

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.833 of 2011

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Manjeet Kumar Sri Anil Kumar Singh Resident Of Village- Shankarwar
Tola Mokama, P.S- Mokama, District- Patna.

.... Petitioner/s

Versus

1. The Union Of India, Through Secretary, Department Of Home New Delhi.
2. The Director General, Central Reserve Police Force, New Dehli.
3. The Inspector General, Central Reserve Police Force, Kolkata, East Sector.
4. The Inspector General, Central Reserve Police Force, Patna, Bihar.
5. The Deputy Inspector General (Administration), Central Reserve Police Force, Muzaffarpur.
6. The Deputy Inspector General (Law)-Cum- Directorate General, Crpf, New Delhi.
7. The Deputy Inspector General (Rectt.)-Cum- Directorate General, Crpf, New Delhi.
8. The Deputy Inspector General, Group Centre, Crpf, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shyama Prasad Mukherjee, Sr. Adv &
Mr. Amit Shankar, Adv
For the U.O.I. : Mr. Anshuman Singh, C.G.C

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

4 08-07-2015 Heard learned counsel for the parties as with

regard to the following reliefs, prayed in this writ

application:-

“For issuance of writ/writs in the nature of mandamus commanding the respondents to immediately appoint this petitioner on the post of Head Constable in CRPF for which he has appeared bearing Roll No. 051006604. The petitioner selected in written test, Interview as per as physical/medical test also.

For commanding the respondents as to why he has not been appointed on the post of Head Constable though he is fit for all the four corners.

For commanding the respondents as to why the recruitment on the post of Head Constable for the year 2006-07 this petitioner has not been selected though he also

bonafide candidate for the post of CRPF.

For commanding the respondents as to why they have raise lacua that this petitioner has obtained less marks than the last selected candidate of General Category to the post of Head Constable (Min) though he is qualified in all written and other tests.”

2. In support of the aforementioned reliefs sought by the petitioner, Mr. Shyama Prasad Mukherjee, learned senior counsel appearing on behalf of the petitioner has made following submissions:-

(i) The impugned order rejecting the candidature of the petitioner for appointment on the ground that he had secured only 99 marks as against the last cut off of the candidate appointed being 107 marks, suffers from error in the sense that earlier the disqualification of the petitioner was made not on the ground of merit but on medical ground and once the petitioner had qualified on the medial ground, the respondents had no liberty to make out a case for rejecting his candidature.

(ii) According to Mr. Mukherjee, the issue relating to merit was raised behind the back of the petitioner and also without framing of any charge and such action of the resultant order of the respondents is valid and there is no violation of the principles of natural justice.



(iii) According to Mr. Mukherjee, such action on the part of the respondents in denying appointment to the petitioner for the post applied by him is actually a fraud on power and to that extent he has placed reliance on the judgment of the Apex Court in the case of **COMMISSIONER OF POLICE, BOMBAY V. GORDHANDAS BHANJI** reported in **AIR 1952 SC 16**.

(iv) Finally, he also make out a case that the impugned order is malafide exercise of power.

3. Learned counsel for the respondents on the other hand having filed counter affidavit sticks to the stand taken by the respondents in the counter affidavit that at no point of time the petitioner was offered any appointment and infact his case was earlier rejected on the medical ground even before the respondents could have considered the case of the petitioner on merit with others on the basis of over all merit list and in this regard he has placed reliance on the following averments made therein:-

“That it is submitted that the petitioner was an aspirant for recruitment of ASI9ST)/HC(M) 2006-07 in General Category. After scrutiny of his application and testimonial, his candidature for the post of HC (M) was

provisionally accepted and he was allotted Roll No. 061006604. He was directed to report at L.S. College, Campus, Muzaffarpur on 15.07.2007.

