

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5444 of 2012

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Md. Firoz Khan, S/O Late Aziz Khan, R/O Village - Patunka, P.S. -
Nanpur, District - Sitamarhi

.... Petitioner

Versus

1. The Union of India through Secretary, Home Ministry, New Delhi
2. Director General, Border Security Force, Lodi Road, New Delhi
3. Inspector General, Border Security Force, Patna, Bihar
4. Deputy Inspector General, Border Security Force, Patna, Bihar
5. Deputy Inspector General, TC & S, Border Security Force, Hazaribagh,
Jharkhand
6. Commandant, 94 BN, Kalyani - Nadiya, Distt.-Nadiya, West Bengal

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. H.K. Singh and
Mr. Mazharul Hassan, Advocates.
For the Respondents (UoI): Mr. Rajesh Kumar Verma, CGC.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

3 06-02-2018 Heard learned counsel for the petitioner and learned
counsel representing the Union of India (BSF).

2. The present Writ Application was filed in the year
2012 for a direction to the respondents to appoint this petitioner in
the Border Security Force as a Constable (GD) on compassionate
ground.

3. The case of the petitioner is that he happens to be the
son of late Aziz Khan, who was a Constable (GD) in Border
Security Force (BSF). Mr. Aziz Khan died on 23.05.2009,
thereafter, the mother of the petitioner requested the respondents
to make appointment of his son (this petitioner) as a Constable



(GD) on compassionate ground as the family was said to be facing starvation even in course of illness of the concerned employee.

4. The grievance of the petitioner is that while he was made to rush here and there to participate in the recruitment test and, in fact, he was successful in the test held by the respondents but, later on, he got a communication that he was not selected. Vide Annexure-5 to the Writ Application, which is a letter dated 15.07.2011, the petitioner was called upon to participate in the recruitment test at Hazaribag so that his case may be considered for appointment on compassionate ground in accordance with the rules. The petitioner claims that he was successful in the said test but still he was not appointed.

5. On the other hand learned counsel representing respondents no. 1 to 6 has drawn the attention of this Court towards the statements made in Paragraph 5 of their counter affidavit. It is their stand that this petitioner participated as many as five times as per the details provided under the said paragraph and, on every occasion, he failed to pass the Physical Efficiency Test (PET). He has brought on record Annexure-R/1 to show that the Board of Officers considered the case of the petitioner along with others and this petitioner was not selected because he had failed in the test. It is, thus, the stand of the answering respondents



that they have afforded ample opportunities to the petitioner by offering him a number of chances to qualify the Physical Efficiency Test for the post of Constable (GD) in the B.S.F. but on every such occasion he failed to qualify and, therefore, this petitioner was not found suitable for the said post as per the relevant recruitment rules.

5. In course of argument learned counsel representing the petitioner submits that the death of the father of this petitioner had taken place in the year 2009 and now about nine years have gone past from the date of death. There is no material even otherwise to show that the family was living in a condition of destitution, therefore, at this belated stage, considering the facts and circumstances no interference is required with the decision taken by the respondents as reflected in their Counter Affidavit.

6. Today, a Supplementary Affidavit has been filed on behalf of the petitioner enclosing therewith a copy of the letter dated 20.05.2017 by which the petitioner was called upon to fulfill certain requirements in order to consider his case for appointment on compassionate ground. A copy of the said letter has been annexed as Annexure-‘A’ to the Supplementary Affidavit but then no statement has been made that the petitioner has again complied with or fulfilled the requirements as pointed out in the said letter.



7. Having heard learned counsel for the parties and on perusal of the records, in the facts and circumstances as appearing from the pleadings this Court would not find it a fit case to interfere with the decision of the respondents as reflected in Annexure-‘A’ to the Counter Affidavit. There is no denial of the fact that this petitioner was granted as many as five opportunities to participate in the PET and, in all those tests, he could not make it. In these circumstances, if he was not selected for the post of Constable (GD), this Court does not find any illegality or infirmity with the same.

8. It is well settled that compassionate appointment is not a mode of recruitment and cannot be claimed as a matter of right. Learned counsel for the respondents is correct in submitting that now about nine years have gone past from the date of death and at least the materials available on the record do not show that the family was in a condition of destitution. I am in agreement with the submission on behalf of the answering respondents that this Court is not required to issue any direction in the facts and circumstances of the case.

9. So far as the submission of the learned counsel for the petitioner based on the letter dated 20.05.2017 which has been brought with the Supplementary Affidavit today, this Court would



not express any opinion as it is for the respondents to look into the same.

10. This application is devoid of any merit. It is dismissed.

(Rajeev Ranjan Prasad, J)

Dilip, AR

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