

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1268 of 2019

In

Civil Writ Jurisdiction Case No.14292 of 2015

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Sujit Suman, Son of Rajendra Paswan, Resident of Village- Bari Yusufpur,
P.O.- Hajipur, P.S. Industrial Area, District- Vaishali.

... .. Appellant/s

Versus

1. The Chairman, Staff Selection Commission, Block No.12 Central Government Office Complex Lodhi Road, New Delhi.
2. The Chairman, Staff Commission (CR), 21-23 Lawther Road, Allahabad, (U.P.)
3. The Secretary, Staff Selection Commission (CR), 21-23 Lawther Road, Allahabad, Uttar Pradesh.
4. The Union of India, through the Lt. Colonel, DADMS, Project Himank, RMO GREF Centre, Dighi Camp. Pune-411015.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. P.K. Shashi, Sr. Advocate Mr. Brisketu Sharan Pandey, Advocate Mr. Anirudh Kumar Sinha, Advocate Ms. Kumari Shubham, Advocate
For the Respondent/s	:	Mr. Dr. K.N. Singh, ASG Mr. Rajesh Kumar Verma, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 27-08-2021

Ministry of Road Transport and Highways,

Government of India, New Delhi is added as party respondent

no. 5 in this LPA. Registry to make necessary amendment.

Heard learned counsel for the parties.

This Letters Patent Appeal has been filed by the appellant/petitioner against the judgment and order dated 03.09.2019 passed by learned Single Judge of this Hon'ble Court passed in C.W.J.C. No. 14292 of 2015 dismissing the writ petition.

Briefly stated, the facts of the case is that the Staff Selection Commission published an advertisement for combined Higher Secondary Level (10+2) Examination, 2013 which was two tier examination consisting of written examination followed by typing test/skill test and it was clearly instructed that preference for Ministry/Department/Office will be taken at the time of skill test and selection of candidates will be made as per merit position and option opted by the candidates.

Appellant appeared in the examination and passed in the written examination and was declared qualified for appearing in skill test and accordingly he was directed to submit his preference for Ministry/ Department/ Office as per his choice and final results were declared in which appellant was declared qualified for the post of Lower Division Clerk and was allotted Ministry of Road Transport and Highway as per his merit position and preference opted by him accordingly his

candidature was forwarded to Ministry of Road Transport and Highway for his appointment.

As per service rules, a candidate selected has to undergo medical test before his appointment and he has to be declared medically fit by the Medical Board against the civil post as the appointments were being made against the civil post under various ministries/departments/offices of the Central Government.

It is stated on behalf of Staff Selection Commission that appellant was recommended to Ministry of Road Transport and Highway as per his merit cum preference and thereafter it is within the jurisdiction of the concerned department to post the recommended candidate in any office attached or subordinate office.

Appellant gave various options, out of which his option for appointment as Lower Division Clerk in Ministry of Road Transport and Highways was accepted and accordingly recommendation was sent for the post of Lower Division Clerk in the Ministry of Road Transport and Highways.

It appears that Ministry of Road Transport and Highways allotted appellant Border Road Organization (General Reserve Engineer Force) which is a Central Government

Organization and is governed by Central Services Rules, however, certain provisions of Army Act, 1950 are also applicable to the members of force. The Final Selection of the candidates recommended by Staff Selection Commission is subject to medical fitness test by the Medical Board detailed by Head Quarters, Director General Border Road. Physical efficiency Test, Physical and Medical Standard for the post of Lower Division Clerk in BRO is of Higher Standard than those as required in Ministry/Department/Office of Central Government.

Appellant has brought on record by way of supplementary affidavit filed in LPA as Annexure-A1 the list published of selected candidates of the SSC Examination, 2013 giving details of every selected candidates alongwith the department for which they have been nominated, the name of appellant finds its place at serial no. 437 under the SC category and has given names of SC candidates much below in the merit list, who have been appointed in different departments/offices of Government of India on the basis of recommendation made by the SSC after undergoing medical examination conducted for civil post, however, appellant was recommended by either SSC or Ministry of Road Transport and Highways for his

appointment in BRO (GREF) which requires medical fitness as that of armed forces personnel, which was improper, unjust and unfair.

