

GAHC010249172014



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

Case No. : WP(C)/1885/2014

AVINASH KUMAR
S/O VINOD KUMAR, VILL. and P.O. RAJPUR, JASWA TEHSIL AMB, DIST-
UNA, HIMACHAL PRADESH, TEMPORARILY R/O AT KAMAKHYA GATE,
A.T. ROAD, NEAR GAUHATI, NURSURY, GHY-9

VERSUS

THE UNION OF INDIA and 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF HOME AFFAIRS, NEW DELHI

2:DIRECTOR GENERAL OF ASSAM RIFLES
RECRUITMENT BRANCH ASSAM RIFLES
SHILLONG
MEGHALAYA

3:ADDL. DIRECTOR GENERAL
HEADQUARTER
DIRECTOR GENERAL ASSAM RIFLES
LAITKOR
SHILLONG-11

4:THE COMMANDANT
PRESIDING OFFICER
ASSAM RIFLES
LAITKOR
SHILLONG-11

5:COL./LT. COL./PRESIDING OFFICER
SHOKHUBI
ASSAM RIFLES TRAINING CENTRE and SCHOOL C/O 99 APO
DIMAPUR

PIN-90030

Advocate for the Petitioner : MRS A GAYAN

Advocate for the Respondent : MR.M PHUKANR-1to5

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

J U D G M E N T (O R A L)

Date : 18-04-2024

Heard Mr. R. Mazumdar, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned Central Government Counsel appearing for the respondents.

2. The petitioner, by way of instituting the present proceedings has prayed for a direction upon the respondent authorities to consider the candidature of the petitioner for the post of RTJCO or ORL, in terms of the advertisement dated 21.08.2012 and for issuance of orders of appointment in his favour against the post in question and/or the petitioner has alternatively prayed to consider the application, as submitted by the petitioner for the post of RTJCO, available for his home State in pursuance to the advertisement dated 15.04.2013.

3. The Director General of Assam Rifles vide an advertisement dated 21.08.2012 had invited applications for filling up 171 numbers of post of Operator Radio Line (ORL), amongst other posts. As per the distribution of the posts made, for the State of Himachal Pradesh, three (3) posts were reserved. Amongst the three posts, so allotted to the State of Himachal Pradesh, one post was reserved for the candidates belonging to the Schedule Caste (SC) community and another post was reserved for candidates belonging to the Other Backward Class (OBC) community. One post was kept unreserved.

4. The petitioner being eligible, submitted his application against the said post and his application having been found to have satisfied the eligibility criteria prescribed, the petitioner was directed to report before the Presiding Officer, Recruitment Selection Board at Lokhra (Assam).

5. The petitioner in the Writ Petition has contended that on appearing for the Recruitment Rally, he was examined by the Medical Board and was found to be fit. It was further contended by the petitioner that the Presiding Officer had suggested to the petitioner that as the petitioner possess the requisite qualification, he should take the written examination for the post of RTJCO, in lieu of the written examination for the post of ORL. It is contended by the petitioner that the petitioner appeared in the written examination for the post of RTJCO and qualified therein. Thereafter the petitioner was directed to report for the Trade Test. However, on reporting for the Trade Test, the petitioner was not allowed to undertake the Trade Test on the ground that his name was erroneously entered against the post of RTJCO and that there was no post of RTJCO, allocated for the State of Himachal Pradesh. It was further contended that the petitioner had reported for the Medical Test under the ORL Trade but he was not permitted to undertake the said test.

6. It was also contended by the petitioner that on account of the irregularities as committed by the respondent authorities in the matter during the Recruitment Rally held in pursuance to the advertisement dated 21.08.2012, his merit position was suppressed and accordingly, his case for recruitment was rejected on the ground that he had scored lower marks in the selection process.

7. The petitioner has further presented a challenge to the rejection of his candidature for the post of RTJCO (Technical Grade) for the State of Himachal Pradesh, as advertised vide advertisement dated 15.04.2013. It is the

contention of the petitioner that as per the subsequent advertisement dated 15.04.2013, it was prescribed that the candidates so applying for the post advertised must be between 18 to 23 years, as on 01.08.2012. It is contended by the petitioner that as on 01.08.2012, he had not crossed the age of 23 years and was aged around 22 years 4 months 7 days, as per his matriculation certificate. It is the contention of the petitioner that his case, in view of the prescription as made in the advertisement, could not have been rejected on the ground of being over aged and on account of such rejection, the petitioner was denied an opportunity to have his case considered for appointment against the post of RTJCO, as advertised and allocated for the State of Himachal Pradesh. Basing on the above premises, the petitioner has instituted the present proceedings.

