

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

O R D E R

Satyapa1 Kaswan v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.1905/2005
under Article 226 of the
Constitution of India.

Date of Order : 30th August, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Sandeep Shah, for the petitioner.
Mr. L.R.Upadhyay, Dy.Govt.Advocate.

BY THE COURT :

Admit.

with the consent of parties this petition is
heard for final disposal.

The petitioner, an Ex. Army Personnel, in
pursuant to a notification dated 18.1.2003 submitted
an application to consider his candidature for the
purpose of appointment to the post of Constable in
Rajasthan Police in District Sriganganagar. The

petitioner qualified written test and also physical efficiency test by remaining first in 1000 meters run, however, his candidature was rejected by the respondents by treating him suffered with flat foot. Being aggrieved by the same the petitioner preferred a writ petition (SBCWP No.3270/2003) before this Court which came to be accepted by judgment dated 14.10.2003 in following terms:-

“As such, the respondents shall consider the case of the petitioner for the post in question by constituting a Medical Board, which will re-examine the case of petitioner with regard to his physical fitness. Medical Board so constituted will give a date on which petitioner shall appear before the Board for medical test and if he is found physically fit and otherwise also eligible, he may be considered for the appointment on the post in question.

In the result, the writ petition is disposed of with the above directions. There shall be no order as to costs. The stay petition stands disposed of.”

In pursuant to direction above the Director General of Police, Rajasthan, constituted a Medical Board by an order dated 25.6.2004. The Medical Board on 7.7.2004 in presence of selection committee made physical examination and does not found the petitioner unfit to be recruited as constable on the count of

flat foot. The selection board on the same day interviewed the petitioner and declared him failed being not possessing requisite minimum aggregate marks in written test, physical test and interview for appointment as constable. The instant petition for writ is preferred by the petitioner being aggrieved by the same.

The contention of the counsel for the petitioner is that the respondents at the first instance rejected candidature of the petitioner on a non-existent ground and then only being annoyed for the reason that the petitioner approached this Court for redressal of his grievance declared him failed.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the petitioner did not secure minimum aggregate marks in written test, physical test and interview, therefore, he was declared failed.

This Court by order dated 25.7.2005 directed the respondents to produce original record of the selection proceedings pertaining to the petitioner. In compliance to that the same is produced before the Court, a photocopy of which is also taken on record. From perusal of record it reveals that the petitioner secured 31 marks out of 50 marks in written test, 10 marks out of 25 marks in physical test and only 2

marks out of 10 marks in interview. In aggregate 43% marks are secured by the petitioner trailing by 2% marks from the requisite 45% marks in aggregate.

While exercising powers under proviso to Article 309 of the Constitution of India the Governor of Rajasthan framed the Rajasthan Police Subordinate Service Rules, 1989 (hereinafter referred to as "the Rules of 1989") to regulate recruitment to posts in and the conditions of service of persons appointed to Rajasthan Police Subordinate Service. The appointment to the post of police constable is required to be made 100% by way of direct recruitment. Part-IV of the Rules of 1989 prescribes procedure for direct recruitment. Rule 23 of the Rules of 1989 empowers a Board of selection to recommend the names of suitable candidates for appointment. Rule 23 of the Rules of 1989 referred above reads as under:-

"23.Recommendations of the Board/Commission.- The Board/Commission shall prepare a list of the candidates, whom they consider suitable for appointment to the post concerned, arranged in order of merit, and forward the same to the Director General-cum-Inspector General of Police, who shall in his turn intimate to the Appointing Authority concerned, the name of the candidates in order of merit as mentioned in the list, upto the number of vacancies available. The Board, Commission shall not recommend candidates, who

have secured less than 36% marks in interview and 45% marks in the aggregate:

Provided that the Recruitment Board/Commission may recommend candidates belonging to the Scheduled Castes and Scheduled Tribes, who though failing to obtain the minimum marks, are declared by the Board/to be suitable for appointment to the service with due regard to the maintenance of efficiency of administration, if the candidates secure 30% marks in interview and 40% marks in the aggregate.”

In accordance with Rule 23 of the Rules of 1989 an incumbent is required to secure at least 36% marks in interview and 45% marks in aggregate. The petitioner is awarded only 2 marks in interview, therefore, the respondents declared him failed.

This Court is required to examine as to whether the respondents fairly and objectively allowed 2 marks to the petitioner in interview? In normal course the presumption is that the selection board must have acted fairly, objectively and with view to select a best aspirant for appointment from available stuff, however, in present case a doubt is created about fairness of the selection board while granting 2 marks in interview for the reason that at first instance the petitioner was declared unfit to be appointed as constable by treating him suffered with flat foot. The petitioner subsequently on examination

by competent Medical Board was found fit to be appointed as constable being not suffered with flat foot. It is also pertinent to note that the petitioner secured 31 marks out of 50 marks in written test and also stood first in 1000 meters run. It is also pertinent to note that the respondents have not given any reason as to why at first instance the petitioner was treated to be suffered with flat foot. The petitioner also served Indian Army for a considerable period. It is further important to note that the respondents were going to make appointment to the lowest post in Rajasthan Police and interview in these selection proceedings is normally to check testimonials of the aspirant. In present case the circumstances create doubts about the objectivity of the selection board. It appears that the respondents were determined for not giving appointment to the petitioner.

In peculiar facts and circumstances of the case I am having no hesitation in holding that the petitioner was not treated fairly and objectively by the selection board while interviewing him.

I could have remanded the matter to selection board for interviewing the petitioner afresh, however, the facts of the present case requires that instead of remanding the matter it shall be appropriate to direct the respondents to allow the same percentage of marks

to the petitioner in interview which he has secured in written test and then to determine aggregate marks.

In view of it this writ petition is allowed with a direction to the respondents to allow 62% marks to the petitioner in interview and then to refer his case for appointment as constable in accordance with the Rules of 1989. The appointment shall be given to the petitioner from the date the same was accorded to the persons selected through the same selection process. The petitioner shall be entitled for all notional benefits from that date.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.