

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8046 of 2014

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Avinash Kumar Singh Son of Gorakh Nath Singh Resident of Village -
Nemi Tola, P.S. Charpokhari, District - Bhojpur.

.... Petitioner/s

Versus

1. The Union of India through the Inspector General, Sasatra Seema Bal, Range Headquarter, Bailey Road, Rukunpura, Patna.
2. The Commandant, 27th BN. S.S.B. Narkatiaganj, District West Champaran, Bihar.
3. The Chief Post Master General, Bihar, Patna.
4. The Staff Selection Commission, Middle Zone, Allahabad (U.P.) through the Secretary.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar, Advocate.

For the Respondent/s : Mr. N. A. Shamsi (A.S.G.)

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

4 08-04-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application

reads as follows:

"1.(i) For quashing review order bearing no. 13-14/2922 dated 31.03.2014 issued by the Inspector General, S.S.B., Range Headquarter, Bailey Road, Rukunpura, Patna (Respondent no. 1) by which review application of the petitioner with regard to appearance in Medical Board has been rejected.

(ii) For giving direction upon the Respondent authorities to consider the representation dated 28.02.2014 filed by the petitioner for appearance in re-medical test before the Medical Board with his fitness certificate issued by Sadar Hospital, Arrah, District-Bhojpur.

(iii) For giving direction upon the Respondent authorities specially to Respondent No. 1 to allow the petitioner for appearance before Medical Board for selection of S.S.B. Constable post as a eligible candidate."

3. Mr. R.S.Pradhan, learned senior advocate appearing



on behalf of the petitioner, in support of the aforementioned prayer, has submitted that the petitioner has unnecessarily been subjected to harassment in the matter of his consideration for appointment on the post of Constable in Sasatra Seema Bal (hereinafter referred to as 'the SSB') even when he could not be remotely held at fault in any respect. Mr. Pradhan in this regard explains that the petitioner, having been an applicant for the post of Constable (General Duty) in SSB, had undergone a medical test on 29.01.2014 wherein he was declared medically unfit and was extended an opportunity to appear before the Review Medical Board, but when the petitioner had complied the requirement in terms of the communication of the Assistant Commandant, had sent his application for appearing in the Review Medical Board by Speed Post on 04.02.2014, the same was illegally rejected on the ground of its having not reached the authority within 15 days i.e. by 14.02.2014. In this regard, Mr. Pradhan has not only produced the copy of the envelop of the Speed Post sent by the petitioner on 04.02.2014, in which an endorsement has been made 'refused' on the date of 15.02.2014, but he has also produced the evidence of the Postal Department to show that the Speed Post sent by the petitioner was delivered at Narkatiaganj on 15.02.2014 at 10:50 A.M.



4. Mr. Pradhan, accordingly, has assailed the impugned order dated 31.03.2014 wherein the representation of the petitioner dated 28.02.2014 has been rejected, as with regard to giving an opportunity to the petitioner to appear before the Review Medical Board, on account of the application having not reached to the competent authority of the SSB within the prescribed period i.e. 14.02.2014. Mr. Pradhan submits that as the procedure itself was followed by the authorities of the SSB, that upon refusal of the Medical Board, the request for Review Medical Board could be made after obtaining a certificate from the doctor by the petitioner, he had no option but to first go to a doctor and obtain the certificate and send the application which again could not have been produced by the petitioner by hand in view of the requirement laid down in the letter of the authority prescribing filing of the application with requisite fees on or before 14.02.2014 only by registered post.

5. This Court, initially, was amazed as to how the authorities of the SSB could made an endorsement of 'refusal' on the Speed Post and that is why, this Court had, in course of hearing the matter on 18.02.2015, passed the following order:

Having regard to the fact that when the petitioner was asked to produce the medical certificate and his willingness to appear in the Review Medical Board, it is claimed in the writ application that he had sent such requisition in terms of the letter received by

him on 31.01.2014 vide Annexure-A to the counter affidavit, this Court would direct the Commandant of 27th Battalion of Sasatra Seema Bal, Narkatiaganj to state on affidavit as to how the letter sent by Speed Post by the petitioner was refused, and by whom on 15.02.2014, even if it was late by one day. Such supplementary counter affidavit must be sworn and filed by the aforesaid Commandant himself.

Put up this case after four weeks under the heading '**for orders**', for its final disposal by which time the petitioner firstly shall file his supplementary affidavit within a period of two weeks giving details as with regard to the facts regarding the application sent by him on 04.02.2014, along with evidence of its refusal by the Commandant on 15.02.2014, whereafter the Commandant shall file his supplementary counter affidavit in next two weeks.