That it is submitted that accordingly the petitioner reported there on 15.02.2007 along with his testimonials. During preliminary physical measurement test he was found fit and as such he was allowed to appear on written test and after qualifying the same further in typing test on 09.05.2007, where he was declared successful. Thereafter he was allowed to appear in Medical Examination on 12.06.2007 and was declared Medically unfit due to "dropping shoulder and Techycardia". After being medically Unfit the petitioner submitted an appeal against his Medical Unfitness to the DIGP, CRPF, Muzaffarpur vide letter No. A-VI-4/07-CC dated 08.08.07 rejected his appeal due to the deformity (dropping shoulder) was only mentioned in proforma certificate but disease (tachy cardia) for which he was tendered unfit was not mentioned in certificate produced.

That it is further submitted that the petitioner filed C.W.J.C No. 15111 of 2007 before this Hon'ble Court, which was disposed off on 06.08.2008 with direction that based on the two certificates issued by Dr. B.K. Sharma which are on record, the petitioner shall get re-medical examination held.

That it is submitted that in compliance of the order of the Hon'ble Court dated 06.08.2008 the petitioner was re-examined medically by a Board of medical officer on 31.10.2008 at Composite Hospital, CRPF, New Delhi where he was found unfit due to "ECG-Tachy Cardia 114 per minute".

That again being aggrieved with the result of the re-medical examination the petitioner filed C.W.J.C No. 12714 of 2009 before this Hon'ble Court, which was disposed off on 05.10.2009 with direction to depute a doctor from the Force, who along with senior doctor nominated by the Director of Indra Gandhi Institute of Cardiology, PMCH, Patna would jointly examine the petitioner on a date fixed by them within six weeks from today and based on the finding arrived, decision with regard to medial fitness would be taken by CRPF. I, therefore, direct DUG Group Centre, Muzaffarpur, CRPF and the Director Indra Gandhi Institute of Cardiology, PMCH, Patna to immediately get in touch with each other and fix the date after due intimation to the petitioner for medical examination of the petitioner at Patna and submit their report to the DIG, Group Centre, Muzaffarpur. Petitioner should file a copy of the order before the Director, Indra Gandhi Institute of Cardiology, Patna and DIG concerned immediately.

That it is relevant to state here that in compliance of the order of the Hon'ble Court dated 05.10.2009, the petitioner was re-examined medically by Dr. S.N. Mishra,



Director, IGIC, Patna and Dr. O.P. Pathak, CMO(SG), CH, Muzaffarpur and found "Fit". Since, the petitioner was declared medically fit, his selection/appointment to the rank of HC(Min) in CRPF became obvious subject to his finding place in the merit list of his respective category.

That it is relevant to point out here that when the matter of his position in the merit list was enquired, it was revealed that Roll No. 091004047 (Shri Sandeep Kumar) was the last selected candidate of General Category to the post of HC(M) in CRPF during 2006-07, who secured 107 marks in aggregate. However, the petitioner secured only 99 marks, hence the petitioner had obtained less marks than that of last selected candidate of General Category to the post of HC(M) and for the reason he could not find place in the final merit list of selected candidates. Accordingly, a reasoned/speaking order was passed by the IGP, Bihar Sector, CRPF, Patna vide order No. J-II-51/2009-BS-Pairvi dated 03.06.2010."

4. Let it be noted that despite service of the counter affidavit on learned counsel for the petitioner, there is no reply much less denial of the aforesaid averments by the petitioner.

5. Thus from the reading of the pleading on record, it becomes very clear that when the recruitment on the post of Constable was sought to be made by the authorities of the CRPF, they had undertaken selection process in different parts. The first of such selection process was followed by physical test which was followed by written test and medical test. Since the petitioner was disqualified in medical test he was not



considered for appointment along with others wherein the last candidate in the category in which the petitioner had sought his appointment has secured 107 marks. Thus after the petitioner was declared fit in the medical test, he was only entitled for consideration of his appointment on the basis of his marks obtained in the written test and still he had secured only 99 marks he could not be appointed.

