

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE ARINDAM MUKHEREJEE.

WPA 7439 of 2022

SACHIN KUMAR SINGH

VS.

UNION OF INDIA & ORS.

For the Petitioner : Mr. Victor Chatterjee,
Mr. Somnath Roy

....Advocates

For the Respondents : Ms. Chandreyi Alam

....Advocate

Heard on : 04.05.2022, 08.06.2022, 15.06.2022,
27.06.2022, 06.07.2022, 29.07.2022,
24.08.2022, 02.09.2022, 25.11.2022 &
13.01.2022.

Judgment on : 20th January, 2023.

Arindam Mukherjee, J.:

The writ petitioner in the instant application has challenged two communications respectively dated 8th March, 2022 and 29th March, 2022 reconfirming the petitioner's rejection on medical ground in a recruitment process. Before the matter can be heard on merits, the respondent no. 1 has raised an objection as to the territorial jurisdiction of this Court to receive, try and determine the instant writ petition. It has therefore become necessary to first decide on the territorial jurisdiction of this Court before proceeding to hear the matter on merits.

The facts of the case are briefly as follows:

1. The petitioner, a permanent resident of Hooghly in West Bengal, came across an advertisement published by the Office of the Director General, Assam Rifles, Shillong-793010 for Assam Rifles, Technical and Tradesmen Recruitment Rally, 2021 (hereinafter for the sake of convenience referred to as the “recruitment notice”).
2. By the said recruitment notice, online applications were invited from eligible candidates satisfying the particulars enumerated therein. The recruitment process was three-tier i.e., Physical Efficiency Test (in short PET) / Physical Standard Test (in short PST) followed by Written Test, Trade Test (Skill Test) as applicable and succeeded by Medical Examination. The online applications were to be addressed to the recruiting authority at Shillong.
3. The venue for PET/ PST and Written Test was also specified in the said recruitment notice. They were at Diphu (Assam), Karbi Anglong (Assam), HQ DGAR, Shillong (Meghalaya), Jorhat (Assam), Silchar (Assam) and Lokhra, Tejpur also in Assam.
4. The petitioner applied for Havildar/Clerk in Assam Rifles. The petitioner was asked to report to the Presiding Officer, PST/PET Board at Diphu, Assam Centre on 7th December, 2021 for PST/PET. In the call letter dated 18th November, 2021 which was sent through electronic mail the postal address of the petitioner at Hooghly, West Bengal was, however, mentioned.
5. The petitioner appeared in the PST / PET and was successful. The petitioner was then called for the Written Examination on 19th January, 2022 at Diphu, Assam. The call letter also sent through electronic mail, however, bears the

petitioner's postal address at Hooghly, West Bengal. The petitioner on having appeared in the written examination, became successful as such was called for the medical test by a letter dated 26th January, 2022 which was also electronically communicated with the petitioner's address shown at Hooghly. The petitioner was asked to report for Detailed Medical Examination (in short DME) on 3rd February, 2022 at Dimapur, Nagaland.

6. The petitioner reported for DME at Dimapur, Nagaland but was found medically unfit. A memorandum 'Unfit' dated 5th February, 2022 to this effect was made over to the petitioner at Dimapur, Nagaland. The petitioner while at Dimapur applied for Review Medical Examination (in short RME) which was held on 7th February, 2022 also at Dimapur, Nagaland. In the said RME the petitioner was again declared unfit. The result was informed to the petitioner also at Dimapur. Neither the unfit memo nor the result of the RME contains the petitioner's postal address as contained in the call letters is said prior thereto.
7. The petitioner thereafter came back to his residence at Hooghly and got himself medically examined in a private diagnostic centre at Hooghly as also in the Government Hospitals at Chandannagore and Chinsurah, Hooghly. The petitioner thereafter got himself examined at Nil Ratan Sarkar in Kolkata.
8. According to the petitioner, the Government Hospitals in West Bengal have found him medically fit. The petitioner, therefor, applied to the recruiting authority for reconsidering his case. By a memo dated 8th March, 2022 the Government of India, Ministry of Home Affairs, Director General, Assam Rifles, Shillong informed the petitioner over e-mail that his request for reconsideration could not be considered. The petitioner made a further

request for reconsideration by a letter dated 19th April, 2022 terming the same as first appeal against reply rejecting his prayer for re-consideration and also prayed for providing proper information in accordance with the provisions of Right to Information Act, 2005 as to the medical standards considered for the said recruitment process. His request for further consideration was turned down inter alia on the ground that the petitioner was declared unfit following the job requirement for the post which the petitioner applied for and that a private doctor or a doctor working in Government Hospital may not be in a position to comment on the fitness or unfitness of a candidate on the basis of required medical standards for a particular post in the force. It was also clarified that no further representation can be entertained on this ground.

