

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3398 of 2015

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Pawan Kumar Mishra, (Roll No. 3205004838 in CPMFs , Year 2011-12),
Son of Sudhanshu Mishra, Resident of Village- Barahara, P.O. - Bhorey,
P.S.- Bhorey, District- Gopalganj.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Department of Personnel and Training, Government of India, New Delhi.
2. The Secretary, Department of Personnel and Training, Block No. 12, C.G.O. Complex, Lodi Road, New Delhi.
3. The Staff Selection Commission (Central Range), Allahabad at Allahabad, Uttar Pradesh.
4. The Presiding Officer (Commandant) for combined recruitment of Constable General Duty in C.P.M.F.S., Recruitment Board No. 1 C.R.P.F. at C.G., C.R.P.F., Muzaffarpur.
5. The Inspector General, Border Security Force, North Bengal Frontier head Quarter, P.O.- Kadamtala, District- Darjeeling, West Bengal.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Pandey No-5

For the Respondent/s : Mr. Sanjay Kumar(ASG)

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 10-03-2015 Heard learned counsel for the parties.

The prayer of the petitioner in this writ
application reads as follows:-

“That this is an application for the issuance of an appropriate writ in the nature of mandamus commanding the Respondent Authorities (in particular Respondent No. 5) to hold a “Review Medical Examination” of the petitioner and thereafter select and appoint the petitioner on the basis on the post of Constable(General Duty); on the basis of his passing in the qualifying test as held on 02.04.2011 and declared qualified by Respondent No. 4;”

Learned counsel for the petitioner submits that the



petitioner had appeared in the process of selection undertaken before the Staff Selection Commission, Allahabad for filling up the post of Constable (General Duty) but he was disqualified in the medical test and opportunity of his further medical examination by way of review medical examination as per the existing rules and procedures in the C.P.M.Fs was also not allowed. In this regard, he has sought to rely on a communication dated 29th of April, 2013, to show that the claim of the respondents that an information was given to the petitioner to appear in the review medical examination on 28.10.2011, by letter dated 10.11.2011 would itself go to show that the petitioner was denied the opportunity of review medical examination because no person on the basis of letter dated 10.11.2011, could have appeared in the review medical examination to be held on 28.10.2011.

Learned Assistant Solicitor General appearing on behalf of respondents on the other hand has submitted that the process of selection of Constable (General Duty)



having already been completed way back in the year 2011 by drawing a panel of 2240 candidates and thus now the petitioner cannot be allowed to appear in the review medical examination for his name being also included in the panel. According to him, the delay of more than three years in approaching this Court would be fatal for the petitioner for the relief sought herein.

Learned counsel for the petitioner, in reply has submitted that the petitioner may be given once chance to get himself declared medically fit by this Court by taking a sympathetic view of the matter.

In the considered opinion of this Court, the delay on the part of the petitioner in moving this Court would be fatal for more than one reason. The petitioner was at best a successful candidate in the physical test and/or in the written test on the basis of which his name could have been included in the panel but when his such inclusion was not made on account of his being medically unfit his status cannot be better than a person who may have been included in the panel. 2240



candidates were already empanelled and the petitioner at that point of time when he was allegedly denied the opportunity of review medical examination did not move this Court. As a matter of fact his R.T.I. application was filed on 13th of April, 2013 and was replied on 29th of April, 2013 giving full details of the action taken as with regard to review medical examination.

It has to be noted here that the respondents had enclosed a photocopy of the letter allegedly sent in the date of 10th November, 2011 but that also has not been brought on record. The defence of the petitioner now projected by his counsel is that the letter was not received by the petitioner. These are the unfilled gaps which would only further complicate the issue in hand.

The undisputed fact therefore is that the selection process was undertaken in the year 2011 and the petitioner was declared medically unfit and thus he had a right for review medical examination and if that was denied to him, he had to move this Court within the

reasonable period of time. Today, after expiry of a period of more than three years of the selection process undertaken and the life of the panel of 2240 candidates coming to an end on account of publication of new advertisement for filling up the post of Constable (General Duty) in C.P.M.Fs, no liberty can be given to the petitioner now for reopening the earlier selection process which as noted above ended in the year 2011. The sympathy also can only be given to such a person who has been conscious to his right. The petitioner who had slept over his right for more than three years today cannot ask the respondents to reopen the whole selection process of the year 2011.

That being so, this writ application must fail and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

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