

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA,
MIZORAM & ARUNACHAL PRADESH)
ITANAGAR BENCH.

WRIT PETITION(C) 350 (AP)/ 2010

Shri Rima Taipodia,
S/O Shri Tari Taipodia,
Permanent resident of
Liru Village, P.O. & P.S. Likabali,
District–West Siang,
Arunachal Pradesh.

.....Petitioner.

By Advocate:

*Mr. K. Ete,
Mr. N Ratan,
Mr. M. Kato,
Mr. D. Padu,
Mr. K. Tasso,
Mr. G. Kato,
Ms. S. Appa.*

-Versus-

1. The State of Arunachal Pradesh
Represented by the Chief Secretary,
Government of Arunachal Pradesh,
Itanagar.
2. The Arunachal Pradesh Public Service
Commission(APPSC), Itanagar, represented
by its Chairman.
3. The Commissioner(Finance),
Government of Arunachal Pradesh, Itanagar.
4. The Secretary(Personnel),
Government of Arunachal Pradesh, Itanagar.

Respondents.

By Advocate:

*Ms. G. Deka, Addl. Sr. GA.
Mr. N. Tagia.*

**BEFORE
THE HON'BLE MR. JUSTICE A.C. UPADHYAY**

Date of hearing : **15-03-2011**

Date of Judgment & Order : **15-03-2011**

JUDGMENT AND ORDER(ORAL)

Heard Mr. K. Ete, learned counsel for the petitioner, Ms. G. Deka, learned Addl. Senior Govt. Advocate, Arunachal Pradesh. Also heard Mr. N. Tagia, learned counsel, representing the Arunachal Pradesh Public Service Commission.

2. The writ petitioner has challenged the order dated 25.08.2010 passed by the Arunachal Pradesh Public Service Commission, where the Commission has cancelled the recommendation dated 21.01.2009 for appointment of the petitioner to the post of Sub-Treasury Officer.

3. Facts, leading to the filing of this writ petition, may be narrated, in brief as follows:

The petitioner was selected and appointed as a Sub-Treasury Officer, against 3% reserved quota, for physically challenged persons, on the basis of selection process and recommendation of the Arunachal Pradesh Public Service Commission(hereinafter referred to in short as 'APPSC'). One Sri Ojing Siram, by filing WP(C) No.78 (AP) of 2009, challenged the appointment of the petitioner on the ground of non-submission of proper disability certificate. The aforesaid writ petition was disposed of on 24.06.2009 by the learned single Judge of this court, directing the petitioner to appear before the State Medical Board of Arunachal Pradesh to ascertain with certainty as to whether the petitioner is a physically disabled person or not.

The petitioner preferred an appeal being WA No.12 (AP) of 2009, against the aforesaid order of the learned single Judge, on the ground that at the time of issuance of the disability certificate to the petitioner in the year 2003, there was no such guideline or mandatory requirement for a Specialist to be a member of a Medical Board. The aforesaid writ appeal was disposed of by an order dated 18.12.2009, passed by a division Bench of this Court, upholding the decision of the learned single Judge, by directing the petitioner to appear before the appropriate Medical Board to determine, if the petitioner really suffered from disability, as would place him in the status of a physically disabled person. The medical examination was directed to be completed within a period of four weeks from the date of passing of the order aforesaid.

Accordingly the petitioner approached before the Chief Medical Officer (CMO), General Hospital, Naharlagun, for medical examination, but the CMO, General Hospital, Naharlagun, refused to entertain personal request, without any official direction either from the APPSC or from this Court, and thus did not carry out medical examination of the petitioner. Thereafter, the petitioner submitted representation dated 12.01.2010, before the CMO aforementioned for conducting medical examination of the petitioner but the petitioner was never called for by the State Medical Board for medical examination.

Since time was passing out and the petitioner was not called for any medical examination by the State Medical

Board, to avoid any further confusion and delay, the petitioner approached the District Medical Officer, Aalo for his medical examination. The petitioner was thoroughly examined by the District Medical Board and a disability certificate, certifying the petitioner to be permanently disabled with 60% disability, was issued on 23.04.2010. Accordingly, the petitioner thereafter submitted the said report to the APPSC on 26.04.2010.