8. Mr. R. Mazumdar, learned counsel for the petitioner by reiterating the contentions, as raised in the Writ Petition has submitted that the petitioner in pursuance to the first advertisement dated 21.08.2012, more particularly for the post of ORL as allotted to the State of Himachal Pradesh, was on account of the irregularities as occasioning in the consideration of the case of the petitioner therein and the action on the part of the respondent authorities in entering his name against the post of RTJCO (Technical Grade) in lieu of the post of ORL, for which he had applied and the denial to the petitioner to take the requisite examinations including the Trade Test for the post of ORL, the petitioner could not score the requisite marks for being eligible to be appointed against the unreserved vacancy as available against the post of ORL, allocated to the State of Himachal Pradesh.

9. Mr. Mazumdar, learned counsel for the petitioner has further submitted that the petitioner's name having been entered during the Recruitment Rally

against the post of RTJCO and such posts having been allocated to other States, the case of the petitioner for appointment against the post of RTJCO ought to have been considered and the petitioner was required to be so appointed in terms of the merit position that he had so obtained in the Selection Process. However, on account of the error as committed by the authorities during the Recruitment Rally, the petitioner was denied a fair consideration, either against the post of ORL or against the post of RTJCO. Mr. Mazumdar, learned counsel for the petitioner, by referring to the second advertisement dated 15.04.2013, as issued for the post of RTJCO, allocated for the State of Himachal Pradesh, contends that he fulfilled all the eligibility criterias as mandated in the said advertisement including the criteria with regard to prescription of age. Mr. Mazumdar has submitted that the petitioner who was born on 24.03.1990, had not crossed the maximum age of 23 years as prescribed, as on 01.08.2012 and accordingly, his case could not have been rejected on the ground of being over aged.

10. Mr. K. Gogoi, learned Central Government Counsel appearing for the respondents has contended that the petitioner was permitted to undertake all the required Tests/Written Examination as held for the post of ORL and he had duly undertaken the said Written Examination as well as Trade Test. However on account of the low mark scored by him in the recruitment process, the petitioner's name could not be recommended for appointment against the post of ORL, as advertised for the State of Himachal Pradesh. Mr. Gogoi further submits that the said aspect of the matter was duly communicated to all concerned, by the competent authorities in pursuance to the queries made by higher authorities in this matter upon receipt of representations from the petitioner. Mr. Gogoi has referred to the noting dated 30.09.2013, annexed as

Annexure-6 to the affidavit-in-opposition filed by the petitioner, wherein it has been categorically stated that the petitioner on successfully completing the PST/PET and Written Test for ORL Trade had thereafter undertaken the Medical Test as mandated for the ORL Trade. However, after clearing all the stages of the Recruitment Process for the ORL Trade, the petitioner not having secured the marks as mandated, could not be recommended for appointment against the post in question.

11. With regard to the contentions made by the petitioner pertaining to the rejection of his case in pursuance to the second advertisement dated 15.04.2013, it is stated that although in the advertisement in Clause-10, it was mandated that the candidates so desirous to apply, must be between the age of 18 to 23 years, as on 01.08.2012, the said prescription was subsequently amended by way of an Corrigendum dated 03.05.2013, wherein the prescription with regard to the age criteria was amended and it was now mandated that the candidates desirous to so apply, must be between the age of 18 to 23 years, as on 01.08.2013. Mr. Gogoi contends that considering the date of birth of the petitioner, the petitioner was over aged for applying against the post of RTJCO, in pursuant to the said advertisement dated 15.04.2013 and accordingly, no error has been committed by the respondent authorities in rejecting the case of the petitioner on the ground of being over aged.

12. I have heard the learned counsel for the parties and also considered the materials available on record.

13. The facts as narrated herein above would reveal that it was the specific contention of the petitioner that on account of the error committed by the respondent authorities in entering his name against the Trade RTJCO, in the Recruitment Rally held in pursuance to the advertisement dated 21.08.2012, the

petitioner was denied a fair consideration and accordingly on account of the low marks secured by him, he was denied an appointment against the post of ORL, as advertised by the said advertisement dated 21.08.2012 and allocated to the State of Himachal Pradesh.