6. Pursuant to the aforementioned order, a supplementary counter affidavit sworn by Mr. Rakesh Kumar, Commandant, 27th Bn. SSB, Narkatiaganj has been filed wherein this aspect of the matter has been dealt in paragraph-5 & 6 which for the sake of clarity and convenience is quoted herein below:

"5. That the out set, it may be stated that Avinash Kumar Singh(Roll No. 3206559087) (the petitioner) attended the combined recruitment of Constable (GD) in CAPFs as per the advertisement published by Staff Selection Commission. The petitioner appeared in the Physical Standard Test, Physical Efficiency Test and written examination. Thereafter, the petitioner was issued an admit card by SSC for medical examination at 27th Bn. SSB Narkatiaganj on 29.01.2014. Accordingly the petitioner's Medical Examination was carried form 29.01.2014 to 31.01.2014 and he was declared medically unfit due to Tachycardia. As per the procedure, Form No. CAPFs (Constable (GD))/I was issued to the petitioner by the Medical Officer clearly specifying the details for preferring Appeal again the finding of the Medical examination. It was clearly mentioned in the aforementioned Form that the appeal should reach the addressee i.e. the Commandant, 27th BN SSB Narkatiaganj within a period of 15 days i.e. positively by 14.02.2014. It would be pertinent to mention that no application for appeal was received by the Office of the answering deponent within the

stipulated period.

6. That it is not humbly submitted that no document or application for appeal has been received by the Office i.e. the respondent authorities. It is submitted that the allegation of the petitioner that his application was not received by and was refused due to one day delay is denied. It may be stated that a Dak Runner is sent to the post office on every working day who receive/collects all the Daks/Letters meant for the Commandant, 27th Bn. And brings it to the Bn Hqrs. It may further be stated that no Dak/Letter is scrutinized at the post office. Any action that is required to be taken on the matter is decided at the Bn Hqrs. It would further be pertinent to mention that without opening the letter how can a person ascertain/decide that on what date the form regarding appeal was issued and what is the last date of submission. It can only be decided once the letter is opened. Therefore, it is submitted that the Dak Runner can not know the last date of receipt of letter without opening the letter. It is submitted that in the light of the aforesaid the allegation of the petitioner that the receipt of letter has been refused by this office is clearly baseless and false."

7. In view of the detail procedure explained by the Commandant, this Court will have no difficulty now in coming to the conclusion that word 'refusal' has been recorded by someone else of the Postal Department and not by the office of the Commandant. The question, however, would be, why could the authority of the Postal Department not take steps to deliver the letter of the petitioner sent by Speed Post which, as noted above, has already consumed 11 days time to travel from Ara (in the district of Bhojpur) to Narkatiaganj (in the district of West Champaran). The Speed Post letters are supposed to be delivered positively on the third day and if therefore a period of 11 days had been consumed in reaching or the letter sent by the petitioner



under Speed Post from Ara to Narkatiaganj in the district of West Champaran, the matter needs to be enquired into by the Postmaster General, Bihar who will be under obligation to get the whole matter enquired into by a senior official and would submit a report to this Court. For this purpose, the photocopy of the original envelop of the Speed Post produced by the petitioner and the copy of the Annexure-11 (Track Result) shall be forwarded to the office of the Postmaster General, Bihar, Patna by the Registry of this Court within a period of two weeks from today. Such report, alongwith original envelope therefore, must be filed by the office of the Postmaster General within a period of one month from the date of receipt of a copy of this order along with original copy of the envelope and the Track Result (Annexure-11).

8. This Court, having already considered most of the fact that the petitioner, in any view of the matter, was not at all fault, must now do complete justice between the parties inasmuch as all that the petitioner wants is only an opportunity of being considered for appointment on the post of Constable. For that purpose he has to be only examined by the Review Medical Board. The petitioner did fulfil all the requirements for being allowed to appear before the Review Medical Board, but he was not allowed to do so because of the postal vagary, as noted above.



9. In such a situation, this Court would direct that a Review Medical Board will be constituted by the Commandant who will get the petitioner examined and if in such Review Medical Board the petitioner is declared to be medically fit, the respondents including the Commandant must take an appropriate decision with regard to appointment of the petitioner on the post of Constable.

10. This Court however must hasten to add that if the entire process of appointment on the post of constable for the advertisement in question had already been completed prior to 25.04.2014 when this writ application was filed, the petitioner will not be entitled for being appointed despite being declared fit by the Review Medical Board but if, on the other hand, it is found that any person having same or lesser merit has been appointed on or after 25.04.2014 the petitioner subject to his being found medically fit by the Review Medical Board, he must be appointed because from 25.04.2014 the matter has remained pending before this Court and is being disposed of by this Court only today. This exercise, therefore, must be completed by the Commandant and/or competent authority of S.S.B., within a maximum period of three months from the date of receipt of a copy of this order.

11. Let it be made clear that in doing so, this Court is

only following its earlier order passed on 10.02.2015 in C.W.J.C. No. 19656 of 2014 (*Md. Kamal vs. the Union of India & Ors.*) wherein a similar direction was issued.

12. With the aforementioned observations and directions, this writ application is disposed of.

13. Let a copy of this order be sent to the Post Master General, Bihar for compliance of the directions given in paragraph no. 8 of this judgment.

14. The registry of this Court on receipt of the report of Post Master General, Bihar shall place the matter before this Court for passing an appropriate order.

(Mihir Kumar Jha, J)

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