

(2020) 09 DEL CK 0162

In the Delhi High Court

Case No : Civil Writ Petition No. 4248 Of 2020, Civil Miscellaneous No. 18022 Of 2020

Gaurav Chaudhary

APPELLANT

Vs

Government Of India & Ors

RESPONDENT

Date of Decision : 22-09-2020

Acts Referred:

Citation : (2020) 09 DEL CK 0162

Hon'ble Judges : Rajiv Sahai Endlaw, J;Asha Menon, J

Bench : Division Bench

Advocate : Samrendra Kumar, Shivani Jain, Sushil Kumar Pandey, Piyush Gaur

Final Decision : Disposed Of

Judgement

Rajiv Sahai Endlaw, J

1. The petitioner joined the respondents No.1 to 3 Border Security Force (BSF) as a Constable on 23rd November, 2012 and appeared in the Limited Departmental Competitive Examination (LDCE) of the year 2018- 2019 for promotion to the post of Sub-Inspector. Though the petitioner passed and cleared the said examination, but on 13th December, 2019 was declared unfit by the Medical Officer, on the ground of having a tattoo on his right arm. It is the case of the petitioner, that he got the said tattoo removed and applied for Review Medical Board but the Review Medical Board has also declared him unfit, for the reason of having a scar mark at the place where the tattoo earlier existed and has been obliterated. Aggrieved therefrom, this petition is filed.

2. The petition came up before this Court on 16th July, 2020, when notice thereof was ordered to be issued for 30th July, 2020 and the presence of a responsible officer of the respondents BSF in a position to answer the queries of this Court with reference to the Rules pertaining to BSF, was also directed.

3. On 30th July, 2020, the counter affidavit stated to have been filed by the respondents BSF was not on record and the hearing was accordingly adjourned

to 6th August, 2020.

4. The respondents BSF filed a short affidavit and Dr. Murugan, Chief Medical Officer of the BSF also participated in the hearing on 6th August, 2020. After hearing, on the basis of the Rules and the contentions, it was recorded in the order dated 6th August, 2020, as follows:

"(i) Per revised uniform Guidelines issued by the Ministry of Home Affairs, tattoos depicting religious symbol or figure and name are to be permitted;

(ii) Tattoos marked on traditional sites of the body, like inner aspect of forearm but only left forearm, being the non saluting limb, are to be allowed;

(iii) However the size of the tattoo must be less than 1/4th of the particular body part on which the tattoo is engraved;

(iv) "Scars, or any other chronic skin disorder of a degree or nature that requires frequent outpatient treatment or hospitalization, which in the opinion of the certifying authority affects thermoregulatory function, or will interfere with the wearing of combatized clothing or equipment, or which exhibits a tendency to ulcerate, or interferes with the satisfactory performance of duty, are disqualifying. Includes scars at the skin graft donor or recipient sites.";

(v) Therefrom, it appears that scars per se are not a ground for disqualifying a candidate medically, unless the scars are of such a nature as described aforesaid;

(vi) The Medical Board which examined the petitioner disqualified the petitioner only on the ground of tattoo and which was justified;

(vii) However the Review Medical Board which examined the petitioner, post removal by the petitioner of the tattoo, in its findings has merely opined that the petitioner has a large scar mark more than 1/4th in size over his right arm and disqualified the petitioner on the said ground, without however opining that the said scar mark has any of the potentials aforesaid which make it disqualifying;

(viii) It also appears that with respect to the scars, the criteria of up to 1/4th of the body part bearing the scar is not applicable and the same is applicable only with respect to tattoos; tattoos and scars have been separately dealt in the Guidelines aforesaid."

5. Recording the aforesaid, vide order dated 6th August, 2020, the petitioner was directed to be re-examined for his medical fitness, particularly qua the scar aforesaid and medical opinion was specifically directed to be rendered on, whether the scar mark on the petitioner at the place of obliteration of the tattoo which earlier existed was of the nature so as to disqualify the petitioner medically.

6. On further enquiry on 6th August, 2020, it was informed that the result of the LDCE in which the petitioner had participated had not been announced and hence the question of the post being filled up did not arise. Be that as it may, one of the posts was directed to be not filled up till today.

7. Today, the counsel for the petitioner states that he has received an e-mail from the counsel for the respondents to the effect that the petitioner has been medically found fit in respect of the ground on which earlier he was found unfit.
8. The counsel for the respondents confirms.
9. With the aforesaid, the grievance with which the petition was filed stands satisfied and recording so, the petition is disposed of.
10. The petitioner be accordingly considered further for recruitment/promotion.