
(2010) 07 DEL CK 0252

In the Delhi High Court

Case No : Writ Petition (C) No. 651 of 2010 and CM No. 1379 of 2010

CT./GD Ugma Ram Godara

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-07-2010

Acts Referred:

Citation : (2010) 07 DEL CK 0252

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : N.L. Bareja, for the Appellant; Sameer Chaudhary, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.—By the present writ petition, the petitioner has complained of his being declared medically unfit for appointment to the post of Sub-Inspector (General Duty). The petitioner was enrolled on 6th March, 2003 in the Central Reserve Police Force ("CRPF" hereafter) as the Constable (General Duty). After completion of his training, the petitioner was initially posted with 150 Battalion, CRPF and since then he is serving with the said company. Between August, 2004 and October, 2004, the petitioner suffered some ailment while on leave. As a result, the petitioner underwent a surgical operation on 30th September, 2004 at the SMS Hospital, Jaipur for a disease of PIVD, L3/4 and L4/6. The petitioner was discharged on 5th October, 2004 from the Hospital.

2. On a medical evaluation on 29th January, 2005, the petitioner was placed in medical SHAPE-3 temporarily for a period of 24 weeks by the medical officer of the CRPF. On 29th June, 2005, upon a fresh medical evaluation, the petitioner was upgraded to medical category SHAPE-1.

It is undisputed that the petitioner continues to remain so ever since.

3. The petitioner has also pointed out that over this period, he has remained posted in hard field areas including Jammu & Kashmir upto June, 2007 and

thereafter has been posted in Nagaland in the North-East where he is presently located as well. Admittedly, there is no complaint with regard to the performance of hard duties in his entire career by the respondents despite his having undergone the surgical procedure.

4. In the annual medical examination conducted upon the petitioner from the years 2005 to 2008, the petitioner has been assessed as SHAPE-1 which is manifested from the health card maintained by the CRPF which has been placed on record.

5. Learned counsel for the respondents has submitted that the medical examinations reflect that the doctors have duly noted the fact that the petitioner has undergone the afore-noticed surgery.

6. In June, 2009, the petitioner applied for undertaking the Limited Departmental Competitive Examination for accelerated appointment to the post of Sub-Inspector (GD). The petitioner was shortlisted for the same pursuant to the scrutiny of his application. In September, 2009, the petitioner has successfully undertaken all the tests which included the physical endurance test followed by a written test, personality/psychology test and qualified the same as per the laid down criterion.

7. A grievance has been made that in a medical examination conducted on 5th October, 2009, the petitioner was declared medical unfit temporarily for the same reason that he had undergone the afore-noticed surgical operation. The petitioner's request for a review medical board was accepted. The petitioner was medically examined by a review medical board on the 7th October, 2009 which has also declared him medically unfit on the ground that the petitioner was an operated case of PIVD.

8. Mr. N.L. Bareja, learned counsel for the petitioner has made a vehement grievance that the petitioner's examination on 5th October, 2009 was by a medical officer in charge while the review was conducted by an Ophthalmologist and a General Surgeon.

9. We find force in the contention of learned counsel for the petitioner to the effect that neither the medical examination of the petitioner nor the review medical examination has been conducted by specialities or experts in the field which was required to examine a case of a person who had undergone surgery for PIVD. There is also substance in the petitioner's contention to the effect that he has been found fit for performance of his duties in a hard area premised on his medical categorisation by the annual medical check up. The petitioner's fitness stands endorsed by the fact that the respondents have made no grievance at all with regard to his ability and satisfactory performance of duty. It is also noteworthy that appointment to the higher post of Sub-Inspector from Constable would require enhanced leadership abilities and capabilities and decrease the arduous nature of duties which a person may be required to perform and may lower extent of physical endurance he may be required to

undergo. In any case, before a person is to be declared as medically unfit, the respondents themselves have recognised the fact that he is required to be medically examined by the experts and specialists in the field.

10. So far as the petitioner is concerned, the complaint against him would require to be examined by an expert in the field of Orthopedics or neurology which has not been so done. The expert of the respondents who is present accepts this position. The record shows that this has not been done.

