
(2023) 01 MP CK 0056
In the Madhya Pradesh High Court
Case No : Writ Petition No.18707 Of 2020

Aksha Bee

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 02-01-2023

Acts Referred:

Citation : (2023) 01 MP CK 0056

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : Arvind Parmar, Aniket Naik

Final Decision : Dismissed

Judgement

Vivek Rusia, J

1. The petitioner has filed this present petition being aggrieved by the action of respondents wherein she has been declared unfit for the post of Constable-GD due to being overweight.
2. The Staff Selection Commission issued an advertisement dated 21.07.2018 inviting applications to fill the post of Constable-GD. In pursuance of the advertisement petitioner applied for the said post and she was permitted to appear in the written examination. The petitioner secured 83 marks out of 100 hence, she was called for Physical Efficiency/Standard Test (in short: PET/PST). The petitioner appeared before the Recruitment Board CISF Unit, BHEL Bhopal and she has been declared qualified in the race. She has also been declared qualified in respect of height and 5 km/1.6 km run. Since her weight was found 63 kg she was overweight by 13 kg. accordingly, she was unfit and directed to fulfill the weight criteria at the time of DME.
3. Accordingly, the petitioner was medically examined in detail for the said post by the medical officer who reported in the prescribed format (Annexure H) dated 25.01.2020 with the finding that she was overweight having BMI 25.4 kg/m2,

WT-65 kg, height 160 cm. is unfit for the post in question . The petitioner has signed the said report and applied for Review Medical Examination (in short: RME).

4. According to the petitioner immediately thereafter the lockdown was imposed in the entire country due to the Covid pandemic therefore, the medical examination could not be done within 15 days thereafter she became pregnant and appeared before the RME on 07.10.2020. That, vide report dated 07.10.2020 she was declared unfit on account of pregnancy also. Hence, the present petition before this Court.

5. Initially, the petitioner prayed for quashment of the order dated 07.10.2020 (Annexure P/1) and sought for RME. Later on, by way of amendment, the petitioner also sought a quashment of part of the order (Annexure P/6) whereby she was declared overweight.

6. Learned counsel for the petitioner submits that the petitioner has wrongly been declared unfit because of the pregnancy. The respondent ought not to have done the RME during pregnancy. Now, the petitioner delivered a family child on 02.08.2020 and also reduced her weight therefore, the respondents be directed to conduct afresh RME of the petitioner in respect of the weight and appoint her since one post has been kept vacant by way of the interim order. In support of his contention learned counsel has placed reliance on a judgment passed by the Division Bench of the High Court in the case of Laxman Devi v/s State of Rajasthan reported in 2000 (18) 3 RLW 2259 (Rajasthan) in which the pregnant women candidate, it has been held that she would be entitled to seek postponement of the date of her PET/PST because the Physical Efficiency Test was conducted after the long gap and by that time she became pregnant.

7. Learned counsel has also placed reliance on the judgment of [i] Delhi High Court in the case of W.P. (C) No.925/2017 Monu Kumari v/s Staff Selection Commission and others dated 03.04.2019, [ii] Ram Niranjana Kajaria v/s Sheo Prakash Kajaria reported in (2015) 10 SCC 203, [iii] Raju Devi v/s State of Rajasthan & Ors reported in 2019 (1) RLW 847 (Rajasthan).

8. The respondents have filed the reply as well as an additional reply to the amendment Writ Petition by contending that no relief can be granted to the petitioner as at the time of PET/PST she was found overweight hence, she was rightly declared unfit. At that time she was not pregnant. The petitioner is not disputing her being overweight at the time of PET/PST therefore, there was no question to permit her to participate in an RME, therefore, the petition is liable to be dismissed. Learned counsel appearing for the respondents argues that the facts of the case of Laxmi Devi (supra) are different from this case, hence will not help the petitioner. It is further submitted by the learned counsel that the petitioner has admitted that she was overweight at the time of PET/PST and such admission can not be permitted to be withdrawn by her, hence she is not entitled to any relief.

I have heard the learned counsel for the parties and perused the record.

9. The facts of this case are not in much dispute that the Staff Selection Commission initiated the recruitment process to fill the post of Constable-GD for all the Central Armed Forces by publishing an advertisement in the year 2018. The petitioner being an aspirant submitted an online application and she was permitted to appear in the written test, and she was declared qualified. Central School of Weapon and Tactics (CSWT), BSF, Indore was assigned the task to conduct the document verification and detailed medical examination of 1590 male and 722 female candidates and Review the Medical Examination of 521 candidates who are domicile of the State of Madhya Pradesh.

