

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 1414 of 2019

Saroj Kumar Sahoo

...

Petitioner

Mr. J.K. Digal, Advocate

- Versus -

**Director General and Inspector
General of Police & Anr.**

...

Opposite Parties

Mr. H.K. Panigrahi,
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER

09.03.2022

Order No.

5.

1. This matter is taken up through hybrid mode.
2. The petitioner has filed the present application seeking the following relief:

"i) To quash the order of rejection dtd. 26.09.2017, 20.09.2017 and 31.12.2018 under Annexures-4 ,5 & 6 respectively.

ii) To direct the respondents to consider his case afresh in the matter of appointment as sepoy treating him as last SEBC selected candidate having secured 43 marks in OSAP 1st Bn. in pursuance to advertisement under Annexure-2.

iii) To allow the Original application.

iv) And pass such order/orders as may be deemed fit and proper for the interest of justice."

3. The facts of the case are that pursuant to an advertisement dated 29.10.2006 issued for inviting applications for appointment to the post of Sepoy in OSAP Battalion, Sambalpur, the petitioner duly applied and went through the selection process, which as per the relevant rules, involved physical and written tests besides interview. As per the Odisha Special Armed Police Battalion and Odisha State

Armed Police (Special Security) Battalion Service (Method of Recruitment and Conditions of Service of Sepoys) Order, 2006 (in short “Order, 2006”) different marks are awarded to candidates for height and other physical criteria as also for qualification. Accordingly, as per Clause-11(2)(a) of Order, 2006, a candidate belonging to General and SEBC category for height of 168 upto 169 cm will be awarded 10 marks and those with height of 169 cm upto 171 cm will be awarded 11 marks. Similarly, as per Clause-11.7, the candidates passing Matriculation Examination in First Division are to be awarded 5 marks, in 2nd Division 3 marks and 3rd Division, 2 marks. It is stated that the petitioner secured 42 marks in SEBC category, whereas the last man selected from the said category had secured 43 marks. According to the petitioner, he should have been awarded 43 marks since his height is 170 cm and he secured 2nd Division in his Matriculation Examination. Since the petitioner was not selected, he submitted representation which was kept pending without being disposed of. The petitioner therefore approached the Odisha Administrative Tribunal in O.A. No. 4477 (C) of 2016 and by order dated 18.05.2017, the learned Tribunal directed the opposite party no.1 to treat the Original Application of the petitioner as representation and to consider the same and pass appropriate order on its own merit as per Rules. Pursuant to such order, the opposite party no.1 passed a detailed order, which is enclosed as Annexure-5, whereby the petitioner’s claim for appointment as Sepoy was rejected being devoid of merit.

4. A counter affidavit has been filed by the opposite party no.2 disputing the averments made in the writ petition particularly with

regard to the award of marks to the petitioner. It is stated that he was awarded 10 marks as his height was 169 cm, which was measured at the time of selection. It is however, admitted that the petitioner should have been awarded with 3 marks instead of 2 as he had passed the Matriculation Examination in 2nd Division. Even then, the total marks secured by the petitioner is 42, whereas the last man selected in the SEBC category secured 44 marks. As such, the petitioner is not entitled to be considered for appointment and therefore, his representation was rightly rejected

5. Heard Mr. J.K. Digal, learned counsel for the petitioner and Mr. H.K. Panigrahi, learned Addl. Standing Counsel for the State.

6. Referring to the Matriculation Certificate enclosed as Annexure-1 to the writ petition, it is argued by Mr. Digal that the petitioner having secured 2nd Division should have been awarded 3 marks as per Order, 2006. Similarly, referring to the Medical Certificate, enclosed as Annexure-3, which clearly mentions his height as 170 cm, it is submitted by Mr. Digal that 11 marks should have been awarded to him. As such, the petitioner should have been awarded with 43 marks in all after taking into consideration the marks secured under other heads. Since the Medical certificate was issued by the District Medical Board, Angul, the same ought to prevail over the measurement of height made during the process of selection. In support of his contention, Mr. Digal has relied upon a decision of this Court in the case of **D.G. & I.G. of Police, Fire Services, Odisha and another vs. Jyotish Chandra Muduli** reported in 2015 (Supp.I) OLR 818.

7. Per contra, Mr. H.K. Panigrahi has admitted at the outset that there was an error in awarding marks towards educational qualification and that the petitioner should have been awarded 3 marks instead of 2 on such score. However, the opposite party no.1 in the impugned order has taken note of such error and directed correction of the same appropriately. As regards the claim that the petitioner was wrongly awarded marks for his height, Mr. Panigrahi has referred to the broadsheet of the test measurement of candidate enclosed as Annexure-C/2 to the counter, which reveals that the petitioner's height is 169 cm. Mr. Panigrahi has also referred to a letter issued by the Chief District Medical & Public Health Officer, Angul to the opposite party no.2 indicating that the medical certificate vide Annexure-3 was signed by a Medicine Specialist of District Headquarters Hospital, Angul, which was countersigned by CDM & PH, Officer, Angul but there was no office order. It is further stated in the said letter, which is enclosed as Annexure-E/2, that the District Medical Board sits twice a month for issue of disability certificate to the disabled persons. On such basis it is submitted by Mr. Panigrahi that the so called Medical Certificate submitted by the petitioner, issued 12 years after the test measurement of height in the year 2006, cannot be treated as valid or acceptable. Therefore, according to Mr. Panigrahi, the petitioner's claim for appointment as Sepoy was rightly rejected by the authority.

8. As it appears, the crux of the dispute lies in determination of the height of the petitioner. According to him, his height is 170 cm as certified by the Medicine Specialist of District Headquarters

Hospital, Angul and counter signed by CDM & PH Officer, Angul. It is further observed that the said certificate was issued in the year 2018, which is 12 years after the recruitment process was over. That apart, the broadsheet containing test measurement of candidates enclosed as Annexure-C/2 clearly reveals that height of the petitioner on actual measurement was found to be 169 cm. Significantly, the petitioner has neither objected to such recording of height immediately nor at any time thereafter. Even in the writ petition or the representation submitted by the petitioner, there is not a whisper of allegation that his height was wrongly measured at that time.

9. In the case law relied upon by Mr. Digal, i.e., **Jyotish Chandra Muduli** (supra), it is observed that the applicant therein had immediately objected to the wrong recording of his height at the relevant time but his request was not considered. Such being the facts, the applicant had approached the learned Tribunal seeking appropriate relief, which was granted. The facts of the said case are entirely different from the case at hand in view of the fact that the petitioner had never objected to his height being mentioned as 169 cm and as stated earlier, the petitioner has also not taken any specific averment in this regard in the writ petition. As regards the so called medical certificate issued by the Medicine Specialist of DHH, Angul, without entering into the controversy as regards its authenticity or genuineness, this Court observes that the same was issued 12 years after the recruitment process. Since a validly constituted selection board had conducted all the tests and there is no reason to doubt their bonafides or the findings of the tests

conducted by them, this Court finds no merit in the contention advanced by the petitioner. Even otherwise, it is seen that the petitioner secured 42 marks, whereas the last man selected in SEBC category had secured 44 marks. Therefore, the petitioner's claim for appointment as Sepoy is entirely unjustified and without any basis.

10. For the forgoing reasons therefore, this Court finds no merit in the writ petition, which is therefore, dismissed.

(Sashikanta Mishra)
Judge

A.K. Rana