11. We have earlier had occasion to consider medical examination and declaration of a person as medically unfit for appointment in similar circumstances. In the judgment reported at 169 (2010) DLT 647 (DB) Birendra Singh Vs. Union of India & Ors., we had referred to other similar instances and held as follows:

26. We find that this Court had the occasion to consider a similar medical examination of a candidate by a Board which did not consist of a specialist of the discipline which was involved. In the decision in Anish Barla v. Union Public Services Commission reported at 131 (2006) DLT 170(DB) : 2006 VIII AD (Delhi) 622, appointment to the post of Assistant Commandant Group A in the Central Police Forces was involved. The petitioner had been rejected by the respondents on grounds of medical unfitness. The petitioner had assailed the rejection inter alia on the ground of the petitioner having been declared fit by a dermatologist of a recognised hospital of Delhi and that he had wrongly been declared medically unfit by a Board which did not include a specialist of the required field. Observations in para 4 of the judgment deserve to be considered in extenso which reads as follows:

4. It may be mentioned by us that the above order has been passed by us on the basis of the statement made by the Counsel appearing for the petitioner that the petitioner is now free from the aforesaid skin disease, and upon our noting with anguish from the record of the respondent that although the petitioner was held unfit for appointment on the ground of inveterate skin disease, none of the members of the Medical Board who had thus disqualified the petitioner had any experience in dermatology. This is, to say the least, most unfortunate and we record our disapproval of the manner in which the case of the petitioner has been dealt with by the respondent. We hope that the respondent will desist from committing such mistakes in the future and will bestow earnest consideration to such like cases since the very right to life and livelihood of a person may be adversely affected by the same.

27. It is apparent that despite this pronouncement made on 14.3.2006, the respondents have not paid any heed to the composition of the Board which examines the fitness of the candidates. It also shows that the respondents have not at all given any heed to the material facts of the case which have certainly a bearing on the fitness of the petitioner. Mere amputation of the little toe of the left foot by itself may not necessarily render a candidate unfit for appointment to

a particular post. Further the impact of declaring him as medically unfit may render him unfit for continuation in the post which he was occupying at the time of his medical examination.

12. It is noteworthy that this case related to Central Industrial Security Force. Both Central Reserve Police Force with which the instant case is concerned and the Central Industrial Security Force are part of the Central Police Organization and would be governed by the same rules and regulations. So far as certification of fitness is concerned, that would be by a similar procedure of examination by the concerned specialists.

13. In view of the above, the challenge by the petitioner to the action of the respondents in declaring him unfit deserves to be sustained. The composition of the review medical board was not proper to declare the fitness of the petitioner. The opinion of the respondents to declare the petitioner medically unfit recorded on 5th October, 2009 & 7th October, 2009, has not been recorded by the medical experts in the concerned specialty and cannot be relied upon for the purposes of denying appointment to the petitioner.

14. In view of the above discussion, we hold that the petitioner is entitled to relief in the present writ petition. However, certification of the petitioner's fitness by a panel of proper experts is essential for appointment to any post in the Central Police Organization. The fitness standards which are applied by the defence force remain the highest. The specialists in these forces would also be well experienced in fitness certification. No grievance can be possibly made if the fresh examination of the petitioner is conducted by such specialists. The same would further be in the interests of expediency and independence in the decision making.

We accordingly direct as follows:

(i) The orders dated 5th October, 2009 & 7th October, 2009 declaring the petitioner as medically unfit for appointment to the post of Sub-Inspector (GD) are set aside and quashed.

(ii) The parties shall appear before the Commandant of the R & R Hospital, Delhi Cantt., New Delhi on 9th August, 2010 at 11.00 A.M. with such record and on all dates appointed thereafter. The Commandant, R & R Hospital, Delhi Cantt., New Delhi to constitute a Board of experts in the required specialties to medically examine the petitioner and submit a report of his medical fitness. The petitioner shall appear before the Commandant with copies of all documents including the record of his surgery and medical records thereafter till date which may be in his power and possession. The respondents shall also produce before the Board the complete medical record of the petitioner including his reports and his annual medical examinations.

(iii) The respondents shall ensure that the petitioner is enabled to appear before the Commandant of the R & R Hospital and participate in the board proceedings

on the above date and any other date which may be appointed by them.

(iv) In case the required experts are not available in the R & R Hospital, it shall be open for the Commandant to make a requisition of the experts from any other facility of the Armed Forces in Delhi who shall be made available to comply with the present directions.

(v) The report of the Board constituted by the Commandant, R & R, Delhi Cantt. shall be submitted to the Director General, CRPF. Copy thereof shall be furnished to the petitioner as well.

(vi) In case the petitioner's fitness is certified in the report, the respondents shall forthwith take steps for appointing the petitioner as Sub-Inspector (GD) with the consequential benefits with other candidates who were selected as Sub-Inspector (GD).

(vii) Orders in terms of the above directions shall be passed within four weeks of the receipt of the medical report from the Commandant, R & R Hospital, Delhi Cantt., New Delhi.

(viii) In case the petitioner is still aggrieved by the orders passed by the respondents, it shall be open to him to assail the same by appropriate legal proceedings.

The writ petition and application are allowed in the above terms.

Dasti to parties.