reflected that the petitioner has not submitted any reply and that he was not eligible for any relaxation, since he was not a "ward of Assam Rifles personnel". Aggrieved by the order dated 29-03-2023 the present writ petition has been instituted.

It appears from the record that despite several opportunities granted by this Court, the respondents have not filed any affidavit controverting the stand of the petitioner that although he had submitted reply to the show cause notice, the same was not considered by the authorities. Moreover, there is nothing to show that the petitioner was given an opportunity of hearing, which was also a specific direction of the Court in the order dated 16-11-2022. Since there is already an order from this Court dated 16-11-2022 to take a fresh decision in the matter after complying with the principles of natural justice and considering the claim of the petitioner that he had submitted his reply to the show cause notice dated 14-12-2022, which was received by the authorities but not considered, which

claim has remained uncontroverted, this Court is of unhesitant opinion that the impugned order dated 29-03-2023 has been passed in fragrant violation of the direction contained in the order dated 16-11-2022 passed by this Court in W.P.(C) No. 52/2019. If that be so, the impugned order dated 29-03-2023 must be held to be unsustainable in the eyes of law. The same is accordingly set aside.

The respondents are directed to pass a fresh order in the matter after taking note of the show cause reply dated 22-12-2022 submitted by the petitioner, within 03 (three) months from the date of receipt of a certified copy of this order.

If desired, the petitioner be also given an opportunity of being heard in person. Whatever be the outcome of the process, the same be communicated to the writ petitioner, in writing.

With the above observation, this writ petition stands disposed of.

JUDGE

GS

Comparing Assistant