After a lapse of about three months, thereafter, on 16.07.2010, the APPSC served on notice to the petitioner asking him to explain the reasons for delay in the submission of the medical certificate/report. The notice was replied by the petitioner vide his letter dated 21.07.2010, explaining in detail the reasons for delay. However, suddenly, on 22.07.2010, the petitioner was served with a copy of an order of termination of service dated 14.07.2010, issued by the Commissioner, Finance, Govt. of Arunachal Pradesh. The petitioner contended that the termination order was issued without explaining any reason and without consultation with the APPSC, and without affording any opportunity of being heard.

On 25.08.2010 and 26.08.2010, the APPSC passed the impugned orders, arbitrarily rejecting the explanations given by the petitioner for delay in submitting the medical report and accordingly cancelled the recommendation made by the APPSC for appointment of the petitioner in the post of Sub-Treasury Officer. The petitioner has challenged the cancellation of recommendation made by the APPSC for appointment of the petitioner as Sub-Treasury Officer, by filing this writ petition.

4. Mr. K. Ete, learned counsel for the petitioner has submitted that in terms of the order passed by this Court in writ appeal being WA No12(AP) of 2009, the petitioner presented himself, well within time allowed by the Court before the State Medical Board, for his medical examination, but the CMO did not medically examine the petitioner for not having received any direction from this Court, but unfortunately all such reasons and explanation put forward by the petitioner before the APPSC was arbitrarily ignored and rejected.

5. It would be pertinent to depict hereinbelow the operative portion of the direction passed by this Court in WA No.12 (AP) of 2009, which reads as follows:

"In such circumstances, when the learned single Judge has taken a view that the appellant needs to be examined by a State Medical Board, which shall consist of persons, who can determine if the appellant really suffers from such disability, as would place him in the status of physically disabled person, we are of the view that the direction for re-examination by an appropriate Medical Board is not bad in law.

It is, however, in the interest of justice and in the attending circumstances of the present case, made clear that if the medical examination of the appellant, as directed, goes against the interest of the appellant, the appellant shall have the liberty to take recourse to such provision of law as may be permissible. The medical examination, as directed, shall be completed within a period of 4(four) weeks from today."

Apparently, the above direction for completion of medical examination within a period of four weeks could not be made on the petitioner, since the petitioner neither can organize

a medical Board to examine him nor can he direct the medical Board to complete the process in time.

6. Learned counsel for the petitioner has submitted that after having presented himself before the State Medical Board for medical examination in terms of the direction of the Court, the petitioner could not have compelled the authority concerned to get him medically examined. Apparently, the process of completing medical examination of the petitioner, which took some time, did not occur due to the fault of the petitioner, and the delay in submitting the medical report, if any, was neither appears to deliberate nor intentional.

7. Drawing the attention of the court to the relevant extract of the direction issued by the learned single Judge, which was affirmed by the Division Bench of this Court, learned counsel for the petitioner, has submitted that the State Medical Board was directed by the Court to send his report directly to the APPSC. On receipt of such medical report, the APPSC was directed reconsider the candidature of the petitioner. The relevant extracts of the order passed by this Court read as follows:

"Situated thus, it would be just and proper to direct Respondent No.3 to appear before the State Medical Board of Arunachal Pradesh within a period of 4(four) weeks from today and on such appearance, the said Medical Board would include one Orthopaedic Surgeon/Specialist to certify whether Respondent No.3, namely, Shri Rima Taipodia, is a physically disabled persons or not, as defined under Section 2(0) of the Persons with Disabilities(Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. It is further made clear that the State Medical Board

shall send its report/certificate directly to the APPSC and on receipt of such report/certificate, the APPSC shall reconsider the candidature of the Respondent No.3 for his selection, to the post of Sub-Treasury Officer, under the reserved quota."

Apparently the above direction was issued by the Court to the State Medical Board to send the report directly to the APPSC. Therefore, apparently putting the blame on the petitioner for delayed submission of medical report is not reasonable and justified.