Annexure- 4 as enclosed in writ petition is a letter dated 02.05.2015 issued from GREF Centre, Pune and addressed to petitioner with respect to cancellation of his candidature for the post of LDC on the ground of medical unfitness by the GREF and dossier of appellant was forwarded to SSC for further necessary action.

Although, the Staff Selection Commission in their counter affidavit filed in LPA in paragraph no. 10 has stated that commission declared the final result of the said examination in which the appellant was declared qualified for the post of Lower Division Clerk in the Ministry of Road Transport and Highways as per the merit position of the appellant and preference opted by him for allocation of Ministry/Department/Office as per his own choice, accordingly the dossier of the appellant was forwarded to Ministry of Road Transport and Highways for issue of offer of appointment.

Ministry of Road Transport and Highways was not made a party respondent either in writ petition or in the LPA, as such, correctness of said statement could not be ascertained.

However, from Annexure-4 of writ petition, it appears that the recommendation of appellant was made in BRO (GREF) and after declaring appellant medically unfit, the dossier of appellant was returned by the BRO (GREF) to the Staff Selection Commission. If the Ministry of Road Transport and Highways had sent dossier of appellant to BRO (GREF) for his appointment on the post of LDC then after finding him medically unfit, the GREF (BRO) ought to have returned the dossier of appellant to the Ministry of Road Transport and Highways for further action from their end.

Appellant was subjected to undergo medical examination by the BRO in which he was declared unfit with respect to medical standard as required in the BRO (Armed Forces), his appeal was also dismissed. The relevant part of the declaration to be made by candidate in course of medical examination is extracted below:-

“I declare that

(a) I have never been rejected medically as unfit for GREF/Armed Force/Para Military forces before. None of my family members suffer from diabetes, TB Leprosy, Fits or mental problems. I have never been operated upon nor hospitalized for any injury. I have not been tested for HIV (AIDS Virus)/Hepatitis B or C. I do not suffer from STD. I do not suffer from any discharge from the ears. I do not have enlarged glands or swelling in the neck. I have had no fever for prolonged duration accompanied by cough and spitting of blood or loss of weight. I have not suffered from joint pain. I do not have night

blindness. I do not suffer from epilepsy (fits).

(b) I further certify that :-

(I) I will be medically examined as per the standard required for recruitment in GREF.

(ii) The medical Standards for GREF are at variance as compared to the civil medical standards because of service requirement of serving in any part of the world, in any type of weather and terrain.

(iii) The Recruiting Medical Officers and other specialists of BRO/Armed Force are the final authority for such matters for declaring me FIT/UNFIT.”

From the facts as gathered, it appears that appellant who was a scheduled caste candidate has wrongly been denied appointment on the post of LDC as he was found medically unfit by BRO (GREF) in which standard of medical fitness is that of armed forces personnel and appellant was selected for appointment as LDC under Government of India against Civil Post and candidates who secured less marks than appellant were appointed after being found medically fit against civil post.

The Secretary, Ministry of Road Transport and Highways is directed to consider appointment of appellant against the civil post of LDC where medical fitness is required as that for a civil post within sixty days from the date of receipt production of a copy of order passed by this Court for which he may summon dossier of appellant from SSC or

GRES wherever it is lying. Appellant shall also be entitled for his seniority and continuity of service from the date candidate junior to him was appointed against civil post in the Ministry of Road Transport and Highways. There shall be no order for back wages. However, if Secretary finds that appellant is not entitled to be appointed then he should pass a speaking and reasoned order to be communicated to the appellant through a registered post/speed post on his address. Liberty reserved to appellant to assail said order, if any, before appropriate forum.

The order dated 03.09.2019 passed in C.W.J.C. No. 14292 of 2015 passed by the learned Single Judge is set aside and LPA is disposed of in terms of direction as indicated above.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA