

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9527 of 2014

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Ashok Kumar, son of Shri Vikarama Sah, resident of village Matiyariya
(English), P.S. Harsidhi, District East Champaran

.... Petitioner/s

Versus

1. The Union of India through Secretary Defence, New Delhi
2. The Secretary, Department of Personnel and Training, Govt. of India,
New Delhi
3. The Under Secretary, Department of Personnel and Training, Govt. of
India, New Delhi
4. The Chairman, State Selection Commission (S.S.C.) Central Region,
Allahabad (U.P.)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Aditya Nath Jha, Adv.

For the Respondent/s : Mr. Anjani Kumar Sharan, CGC

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

3 18-05-2015 Heard learned counsel for the parties as with regard to the
following prayer made in this writ application:

“Directing upon respondents to consider the name of
petitioner for the appointment on the post of Constable
(GD) in CAPFS and RIFLEMAN (GD) in Assam Rifles
as he secured more marks than cut off fixed by the
Commission.”

Learned counsel for the petitioner has basically
concentrated on the statement made in paragraph no.9 of the writ
petition which reads as follows:

“9. That it is pertinent to submit here that in all previous
selection process the persons who had secured more
marks than cut off fixed by the respondents and declared
fit in ground medical test, were appointed and if thereafter
vacancies existed then the persons who found fit in

referred medical test were considered for selection but in the present process referred medically fit persons have also been considered simultaneously with ground fit persons.”

Learned counsel submits that since this paragraph has not been controverted by the respondents, the petitioner will be automatically entitled for the relief sought herein.

On the other hand, the respondents have not only filed an exhaustive counter affidavit but they have given a reason for not appointing the petitioner. Such reasons in fact can be found in paragraphs no. 27 to 30 of the counter affidavit, which reads as follows:

“27.That the petitioner, Shri Ashok Kumar applied for said examination as candidate of OBC category and he was allotted Roll No. 3205521724. On the basis of his performance in the PET/PST, Written Examination, he was included in List II for medical examination. As per the mark list, published by the Commission, after Medical Examination/ Review Medical Examination, details of petitioners is as under;

State	Name of the candidate	Roll No	Cat.	Border/ Naxal Militancy affected District	Marks obtained	Pref.	Med Result
05 (Bihar	Ashok Kumar	3205521724	OBC	14.52	56	ABCD EF	Fit (RME)

28. That the final result for the said examination was declared on 22.4.2014 in which the petitioner was shown

as qualified with SL/15229 with CAPF allotment in preference ‘C’. However, after declaration of result some discrepancies were noticed and therefore the Commission has decided to revise the result. Accordingly, in suppression of final result declared on 22.4.2014, the Commission has declared revised result on 30.5.2014. The write up dated 30.5.2014 contains all the details viz method and manners of preparation of result (as per the provisions envisaged in the notice of the examination), details of vacancy and filling status, marks obtained by last selected candidate State/ UTs wise (general area, border area, naxal/ militancy area), category wise etc. It may be submitted that candidates belonging to Border/ Naxal affected districts were also considered against vacancies in such area or in the state concerned against General vacancies as may be advantageous to them.

29. That it is submitted that as per the result declared on 30.5.2014, the details of marks of the last selected candidate of OBC category in general area, naxal/ militancy affected districts and border districts for different CAPFs for State code ‘05’ i.e. Bihar State is given below:-

OBC candidates of Bihar	‘A’ BSC	‘B’ CISF	‘C’ CRPF	‘D’ SSB	‘E’ ITBP	‘F’ Assam Rifle
General area	77	82	70	78	73	73
Naxal/ Militancy area	76	78	63	76	73	71
Border area	–	–	–	60	–	–

30. That it is clearly seen from the above table that last



selected OBC candidate of naxal/ militancy affected area of Bihar had 63 marks (for CRPF) and 60 marks was the cut off for OBC candidates of Border district of Bihar in SSB. As the petitioner had only 56 marks which was much lower than the cut off mark fixed for final selection of OBC candidates against vacancies allotted to Bihar (General area, Naxal affected districts and Border districts). Therefore, lower merit was the only reason for non-selection of the petitioner in select list. It may also be seen that all the vacancies under OBC category in General area, Naxal affected district and Border district in each CAPF was filled up.”

Once this aspect becomes clear that the petitioner had secured only 56 marks and no one in his category was appointed, his mere declaration of being fit by the Medical Board will not clothe him any right. By-now it is well settled that mere empanelment of a candidate does not clothe him with any indefeasible right of being appointed as was also held by the Constitution Bench in the case of Shankarsan Dash v. Union of India, reported in AIR 1991 SC 1612.

That being so, when the facts stated by the respondents in paragraphs no. 27 to 30 has not at all in controversy and in fact had not even been denied by the petitioner, this Court will have no difficulty in coming to the conclusion that as no person being lesser in merit to the petitioner in his category was appointed, the

direction sought in this writ application for appointment of the petitioner can also not be given.

In the result, this writ application fails and is hereby dismissed.

(Mihir Kumar Jha, J)

surendra/-

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