

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.15353 of 2016

ORDER:

This, Writ Petition filed under Article 226 of the Constitution of India, challenges the letter bearing No.JS(P)DS(E)/AS(E)/PO.C/472/2011, dated 14.03.2016, issued by the Chief of Vigilance & Security Officer, A.P.Power Generation Corporation Limited, Hyderabad – 2nd respondent herein.

2. Heard Sri Ramakrishna Pativada, learned counsel, appearing for the petitioner and Smt.K.Aruna, learned standing counsel, appearing for the respondents.

3. The respondent Corporation issued a notification, dated 22.04.2013, inviting applications from the eligible candidates for the posts of Security Guards and Firemen. In response to the said notification, petitioner herein also applied for the post of Firemen. Subsequently, on 04.11.2015, a select list was published by the respondents, showing the name of the petitioner at serial No.1 with Hall ticket No.13580. Subsequently, petitioner was called for verification of the certificates vide letter No.JS(Per)/DS(Estt.)/AS(Estt.)/PO-C/ 472/2011, dated 11.01.2016, by the Joint Secretary (Personnel), APGENCO, Khairatabad, Hyderabad. In response to the same, petitioner appeared before the respondents and certificates furnished by the petitioner were also acknowledged by the respondents. Subsequently, by virtue of letter bearing

No.JS(P)DS(E)/AS(E)/PO.C/472/2011, dated 14.03.2016, the 2nd respondent informed the petitioner that his candidature for the post of Firemen was cancelled on the ground that the physical standards of the petitioner were not in accordance with the notification i.e., the petitioner herein was found to have Flat Foot. Challenging the validity and legal sustainability of the said letter of rejection, the present Writ Petition has been filed.

4. It is submitted by the learned counsel for the petitioner herein that the impugned action of rejection is highly illegal, arbitrary, unreasonable and is violative of Articles 14 and 16 of the Constitution of India. It is further submitted that as per the medical certificate dated 26-04-2016 issued by Dr.T. Siva Sankar Murthy in Sai Rathna Multi Specialty Hospital, Ananthapuram, there is minor collapse of the arch it is correctable with arch supporter. It is eventually requested by the learned counsel for the petitioner herein to permit the petitioner to make an application to the respondents herein to refer his case for medical authorities once again. In support of his contentions and submissions, the learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Apex Court in **National Thermal Power Corporation, Kahlagaon and others Vs. Nakul Das and others**^[1].

5. On the contrary, it is vehemently contended by the learned standing counsel for the respondent Corporation that there is no illegality nor there exists any procedural infirmity in the impugned

action, as such, the complaint of the petitioner is not amenable for any judicial review of this Court under Article 226 of the Constitution of India. It is further submitted that the Hospital Authorities, Guntur, after verification, found the petitioner to have left flat foot, which is a disqualification for holding the post of Firemen in the respondent Corporation as per the notification.

6. There is no dispute with regard to the reality that the petitioner herein passed the physical efficiency test and got through the said test successfully and only thereafter, his name was included in the select list. In this context, it may be appropriate to refer to the judgment of the Hon'ble Apex Court in **National Thermal Power Corporation, Kahalagaon and others Vs. Nakul Das and others (1 supra)**. Paragraph No.19 and 20 of the said judgment read as under:

"19. Pursuant to the orders dated 09.05.2013 directing NTPC to appoint the selected candidates, two out of the aforesaid five appellants have been given the appointment. However, cases of other three appellants are rejected as in the medical examination conducted, they are found medically unfit as suffering from "colour blindness". They are appellants 1, 4 and 5. The learned counsel appearing for these appellants submitted that their medical examination was done in haste; they had made representation to the NTPC regarding constitution of Medical Board to re-examine their cases to which NTPC was not agreeing; they had got themselves medically examined from the same hospital and same doctor namely, NTPC, Kahalagaon Hospital and also outside doctor and they had duly certified that these appellants were not suffered from "colour blindness". Additional affidavit dated 26.06.2005 is filed including

the result of their medical examination from out-patient department of NTPC, Kahalagaon Hospital, as well as opinion of some private doctors in support of the aforesaid submission.

20. Having regard to the aforesaid facts, we are of the opinion that it would be in the interest of justice that NTPC constitutes another Medical Board for re-examination of these three appellants and decide their fate on the basis of the opinion given and take further action on the basis of opinion given by the reconstituted Medical Board. This appeal is disposed of on the aforesaid terms.”

7. In the instant case also, as stated supra, the medical certificate issued by Dr.T. Siva Sankar Murthy, Sai Rathna Multi Specialty Hospital, Ananthapuram, clearly shows that the minor collapse of the arch in the left foot cannot be considered as flat foot. Taking into consideration the totality of the circumstances and the above judgment of the Hon'ble Apex Court and having regard to the nature of controversy and taking into consideration the request made by the learned counsel for the petitioner, this Court deems it appropriate to permit the petitioner herein to make an application before the respondent authorities for re-medical examination.

8. For the aforesaid reasons, Writ Petition is disposed of, permitting the petitioner herein to make a representation before the respondent authorities, enclosing all the material in support of his case, within a period of one week from the date of receipt of a copy of this order, with a request to refer for re-medical examination. If any such application is made within the time

stipulated, the case of the petitioner herein shall be referred to the re-medical examination and further action on the basis of the opinion expressed by the said reconstituted medical team shall be taken by the respondents herein. The entire exercise shall be completed within one month from the date of making application by the petitioner herein.

9. Miscellaneous petitions pending consideration, if any, in the Writ Petition shall stand closed in consequence. No order as to costs.

A.V. SETHA SAI, J

April 29, 2016

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THE HON'BLE SRI JUSTICE A.V. SETHA SAI

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