

09-02-2010 — 09-02-2010.

SLNO — 164

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,
MANIPUR, TRIPURA, MIZORAM & ARUNACHAL PRADESH)

ITANAGAR BENCH.

WRIT PETITION(C) NO.100 (AP) 2009

Shri Abu Taba,
Son of Shri Ratung Taba
resident of Rajabapak Type-1,
PO&PS-Seppa,
District East Kameng,
Arunachal Pradesh.

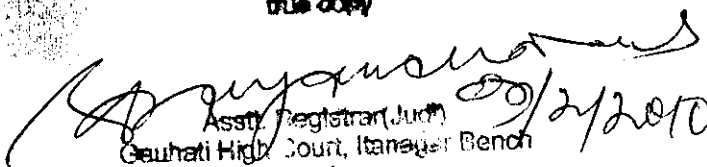
.....Petitioner.

-Versus-

- 1.The State of Arunachal Pradesh,
represented by the Chief Secretary,
Government of Arunachal Pradesh,
Itanagar.
- 2.The Arunachal Pradesh Public Service
Commission,
Itanagar, represented by its Chairman,
- 3.Shri Okan Sitek,
Son of Shri Onyok Sitek,
Village- Sianong, Post Office & Police Station
Yingkiang, District- Upper Siang,
Arunachal Pradesh.

.....Respondents.

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Asstt. Registrar (Judicial)
Gauhati High Court, Itanagar Bench
Itanagar
09/24/2010
Authorised by S 76 of Act I of 1957

**BEFORE
THE HON'BLE MR. JUSTICE B.D.AGARWAL**

For the Petitioner : Mr. M.Batt, Advocate
For the Respondents : Mr.R.H.Nabam, Sr.Govt. Advocate,
Mr.N.Tagia, Advocate,
Mr.A Apang, Advocate.

Date of hearing and judgment: **25.06.2009**

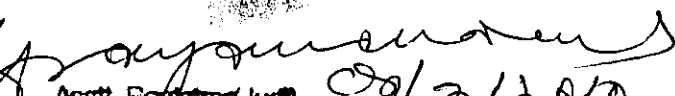
JUDGEMNT AND ORDER (ORAL)

The facts of the case would reflect the poor state of affairs in the office of the Arunachal Pradesh Public Service Commission (in brief 'APPSC') and the facts being narrated herein below would also reveal that an expert body like APPSC is selecting candidates by way of superficial examination of documents. It is made clear that I am not making any observation with regard to the quality of written test and interview being conducted by the APPSC.

2. Heard Shri M. Batt, learned counsel for the writ petitioner as well as Shri R H Nabam, learned Senior Government Advocate for respondent No.1; the APPSC (Respondent No.2) was represented by Shri N Tagia, learned counsel, whereas the private Respondent No.3 was represented by Sri A. Appang, learned counsel. I have also perused the pleadings as well as the documents for the parties.

3. At the out set, I would like to mention here that yesterday also this court had an occasion to examine the legality of

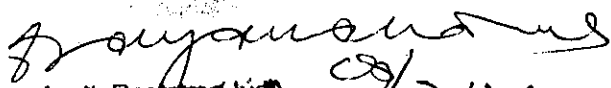
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Itanagar
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appointment to one Shri Rima Taipodia as Sub-Treasury Officer against the reserved quota for physically handicapped person. Finding sufficient materials to doubt about the genuineness of the medical certificate of the said person this court had also directed the said Shri Rima Taipodia to undergo fresh medical test before the State Medical Board of Arunachal Pradesh vide order dated 24.6.2009 in WP(C) No. 78(AP) 2009.

4. The writ petitioner of this case is challenging the recommendation of respondent No.3, Shri Okan Sitek for his appointment as Sub-Treasury Officer against the reserved quota for physically handicapped person. The APPSC started the process of recruiting suitable persons for filling up 50 posts in different categories in the month of July, 2006. After competitive examination a merit list was published on 14.10.2008 and thereafter final list was published on 17.1.2009. The APPSC also reserved 3% posts for physically disabled persons under the provisions of the "Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995" (hereinafter referred to as the 'Disabilities Act'). As a matter of precautions the APPSC issued a public Notice on 20.3.2007 directing that physically handicapped persons are required to submit Part-B Certificate of Disability/Handicapped Certificate issued by the competent Medical Board. On the basis of such certificates submitted by the candidates, a separate merit list for the disabled persons was issued, wherein details of nature of disability, percentage of disability and documents furnished by the candidates in support of their disability were also mentioned. As per this list the petitioner was shown to be suffering from Partial Blindness, whereas respondent No.3 was shown to be suffering from Orthopaedically handicapped and also having speech disability. However, respondent No.3 subsequently submitted another certificate issued by a Medical Board of General Hospital, Naharlagun on 22.10.2008. The earlier disability certificate was issued by a Medical Board of

