

105.
23.3.2023
S.D.

W.P.A. 791 of 2023

Dharamdeo Ray
Vs.
Union of India & Ors.

Mr. Debasish Kundu

...For the petitioner

Mr. Kumar Jyoti Tewari

Ms. Runu Mukherjee

...For the Union of India

Report on affidavit as handed over by Mr. Tewari,
learned counsel appearing on behalf of the Union of India in
Court today is retained with the records.

Pursuant to an advertisement for recruitment to the
post of Constable (G.O) and/or Rifleman (G.D.) in Assam
Rifle Examination, 2018 held by the Staff Selection
Commission (SSC), the petitioner applied for recruitment.
The case of the petitioner is that due to an inadvertent
mistake with regard to the entry in the district of domicile in
column no. 7 in the application form, it was stated to be
Hooghly instead of Nadia. In Column No. 20, the writ
petitioner stated that he did not belong to the border district.
Immediately upon intimation of the mistake, the petitioner
applied for correction of his domicile and made a prayer that
instead of Hooghly, the district should read as Nadia. The

Column Nos. 24 and 25 of the application form reflected the postal address and the permanent address of the petitioner correctly. The petitioner was allowed to change his domicile on August 7, 2019. The petitioner obtained 62.47334% in his examination. In the Detailed Medical Examination, the petitioner was found to be **unfit** on February 7, 2022. The DME was held in Nadia. Thereafter, the petitioner went for a Review Medical Examination (RME). The said examination was also held at Nadia. After the RME was conducted, the petitioner was declared to be **fit** by a report dated September 22, 2020. Thereafter, a panel was published on January 21, 2021 and the petitioner's name was not included in the said panel. Even though, the petitioner's score was above the cut off marks required to be included in the said panel.

On the prayer of the petitioner, it transpired that the petitioner's candidature was rejected for being **unfit** in DME. Interestingly, no entry was made regarding the petitioner being declared to be **fit** in RME. When the petitioner filed the previous writ petition being W.P.A. 5915 of 2021, it was argued on behalf of the respondents that **domicile mismatch** was a very serious issue and the petitioner's application was rejected by a Board constituted on December 3, 2020 upon document verification. The petitioner was rejected on the

ground of “**domicile mismatch**”. Order of the Board dated December 3, 2020 was produced before the Court.

This Court held that the order of the Board dated December 3, 2020 was not reflected in the order of rejection. Only ground was that the petitioner was declared **unfit** in DME. The said order of rejection was quashed by this Court on September 26, 2022 holding that after allowing the petitioner to take necessary steps for correction of “**domicile mismatch**” and allowing him to appear for DME and RME, the respondents could not reject the petitioner on the basis of the report of DME without considering the report of RME. It was clearly found in that order that the respondents have allowed the petitioner to correct the “**domicile mismatch**”.

The Director General, BSF was required to consider the representation of the petitioner only with regard to the issue why the petitioner’s name did not appear in the merit panel after being declared **fit** in the RME.

By the impugned order dated January 3, 2023, the Deputy Director again came to the finding that the petitioner’s application was rejected on the ground of “**domicile mismatch**” and not on the ground of being declared **unfit** in DME.

Mr. Kundu, learned counsel appearing on behalf of the petitioner submits that the issue that was decided by this Court on September 26, 2022 has again been sought to be re-agitated by the respondent authorities.

Mr. Tewari, learned counsel appears on behalf of the respondent authorities and submits that the “**domicile mismatch**” was erroneously corrected by the respondent authorities. It was a mistake on the part of the respondent authorities to allow the petitioner to appear in the DME and RME.

A report filed by Mr. Tewari in Court is retained with the records.

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that the issue with regard to the “**domicile mismatch**” has already been decided by this Court by a previous order dated September 26, 2022. Neither an application for recalling of the said order was made by the respondent authorities nor was the said order carried out in the appeal.

In fact, the respondent authorities have acted in compliance of the order by giving a hearing to the petitioner and passing the impugned order dated January 3, 2023. Once the issue with regard to “**domicile mismatch**” has been

decided by this Court and it has been held that only upon correction of the “**domicile mismatch**”, the petitioner was allowed to participate in the recruitment process, the said issue was not open for reassessment or reconsideration by the Deputy Director.

The Deputy Director has passed an impugned order by acting beyond his jurisdiction.

In such view of the matter, the impugned order dated January 3, 2023 is quashed and/or set aside.

The authorities concerned will consider the issue of recruitment of the petitioner in the post that he has applied for within six weeks from the date of this order upon compliance with all the necessary formalities and in terms of the extant rules and policies of the Force.

With the directions aforesaid, **W.P.A. 791 of 2023** is **disposed of**.

All parties shall act on the server copy of this order duly downloaded from the **website** of this Court.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all the formalities.

(Lapita Banerji, J.)

