

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6541 of 2015

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1. Sudhanshu Kumar, aged about 22 years, son of Shashi Bhusan, resident of:
Village- Hakikatpur, Police Station- Bakhtiyarpur, District- Patna

.... Petitioner/s

Versus

1. Union of India, through, Regional Director (CR), Staff Selection Commission (CR), Allahabad.
2. Regional Director (CR), Staff Selection Commission, 21-23 Lowther Road, Allahabad.
3. Assistant Commandant Member II, RCCH Board for CT/GD SHQ SSB, Haridanga (W.B.).
4. Shri Amit Kumar son of not known to the petitioner, selected candidate for the post of constable (GD) in CAPFS and Rifleman in our Assam Rifles-2013.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lal Babu Singh
Mr. Rajesh Kumar Singh
For the Union of India : Mr. Anjani Kumar Sharan, CGC

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL JUDGMENT
Date: 26-07-2016

Petitioner was one of the candidates who applied for the post of Constable (General Duty) against the advertisement issued by the Staff Selection Commission, Allahabad, a copy of which is Annexure-1.

2. It is the case of the petitioner that he was successful in all respect and his name did figure in the final results which were published, but since he did not gain employment or receive any communication indicating his selection and appointment, he tried to approach the authorities and then set the law in motion by moving the Central Administrative Tribunal, Patna for an appropriate direction upon the respondents. The order passed by the Tribunal has been annexed as Annexure-8 to the writ application by the petitioner himself. The Tribunal refused to interfere with the matter primarily on the ground that no cause of action has

arisen within the territorial jurisdiction of the Tribunal. This order could be a correct or incorrect order. The Court is not going into that aspect of the matter but having failed to succeed before the Central Administrative Tribunal, the present writ application has been filed.

3. Matter was initially heard before a learned single Judge who was of the opinion that as per the allocation of business in the High Court as well as keeping in mind the Constitution Bench decision of the Hon`ble Supreme Court, the order of the Central Administrative Tribunal can only be tested by a Division Bench.

4. The Division Bench took up the matter on 8.1.2016. The opinion of the Division Bench was that even otherwise the Tribunal did not have the jurisdiction to entertain such grievance keeping in mind the post for which the petitioner was an aspirant since the recruitment related to the Central Armed Police Force. The Division Bench did not agree with the view of the Tribunal about the cause of action. However, a direction was issued to list the matter before a learned single Judge for adjudication and that is how the writ application has been placed before me for consideration.

5. The Union of India has also appeared now. They have filed a detailed counter affidavit. The details thereof will be dealt with subsequently and in the above background the Court decided to hear the matter on merits.

6. Learned counsel for the petitioner starts his argument with the submission that non-submission of a domicile certificate at the time of conduct of medical examination of the petitioner cannot be fatal to his claim of appointment because a person is domicile of a country and not of a State. He has some decisions to take such a plea as part of his submissions. He further submits that none of the instructions or the call letter for the medical examination indicated

that it was mandatory for him to produce the domicile certificate at that stage. Other details have already been provided by the petitioner to the respondent Staff Selection Commission and it was only a formality which was required to be completed.

7. Counsel for the petitioner also submits that in similar dispute raised earlier in relation to selection made by the Staff Selection Commission, a Bench of this Court held such rejection to be hyper-technical and gave a direction in favour of the petitioner. Heavy reliance has been placed on this decision by the counsel for the petitioner for obvious reason. The relevant case is **Amit Kumar Singh vs. The Union of India and others [2007 (2) PLJR 519]** with emphasis on paragraph - 8.

8. The Union of India has explained the details of the selection process as well as the objective behind such recruitment. From the advertisement itself it is evident that there was also provision for special drive for giving an opening to candidates coming from Naxal affected area in the State of Bihar or other States as well. A candidate seeking benefit of recruitment under the said category was required to make a declaration and provide the relevant code in his application form, which the petitioner had done. Annexure-2 is the application form of the petitioner and in the last column relating to the declaration “**if you belong to Militancy/Naxal affected district**”, the response of the petitioner is Code-52. Code 52 relates to the districts of the State of Bihar, which has been treated as naxal affected area, provided in the advertisement itself.

9. It is obvious that the petitioner was looking for the benefit of recruitment under the special category by belonging to a particular naxal affected district and area.

10. It is also of significance that there is particular quota which has

been fixed for States and Districts in such category. Obviously, objective is to spread the benefit in a balanced way in such recruitment. This is where the significance of domicile certificate comes into play and the Court here opines that the word 'domicile' has been loosely used and it cannot be read to mean the technical interpretation which the petitioner wants to give, meaning thereby that a domicile means a domicile of a Nation and not of a State.

11. The advertisement does talk in terms of vacancies and reservation and Clause 2 (III) of the said advertisement clearly issues instructions with regard to production of domicile certificate by a candidate. The said provision is reproduced for ready reference.

"Note III. As the vacancies have been allotted to the concerned States/UTs, candidates are required to submit domicile certificates of the states indicated by them in the application at the time of medical examination." (emphasis mine)

12. AS per the instructions in the advertisement it was mandatory to submit domicile certificate at the time of medical examination. The limb of argument of the petitioner that there are no instructions of such kind with the call letter etc. is of no avail. Lack of such instruction in other communication may not help the petitioner much because what has already been given as part of instruction in the main advertisement is not required to be repeated every time with every communication. The obligation, therefore, to produce domicile certificate at the time of medical examination is mandatory.

13. The Court is further informed that this domicile certificate has not been seen by any body much-less the respondents till date because it was neither produced before the authorities nor has it been brought on record as a part of legal proceeding initiated by the petitioner.

14. Counsel for the Union of India draws the attention of the Court to



para 14 of the counter affidavit where it has been explained in unambiguous term that because of non-production of the domicile certificate petitioner has been treated as a general category candidate i.e. the procedure which has been followed. In other words, the advantage of reservation or weightage which was required to be given by virtue of belonging to a naxal affected district of a geographical area would not be given to a candidate on mere declaration at the time of filling up a form. Since the petitioner did not have the merit position in the category of general candidate, he has not been appointed and not for the reason of non-production of domicile certificate. The main limb of argument that non-production of domicile certificate is not necessary is for obvious reason. As a general candidate he does not figure in the merit position. He has done his home work well and discovered that in naxal affected area there are people with lesser marks than the petitioner who have been appointed. That is why the whole case has been built up on non-requirement or non-furnishing of domicile certificate by the petitioner.

15. The selections have been completed and made. People have already been appointed. Rights have accrued. This Court will not reward the petitioner for an omission committed by him and him alone. There could have been an occasion to give a direction upon the respondents provided the respondents were at fault at any point of time. Any indulgence shown to the petitioner will affect the right of already selected and appointed candidate in the category of naxal affected area. So far as the general merit position of the petitioner is concerned, marks do not add up for such appointment.

16. In view of the above, Court has no option but to dismiss the writ application because the Court did not find any merit in any of the submissions made on behalf of the petitioner.

17. Writ application, therefore, is dismissed.

(Ajay Kumar Tripathi, J)

R.K.Pathak/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	27/07/2016
Transmission Date	