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Yingkiong, District Hospital on 30.4.2007. In other words, the Medical Certificate of Yingkiong hospital was obtained after the vacancies were notified by the APPSC and in this certificate there was no mention of any low vision of the respondent No.3. However, relying upon the second certificate, the respondent No.3 has been recommended by the APPSC for his appointment as Sub-Treasury Officer by the impugned notification dated 17.1.2009. This recommendation of respondent No.3 has been basically challenged on the following grounds: i) That the respondent No.3 could not have been recommended for the post of Sub-Treasury Officer as only one of such posts was reserved for Orthopaedically disabled persons, whereas the appointment has been made against visually disabled quota, ii) The respondent No. 3 did not suffer from 40% disability, which is the minimum requirement of disability U/s. 2 (t) of the Disability Act, iii) The recommendation/appointment of respondent No.3 has also been challenged on the ground that Medical Certificate showing him as a disabled person due to low vision is not a genuine one.

5. On the other hand, Sri A. Apang, learned counsel for the respondent No.3 took a preliminary objection about the maintainability of the writ petition on the ground that the writ petitioner himself is not qualified to be recommended or appointed for any post, inasmuch as, he did not secure 33% marks in as many as three papers. With regard to Medical Certificates Sri Apang has submitted that since the respondent hailed from Upper Siang District, of which Yingkiong is the Head Quarter, he approached District Hospital for obtaining Disability Certificate and since there was no Eye Specialist in the hospital, the vision of the petitioner could not be examined. The respondent No.3 has furnished a document from the District hospital authority certifying that there was no eye specialist in the hospital. Be that as it may, if the respondent No.3 was suffering from low vision the Medical Board at Yingkiong was under an obligation to refer respondent

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No.3 to any other Govt hospital for undergoing requisite medical test for his low vision. According to the learned counsel, the respondent No.3 is still ready and willing to undergo fresh medical test, if so directed by the court.

6. So far as the APPSC is concerned, it was the submission of Sri N. Tagia, learned Standing counsel that APPSC acted upon the latest Medical Certificate furnished by the respondent No.3 and as such the recommendation was not made on any extraneous consideration, nor was it a malafide action.

7. Sri R.H. Nabam, learned Senior Govt Advocate has submitted that the State Govt. had no role in the selection of respondent No.3 or non-selection of the petitioner since the APPSC is the competent authority for the purpose, and the said responsibility is vested upon the APPSC.

8. As required under the law the State Govt has identified various posts, wherein physically disabled persons can be considered for appointment. A copy of the Notification dated 21.5.2007 has been submitted by the writ petitioner. Under this notification only Orthopaedically and partially deaf persons can be appointed as Sub-Treasury Officer. However, the respondent No.3 has been appointed as Sub-Treasury Officer on the ground that he is a visually disabled person. In other words the respondent No.3 was not recommended against the reserved quota for orthopaedically disabled persons. After going through the documents, filed by the petitioner, it is difficult on my part to ignore the gross mistake committed by the APPSC, which is certainly an expert body for this purpose. It may also be mentioned here that only one post of Sub-Treasury Officer was reserved and the APPSC had already recommended the name of one Shri Rima Taipodia for the said post against reserved quota of Orthopaedically handicapped persons. Hence, there was no scope

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to recommend the name of respondent no.3 for the post of Sub-Treasury Officer. By doing so the APPSC has demonstrated as to how irresponsibly it acts.

9. The aforesaid illegality in recommending the name of respondent No.3 for his appointment as Sub-Treasury Officer against reserved quota smacks foul play and this aspect cannot be totally ruled out in the given circumstances. I say so, because when the writ petitioner obtained opinion from the APPSC, exercising its right under Right to Information Act, the APPSC initially intimated the petitioner that respondent No.3, Shri Okan Sitek, along with Shri Rima Taipodia, was selected and recommended for the post of Sub-Treasury Officer as handicapped person. In this reply letter dated 9.2.2009 it was categorically stated that respondent No.3 was selected under reserved quota since he was suffering from speech disability (Dumb). The APPSC also informed the petitioner that the quota for Blind/ Low Vision post was still unfilled. After the aforesaid reply the writ petitioner submitted a representation claiming consideration of his recommendation against the post earmarked for Blind/ Low Vision persons. Only thereafter the APPSC issued a corrigendum dated 4.3.2009 clarifying that earlier information was incorrect and respondent No.3 was in fact suffering from Low Vision Disability. Even after realising the mistake the APPSC failed to take any corrective measure to cancel the appointment of respondent No.3 as Sub-Treasury Officer, the post which was already filled up by way of recommending the name of Shri Rima Taipodia. In my considered opinion, such illegality, gross negligence and error by an expert body like APPSC cannot be condoned and the authority has to be made accountable for such illegality.

