

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.13519 of 2014**

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1. OM PRAKASH Son of Sri Anatu Prasad Singh resident of village - Baripar,  
P.O. Barah, P.S. Punpun, District - Patna

.... .... Petitioner/s

Versus

1. The Chairman, Staff Selection Commission, 8AB Baily Road, Allahabad ( U.P. )  
2. The Secretary Staff Selection Commission, 8AB Baily Road, Allahabad ( U.P. )  
3. The Regional Director (C.R.) Staff Selection Commission, 8AB Baily Road  
Allahabad ( U.P. )

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Arvind Prasad Singh  
For the Respondent/s : Mr. S.D.Sanjay, Addl. Sol. General  
Mr Ravinder Kumar Sharma, CGC

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**

**ORAL JUDGMENT**

**Date: 04-05-2016**

Petitioner was one of the applicant, who applied for appointment on the post of Constable (GD) in terms of advertisement no.F dated 18.3.2011 published by the Staff Selection Commission, Allahabad. As per the petitioner, he went through the process of selection. Initially, he was found medically unfit but a review medical board did clear his position but still when he was not appointed he filed several representations before the authorities and when the same failed to beget any response, he decided to file the writ application for a direction upon the respondents to appoint him.

Counsel for the petitioner submits that the petitioner got

57 marks in the examination when people with lesser marks than him came to be appointed, therefore, it is a clear cut case of discrimination practiced by the respondent authorities.

The learned Additional Solicitor General representing the Union of India filed a detailed counter affidavit and rebuts the allegation or the insinuation and offered explanation for the reason of non- appointment of the petitioner. The details of such recruitment, the category under which opening was required to be given, the number of vacancies etc. had already been indicated in the advertisement for recruitment. Petitioner filed his application under the category of Naxal affected area. He did get 57 marks, which is not a matter of dispute, but there were other candidates, who got better marks than the petitioner and the petitioner, in fact, got tied with other successful candidates. The advertisement itself indicates the methodology, which is adopted in case there is a tie, and the details have been reiterated in paragraph 20 of the counter affidavit, which are reproduced herein below :

*“20. That the method of resolving the ‘Tie case’ of said examination has already been given in para 11 of notice of Examination under heading “RESOLUTION OF THE CASES”. This has also been reiterated in para 8 of write up of result of examination declared on 17.10.2012. The details of resolving the ‘Tie Case’ is reproduced below :*

*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."*

Explanation has also been offered with regard to the discrimination vis- a- vis the three identified candidates, who earmarked by the petitioners. The status and position with regard to the three candidates have been explained in paragraph 23 of the counter affidavit.

Two unequals cannot be treated as equal. The three candidates, whose names have been indicated in the writ application, are candidates, who belong to another category and they are not competing with the petitioner in any manner.

The position so indicated has neither been rebutted nor can the same be rebutted as such because the Court is satisfied that there is no hide and seek nor is there any mystery in the matter of non-appointment of the petitioner. It is basically a case of petitioner not performing well enough to be able to make the cut and get

recommended for appointment despite reaching a position after the selection process.

In view of the above, the writ application is dismissed being devoid of merit.

**(Ajay Kumar Tripathi, J)**

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