9. Being aggrieved by the rejection of the petitioner's prayer for reconsideration of the decision declaring him medically unfit, the petitioner has filed this writ petition.

10. **Petitioner's submission:**

- (a) The petitioner says that he had as per the recruitment notice appeared in the examination at Diphu Assam and Dimapur, Nagaland, but all along was a resident of Hooghly in West Bengal. This fact was already known to the respondents and in fact the call letters were sent to the petitioner, stating the petitioner's place of residence. The petitioner has been served with the rejection memo respectively dated 8th March, 2022 and 29th March, 2022 at his place at Hooghly, West Bengal. The petitioner's right to be considered for the recruitment process, therefor, has been infringed in West Bengal within the territorial limits of this Court and as such this Court is competent to

receive, try and determine the instant writ petition. The petitioner also says that he has a very good case on merit as he was arbitrarily eliminated from the recruitment process on medical ground contrary to the laid down parameters.

- (b) The petitioner has relied on the following judgments: **1985 (3) SCC 217 (State of Rajasthan and Ors. vs. M/s. Swaika Properties and Anr.), AIR 1990 Cal 96 (General Shaw and Blades Co. and Ors. vs. Bharat Coking Coal Ltd. and Ors.), 2014 (9) SCC 329 (Nawal Kishore Sharma vs. Union of India and Ors.) and 2020 (10) SCC 766 (Shanti Devi @ Shanti Mishra vs. Union of India and Ors.)** in support of his contention that this Court has territorial jurisdiction to receive try and determine the instant writ petition. Relying on Shanti Devi (supra) the petitioner says that on having received the two rejection memo respectively dated 8th March, 2022 and 29th March, 2022 at Hooghly by which his medical unfitness was reconfirmed as infringed his right to be considered for employment in Government job as guaranteed under the Constitution of India. This according to the petitioner, gives rise to a part cause of action within the territorial jurisdiction of this Court and as such this Court is competent to receive try and determine the instant writ petition. That apart and in any event the petitioner says that the forum conveniens is in favour of the petitioner. The petitioner an ordinary resident of Hooghly in West Bengal should not be asked to file a writ petition before the High Court at Guwahati as that will be inconvenient for him. On the other hand, the respondents can conveniently appear and contest the proceedings before this Court.

Submission of the Respondents:

1. On behalf of the respondent no. 1, it is submitted that no part of the cause of action, if any of the petitioner has accrued within the territorial of jurisdiction of this Court. The PET/PST, the written examination as also the medical examinations were held either in Assam or in Nagaland. The unfit memo and the result of RME were made over to the petitioner at Dimapur, the petitioner's cause of action if any, arises on the petitioner being declared unfit in DME at Dimapur, Nagaland. The subsequent letters and/or appeal to reconsider the decision and the reply thereto does not give rise to any cause of action in favour of the petitioner as alleged by him. The respondent no.1 also says that the main respondent in this writ petition is Assam Rifles. The Head Quarter of Assam Rifles is at Shillong, Meghalaya, it has offices at different places in Assam as also in Nagaland. It has no office in West Bengal and as such is not separately represented. The petitioner found it convenient to appear in the PST/PET at Diphu, Assam and as such cannot now contend forum conveniens for DME at Dimapur Nagaland. All the records pertaining to the DME are at Dimapur, Nagaland and as such it will be inconvenient for the respondent nos. 2, 3 and 4 to appear and contest before this Court. Even though Union of India is the respondent no. 1 which has its office within the territorial jurisdiction of this Court but its representation will not suffice as the said respondent is not the answering respondent. Although the respondent no. 1 may have certain control over Assam Rifles but the recruitment process was entirely conducted by Assam Rifles and other agencies. The forum conveniens issue as sought to be invoked by the

petitioner also goes against the petitioner in view of the ratio laid down in the judgment reported in **AIR 2004 SC 2321 2004 (6) SCC 254 (Kusum Ingots & Alloys Ltd. Vs. Union of India** which has been considered in **Shanti Devi (supra)**. According to the respondent no. 1 if the petitioner could appear in the three stages of the recruitment process at Assam and Nagaland, it does not suit the petitioner to contend that the forum conveniens is in favour of the petitioner and against the respondents no. 2, 3 and 4. On the contrary, the respondents are to face inconvenience to appear and contest the proceeding in this Court.