10. Section 2(b) and 2(o) defines 'blindness' and 'locomotor disability' under the Disabilities Act. For ready reference, the aforesaid definitions are quoted below:

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" (b) **"blindness" refers to a condition where a person suffers from any of the following conditions, namely:-**

- (i) **total absence of sight; or**
- (ii) **visual acuity not exceeding 6/60 or 20/200(snellen) in the better eye with correcting lenses;or**
- (iii) **limitation of the field of vision subtending an angle of 20 degree or worse;"**

"(o) "locomotor disability" means disability of the bones , joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy;"

Similarly Section 2(t) of the Disabilities Act has laid down the minimum percentage of disabilities for appointment against any identified post to physically disabled persons. Section 2(t) is also quoted below:

"(t) "person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority."

11. Broadly speaking physical disability is confined to 3 (three) categories- (i) Orthopaedically Disabled, (ii) Visually Disabled and (iii) Hearing Impaired. Hence, in my considered view a person suffering from locomotor disability would also fall within the category of 'orthopaedically handicapped' persons. In the present case, the second Disability Certificate furnished by the respondent No.3, certifying that Oken Sitak was suffering from 40% disability, was based on his locomotor disability and low vision . The doctors of the Medical Board has calculated 30% and 10% disability from each disablement and in aggregate the respondent No.3 has been certified suffering from 40% disability. According to the Medical Board, the respondent No.3 was suffering from

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amputation of wrist as well as visual disability, which resulted in 40% disability. Hence, it was the duty of the APPSC to exclude percentage of disability which fell in the category of 'locomotor disability'. In other words, the APPSC was entitled to take into consideration only the percentage of disability which related to 'Low Vision' and not the cumulative disability.

12. Since it was a case of furnishing two disability certificates from two separate Medical Boards, the APPSC should have scrutinised the candidature of respondent No.3 more carefully. Instead, the name of respondent No.3 appears to have been cleared even without superficial examination of the documents. It is also mentioned here that in the Disability Certificate the signature of the victim is also required to be obtained. However in the second certificate there does not appear to be any signature of the candidate. This aspect also did not draw the attention of the APPSC, which is really shocking. These lapses also indicate that respondent No.3 was totally not questioned about his disability before recommending his name for appointment as Sub-Treasury, the post which was already filled up by another candidate.

13. For the aforesaid reasons, I find no hesitation or difficulty to quash the recommendation of the name of the respondent No.3 against the post of Sub-Treasury Officer. However, in the interest of justice, the respondent No.3, namely, Shri Okan Sitek is directed to appear before State Medical Board of Arunachal Pradesh within a period of 4(four) weeks from today and on such appearance, the said Medical Board would conduct another vision test of the respondent No.3 and issue appropriate certificate, clearly indicating the percentage of disability due to loss of vision, if any. It would be appropriate that the hospital authority shall constitute a fresh Medical Board excluding the doctors who had earlier examined respondent No.3. The Medical Board is further

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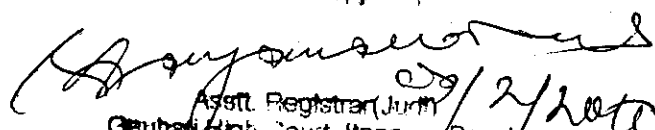
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directed to send the Disability Certificate directly to APPSC under sealed cover and on receipt of such report/certificate of Respondent No.3 the APPSC shall reconsider the candidature of respondent No.3. In the event APPSC finds that Respondent No.3 is not eligible for fresh recommendation as a visually challenged /disabled person, they shall be at liberty to consider the case of the writ petitioner, if the petitioner fulfils all the criteria for his recommendation and also taking a decision about his eligibility on the basis of marks obtained by him in the written test.

14. With the aforesaid directions, the writ petition stands allowed. Since, I hold that the APPSC has committed gross illegality in recommending the name of respondent No.3 against reserved quota for Orthopaedically handicapped person, and also furnished wrong information to the petitioner under RTI Act, I hereby, impose costs of Rs. 25,000/- (Twenty five thousand). Costs shall be paid by APPSC to the writ petitioner within a period of 4(four) weeks from today, failing which the amount shall carry interest @ 8% per annum.

SDF B. D. AGARWAL
JUDGE

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