6. The impugned order has been accordingly passed stating that the petitioner was not entitled for appointment though he was declared to be medically fit which reads as follows:-

**"OFFICE OF THE INSPECTOR GENERAL, BIHAR SECTOR, C.R.P.F.,PATNA
[BIHAR]**

NO.-JII51/2009-BS-PAIRVI

Dated the June 2010

OFFICE ORDER

In pursuance of advertisement published for recruitment of ASI[Steno] and HC[Min] during the year 2006-07, Shri Manjeet Kumar [hereinafter referred to as the petitioner] S/o Shri Anil Kumar Singh, resident of Sakarwar Tola, Mokama, Dist.-Patna [Bihar] had applied for the post of HC[Min] in General Category. After scrutiny of his application and testimonials submitted by him, his candidature was provisionally accepted and he was allotted Roll No. 051006604. Further, the petitioner was directed to report at L.S. College Campus, GC Muzaffarpur on 15.02.2009 for his participation in the selection process.

02. Accordingly, the petitioner reported at L.S. College,



Muzaffarpur on 15.02.2007 along with his relevant testimonials. During the course of preliminary physical measurement and verification of original testimonials, he was found fit and accordingly allowed in the written test conducted on 25.03.2007 and subsequently in typing test conducted on 9.5.2007. On qualifying, he was called for Medical examination on 12.6.2007. However, during the course of Medical Examination the petitioner was declared medically unfit due to "Dropping Shoulder and Trachycardia". Aggrieved with the impugned decision of his medical unfitness the petitioner preferred appeal to the DIG CRPF Muzaffarpur. But, the said appeal was rejected vide DIG CRPF MZR letter No. A.VI4/2007-CC dated 8.8.2007 due to the reasons that, the petitioner submitted documentary evidence in support of his medical fitness against "Dropping Shoulder". But, the second medical deformity rendering the petitioner unfit due to "Trachyardia" was no where discussed in the medical certificate produced by the petitioner along with his appeal.

03. Aggrieved with the decision of rejection of his appeal by the DIG CRPF MZR, the petitioner earlier filed CWJC No. 15111/2007 before the Hon'ble High Court of Patna which was disposed of on 6/8/2008 with direction to get the petitioner medically re-examined and that the outcome of re-examination shall govern the future course of action against the petitioner. In light of said court order dated 6/8/2008, the petitioner was medically re-examined at composite Hospital CRPF N/Delhi by a board of Medical Officers. However, as per result of the medical examination, the petitioner was again declared medically unfit due to "Trachycardia 114 per minute".

04. The petitioner again filed CWJC No. 12714/2009 before the Hon'ble High Court Patna stating that, he has been declared medically fit from "Trachycardia" by P.M.C.H. Patna. The said writ petition was taken up for hearing on 5/10/2009 in the court of Mr. Justice Navniti Prasad Singh and the Hon'ble Court was pleased to dispose of the writ petition directing the DIG CRPF MZR to depute a Doctor from the Force, who along with a senior

doctor nominated by the Director of Indira Gandhi Institute of Cardiology, Patna would jointly examine the petitioner on a date fixed by them within six weeks from today and based on the finding arrived, decision with regard to medical fitness would be taken by CRPF.

05. Consequent on examination of the judgment *ibid*, the DIG(Law) Directorate vide signal No. J.II.921/2009-LWP-II dated 29/10/2009 desired to implement the court order. Accordingly, the petitioner Manjeet Kumar was medically examined at Indira Gandhi Institute of Cardiology, Patna on 18/12/2009 in the presence of Dr. O.P. Pathak, CMO(SG), CH MZR and Dr. S.N. Mishra, Director, IGIC, subsequently, the petitioner was declared fit from "Tranchycardia".