10. The petitioner appeared for document verification and detailed PET/PST at CSWT, BSF, Indore. She was medically examined from 24.01.2020 to 25.01.2020 by a detailed Medical Examination Board (DME). During the examination, the Board found her unfit due to being overweight with BMI 25.4 kg/m², WT-65 kg, and height 160 cm and accordingly she was handed over the unfit memorandum on 25.01.2020. Along with the unfit memorandum she was issued a blank medical fitness certificate Annexure-V form No.3 and proforma application for filing an appeal against the finding of the Medical Board within 15 days.

11. The petitioner filled out the form and submitted the appeal and all the appeals for RME were scrutinized by the Appeal Panel Board. The CRPF decided the date and venue for conducting an RME for all the candidates including the petitioner. She was called for Review Medical Examination on 07.10.2020 before R.A. at Indore. The RME was conducted and she was found unfit due to her BMI 25.4 kg/m², WT-65 kg, and height 160 cm however, since she was also carrying a pregnancy of 36 months, therefore, she was declared unfit.

12. Learned counsel for the petitioner contends that since she was carrying a pregnancy, therefore, she has wrongly been declared unfit and she was liable to be declared temporarily unfit till the delivery of the child and her RME ought to have been differed. In reply to this submission, the respondents submitted that at the time of PET/PST she was found overweight and declared unfit, at that time she was not pregnant and the petitioner has admitted her weight. It is further submitted that Clause B(viii) of General Medical Guidelines would not apply in the case of a Review Medical Examination. Had it been the case of pregnancy at the time of PET/PST, she would have been declared unfit temporarily for medical examination, therefore, the case of the petitioner was not liable to be treated as fresh consideration for examination.

13. Learned counsel has placed heavy reliance on a judgment passed by the Division Bench of Rajasthan High Court in the case of Laxman Devi v/s State of Rajasthan reported in 2000 (18) 3 RLW 2259 (Rajasthan) and another judgment of a single bench in case of Raju Devi v/s State of Rajasthan & Ors reported in 2019 (1) RLW 847 (Rajasthan) where the Rajasthan High Court has held that the denial to the extent of period of undergoing PET/PST by the candidate on account

of her pregnancy, is not sustainable and the recruitment agency was directed to extend the time for PET/TST by 60 days from the date of her delivery. In the aforesaid case, at the time of the first PET/PST the candidate was pregnant therefore, under guidelines B(viii) the provision of re-examination would apply after six weeks of the pregnancy but in the case in hand at the time of the first medical examination i.e. PET/PST Board the petitioner was found unfit due to her overweight.

14. The petitioner has not filed any document to controvert the aforesaid finding that she was not overweight and this finding is wrong. Although the petitioner has initially admitted the writ petition in the said weight later on by way of amendment, she has withdrawn such pleading. The respondents have raised an objection that the admission cannot be withdrawn but without entering into that controversy, the petitioner has not come up with any documentary evidence to show that on 24/25.01.2020 when she was examined, she was not 63 kgs of weight, therefore, this Court has no reason to disbelieve the weight recorded in the first medical report. So far as the Review Medical Examination is concerned, for which Clause VIII (E) of the guidelines applies. The Review Medical Examination is permissible only if any medical certificate is produced by the candidate as a piece of evidence about the possibility of an error or judgment in the decision of the Initial Medical Board/recruitment of the Medical Officer who had examined him/her in the first instance i.e. DME an appeal can be accepted. Clause E is reproduced below:

E. Review medical examination (RME): Ordinarily there is no right of appeal against the findings of the Recruiting Medical Officer or Initial Medical Examination. If any Medical Certificate is produced by a candidate as a piece of evidence about the possibility of an error of judgment in the decision of Initial Medical Board/ Recruiting Medical Officer, who had examined him/her in the first instance i.e. DME, an appeal can be accepted. Such Medical Certificate will not be taken into consideration unless it contains a note by the Medical Officer from Government District Hospital or above along with registration no. given by MCI/ State Medical Council, to the effect that it has been given in full knowledge of the fact that the candidate has already been rejected and declared unfit for service by CAPF Medical Board, or the recruiting medical officer. If the appeal of a candidate is accepted by CAPF Appellate Authority, his/ her Review Medical Examination will be conducted by CAPF RME Board. The Decision of the CAPF's Review Medical Boards will be final. No appeal will be entertained against the finding of the second medical i.e. Review Medical Examination.

15. The petitioner has failed to produce any medical certificate to establish that she was not overweight at the time of PET/PST therefore, even if at the time of Review Medical Examination she was carrying a pregnancy is of no concern to her declaration of unfit for the post in question .

Hence, in view of the above discussion, the Writ Petitioner is not entitled to get any relief in this Writ Petition, hence the Writ Petition is dismissed.

No order as to cost.