
(2013) 07 GAU CK 0034
In the Gauhati High Court
Case No : Writ Petition (C) No. 1683 of 2006

Anowar Hussain

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Citation : (2014) 1 GLD 171 : (2013) 5 GLT 147

Hon'ble Judges : A.K. Goswami, J

Bench : Single Bench

Advocate : J. Islam, for the Appellant; N. Borah, Learned CG, for the Respondent

Judgement

A.K. Goswami, J.—Heard Mr. J. Islam, learned counsel for the petitioner. Also heard Mr. N. Borah, learned CGC appearing for the respondents. This writ petition, in essence, seeks a direction to the respondent authorities to appoint the petitioner as Constable (GD) in Central Reserve Police Force (CRPF) consequent upon setting aside and quashing of declaration made by the Medical Authorities of the CRPF declaring the petitioner unfit for the post.

2. Facts as disclosed in the writ petition are that pursuant to an advertisement (An-nexure-1) dated 27.06.2005 being advertisement No. 1 for the year 2005, inviting applications for the post of Constable (GD), Central Reserve Police Force (CRPF), from the residents of Assam, Meghalaya and Arunachal Pradesh, being eligible, the petitioner applied for the same. He cleared the physical efficiency test. He was called for written test to be held on 09.10.2005. The petitioner appeared in the written test and came out successful. The declaration of the result of written test was made on 30.10.2005. He was called for oral interview on 31.10.2005 and he came out successful in such interview as well. The name of the petitioner appeared at Sl. No. 21 of the select list. Thereafter, he was asked to appear before the Medical Board to assess his fitness for appointment. The result of the medical examination was declared on 01.01.2006. He was declared "temporarily unfit" by letter dated 10.01.2006. While communicating that he had been declared "temporarily unfit", he was directed again to report at

Group Centre, CRPF, Guwahati on 13.02.2006 for review of medical examination along with admit card, etc. and proof of cure from disease/deformity at his own risk/cost. The petitioner got himself medically examined at Gauhati Medical College Hospital and as advised, got chest X-ray done on 30.01.2006, report of which was furnished on 31.01.2006. He was again examined by the doctors at Gauhati Medical College Hospital on 02.02.2006 and he was found fit and accordingly, a Medical Certificate was issued to that effect.

3. The petitioner reported, as directed by the letter dated 10.01.2006, to the authorities concerned on 13.02.2006 and produced the Medical Certificate dated 02.02.2006 of the Gauhati Medical College Hospital. The said certificate was not accepted and the petitioner was referred to Good Health Hospital. After subjecting the petitioner to a chest X-ray, Good Health Hospital submitted report to the CRPF authorities. However, again the petitioner was declared as unfit by the doctors of CRPF. The petitioner subsequently obtained the report from Good Health Hospital which go to show that everything was normal with the petitioner. On the basis of the report, declaring him unfit, the petitioner was declined appointment.

4. In the affidavit-in-opposition, it is stated in paragraph 6 of the writ petition that the petitioner was rejected on medical ground due to the following reason:

That as regards the statements made in paragraph 7 of the writ petition I deny the contention of the writ petitioner that he was declared temporary unfit without assigning any reason. In this regard I beg to state that the petitioner was rejected on medical ground due to mild parecumonitives (if).

Perhaps, "mild parecumonitives" as appearing above is a typographical error and the same should have been "mild pneumonitis."

5. It is also stated in the affidavit that the report of the Medical Certificate given by the Gauhati Medical College Hospital was not considered because the certificate was not accompanied by the X-ray plate so as to facilitate cross-checking the justification of the opinion. Further, it was also not indicated in the said Certificate issued by the doctor in the Gauhati Medical College Hospital that he was aware that the candidature of the person in whose favour certificate was issued had been rejected as unfit for appointment in CRPF by Medical Officer, which was a requirement under the terms of the advertisement. It is also stated that Certificate issued in contradiction to the findings of the Recruitment Board needed detailed reasoning and justification of the specialist. The petitioner was told at the time of the medical examination why he was declared medically unfit. The second Medical Board which had occasion to examine the petitioner, after such examination and on going through the documents, came to the conclusion that the petitioner was rightly declared medically unfit by the earlier Medical Board.

6. Mr. Islam, learned counsel for the petitioner submits that the petitioner is wrongly declared to be medically unfit by the doctors of CRPF against the weight

of opinion rendered by the doctors at Gauhati Medical College Hospital and also by the specialist in the Good Health Hospital, to which hospital the petitioner was referred by the CRPF Authorities. He submits that a bare look of the opinion contained in the certificate of Good Health Hospital would leave no room for doubt that the petitioner was absolutely fine. He emphasizes that this report of the Good Health Hospital was not even dealt with in the affidavit-in-opposition of the respondents. It is categorically asserted by him that there is no stipulation in the advertisement that it was incumbent upon the doctor certifying a person to be fit to give an endorsement in such certificate that he was aware that such a person was rejected on medical grounds by CRPF authorities.

7. It is in this backdrop of events, the learned counsel for the petitioner submits that a re-examination of the petitioner along with the X-ray plates, produced by Mr. Borah during the course of hearing, is called for. He suggests that the same may be done by a team of doctors comprising of two doctors from the CRPF and a radiologist from the Gauhati Medical College Hospital.

