
(2020) 09 CAT CK 0067

In the Central Administrative Tribunal

Case No : Original Application 100, 2948 Of 2017

Atul Kumar

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 24-09-2020

Acts Referred:

Citation : (2020) 09 CAT CK 0067

Hon'ble Judges : R.N. Singh, Member (J); Aradhana Johri, Member (A)

Bench : Division Bench

Advocate : Rajat Taneja, Y.P. Singh

Final Decision : Dismissed

Judgement

R.N.Singh, Member (J)

1. Hard Sh.Rajat Taneja, learned counsel for the applicant and Sh.Y.P. Singh, learned counsel for the respondents.

2. The present application has been filed to challenge the Memorandum dated 24.01.2017 of Medical Examination and the result dated 22.07.2017 of the Review Medical Examination (Annexure A-1 Colly) vide which the applicant has been declared 'unfit' and thus has been denied selection/appointment to the post of Sub Inspector (Direct Entry) in the Central Armed Police Forces (CAPFs) and Assistant Sub-Inspector in CISF.

3. The undisputed facts leading to the OA are that the Respondent No.2 issued a Notice/Advertisement dated 09.01.2016 (Annexure A-4) inviting applications for recruitment to the post of Sub-Inspector in the Delhi Police/CAPFs and Assistant Sub-Inspector (ASI) in CISF Examination, 2016. Pursuant to the aforesaid Notice/Advertisement the applicant applied for the aforesaid post. The applicant was allotted Roll No.2201121956 in order to enable him to participate in the aforesaid selection process. After qualifying in the Computer based written examination (Paper-1), PET/PST (Physical Endurance/Standard and written examination (Tier-

II), he was called for detail Medical Examination by CISF as a coordinating CAPFs as per letter dated 12.05.2016 (Annexure R-1). The applicant's detail Medical Examination was conducted at Composite Hospital, BSF, Mandore Road, Jodhpur on 21.04.2017, however, the applicant was declared unfit on account of (i) Flat Foot and (ii) Tremors (Annexure A-1 Colly). The impugned circular dated 21.04.2017 provided for filing of an appeal against the finding of the Medical Examination, if the applicant is advised to apply for Review Medical Examination, he was required to prefer an appeal within the time and in the manner as provided therein. As per extant provisions the applicant preferred an appeal against the findings in the Memorandum of unfitness dated 21.04.2017 and his Review Medical Examination was conducted at Composite Hospital, BSF, Mandore Road, Jodhpur on 21.07.2017. However, on Review Medical Examination as well, the applicant was declared unfit vide Memorandum dated 22.07.2017 (Annexure A-1 Colly) on the grounds of (i) Flat Foot and (ii) Tremors.

4. The learned counsel for the applicant submits that after coming to know about the result of the Review Medical Examination, the applicant approached Safdarjung Hospital, New Delhi on 26.07.2017 (Annexure A-16) for his Medical Examination as an 'Out Door Patient' and in the OPD examination conducted by the said Hospital, no tremor was found in the body of the applicant and that the TSH Level of the applicant was found to be within normal limit i.e. 1.40 mIU/ml and the applicant was also not found to have a flat foot. The applicant submitted a Medical Fitness Certificate (Annexure A-14) which is conducted by Doctor S.K. Sinha, Associate Professor Orthopedic, Nalanda Medical Collage, Patna. Aggrieved of the aforesaid the applicant is stated to have preferred a representation dated 10.08.2017 (Annexure A-17) addressed to the Ministry of Home Affairs through the Public Grievance Portal and when no remedial action was taken by the respondents the applicant has filed the present OA on 24.08.2017.

