

The Commandant and Another Vs. M.P. Sunil Kumar and Others

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Court : Karnataka

Decided On : Apr-02-2014

Judge : K.L. Manjunath & Ravi Malimath

Appeal No. : Writ Petition No. 23737 of 2012 (S-KAT) & Writ Petition Nos. 24012-24016 of 2012 (S-KAT)

Appellant : The Commandant and Another

Respondent : M.P. Sunil Kumar and Others

Judgement :

(Prayer: These Writ Petitions are filed under Article 226 and 227 of the Constitution of India praying to set aside the impugned order dated 13.10.2011 in application Nos.14119-14124/02 on the file of the Karnataka Administrative Tribunal, Bangalore as per Annexure-A.)

1. The State has preferred these petitions challenging the legality and the correctness of the order passed by the Karnataka Administrative Tribunal, Bangalore dated 13th October, 2011.

2. The admitted facts are as hereunder:-

On 8-12-2000 the respondents name was sponsored by the District Employment Exchange for the post of Reserve Police constable. On 16-2-2014 interview and physical test was conducted on 16-2-2001. Since the respondents cleared the test,

provisionally they were selected, subject to undergoing medical tests and verification of records. When the respondents were sent for medical examination they were found to be ur.fit for the post of police constable in 3rd Battalion of the Karnataka State Reserve Police. Accordingly, the respondents were not selected.

3. Aggrieved by their non-selection they approached the Karnataka Administrative Tribunal in the year 2002. The matter was not disposed off for more than 9 years. For the reasons best known to the tribunal on its own sent the respondents to undergo medical test again, in the year 2011. The Chairman of the Medical Board, General Hospital, Jayanagar, gave an opinion that the candidates physical standards are in conformity with the stipulated physical standards of KSRP constables. Based on the medical report of 2011 the tribunal allowed the applications directing the petitioners herein to include the name of the respondents in the select list at appropriate places and to give all consequential benefits except backwages. This order is called in question in these petitions.

4. The main contention of the learned Government Advocate is that the tribunal has committed an error in referring the candidates for medical examination afresh in 2011. According to her, the candidates were required to pass medical test on the date of the test conducted by the department along with other applicants in 2001 or 2002. After nine years if there is any change in physical deformity, it cannot be a ground for the tribunal to direct the State Government to appoint them as police constables by giving retrospective effect. She further contends that if the applicants were of the opinion that the medical report of them as on 2001 was an incorrect report it was open for them to make an application to send them for medical check up immediately in order to find out the veracity or correctness of the medical test. Without doing so they could not have been directed to undergo medical test, after 9 years, because naturally there will be improvement or change in the body. Therefore she requests the Court to set aside the order of the tribunal and dismiss the applications of the respondents.

5. An attempt is made by the respondents' counsel to support the order of the tribunal. According to him, when the respondents underwent medical test in 2011 they were medically found fit, eligible to be appointed as KSP constable. In the

circumstances, he requests the Court to dismiss the petitions.

6. Having heard the learned counsel appearing for the parties, what is to be considered by this court in these petitions is:

"whether the tribunal has committed any error in allowing the applications of the respondents and in directing the State Government to appoint them as Reserve Police Constable".

7. The facts are not in dispute to the following extent:

The petitioners were sponsored by the District Employment Exchange for the post of Reserve Constable. The respondents passed the interview and were provisionally selected. However, they were not finally selected since they were medically unfit. The tribunal has directed them to undergo medical test 9 years after the selection process. On account of change in the status of health a direction has been issued by the tribunal to select the respondents as police constables by giving all consequential benefits. According to us, the tribunal has committed a grave error in allowing the petitions because the respondents were not sent for medical examination afresh, immediately after the petitioners refused to include their names in the final select list. If the respondents were of the view that the report submitted by the Doctors was an incorrect one, they should have requested the tribunal to conduct the medical test afresh forthwith. Instead of that the tribunal has directed the respondents to undergo medical test in 2011, 9 years after the selection list is published which according to us, is an error committed by the tribunal and the tribunal has exceeded its jurisdiction.

8. What was required to be considered by the Tribunal was whether the applicants were medically fit to hold the post of Karnataka State Reserve Police Constable on the date of selection by the board. If they were found to be ineligible on the date of selection and 9 years later if there is any improvement in their health condition the same cannot be a ground for the tribunal to direct the Government to select them and pay all consequential benefits. Therefore, we are of the opinion that an error is committed by the tribunal.

9. In the circumstances, the writ petitions are allowed. The order dated 13-10-2011 passed by the Karnataka Administrative Tribunal in case Nos.14119- 14214/2012 is hereby set aside. Consequently, the applications filed by the respondents herein before the tribunal are hereby rejected.

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