8. Mr. N. Borah, learned CGC, submits that the recruitment process was of the year 2005 and 8(eight) years have gone by and in absence of any stay order reserving a post on that recruitment drive for the petitioner, there is no surviving cause of action for consideration of this Court. On the merits of the case the learned counsel submits that the petitioner was examined twice by Medical Board and on both the occasions, he was found not fit and therefore, the petitioner was rightly denied appointment. Referring to a guideline/instructions dated 24.11.2008, on the subject of recruitment to the post of Constable, the learned counsel submits that for review of medical examination, the Board should consist of two Medical Officers, out of which one should be a senior or equal to the Medical Officer who had earlier examined and that specialist may be co-opted whenever required. It is also submitted by him that even prior to the said instructions issued, review medical examination used to be conducted by two doctors and in the instant case also, the petitioner was examined by two doctors. He concedes that endorsement of the doctors in the Medical Certificate to the effect that he was aware of rejection of the candidature was not a requirement under the advertisement but under the guidelines in force.

9. The records produced by Mr. Borah shows that the petitioner was declared "temporarily unfit" due to "mild pneumonitis (LT)" by the Chief Medical Officer, 144 BM CRPF. From the records it would appear that the Medical Board was constituted by the Chief Medical Officer and a Child Specialist. The records do not indicate whether the Chief Medical Officer was a Specialist in any branch. The report of the Medical Board dated 15.02.2006 reads as follows:

X-ray PA view-

As compared to previous X-ray, Radio opacities have in used (increased)

(L) Sided hilar shadow persistent NAD

(R) Side hilar shadow increased.

Hence unfit.

10. The report of the Good Health Hospital reads as under:

Chest X-ray PA view:

No active parenchymal lesion seen.

Pulmonary hilar are normal.

Trachea is central.

Cardio-thoracic ratio is maintained.

Hemidiaphragms are normal.

CP angles are free.

Bony thorax and soft tissue are normal.

11. In the records produced by Mr. Borah, there are two X-ray plates. One with No. 12870 relating to the X-ray done by Good Health Hospital and the other obviously the X-ray done by the CRPF Authorities at the time of recruitment.

12. The report of the Gauhati Medical College Hospital, to the extent relevant, which was not acted upon by the CRPF Authorities, reads as under:

As per chest X-ray report (Skiagram No. 1224).

No parenchymal lesion is seen.

Hence he is fit.

13. While the Medical certificate issued by the Gauhati Medical College Hospital shows that he is fit, there is no such positive endorsement on the X-ray report of Good Health Hospital. But from a layman's point of view, it appears to this Court that the said report does not indicate that something was wrong with the petitioner.

14. The report of the Good Health Hospital was issued by Radiology Department. The Medical Board in its opinion dated 15.02.2006 did not comment on the said report. The report was not dealt with in the affidavit-in-opposition also. In the affidavit, there is no denial of the assertion of the petitioner that medical opinion received by him was to the effect that report of Good Health Hospital is normal and no disease/deformity was noticed.

15. There is no gainsaying the fact that there is intense competition for any job. After a rigorous process of selection, the petitioner found himself at serial No. 21 of the select list and as noted earlier, he was denied appointment as he was found unfit in medical examination. This court will not hazard a guess with regard to correctness or otherwise of the declaration of the Medical Board

declaring the petitioner to be unfit as the same is purely in the domain of medical experts. However, materials on record leave the court satisfied in view of apparent conflicting views of experts in the field that there is force in the submission of the learned counsel for the petitioner for constitution of fresh medical board for considering the case of the petitioner afresh. This court is also unable to accept the contention of Mr. Borah that there is no surviving cause of action because of intervening gap of six years. The petitioner approached this Court immediately after he was declared medically unfit by filing this application on 16.03.2006. This Court, having noticed the subject matter of dispute, by an order dated 06.09.2006 had directed listing of the case on 7.11.2006 for hearing. However, the matter was not listed on that day and finally hearing commenced on 18.06.2013. The petitioner cannot be blamed entirely for delay in disposal of the Writ Petition.

16. On due consideration of the submission of the learned counsel for the parties and the materials on record, I consider it appropriate to direct re-examination of the petitioner by a Medical Board consisting of 2 doctors from the CRPF who were earlier not associated with medical examination of the petitioner and one specialist in Radiology Department from Gauhati Medical College Hospital to be nominated by the Principal-cum-Chief Superintendent of the Gauhati Medical College Hospital. The Medical Board would evaluate the earlier X-rays of the petitioner bearing in mind the opinion of the Board of the CRPF and Good Health Hospital as also the first opinion recorded by the Chief Medical Officer and give their opinion as to whether the petitioner was rightly declared unfit. If it is found that the petitioner was wrongly declared unfit, they will also give an opinion as to whether the petitioner is fit for appointment now.

17. This court requests the Principal-cum-Chief Superintendent, Gauhati Medical College Hospital to facilitate examination of the petitioner, namely, Anowar Hussain in his establishment on 28.08.2013 at 11:00 am. The petitioner and the two doctors of CRPF will report to the Principal-cum-Chief Superintendent at 10:45 am. The CRPF doctors would take along with them the medical reports of the petitioner including the X-ray plates which have been returned to Mr. Borah.

18. A copy of the report of the Medical Board will be furnished to the petitioner on that day itself. In the event of opinion of the Medical Board being favourable to the petitioner, the respondents will appoint the petitioner, by condoning age, if necessary, in any available vacancy and if there is no vacancy available, in the next vacancy that becomes available.

19. Mr. B. Gogoi, learned Standing counsel, Health Department, who is present in Court, was requested to apprise the Principal-cum-Chief Superintendent, Gauhati Medical College Hospital of this order for compliance of the directions and he has readily and graciously assured the Court that he will communicate a copy of this order to the Principal-cum-Chief Superintendent, Gauhati Medical College Hospital and will also take such steps as may required so that the order of this Court is complied with so far it relates to holding of the Medical Board on

28.08.2013.

20. A copy of this order be furnished to Mr. B. Gogoi and Mr. N. Borah. Writ petition stands allowed to the extent as indicated above.