14. The said contention of the petitioner has been denied by the respondent authorities in the affidavit filed by them. It is seen that the petitioner on not being favoured with an appointment, had submitted a representation before the Government of India, in the Ministry of Home and accordingly, a query was raised to the respondent authorities with regard to the contentions made by the petitioner therein. The respondent authorities vide the note dated 30.09.2013, responded to the query made by the Ministry and there-in it was categorically stated that the petitioner had successfully completed the PST/PET and the Written Test for ORL Trade. It was also contended that the name of the petitioner was erroneously entered against the RTJCO Trade during the Recruitment Process instead of ORL Trade. However, said error on being noticed by the Board of Officers of the Trade Test/Medical Board, the petitioner was not allowed to take the Trade Test for RTJCO and he was allowed to attend the Medical Test for ORL Trade, which he has initially applied. It was further contended by the respondent authorities that the petitioner cannot be permitted to change his Trade and that the authorities conducting the Recruitment Rally were not empowered to change the Trades of the candidates. It was further contended by the respondent authorities that in pursuance to the advertisement dated 21.08.2012, no prejudice was caused to the petitioner and he had undertaken all the Tests as prescribed for the post of ORL Trade and having scored low marks, his name could not be recommended by the Selection Committee against the post of ORL. It is seen from the said note dated

30.09.2013, along with communications dated 25.09.2013 and 03.09.2013, that the petitioner was duly intimated as to why his case for appointment against the post of ORL, in pursuance to the advertisement dated 21.08.2012 had not materialized.

15. The petitioner has not disputed the contentions as made by the respondent authorities with regard to the Recruitment Process as initiated and concluded in pursuance to the advertisement dated 21.08.2012. Accordingly, in view of the categorical averments as made by the respondents in the matter, supported by the documentary evidences brought on record, this Court has to hold that the petitioner was not favoured with an appointment against the post of ORL, in pursuance to the advertisement dated 21.08.2012, only in view of the fact that the petitioner had secured low marks in the recruitment process and for no other reason. Accordingly, the contentions made contrary to the above position in the Writ Petition by the petitioner stands rejected.

16. This brings the Court to consider the contentions raised by the petitioner with regard to the steps taken by the respondent authorities in his case, in pursuance to the advertisement dated 15.04.2013. It is a fact that the advertisement dated 15.04.2013, while advertising the post of RTJCO, even for the State of Himachal Pradesh, the respondent authorities in Clause-10 thereof had mandated that any candidate desirous to apply in pursuance to the post so advertised, should be between the age of 18 to 23 years, as on 01.08.2012. The petitioner being born on 24.03.1990, in terms of the prescription as made in Clause-10 of the said advertisement was within the age limit so prescribed. However, it is to be noted that the respondent authorities vide the communication dated 03.05.2013 had amended the criteria with regard to age, as mandated in the advertisement dated 15.04.2013 and now the prescription

with regard to the age criteria mandates that the candidate desirous to apply against the post so advertised, must be between the age of 18 to 23 years, as on 01.08.2013. On account of the date for determining the age of a candidate desirous to apply in pursuance to the advertisement dated 15.04.2013 having been changed from 01.08.2012 to 01.08.2013, basing on the applicable policy in this connection, the petitioner was rendered over aged to apply for the post in question. The said prescription of age not having been so mandated specifically for the purpose of excluding the petitioner from the purview of the Selection Process and the petitioner having not alleged any *mala fide* in this connection against the respondent authorities, the rejection of the candidature of the petitioner, in pursuance to the advertisement dated 15.04.2013, in the considered view of this Court is not erroneous and does not call for any interference.

17. In view of the conclusions reached herein above with regard to the manner in which the case of the petitioner was considered in pursuance to the advertisements dated 21.08.2012 and 15.04.2013, it is the considered view of this Court that the petitioner has failed to make out a *prima facie* case requiring the interference of this Court in the matter.

18. Accordingly, the Writ Petition is held to be devoid of merit and the same stands dismissed. However, there is no order as to cost.

JUDGE

Comparing Assistant