

**(2010) 10 MAD CK 0189**

**Madras High Court**

**Case No:** Writ Petition No. 40719 of 2006

K. Asaithambi

APPELLANT

Vs

Director General of Police and  
Chairman, Tamil Nadu  
Uniformed Services of  
Recruitment Board

RESPONDENT

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**Date of Decision:** Oct. 25, 2010

**Hon'ble Judges:** D. Hariparanthaman, J

**Bench:** Single Bench

**Advocate:** S. Ilamvaludhi, for the Appellant; Lita Srinivasan, Government Advocate, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

D. Hariparanthaman, J.

The Petitioner was a candidate for direct recruitment to the post of Sub-Inspector of Police for the year 1994-1995. The Petitioner secured 55 marks. Though the cut-off mark was 55, four candidates obtained 55 marks. Hence, the Petitioner was not selected. The oldest among the four was selected. He questioned the non-selection before the Tamil Nadu Administrative Tribunal by filing O.A. No. 6431 of 1997. A batch of Original Applications were filed, questioning the non-selection to the post of Sub-Inspector of Police. The said batch was disposed by the Tamil Nadu Administrative Tribunal on 10.09.1998. The Tribunal held that though four persons secured the cut-off mark of 55, elderly among them was selected and therefore there was nothing wrong in non-selection of the Petitioner. However, the Tribunal opined that the non-selection of the Petitioner was not due to his fault and therefore he should be accommodated in future vacancies.

2. Hence, the Petitioner made a representation dated 07.04.2000 to appoint him as Sub-Inspector of Police. The same was rejected by the Director General of Police, the Respondent herein, by an order dated 25.05.2000 stating that his non recruitment

for the post of Sub-Inspector of Police for the year 1994-1995 was due to medical 3 unfitness and that therefore he could not be considered for appointment to the post of Sub-Inspector of Police.

3. The Petitioner has filed the Original Application in O.A. No. 4650 of 2000 (W.P. No. 40719 of 2006) to quash the aforesaid order dated 25.05.2000 of the Respondent and for a direction to the Respondent to appoint the Petitioner as Sub-Inspector for the year 1994-95.

4. The Respondent filed reply affidavit refuting the allegations. The Respondent has stated that the Petitioner was not selected for the post of Sub-Inspector of Police for the year 1994-1995, since he was medically unfit. Hence, he could not ask for appointment and there is no infirmity in the impugned order.

5. Heard Mr. S. Ilamvaludhi, learned Counsel for the Petitioner and Mrs. Lita Srinivasan, learned Government Advocate for the Respondent.

6. It is not in dispute that the Petitioner is a candidate for direct recruitment to the post of Sub-Inspector of Police for the year 1994-1995. It is also not in dispute that he secured 55 marks. He was not selected though he secured the cut-off mark. He filed O.A. No. 6431 of 1997 before the Tribunal, questioning his non-selection. A batch of Original Applications was filed before the Tamil Nadu Administrative Tribunal on the same issue.

7. The Respondent filed a counter affidavit in O.A. No. 6431 of 1997 justifying its stand for non-selection of the Petitioner. The relevant passage in counter affidavit filed by the Respondent in O.A. No. 6431 of 1997 is as follows:

The applicant in the above O.A. Thiru.K. Asaithambi (18/0383) belongs to B.C. Community. The total marks scored by this applicant is 55.00 and having date of birth as 21.03.1969. The last candidate selected has also scored 55.00 marks but his date of birth is 20.06.1966. The elderly amongst the two applicants having equal marks has precedence and the latter is therefore, been considered for selection.

8. The Tribunal disposed the batch of Original Applications, questioning the non-selection for the post of Sub-Inspector of Police by an order dated 10.09.1998. Para 7 (iv) of the order of the Tribunal deals with the case of candidates who secured same marks, but were not selected. There are two other candidates, who also secured 55 marks, but were not selected. Para 7(iv) of the order of the Tribunal dated 10.09.1998 deals with the Petitioner and the same is extracted here-under:

The applicant Thiru.K. Asaithambi (18/0383) in O.A. No. 6431 of 1997 belongs to BC community. The total marks scored by this applicant is 55.00 and having 21.03.1969. The last candidate selected has also scored 55.00 marks but his date of birth is 20.06.1966. The elderly amongst the two applicants having equal marks has precedence and the latter is therefore, been considered for selection.

9. Ultimately, the Tribunal held that the Respondent could not be found fault for selecting the elderly person when more than one person secured the cut off mark. Para 18 of the order of the Tribunal dated 10.09.1998, that is relevant for the purpose of the case is extracted here-under:

The Respondents have stated that some vacancies are still unfilled to meet eventuality of any decision by High Court in favour of some of the candidates. We think that, on grounds of equity vacancies, if available should go to those six applicants who among the applicants in O.A. Nos. 4087/97, 4431/97 and 6431/97, having got equal marks along with selected candidates, but were not selected with reference to their dates of birth being later than that those who were selected. Their cases of non-selection is not due to any deficiency in regard to performance, but due to their dates of birth being later than the case of those whose dates of birth was earlier. This is purely a matter of chances and luck. They should not be allowed to lose selection due to facts beyond their control, having put up equal performance, especially so when vacancies are available.