5. The learned counsel for the applicant argues that ignoring the candidature of the applicant for the aforesaid post on the ground of medical unfitness vide impugned certificate dated 21.04.2017 is arbitrary and unreasonable and liable to be set-aside inasmuch as the applicant has already submitted the medical certificate issued by Nalanda Medical Collage, Patna before the Review Medical Board and the respondents have considered the same in arbitrary and unreasonable manner. He further argued that the impugned certificate of unfitness given by Review Medical Examination dated 22.07.2017 on Review Medical Examination is also unreasonable and inasmuch as the same is contrary to medical certificate issued by the Nalanda Medical Collage, Patna and also contrary to the certificate given by Safdarjung Hospital, New Delhi. He has approached the said Hospital on 26.07.2017 as an Out Door Patient (Annexure A-16). It is further contended that keeping in view the findings of Safdarjung Hospital, New Delhi, no tremor was found in the body of the applicant and the laboratory report dated 28.07.2018 indicates that the TSH Level of the applicant is within the normal limit i.e 1.40 mIU/ml, the Memorandum of Medical

Certificate dated 21.04.2017 as well as result of Review Medical Examination dated 22.07.2017 (Annexure A-1 Colly) are baseless and untenable in the eyes of law.

6. In view of the aforesaid the learned counsel for the applicant submits that the applicant is entitled for the relief sought for in the present OA which reads as under:-

"i). Set aside the Memorandum of Medical Examination dated 21.04.2017 as well as the Result of Review medical Examination dated 22.07.2017 of the Applicant for the post o Sub-Inspector (Direct Entry) in Central Armed Police Forces (CAPFs)/Delhi Police and / or Assistant Sub-Inspector (Direct) in CISF, and for issue of appropriate directions against the Respondents directing them to consider the candidature of the Applicant and to appoint him to the aforesaid post as per the Merit list and to issue the Appointment Letter in this regard, in the light of the facts and grounds mentioned hereinabove.

ii) Pass any other Order(s) which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case in favour of the Applicant and against the Respondents."

7. In response to the notice of this Tribunal the respondents have filed Counter Reply wherein they have opposed the claim made by the applicant and prayed for dismissal of the OA stating that the OA is devoid of merit. Learned counsel for the respondents has invited our attention to para 10 (c) of the aforesaid Advertisement dated 09.01.2016 (Annexure A-4) and particularly "Note-III thereunder which reads as under:-

"Note-III Medical Examination- All the candidates who qualify in the PET will be medically examined by the Medical Officer of the CAPFs or any other Medical Officer or Assistant Surgeon belonging to Grade I of any Central/State Govt. Hospital or Dispensary. Candidates, who are found to be unfit, will be informed of the position and they can make an appeal before Review Medical Board within the prescribed time limit of 15 days. Decision of Re-Medical Board/Review Medical Board will be final and no appeal/representation against the decision of the Re-medical Board/Review Medical Board will be entertained."

8. He contends that vide letter dated 12.05.2016 of DG of CISF, Ministry of Home Affairs, the CISF has been declared a nodal CAPF and the detailed Medical Examination or the Review Medical Examination are required to be conducted by the CISF Doctor/Specialist only and not by any other Doctor/Hospital. He further argued that the applicant has neither challenged the authority and competence of the said Doctor nor the Medical Board, who have issued the impugned unfitness certificate dated 21.04.2017 and 28.07.2017 (Annexure A-1 Colly). Besides, the applicant has also neither impleaded the concerned Doctor or the Board of the Doctors for having any malafidies or bias against the applicant. He has further invited our attention to the note under impugned Memorandum of unfitness certificate dated 22.07.2017 which reads as under:-

"Note: The decision of the Review Medical Board will be final. No appeal will be entertained against the findings of the Review Medical Board in Review Medical Examination."

It is further stated that in view of such provision, there is no occasion and justification for looking into further representation of the applicant or to require conducting further Medical Examination of the applicant. The learned counsel for the respondents has placed reliance on the judgment dated 17.02.2000 of Hon'ble High Court of Delhi passed in CWP No.1326 of 1990 titled Umesh Chakarvarti vs. Union of India, reported in 2000 (3) ATJ page-549. He submits that the Notified Authority for the said Medical Examination has issued the impugned Certificate and the expertise or experience of the Doctors or the Board of the Doctors who have issued the impugned Medical certificate has neither been disputed specifically, pleaded or proved, as such, therefore, opinion tendered by such Doctors or Board of Doctors cannot be substituted by the opinion of the Doctor Sinha of Nalanda Medical Collage, Patna or the Doctor of Safdarjung Hospital, New Delhi who had stated to have examined the applicant as an Out Door Patient.

