

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5405 of 2015

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Matendra Das, Son of Ramu Das, Resident of Village - Pai Bigha, P.S.-
Bela, District - Gaya.

.... Petitioner/s

Versus

1. The Union of India through the Ministry of Personnel, P.G. and Pension, Department of Personnel and Training, Government of India, New Delhi.
2. The Regional Director, Staff Selection Commission, Eastern Regional Office, Nizam Place, 1st MSO Building (8th Floor), 234/4, A.J.B. Bose Road, Kolkata.
3. The I.G., B.S.F., Meru Camp, District - Hazaribagh, Jharkhand.

.... Respondent/s

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Appearance :

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

For the Respondent/s : Mr. Ram Anurag Singh, CGC

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

4 13-05-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application

reads as follows:

"1. ... commanding the respondents authorities to appoint this petitioner on the post of constable(GD) in ITBPS/BSF/CRPF/SSB and Rifle Man (GD) in Assam Rifles in pursuance of the advertisement no. F.No. 3/9/2012-P & P-1, whereby and whereunder the petitioner pursuant to advertisement participated in the physical, written and medical tests and declared successful. However, reason best known to the respondent authorities they have not allowed the petitioner to join the Central Security Forces as stated above and debarred him from joining to the post of Constable (GD) and the matter has been kept pending since last more than one year."

3. Learned counsel for the petitioner, in support of the
aforementioned prayer, has submitted that after the petitioner had

performed very well in the written examination whereafter he also declared medically fit, he could not have been denied the appointment on the post of Constable (General Duty) in Central Security Forces and/or Assam Rifles for which selection conducted by the Staff Selection Commission, Eastern Region in (hereinafter referred to as 'the Commission') the year 2013.

4. This Court, in fact, having noticed a similar submission on the earlier occasion, had directed the learned counsel for the respondents to disclose the reason on which the petitioner was denied the appointment. Learned counsel for the respondents, thereafter, had received a detailed instruction from the officials of the Commission who were also present on the last date.

5. The Commission has produced the entire case history of the petitioner and a copy whereof was also given to the learned counsel for the petitioner. The same reads as follows:

"Brief History

Shri Matendra Das, the petitioner, applied for Constable (GD) in CAPFs and Rifleman(GD) in Assam Rifles Examination, 2013. He submitted application in online mode. He was allotted Roll No. 4205052292 by Staff Selection Commission.

He was declared Qualified in PET (Physical Efficiency Test). He was also declared qualified for appearing in Medical Examination on the basis of his performance in written examination. He was declared FIT in Medical Examination.



The Select list has been prepared as per state-wise vacancies with further reservation for candidates of Border Districts/Naxal or Militancy affected districts within the State. Candidates belonging to Border/Naxal or Militancy affected districts have been considered against vacancies in such areas or in the State concerned against Central Vacancies as may be advantageous to them. Allocation to various CAPFS has been done as per merit (marks obtained in written exam)-cum-option of the candidates, subject to availability of vacancies in State/UT concerned, reservation for Border district and Naxal/Militancy affected district and category-wise reservation.

The petitioner in his online application opted for the State of Bihar under category SC. He also opted reservation under Naxal affected district. The petitioner was treated as SC category candidate by the Commission. The petitioner secured 39 marks in total in the written examination (07 marks in Part A of written exam.

The cut off marks fixed by the Commission for the State of Bihar for SC category and for Vacancy Type-Naxal Affected Districts for all the posts is as under.

<i>Post Code</i>	<i>Cut off marks for the State of Bihar for SC category for vacancy Type-Naxal Affected District</i>	<i>Marks obtained by the last selected candidate in Part A of written examination for the State of Bihar for SC category for Vacancy Type-Naxal Affected District.</i>
<i>A.</i>	<i>58</i>	<i>17</i>
<i>B.</i>	<i>61</i>	<i>18</i>
<i>C</i>	<i>39</i>	<i>10</i>
<i>D</i>	<i>59</i>	<i>16</i>
<i>E</i>	<i>52</i>	<i>20</i>
<i>F</i>	<i>49</i>	<i>15</i>

From the above table, it is evident that the petitioner could not secure more than or even equal to the cut off marks for all the posts for the State of Bihar, for SC category for Vacancy Type-Naxal Affected District except

for the post Code C. For the post code C he secured marks equal to the cut off marks fixed by the Commission. It became a case of Tie. For breaking the Tie cases the Commission adopted the following formulas which was mentioned in the notice of the examination.

(a) The tie is resolved by the Commission by referring to the total marks in the written examination i.e. a candidate having more marks in the written examination gets preference over the candidate (s) with less marks.

(b) If the tie still persists then the marks in Part A are referred to i.e. a candidate having more marks in Part A is given preference.

(c) If the tie still persists, the candidate older in age gets preference.

(d) If the tie still persists, it is finally resolved by referring to the alphabetical order of names i.e. a candidate whose name begins with the alphabet which comes first in the alphabetical order gets preference.

Since the petitioner secured 07 marks in Part A of written exam which is less the marks obtained in Part A by the last selected candidate (10 marks) the petitioner was not declared selected for the post code C."

6. Having regard to the aforementioned explanation, the things become very clear that the case of the petitioner comes under a particular category (C) which became one of the tie. The respondent Commission had to make a recommendation against the available vacancies by dissolving the tie in the manner prescribed in the advertisement. It is here that the petitioner lost the race because he had lesser marks in part A than his competitor, whose case was tied with the petitioner.

7. In view of the aforementioned explanation of the

Commission, correctness whereof cannot be doubted by the petitioner or his learned counsel, this Court is satisfied that the case of the petitioner was considered in a true and correct perspective and his being not appointed on account of being not above in merit to the last successful candidate, does not suffer from any error.

8. Learned counsel for the petitioner, however, on the basis of some oral instruction of the petitioner, has submitted that the petitioner has recently come to know that even persons having 38 marks were selected and recommended under the category of SC in which the petitioner had secured 39 marks.

9. This Court would not like to decide on such oral submission specially when the Commission has produced record to show that the last candidate of the SC category, who was selected and appointed in the category of the petitioner was having 39 marks as also secured by the petitioner and his case had to be resolved by way of tie as explained above.

10. None-the-less, if the petitioner can still satisfy the authority that for the same examination, a candidate of Scheduled Caste category, having a similar case as that of the petitioner, was recommended, despite his having 38 marks, and the petitioner was left out though he had secured 39 marks, the Commission will be

under obligation to at least examine the claim of the petitioner and pass an appropriate order.

11. It is, however, made clear that the petitioner will have to disclose the names and details of such candidates who, despite having 38 marks, had been appointed leaving out the petitioner in the same category despite his having 39 marks. It is only when the petitioner comes with full details alongwith documentary evidence, if any, that the Commission will be under obligation to examine the aforesaid grievance of petitioner.

12. With the aforementioned observation and direction, this writ application is disposed of.

(Mihir Kumar Jha, J)

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