In the said paragraph, it is stated that the non-selection of the Petitioner was not due to his fault. In the said circumstances, the Tribunal directed the Respondent to appoint him in future vacancies.

10. Based on the said observation, the Petitioner made a representation dated 07.04.2000 to consider him for appointment to the post of Sub-Inspector of Police. The same was rejected by the impugned order dated 25.05.2000 and the same is extracted here under:

The Petitioner though secured 55 marks which is eligible for selection and appointment to the post of Sub-Inspector of Police during 1994-95, recruitment was found unfit (Eyes) in the Medical Examination conducted by a duly constituted Medical Board. Hence the Petitioner's request to select and appoint him cannot be considered as it is against the rules position.

11. According to the Respondent, the Petitioner was not selected for the post of Sub-Inspector of Police for the year 1994-1995 on the ground that he was found unfit (eyes) in the medical examination conducted by the duly constituted Medical Board. According to the Petitioner, that was not the case put-forth by the Respondent when he questioned non selection by filing O.A. No. 6431 of 1997. This is not disputed by the learned Government Advocate.

12. In the batch of Original Applications, the Respondent took a plea that 16 applicants were medically unfit. The names of the medically unfit candidates were found in para 6 of the order of the Tribunal and the same is extracted here-under:

As correctly contended by the learned Counsel for the Petitioner, the name of the Petitioner is not one among them. On the other hand, the Petitioner was not selected on the ground that apart from Petitioner, three others also secured the

same 55 marks and the eldest among the four were selected and the Petitioner was not the eldest person. In the case of 16 persons who were medically found unfit, the Tribunal held that their non-selection was justified. Para 13 of the order of the Tribunal is extracted here-under:

Applicant's Name	O.A.Nos.
J.N.Mahendrababu (01/1501)	3892/97
P.Govindaraju (09/0342)	2
S.Tamilselvan (19/1010)	3
M.Kalishan (24/0645)	3803/97
R.Mariaselvam (16/0061)	4087/97
N.Ramachandran (18/0988)	6
A. Mariappan	7135/97
A.Kathiravani (17/0617)	8235/97
M.S.Subramanian (23/0163)	9326/97
A.V.Pushpakali (06/0480)	4032/97
J.Premkumar (18/0152)	4546/97
K.Dhivakarababu (18/0109)	5064/97
R.Mariaselvam (16/0061)	5865/97
A.Muthuandi (24/0083)	5409/97
V.Kesavan (08/0088)	5523/97
	6695/97

Regarding medical examination, it has been stated that the candidates were examined by a duly constituted medical board which declared them unfit. Their opinion is binding on the Board. We agree that the post requires a very high degree of physical fitness and insistence on the candidates to conform to the physical standards and medical fitness would be necessary. The Medical Board consists of experiences team of experts and their opinion has to be necessarily accepted.

13. Now the Respondent seeks to reject the claim of the Petitioner on the ground that the Petitioner was also a person who was found unfit by the Medical Board. The learned Government Advocate has produced the list of 114 candidates who were medically found unfit. The name of the Petitioner stands at Serial No. 75. But, the learned Government Advocate is not able to explain as to why the Petitioner was not shown as one among the medical unfit candidates, when the batch of original applications were heard by the Tribunal. Furthermore, the learned Government Advocate is not able to produce the medical records, finding the Petitioner as unfit. It is stated by the learned Government Advocate that the records are not available.

14. The learned Counsel for the Petitioner heavily relies on a decision dated 30.07.2008 of a Division Bench of this Court in W.A. No. 339 of 2008, wherein, the Appellant in that case disputed the correctness of the certificate of the Medical

Board and the Division Bench directed the Appellant to deposit a sum of Rs. 20,000/-in cash with the Registrar General of this Court and the Appellant was sent for re-examination by a Special Medical Board at the Government General Hospital, Chennai. Ultimately, the Special Medical Board found him that he was fit and an order of appointment was also issued. In the aforesaid order, it is stated that if the assertion was found to be incorrect, the Appellant would have to forfeit the sum of Rs. 20,000/-deposited with the Registrar General of this Court, to the Government. Since the Special Medical Board found that the Appellant was without any defect, the Division Bench also directed the Registry to refund the deposited amount to the Appellant. The learned Counsel for the Petitioner seeks a similar direction in this regard.

15. In these circumstances of the case, particularly, when in the earlier round of litigation, the Petitioner's non-selection, was based on his date of birth and not due to medical unfitness and the learned Government Advocate is not able to produce the medical records, in view of the aforesaid order of the Division Bench of this Court, a direction is issued to the Petitioner to deposit a sum of Rs. 20,000/-in cash with the Registrar General of this Court, within four weeks from today and the Government is directed to re-examine the Petitioner by a Special Medical Board to be constituted in the Government General Hospital, Chennai within a period of four weeks thereafter. If the Special Medical Board finds that the Petitioner is unfit, the amount deposited by the Petitioner would be paid to the State. If it is otherwise, it would be refunded to the Petitioner and the Petitioner is entitled for appointment.

16. With the above said directions, the writ petition is disposed of. No costs.