

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1319 of 2012

IN

Civil Writ Jurisdiction Case No. 9297 of 2012

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Rabindra Kumar Singh S/O Late Badri Narayan Singh R/Ovillage-Kauriya, P.O.-
Hardia, P.S.- Bihiya, District- Bhojpur, Bihar

.... Appellant

Versus

1. The Union Of India Through The Secretary Ministry Of Home, Government Of India, New Delhi
2. The Inspector General Central Industrial Security Force (C.I.F.S.), Ministry Of Home, New Delhi
3. The Assistant Inspector General, Central Industrial Security Force (C.I.F.S) Ministry of Home, New Delhi.
4. The Assistant Commandant, East Zone, Central Industrial Security Force, Patna

.... Respondents

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Appearance :

For the Appellant : Mr. Yugal Kishore, Sr. Advocate &
Mr. Abhay Kumar pandey, Advocate.

For the Respondents : Mr. Sanjay Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 24-03-2015

The appellant is aggrieved by order of the learned Single Judge, whereby his writ petition for mandamus to the C.I.F.S. to consider his case for compassionate appointment has been dismissed.

Father of the writ petitioner was head constable in C.I.F.S. who died in harness. The family being in a pitiable condition as per rules an application for compassionate appointment was made on behalf of the writ petitioner who happens to be the son. The same was rejected on the ground that the writ petitioner was 161 C.ms. in height as against minimum requirement of 170 C.ms.

It was the case of the C.I.F.S that power to relax up to 5 C.ms. lay in the hand of Director General of Police in case of only the persons seeking compassionate appointment.

Learned counsel for the writ petitioner submits that no document has been brought on record by the C.I.F.S. to show that the writ petitioner was 161 Cms. in height.

To the contrary, as per direction of the authorities he had got himself examined by the Civil Surgeon, Arrah and submitted certificate. This certificate clearly shows that the writ petitioner was 165 Cms. tall. Learned counsel for the writ petitioner draws attention of this Court to the counter affidavit of the C.I.F.S at Annexure-A thereto which is forwarded by the D.I.G. to the I.G. for consideration of case of the writ petitioner. This document itself refers to the certificate granted in respect of the writ petitioner's height showing that he was 165 Cms. The certificate is also annexed. This is the document of the C.I.F.S. itself. Learned counsel for the writ petitioner submits that if this document is taken into account then to say that there was some other measurement which found the writ petitioner to be 161 Cms is either fictitious or non existence.

In the counter affidavit there is a bald statement that his height was later found to be 161 Cms, but there is no document in support thereof.

It is well settled by the judgment of the Apex Court in the case of **“Bharat Singh & Ors. Vs. State of Haryana & Ors.”** reported in AIR 1988 SC 2181 and particularly paragraph 13 thereof which states as follows:-

“ In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter affidavit, as the case may be, the Court will not entertain the point. In this context, it will not be out of

place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable.”

In that view of the matter, we cannot rely upon the assertion of the C.I.F.S that the height was found to be 161 Cms. However, as it is a question of fact, we would direct the Inspector General, C.I.F.S, Headquarter, Patna to immediately constitute a medical Board and re-assess height of the writ petitioner in view of the facts as stated above. If the height is found to be within the condonable limit he would accordingly condone the same and offer compassionate appointment to the writ petitioner. But if it is found that it is not within the condonable limit, as noted above, he would accordingly inform the writ petitioner in writing and reject his case for compassionate appointment. The respondent- Inspector General would be expected to comply the order of this Court as expeditiously as possible preferably within one month from the date of receipt/production of a copy of this order before him.

With the above observation/direction this appeal is disposed of.

(Navaniti Prasad Singh, J)

(Jitendra Mohan Sharma, J)

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