

Neutral Citation No. - 2024:AHC-LKO:1292-DB

Court No. - 1

Case :- WRIT - A No. - 10177 of 2023

Petitioner :- Vipin Kumar

Respondent :- Union Of India Thru. Secy. Of Ministry Of Defence ,
New Delhi And Others

Counsel for Petitioner :- Ripu Daman Shahi, Arun Pratap Singh

Counsel for Respondent :- A.S.G.I.

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Brij Raj Singh, J.

1. Heard Sri R.D. Shahi, learned counsel for the petitioner and Sri S.B. Pandey, learned Senior Advocate and Deputy Solicitor General of India, assisted by Sri Mahendra Kumar Mishra, learned counsel appearing for the Union of India.

2. The writ petition filed under Article 226 of the Constitution of India has arisen out of the judgment and order, dated 10.01.2023, passed by the Armed Forces Tribunal, Regional Bench, Lucknow in Original Application No. 09 of 2021, whereby the claim of the petitioner for being sent on training based on his selection on the post of Soldier Trade Man has been rejected.

3. Participation of the petitioner and his qualification at the various stages of selection is undisputed. For despatching the petitioner on training, a call letter was sent on 17.05.2011 which is contained as Annexure No.3 to the writ petition. The call letter sent to the petitioner is reproduced as under :-

Army Recruiting Office

Amethi, Dist. Sultanpur,

PIN- 227405

17-May 2011

R/503/RTG

Roll No.	:	LU/AM/TW/240411/53015
Name	:	VIPIN KUMAR
S/o	:	VIJAY PAL
Village:	:	SALLIPUR
Post	:	DENIPUR

Tehsil : BIKAPUR
District : FAIZABAD-224209

CALL LETTER FOR DESPATCH : CEE 24-Apr-2011

Dear Candidate,

1. You have provisionally been selected for recruitment in SOL TDN (8TH) on the basis of the merit of CEE held on 24-Apr-2011.

2. You are hereby directed to report to Army Recruiting Office AMETHI on 24-Jun-2011 at 08:00 h. along with the following documents in original, for enrollment formalities and subsequent despatch to training center :

- (a) Call up Notice (this letter).
- (b) Admit card and Identity Photograph.
- (c) Ten copies of fresh passport size photographs.
- (d) All educational certificates and Marks Sheets in original.
- (e) Gazette or Cross List (X List) if passed as private candidate/holding hand written/duplicate education certificate duly signed by Principal and countersigned by District Education Officer(DEO).
- (f) Domicile certificate issued by DM/SDM, as applicable.
- (g) Caste Certificate issued by Tehsildar/Gram Pradhan/Sarpanch(duly mentioned the particular caste).
- (h) Character Certificate duly signed by Gram Pradhan/Sarpanch.
- (i) Unmarried/married certificate duly signed by Gram Pradhan/Sarpanch.
- (j) Two copies of joint photograph (Individual along with his wife) duly verified and attested by Village Sarpanch/Tehsildar (for married candidates only).
- (k) Character/Pre verification certificates as per specimen attached duly completed in all respects (i.e. affix a copy of group photo of the family and authenticate/signed by the competent authority.
- (l) Affidavit for variation in self name/father's name or any other variation in any certificate be produced duly signed by 1st Class Magistrate(DM/SDM).
- (m) Two photocopies of all certificates/documents (i.e. educational, domicile, caste, character, unmarried/married, pre verification and affidavit etc.)
- (n) Verification of the following be completed from concerned Record Office, if these particulars are not available in the Discharge Book Ex Servicemen/War Widows :-

This is to certify that master..... whose date of birth is..... is the real son of No.....Name.....of

Regt.....published vide Part II Order
No.....dt.....of (Unit).....as per
service documents held with this office.

3. This letter stands automatically nullified/cancelled at the time of despatch, if any discrepancy is found in medical/physical/both/lack of production of documents/hiding of facts.

Encl. One (Sukhdev Singh)
Col.
ARO Amethi
Dir Rtg

4. On a plain reading of the call letter, it is evident that the call letter by itself was not a final and conclusive call for the candidate to be sent on training. Paragraph-3 of the call letter clearly stipulates that a candidate suffering from any discrepancy in the medical, physical, production of documents or any other facts found hidden shall loose his right of being despatched for training.

5. The petitioner was subjected to the physical test and on verification of his height, he was found below the bench mark and it is for this reason that the call letter for despatching the petitioner for training on the basis of his selection was cancelled. The petitioner in absence of any communication and other selectees having been sent for training feeling aggrieved approached this Court by means of writ petition, Service Single No.7915 of 2011. The writ petition filed by the petitioner was disposed of in terms of the order dated 04.02.2013. The operative portion of the order is extracted here below :-

“For the foregoing reasons, the writ petition is disposed of with a direction to the petitioner to move a fresh representation to opposite party no.4 within two weeks from today in respect to his grievances which he has raised in the present writ petition annexing all relevant documents and materials in support of his case and after receiving the same O.P. No.4 shall consider and dispose of the same by way of speaking and reasoned order in accordance with law within a further period of four weeks thereafter and communicate to him.”

6. In pursuance of the order passed by this Court, a letter was sent by the department to the petitioner on 27.03.2013, whereby reasons for cancellation of his call letter were communicated to him. The only reason for cancellation of call letter was none other than the petitioner not meeting the standard of height. This letter came to be challenged

before this Court in subsequent writ petition, Service Single No. 6731 of 2013, which was disposed of on the ground of alternative remedy available to the petitioner initially before the Central Administrative Tribunal and later on before the Armed Forces Tribunal.

7. Since the matter was cognizable before the Armed Forces Tribunal, the proceedings of Original Application No. 09 of 2021 were initiated before it. Learned Tribunal having regard to the contentions of both the parties has ultimately dismissed the Original Application No. 09 of 2021 by means of the impugned order dated 11.01.2023 giving rise to the present writ petition.

8. The condition as envisaged in paragraph-3 of the call letter dated 17.05.2011 was acted upon equally in respect of all the conditions. It is also not the case of the petitioner that he meets requisite standard of height on the basis of any admissible proof which could not be discarded by the competent authority.

9. In such a view of the matter, this Court does not find any plausible ground to interfere with the order passed by the Tribunal which, in our humble consideration, proceeds as per norms of the selection process. In the interest of justice, the Court may have relegated the petitioner for being examined physically once again, but at this stage the petitioner has already surpassed the maximum age for induction i.e. between 17-1/2 years to 23 years. Even equity does not lean in favour of the petitioner at this stage.

10. Thus, for all reasons recorded by the Tribunal and what has been stated above, the writ petition fails and the same is **dismissed**.

[Brij Raj Singh,J.] [Attai Rahman Masoodi,J.]

Order Date :- 5.1.2024
Sanjay