(2009) 09 GAU CK 0039

Gauhati High Court (Itanagar Bench)

Case No: Writ Petition (C) No. 83 (AP) of 2009

Kipa Raja and Others		APPELLANT
	Vs	
State of Arunachal Pradesh and Others		RESPONDENT

Date of Decision: Sept. 15, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2010) 3 GLR 830 : (2009) 5 GLT 143

Hon'ble Judges: P.K. Musahary, J

Bench: Single Bench

Advocate: P. Taffo, B. Tapa, R.C. Tok, T. Gyadi and T. Nokam, for the Appellant; R.H. Nabam, N. Tagia and K. Ete, for the Respondent

Final Decision: Dismissed

Judgement

P.K. Musahary, J.
Heard Mr. P. Taffo, learned Counsel for the petitioners and Mr. N. Tagia, learned Standing Counsel for the respondent No. 2/APPSC. Also heard Mr. R. H. Nabam, learned Senior Government Advocate, appearing on behalf of the respondent No. 1 and Mr. K. Ete, learned Counsel for the respondent Nos. 3 to 7.

2. The case of the petitioners is that they appeared in the combined competitive examination conducted by the Arunachal Pradesh Public Service Commissioner in 2006 and they were found qualified in the written as well as viva voce tests. In the final selection list published by the Arunachal Pradesh Public Service Commission ("the Commission") on 18.1.2009, the names of the petitioners appeared at serial Nos. 7, 42, 47 and 49. It is claimed that the petitioners were physically and medically fit but they were disqualified in the physical endurance test and in place of the petitioners, the private respondent Nos. 3 to 7 were selected, although, in the select list published by the Commission, their names appeared at serial Nos. 58, 61, 69, 70 and 89. The petitioners

are aggrieved by the selection of the aforesaid private respondents against the posts of Deputy Superintendent of Police (DSP).

3. Mr. Taffo, learned Counsel for the petitioners submits that in the advertisement dated 25.7.2006 (Annexure 1 to the writ petition) published by the Commission, it is provided that the candidates must be physically fit to tour/travel in remote places in Arunachal Pradesh on foot. Candidates opting for Deputy Superintendent of Police (APPS) post must posses the physical and medical standard, i.e., physical fitness. There is no mention about physical endurance test in the said advertisement but subsequently by a notice dated 16.10.2008 (Annexure II to the writ petition), the Commission provided that the candidates who opted for the post of Dy. Superintendent of Police would have to Undergo standard physical test as envisaged in the Combined Competitive Examination Rules, 2001. It has also been provided that the candidates who have opted for DSP post, will have to qualify in physical efficiency test, which includes 1600 metres (1 mile) race to be completed in 7 minutes, long jump of 335.28 cm (3 chances to be given); and Oostacle crossing, etc. According to Mr. Taffo, since the original advertisement published by the Commission did not indicate conducting of such test, the method taken by the Commission in conducting the physical endurance test is unauthorised and illegal. It is also submitted that such endurance test is meant for recruitment to the post of constable, etc., and it is not meant for the high ranking police officials like Deputy Superintendent of Police. It is enough if the candidates who have opted for DSP post are found qualified in the medical test and physical standard. Because of the wrong procedure followed by the Commission in conducting the medical endurance test, which is not provided in the original advertisement, the petitioners have been deprived of being selected in the posts of DSP giving way for the private respondents who are in the much below position in the merit list published by the Commission.

4. Mr. Tagia, learned Standing Counsel for the Commission submits that although, in the original advertisement published by the Commission, no mention was made about the physical endurance test in respect of the candidates for the DSP posts, it was notified subsequently by the Commission in its notice dated 16.10.2008 as per provision under the Arunachal Pradesh Combined Competitive Examination Rules, 2001. He refers to appendix-III of Rule 11, para 4 of the said Rules which has been annexed as annexure-A to the affidavit-in-opposition filed by the Commission, which provides amongst others that "the physical fitness test must precede the personality test. This physical fitness shall be conducted by Inspector General of Police in presence of one of the Members of the Arunachal Pradesh Public Service Commission". The candidate will be put through physical efficiency test as indicated below:

For Male candidates:

1. 1,600 metres (1 mile) race to be completed in 7 minutes.

2. Long jump of 335.28 cm (3 chances to be given)

3. Obstacle crossing of any six of the following:

(i) 182.88 cm x 25.40 cm pickets over which the candidates have to jump and cross.

(ii) Clearing the wall of 152.40 cm x 213.36 cm x 60.96 cm.

(iii) Jump by holding the rope from an obstacle of 243.84 cm.

(iv) Tarzan swing of 304.80cm long.

(v) Parallel rope of 914.40 cm long.

(vi) Climbing the vertical rope of 487,68 cm long.