06. Since, the petitioner was declared medically fit, his selection/appointment to the rank of HC(Min.) in CRPF became obvious subject to his finding place in the Merit list of his respective category. However, when the matter of his position in the merit list was enquired, it was revealed from the DIG(Rectt.) Directorate signal No. A.VI.19/2009-Rectt(Min) dated 33/2010 that, Roll No. 091004047 Shri Sandeep Kumar was the last selected candidate of General Category to the post of HC(Min.) in CRPF during 2006-07 and the said candidate has secured 107 marks in aggregate. Subsequently, it was also revealed from the IGP ES Signal No. A. VI.1/2010-ES-Adm.II dated 9/3/2010 that, the petitioner Manjeet Kumar has secured only 99 marks, hence it is clearly evident that, the petitioner has obtained less marks than the last selected candidate of General Category to the post of HC(Min.).

07. Hence, nevertheless the petitioner has been declared medically fit for appointment to the post of HC(Min.) in CRPF, he can not be considered for appointment due to the reason that, he did not find place in the final merit list of his respective category.

Sd/-

[C.B.S. Rathore]

Inspector General, Bihar Sector
C.R.P.F., Patna (Bihar)

No. J. II51/2009-BS-PAIRVI

Dated the June 2010"

(underlining for emphasis)



7. Amidst, in the aforementioned admitted facts and the underlined portion of the impugned order this Court would find no flaw in the aforesaid impugned order inasmuch it is absolutely clear that earlier disqualification of the petitioner was based only on medical ground and infact he had never been finally selected and given the offer of appointment so as to make out a case of his acceptance of joining being only dependent on his becoming medically fit. Infact as per selection norms every candidate was required to undergo physical test, written test and medical test and the petitioner was found unfit in the medical test. Assuming that even if the petitioner, instead of being declared medically unfit, he was found to be fit he was still liable to be subjected to consideration of his case for appointment on the basis of his performance in the final merit list drawn on the basis of marks secured by all the candidates in the written test.

8. This Court, therefore, fails to understand as to



how the principle of natural justice can be invoked in the case of the petitioner or the petitioner was required to be subjected to departmental proceeding and/or framing of charge even if his appointment itself was not made. The petitioner was/is out and out still a candidate whose appointment was yet to be made and therefore, there would be no scope of either initiating a departmental proceeding against the petitioner much less framing of the charges against him. Thus in the facts of this there is also no violation of principle of natural justice.

9. The plea of violation of principles of natural justice on the ground that the marks of the petitioner was not disclosed to him would also depend on the service rules. If in one selection process, lacs of candidates apply and there is no requirement of the Rule that every candidate should be communicated his marks secured, such selection cannot be held to be bad on account of non supply of marks soon after the examination. List of successful candidates having been published by the Respondents, if the petitioner, had any doubt, about his



marks he could/can avail the remedy provided under Right to Information Act or under the conditions of the advertisement but simply because marks were not supplied to the petitioner that cannot be made a ground for appointment of the petitioner.

10. Similarly the ratio laid down in the case of **COMMISSIONER OF POLICE (supra)** will have no application in the facts of this case because for invoking the principles, firstly the petitioner has to produce his order of appointment or any order that despite being selected for appointment of the petitioner he was not allowed to join only because of his being medically unfit so that when he was ultimately declared medically fit his such appointment had to be restored. In this case there is no such order and at least nothing has been brought on record by the petitioner, and therefore, this Court will have no difficulty in holding that the principle enunciated in the case of **COMMISSIONER OF POLICE (supra)** will not be applicable to the facts of the present case.

11. Thus, for the reasons indicated above, the refusal of appointment of the petitioner cannot also be held to be fraud on power. The respondents having applied the principles under Article 14 and 16 of the Constitution of India have correctly refused to appoint the petitioner specially when he has secured 99 marks whereas the last candidate appointed in his category is having 107 marks.

12. That being so, there is no merit in this writ application and the same is, accordingly, dismissed.

(Mihir Kumar Jha, J)

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