9. The applicant has filed Rejoinder and on the basis of the same, the learned counsel for the applicant reiterates his submissions made hereinabove in the rejoinder as well.

10. We have carefully perused the pleadings on record and have also considered the submissions made by the learned counsels for the parties. The candidature of the applicant for the aforesaid examination and the fact of his qualifying the written test and PET/PST are not in dispute. However, the applicant's selection was also dependent on he being found fit on Medical Examination and for such Medical Examination a particular agency has been notified vide the aforesaid letter dated 12.05.2016 and the same notified agency has got conducted the requisite medical examination resulting into the impugned unfitness letter dated 24.01.2017 and 22.07.2017. There is no dispute that the Doctors and the Medical Board who have issued the Medical certificate have been nominated/constituted by the Competent Authority and therefore, the same is relevant and opinion of any Doctor or Hospital from elsewhere is not relevant in view of the principles of law laid down by the Hon'ble High Court of Delhi in Umesh Chakravarti's case (supra). The para-4 of which reads as under:-

"4. The same situation had arisen in another case being CW No.197/96 and order dated 17.11.1998 was passed dismissing the writ petition which reads as under :

"The petitioner applied for being enrolled as an Airman in the Indian Air Force. He cleared the written test but was found to be medically unfit for appointment by the Medical Advisor to the Central Airmen Selection Board. The petitioner claims that he is medically fit and a certificate to this effect has been given by Dr. S. Bhan of All India Institute of Medical Sciences, New Delhi.

Learned counsel appearing for the petitioner contents that the Doctor examined

the petitioner was merely a M.B.B.S. and his opinion cannot be preferred to the opinion of All India Institute of Medical Sciences.

I have considered the submission of the learned counsel for the petitioner. A perusal of the Medical Unfitness Certificate dated 4.9.1995 Annexure 'A' to the petition shows that the petitioner was found to be medically unfit by the second respondent. According to the second respondent the petitioner is suffering from 'Genu Recurvatum' and failed to achieve the laid down medical standards. The second respondent is Medical Advisor to the Central Airmen Selection Board. His expertise and experience has not been questioned in, the writ petition. Therefore, the same cannot be allowed to be questioned by way of oral submission by learned counsel for the petitioner. In any event the opinion of second respondent cannot be substituted by the opinion of a Doctor of All India Institute of Medical Sciences, New Delhi.

Counsel for the respondent has invited my attention to the decision of Patna High Court in CWP No. 793/97 wherein it was held as follows :

1. The petitioner has been declared medically unfit by Central Airmen Selection Board vide Medical Unfitness Certificate. The petitioner applied for re-medical examination and it appears from Annexure 6 that the Senior Advisor also declared him unfit.

2. Counsel for the petitioner submits that the petitioner had got himself examined at the All India Institute of Medical Sciences and thereby they did not find the petitioner unfit for appointment as Clerk in the Indian Air Force. It is by now well settled that when a Medical Board is constituted by the appointing authority it is the opinion of that Medical Board which is relevant and not the opinion of any other Doctor or Hospital elsewhere. In these circumstances no relief can be granted to the petitioner.

3. The writ petition is therefore dismissed.

I am in respectful agreement with the observation of the Patna High Court."

5. Relying upon the aforesaid judgment, I find no force in the writ petition which is accordingly dismissed."

11. In view of the aforesaid facts and discussions, we find the OA to be devoid of any merit. Accordingly, the OA is dismissed.

12. However, in the facts and circumstances, no order as to costs.