Findings:

1. After hearing the parties and considering the materials on record, I find that the entire recruitment process under the aforesaid recruitment notice was conducted outside the State of West Bengal. The petitioner had appeared in the PST/PET as also in the Written Examination in Assam. The petitioner further appeared in the DME as also the RME at Dimapur, Nagaland. The petitioner as appears from a perusal of the writ petition is aggrieved on being declared medically unfit by the DME Board at Dimapur, at Nagaland. The petitioner applied for RME which was also conducted at Dimapur, Nagaland but ended in the same result. Being aggrieved by the result of RME he had come back to West Bengal and had undertaken medical tests and examinations through private and Government Hospitals in West Bengal. The petitioner applied for reconsidering the results of RME and DME by forwarding such results. The petitioner's prayer for reconsideration was turned down by the two memoranda respectively dated 8th March, 2022 and 29th March, 2022. The reconsideration took place at places outside West

Bengal. Even if the communication is received by the petitioner at Hooghly, it does not give rise to any part cause of action at Hooghly within the territorial jurisdiction of this Court. Thus the cause of action, if any of the petitioner is the infringement of his right to be considered for the job on having been declared medically unfit by DME and thus by RME both of which happened in Nagaland. The letters of reconsideration or its rejection does not give rise to any fresh cause of action to clothe this Court with jurisdiction.

2. Going by the provisions of Article 226 (2) of the Constitution of India as also the ratio laid down in the judgments cited at the bar i.e., *Kusum Ingots (supra)* and in particular *Shanti Devi (supra)* which takes into its fold all the previous judgments, I am also not convinced that this Court has territorial jurisdiction since no part cause of action has arisen within its jurisdiction. The ground of forum conveniens as sought to be pressed into force by the petitioner to maintain the writ petition in this Court also lends no assistance to the petitioner as Assam Rifles being the principal respondent does not have any office within the territorial jurisdiction of this Court to appear and contest this writ petition. The records are at Meghalaya, Assam and Nagaland. The officers of Assam Rifles who will be in a position to give instruction and throw light into the issue are all posted at Assam, Nagaland and Meghalaya. *Kusum Ingots (supra)* has clarified the position which has been discussed and approved in *Shanti Devi (supra)*.
3. The word of caution issued by the Hon'ble Supreme Court of India in the judgment reported in **ONGC vs. Utpal Kr. Basu reported in 1994 (4) SCC 711** should also be kept in mind. The cause of action if any of the petitioner emanated from being declared as medically unfit in the DME and RME at

Nagaland. The two communications rejecting the petitioner's prayer for reconsideration even if are set aside and/or quashed will not ensure the petitioner's benefit as the declaration as to his medical unfitness continues to remain until the result of the DME and RME are set aside. In prayer (a) and (b) the petitioner has sought for setting aside and quashing of the result of the DME and RME along with the two communications dated 8th March, 2022 and 29th March, 2022. So the petitioner is also aware of the fact that the DME and RME results are the main cause which unless set aside will have no impact to the petitioner.

The two communications dated 8th March, 2022 and 29th March, 2022 according to me are therefor, trivial and not connected with the main cause of action otherwise the setting aside and/or quashing of the two memo would have given the desired result to the petitioner and the petitioner was admittedly declared medically unfit outside the jurisdiction of this Court.

Conclusion:

1. The writ petition is therefor, dismissed holding that this Court lacks in territorial jurisdiction to receive, try and determine the writ petition.
2. Since I have only considered the issue of territorial jurisdiction, I have not considered the merits of the petitioner's case.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis after compliance with all necessary formalities.

(ARINDAM MUKHERJEE, J.)