

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.849 of 2019

In
Civil Writ Jurisdiction Case No.4081 of 2009

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The Col. Director Rtg. States H.Q. Rtg. Zone Bihar/Jharkhand, Danapur,
Patna

... .. Appellant/s

Versus

1. Niraj Kumar S/o Sri Nand Kishore Singh Plot No. 64, Pioneer Co-operative Colony, Near D.O.C. Sipara, Village and P.o.- Pokari, P.s.- Beur, Patna
2. The Union of India through the Chief Post Master General, Bihar Circle, Patna
3. The Chief Post Master General Bihar Circle, Patna
4. The Director Postal Services Head (Quarter), Bihar Circle, Patna
5. The Assistant Director (Sand R) C/o The Chief Post Master General, Bihar Circle, Patna
6. The Senior Superintendent of Post Saran D.V. Chapra, Bihar

... .. Respondent/s

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Appearance :

For the Appellant UOI :	Mr. S.D. Sanjay, A.S.G.I. Mrs. Kanak Verma, CGC Mrs. Priya Gupta, Advocate
For the Respondent/s :	Mr. Surendra Kumar Singh, Sr. Advocate Mr. Raj Dular Sah, Advocate Mr. Praveen Prakash, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-09-2019

Heard Shri S.D. Sanjay, learned Additional Solicitor General of India for the Union of India-appellants and Shri Surendra Kumar Singh, learned senior counsel for the contesting respondent.

2. The appeal has been filed and is delayed substantially. This Court had passed an order on 20th August,



2019, which is extracted hereinunder:-

“We have heard Shri S.D. Sanjay, learned Additional Solicitor General of India for the appellant and Shri Surendra Kumar Singh, learned senior counsel for the respondent-petitioner.

The dispute giving rise to this appeal is about the engagement of the respondent-petitioner as a Postal Assistant in the Army Postal Services. The recruitment process which has given rise to the controversy is about a decade old. The respondent-petitioner was offered appointment and had also been physically examined. This offer of appointment concluded by the letter dated 22/24.04.2008. He also assumed charge as Office Assistant in the office of the Senior Superintendent of Post Office, Saran Division, Chapra from where he was relieved and directed to report at Danapur for being sent on training. Instead of being sent on training, he was directed to report at the headquarters at Danapur for medical examination and according to the respondents he came to be declared medically unfit on 29th July, 2008. He was referred to a re-medical test on the strength of such unfitness to the Military Hospital, Namkum, Ranchi. According to the respondent-petitioner, no such medical test was carried out, but the respondents took a stand before the



learned Single Judge that the medical test had been carried out from Namkum from where he had been declared unfit.

On this dispute having arisen before the learned Single Judge, an order was passed on 19th March, 2018 to the following effect:

“In the present case, the petitioner was earlier selected in the Army Postal Service and, later on, he was again medically re-examined and was declared unfit.

Learned counsel for the petitioner submits that the petitioner was never re-examined, so, the question of declaring unfit by the Medical Specialists, Military Hospital, Namkum does not arise.

The outcome of this case hinges upon the re-medical examination of the petitioner. Learned counsel for the petitioner submits that once the petitioner has been declared fit by the Medical Board, he cannot be called for re-medical test and can declared him to be unfit as there is no such rule for the same.

Even if there is no rule but, fitness of an army man can be examined at any time as fitness is the hallmark of a soldier. So, the ground



that has been taken for re-medical test, this Court feels that it is not of an assistance and the same is rejected. However, the Union of India is directed to produce the re-medical test which has been conducted by the Army Medical Unit at Army Hospital, Namkum.

Put up this case after two weeks under the same heading.”

The respondent-petitioner, therefore, was directed to produce the re-medical test report, but unfortunately, no such document was filed before the learned Single Judge. We can gather that insofar as the present appellant is concerned, the said department was arrayed as Respondent No. 5 in the writ petition and a counter affidavit was filed on its behalf through Lieutenant Colonel Prakhar Tiwari. The said affidavit is the only document which was there on behalf of the Respondent No. 5 which does not contain any material nor any further material was filed so as to satisfy the query of the Court dated 19th March, 2018.

The learned Single Judge while hearing the matter finally on 18th July, 2018 came to the conclusion that in the absence of any proof of the fact of any such medical unfitness having been reported, the respondents had failed to



dislodge the claim of the respondent-petitioner and, therefore, he should not be precluded from joining the post of Postal Assistant. Accordingly, the petition was allowed with a direction to allow the respondent-petitioner to join on the post.