(vii) Crossing 182.88 cm wall.

For female candidates:

1. 100 metres race in 16 seconds.

2. 800 metres race in 4 minutes.

3. Long jump of 304.80 cm (3 chances to be given).

4. High Jump of 91.44 cm (3 chance to be given).

5. It has been specifically stated in para 6 of the counter affidavit that the petitioners failed to qualify in the 1600 metres (1 mile) race in 7 minutes which is a vital event for the candidates opting for the post of DSP. Further in para 7 of the aforesaid affidavit, it is clearly stated that no recruitment criteria was altered at any point of time in the course of recruitment process. It has further been stated in para 13 of the counter affidavit that although, the petitioners had opted or preferred for DSP, they have been recommended against their second preference and this was done because they could not qualify in the 1600 metres race in 7 minutes. Mr. Tagia submits that no injustice or discrimination has been done in so far as the selection/recommendation was made by the Commission in respect of the posts of DSP and no injustice has been done to the petitioners inasmuch as they have been recommended for other posts as per their second choice.

6. Mr. K. Ete, learned Counsel appearing for the private respondent Nos. 3 to 7 adopts the submissions made by the learned Standing Counsel for the Commission. However, in addition to the above submissions, Mr. Ete, submits that before the Arunachal Pradesh Combined Competitive Examination Rules, 2001 were framed, the "Government of Arunachal Pradesh framed the Arunachal Pradesh Police Service Rules, 1989 wherein, in the case of direct recruitment to police service including DSP, provisions were made for physical fitness teat, which must precede the personal test. Under Rule 7 of the aforesaid Rules, it is specifically provided that the candidates will be put through physical efficiency

test, which includes in case of male candidates, 1600 metres (1 mile) race to be completed in 7 minutes. The Arunachal Pradesh Combined Competitive Examination Rules, 2001 were framed in the line of the Arunachal Pradesh Police Service Rules, 1989 insofar the direct recruitment to the post of DSP is concerned inasmuch as some criteria have been laid down for the physical fitness test.

7. I have carefully gone through the provisions made in the Arunachal Pradesh Combined Competitive Examination. Rules, 2001. Rule 11 of the aforesaid Rules provides that the candidates applying for the post of Arunachal Pradesh Police Service and called to the interview shall be required to undergo physical standard test as prescribed in Appendix III. For a male candidate, it is specifically provided that a male candidate must complete 1600 metres (1 mile) race in 7 minutes. Since the Rules provide for such physical efficiency test, the submissions made by the learned Counsel for the petitioners to the effect that the Commission of its own conducted the said physical test without indicating anything about the same in the original advertisement, cannot be accepted. The Commission, in my considered view, is bound to follow the aforesaid 2001 Rules in the matter of selection of the candidates because of the nature of duty and responsibility attached to the post of DSP. The Rules have specifically provided for such physical test and when the Commission has conducted such physical test on the candidates including the present petitioners, no fault can be found in it. The present petitioners have been found not qualified in the said physical test.

8. It is to be noted that the Commission published the notice dated 16.10.2008 requiring the candidates who have opted for the posts of DSP to undergo standard physical endurance test. The petitioners participated in the said test before the Commission for the aforesaid standard physical test and they were found to be not successful in the said test. Thereafter, they filed the present writ petition only on 27.2.2009 challenging the aforesaid physical test. The petitioners could have challenged the aforesaid notice dated 16.10.2008 before they participated in the physical test but they have challenged the same only after they participated and found to be unfit in the said physical test. In the case of Nikhilesh Das Vs. State of Tripura and Others, this Court in para 15, held, thus:

15. I have carefully gone through the above decisions cited by the learned senior counsel for the respondent Nos. 2 and 3, the ratio of the above decisions is that if a candidate takes a calculated chance and appears at the interview without any protest and when be found that he has become unsuccessful, he cannot turn round and questioned the legality of the same by filing petition under Article 226 of the Constitution of India. Admittedly, the petitioner, in the present case, did not raise any objection against the advertisement, mode of selection adopted by the TPSC rather he appeared at the interview held for selection of the suitable candidates for the post of Assistant Professor in the Commerce stream. The petitioner filed this present writ petition after the result of the said selection test has been published. In the above factual matrix and applying the principles laid down by the hon''ble Apex Court, this Court has no hesitation in holding that the petitioner is barred by the principle of estoppel from challenging the result of the selection test held on

29.12.2001 and consequent appointments of the respondent Nos. 4 to 8 to the posts of Assistant Professor in Commerce stream.

The aforesaid decision squarely covers the present case.

9. Because of the aforesaid position, I do not find any merit in this petition and accordingly, the same is liable to be dismissed, which I do hereby.

10. There shall be no order as to costs.