8. Mr. N. Tagia, learned counsel appearing for the APPSC has initially submitted that this case is required to be heard together with WP(C) No.81(AP) of 2010, where the selection made by the APPSC is under challenge. Learned counsel for the petitioner rightly pointed out that this is a case, where the petitioner has been terminated from service, and thereafter, his recommendation has been cancelled by the APPSC for delayed submission of medical report. Therefore, challenge by any other candidate regarding the process of selection made by the APPSC in WP(C) No.81 (AP) of 2010, would not be at all material requiring both the petitions to be heard together.

9. Learned counsel for the APPSC has pointed out that the APPSC cancelled the recommendation of the petitioner for appointment as Sub Treasury Officer, only for delay in submission of the medical report. The operative portion of the order passed by the APPSC cancelling the recommendation of the petitioner reads as follows:

"ORDER

On the basis of the these findings the Commission has come to the conclusion that there is no merit in the case of Shri Rima Taipodia because he could not obtain the medical report and arrange its submission to the Commission within the time frame set by the Hon'ble Division Bench vide its order and judgment dated 18/12/2009. It is clear violation of the court order.

Therefore, the Commission has decided to cancel its recommendation made on 21/01/2009 for appointment of Shri Rima Taipodia to the post of Sub-Treasury Officer under reserved quota of the Physically Handicapped person. With this the case stands dispose off. Copy of the order be forwarded to the Govt. and Sri Rima Taipodia.

Order passed on this day of 25th August/2010."

10. It has been contended on behalf of the APPSC that since the petitioner could not adduce any material and/or substantive evidence to convince the APPSC, for his inordinate delay in submitting the medical report, after the court's directive, the Commission did not feel it necessary to write to the Chief Medical Officer, since the Division Bench of this Court did not specifically direct the APPSC to write to the CMO for constitution of a Board, for medical examination of the petitioner as ordered by the learned single Judge.

11. However, the aforesaid reasons put forward on behalf of the APPSC for cancellation of the recommendation is apparently arbitrary and irrational. The direction issued by the learned single Judge, was not to the petitioner to submit the medical report, the order passed by this Court, specifically directed the APPSC to act on the medical report, submitted before it directly by Medical Board, therefore, the APPSC cannot

be heard to say that it had no role to play to obtain the medical report or to take necessary steps in this regard for getting the petitioner medically examined by a medical Board. The moot question for determination by the Medical Board was whether the petitioner was a disabled person or not? The APPSC ought not have forgotten that the petitioner was initially found to be disabled person after verification of all necessary certificates, and accordingly after having accepted the physical disability certificate of the petitioner, he was selected and recommend by the APPSC. The question of re-examination and reevaluation of the petitioner arose on a challenge made before this High Court, suspecting the disability certificates of the petitioner, wherein a direction was issued by the Court to examine and ascertain with certainty, whether the petitioner is at all a disabled person or not. Nobody even whispered either before the APPSC or this Court that the petitioner was not a physically disabled person and all his certificates are false. Apparently, on examination by the Medical Board, the petitioner was once again confirmed to be a disabled person, and thus qualified to be appointed in the disability quota. If the Medical Board would not have found him physically disabled the situation would have been different, but cancellation of recommendation by an Apex body like APPSC on unconvincing ground, like failure to produce the disability certificate in time, is apparently *arbitrary, capricious and irrational*, when ex-facie the petitioner had no control or role to play except presenting himself for examination on issuing a medical certificate of disability.

12. The decision of the APPSC to cancel the recommendation for delayed submission of the medical report by the petitioner is apparently a disciplinary action for the remiss of the employee. Usually such disciplinary action for any remiss committed by the employee should have been left to the State Govt. to decide by taking appropriate administrative action. But instead, the APPSC issued show cause notice to the petitioner for delayed submission of the Medical report and took administrative action by withdrawing/canceling its own recommendation for appointment of the petitioner. The above action of the APPSC is apparently *arbitrary, mala fide* and *capricious*.

13. In view of the above discussions and considering the facts and attending circumstances of the case, I am of the considered view that the action of the APPSC is apparently actuated by *malafide, capriciousness* and *arbitrariness*. Therefore, the action of the APPSC in cancelling the recommendation of the petitioner warrants interference by this Court and accordingly the impugned order, cancelling the recommendation of the petitioner is accordingly set aside and quashed.

14. This writ petition is disposed of in terms of the above observation and directions.

JUDGE

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