
(2021) 04 DEL CK 0251

In the Delhi High Court

Case No : Civil Writ Petition No. 2076 Of 2021 & C.M.No.6080 Of 2021

Ishwar Singh

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 30-04-2021

Acts Referred:

Citation : (2021) 04 DEL CK 0251

Hon'ble Judges : Rajiv Sahai Endlaw, J; Amit Bansal, J

Bench : Division Bench

Advocate : Puneet Jaiswal, Sanjeev Sabharwal, Hem Kumar, Avnish Ahlawat, Tania Ahlawat, Nitesh Kumar Singh, Harish Vaidyanathan Shankar

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J

1. On 7th April, 2021, when this petition first came up before us, inter alia the following order was passed :-

â??3. The petition impugns the order dated 12th January, 2021 of Central Administrative Tribunal (CAT), Principal Bench, New Delhi of

dismissal of OA No. 42/2021 preferred by the petitioner. The said OA was preferred, impugning the denial of selection as Sub Inspector

(Direct Entry) in Central Armed Police Forces (CAPFs)/ Delhi Police/Central Industrial Security Force (CISF), in the recruitment process

held in the year 2018, on the ground of being medically unfit. According to the Medical Board as well as the Review Medical Board which

examined the petitioner, the petitioner is a case of ""old fracture of shaft (Lt) femur with plates and screw in situ resulting in cortical

expansion with scoliosis"".

4. The only contention of the counsel for the petitioner is that since the findings of the Medical Board and Review Medical Board are

inconsistent with the findings of the civil hospital in which the petitioner got himself examined, a case for referring the petitioner for

independent opinion is made out.

5. The aforesaid argument has not found favour with this Court in a catena of judgments. Reference may be made to Priti Yadav Vs. Union

of India, 2020 SCC OnLine Del 951 (DB), Akash Sharma Vs. Union of India MANU/DE/2069/2020 (DB), Dhiraj Milind Dhurve Vs. Union

Public Service Commission MANU/DE/1093/2020(DB), Jonu Tiwari Vs. Union of India MANU/DE/1524/2020 (DB) [Special Leave Petition

(Civil) No. 13492/20 preferred whereagainst was dismissed on 17th December, 2020], Nishant Kumar Vs. Union of India

MANU/DE/1486/2020, Sharvan Kumar Rai Vs. Union of India, 2020 SCC OnLine Del 924 (DB) and Vani Vishwanathan Vs. Union of India,

MANU/DE/1678/2020 (DB).

6. The counsel for the respondent no.1 Union of India appearing on advance notice states that the petitioner has neither impleaded any of

CAPFs nor CISF.

7. On enquiry, it is stated that the Nodal Agency for conducting the examination for the year 2018 was Border Security Force (BSF).

8. BSF is impleaded as respondent No.5 to this petition. Notice of the petition be issued to Mr. Harish Vaidyanathan Shankar, Advocate who

otherwise appears for BSF. The Court Master to telephonically inform him to appear with the manual for medical examination of the subject

examination.

9. List on 15th April, 2021.â??

2. Today, Mr. Sabharwal, Advocate appears for the respondent no.1 Union of India and seeks time to file affidavit.

3. As requested by us in the aforesaid order, Mr. Harish Vaidyanathan Shankar, Advocate also appears and has drawn our attention to Clause 11(1)

of the â??Guidelines for Recruitment Medical Examination in Central Armed Police Forces and Assam Riflesâ??, as revised in May 2015 (Medical

Manual) issued by the Government of India, Ministry of Home Affairs (Police Divisionâ?"II), and Clause 11 titled â??MISCELLANEOUS

CONDITIONSâ?? whereof, in Sub-clause (1) thereof provides as under:

â??1) Any evidence of implants in situ anywhere in body will lead to rejection.â??

4. It is not in dispute, that the petitioner has implants, in the form of plates and screws as aforesaid, in his body, inserted/implanted to join the fracture of his femur bone.

5. The counsel for the petitioner has drawn our attention to the Medical Fitness Certificate dated 15th April, 2020, which has been sent to us via email, certifying that the fracture is well united and consolidated.

6. We have enquired from the counsel for the petitioner, whether not in view of the aforesaid criteria/standard stipulated in the Medical Manual governing the medical tests/examinations to which direct recruits are subjected, no fault can be found with the rejection of the petitioner by the

Medical Board and the Review Medical Board, on having implants in his body inasmuch as the Medical Manual does not provide for any exception in

cases, where the implants have already served their purpose viz. of joining the bones and which fracture has healed.

7. The counsel for the petitioner then contends, that the petitioner is an Ex-Serviceman and has served in the Indian Army for 16 years and has

always maintained SHAPE-I Medical Category in his tenure in the Indian Army and he cannot be held to be medically unfit. It is argued that the

standards of medical fitness required in the Indian Army are much more stringent than those required in the CAPFs/Police.

8. Though merit is found in the aforesaid contention, but Mr. Vinod Kumar, Deputy Commandant, BSF, draws attention to the Advertisement dated

3rd March, 2018 issued by the Staff Selection Commission, pursuant to which the petitioner had applied, and which Advertisement, though in Note-II

to Clause 11(D) titled â??Medical Standard (for all posts)â? provides, that â??Ex-Servicemen applying for the posts are not required to undergo

PETâ? (Physical Endurance Test) but proceeds to further provide that â??However, all Ex-Servicemen are required to pass the written test and fulfil

the physical standards prescribed for direct recruits for recruitment of Sub-Inspector/Assistant Sub-Inspector, as the case may be. They should also

pass the medical standards prescribed for direct recruitsâ??.

9. In view of the aforesaid, there is no ambiguity whatsoever, neither in the Advertisement for recruitment pursuant to which the petitioner applied, nor

in the Medical Manual in accordance wherewith the petitioner was to be medically examined, and no fault can be found with the opinion of the

Medical Board or Review Medical Board, finding the petitioner unfit on account of admittedly having implants in situ in his body.

10. We may record that no challenge to the condition aforesaid of the Advertisement inviting applications or to the provisions of the Medical Manual has been made.

11. Such petitions come to be filed, on account of the counsels filing the same without familiarising themselves with the terms and conditions of

Advertisements inviting applications for appointment or with the Medical Manual in accordance wherewith the Medical Board and Review Medical

Board are to conduct the medical examination. If before filing the petition, such study is made, it would not only enable a better and composite

challenge being made but would also save the time of the Court.

12. Dismissed.