It appears that a Review Petition was filed before the learned Single Judge and it is urged that along with the said Review Petition the Respondent No. 5 had also brought on record the indication as recorded in the register about the carrying out of the medical examination of the respondent-petitioner where he was declared unfit. However, so far as the records of the said medical examination are concerned, the same was admitted as having been destroyed. It is therefore in this background that the Review Application came to be rejected, whereafter the present appeal was filed.

Along with the appeal, the said document pertaining to the extract of the register has been filed to urge that the medical examination had been carried out and consequently it cannot be said that the respondent-petitioner had been declared unfit without carrying out any procedure.

Apart from this, we also find this appeal to be heavily barred by limitation of 342 days. For the present, we are not inclined to condone the delay or even entertain the appeal as *prima facie* if the admitted position is that the



records have been destroyed by the respondents themselves, then there is no report in existence so as to satisfy the query raised by the High Court under the order dated 19th March, 2018 or even before us.

It is stated at the Bar that the respondent-petitioner has filed a Contempt Application, which is stated to be pending in which an opportunity has been given for purging the contempt.

Shri S.D. Sanjay has submitted that an adjournment be granted to enable him to further assist this Court, but we find that the adjournment should be taken as a ground not to purge the contempt leaving it open to the appellants to explore the possibility of accommodating the respondent-petitioner keeping in view the fact that prima facie we are not inclined to entertain the appeal.

List on 23rd of September, 2019.

This order may be placed before the learned Judge proceeding with the contempt.”

3. The reason for passing of the aforesaid order was that the appellants after the impugned judgment of the learned Single Judge had preferred a Review Petition and that was dismissed as withdrawn on 27th March, 2019 by the following order:-

“After some argument, the learned Additional Solicitor General for the Union of India



seeks permission to withdraw the present petition.

Accordingly, this petition is dismissed as withdrawn.”

4. We find from the records of the Review Petition that the documents from Namkum Military Hospital that was being relied on indicate that the medical examination of the respondent had been carried out had also been filed and had been placed on record therein.

5. We therefore find that the Review Petition had been withdrawn even after the submission of such documents which now form part of the appeal and the said documents have also been again pressed into service contending that the medical examination of the respondent had been carried out and on the strength of the same it is urged that the learned Single Judge was not correct in arriving at the conclusion that there was no proof of any medical examination.

6. We may at the outset first deal with the issue of limitation as the learned Additional Solicitor General of India submits that keeping in view the fact of the dismissal of the Review Application and the time period taken for filing of this appeal which is always entailed with the usual procedural delay in Government departments should be taken a relevant ground to condone the delay.

7. Shri Sanjay also submitted that this delay was also on account of the inter-departmental communication between the army officials and the Postal Department and, therefore, the delay should be condoned.



8. This argument, as advanced, does not appeal to reason, inasmuch as, the documents on which reliance have been placed had already been made part of the Review Application and there was, therefore, nothing new which required any further deliberations, yet the appeal came to be filed after the said delay and we find there being no plausible explanation as to why the said documents whatever worth they are had not been placed before the learned Single Judge.

9. Apart from this, the two documents that are being now relied on as an additional material and were not part of the record of the writ petition, are a communication only indicating sending of some hospital documents. The same is an extract of a register said to have been maintained by the hospital indicating the name of the respondent Niraj Kumar at Serial No. 528/8 with a rubber stamp in the last column spelt as “UNFIT”. No document or medical report which may prove the declaration of any such medical unfitness is still wanting and, therefore, in the absence of any such proof a rubber stamp endorsement on a register cannot be taken to be even an additional evidence on the principles of Order 41 Rule 27 of the Civil Procedure Code to be part of a pleading so as to substantiate the plea of unfitness that has now been advanced after the dismissal of the writ petition and the withdrawal of the Review Application.

10. We, therefore, do not find any valid or cogent explanation either for the delay having been explained or for pressing



into service any such document which does not substantiate the factum of medical unfitness as alleged by the appellant. The present Letters Patent Appeal is therefore not worth entertaining for the exercise of intra-court appellate power to reverse a judgement where a discretion has been validly exercised by a learned Single Judge under Article 226 of the Constitution of India. The appeal therefore stands dismissed.

(Amreshwar Pratap Sahi, CJ)

(Ashutosh Kumar, J)

P.K.P./-

AFR/NAFR	
CAV DATE	
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