

(2020) 12 DEL CK 0198

In the Delhi High Court

Case No : Civil Writ Petition No. 10543 Of 2020

Jyoti Thakur

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 17-12-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 226

Citation : (2020) 12 DEL CK 0198

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

Bench : Division Bench

Advocate : Ram Lal Roy, Harish Vaidyanathan Shankar, Nidhi Raman, Varun Kishore, Kinjal Shrivastava

Final Decision : Dismissed

Judgement

Asha Menon, J

1. The petitioner has filed the present petition under Article 226 of the Constitution of India claiming violation of Articles 14 and 16 and seeking the

issuance of writ of mandamus or for writ or direction seeking the recall of the order of termination dated 9th/10th May, 2019 passed by the Deputy

Inspector General, Central Industrial Security Force (CISF), National Industrial Security Academy (NISA), Hyderabad and the order dated 16th July,

2019 passed by the Director/Inspector General, CISF, NISA, Hyderabad and the order dated 11th December, 2019 passed by Assistant Directorate

General, CISF, Ministry of Home, New Delhi with a further direction for re-appointment of the petitioner to the post of Sub-Inspector (SI) in the

CISF.

2. The facts, as are relevant for the disposal of this case, are briefly, that the petitioner had applied for selection to the post of SI in the Delhi Police,

CAPFs and Assistant Sub-Inspector (ASI) in CISF through a common examination held in the year 2016. She successfully cleared the Written

Examination held on 6th June, 2016 and also the Physical Endurance Test (PET) on 23rd September, 2016 and a physical fitness certificate was

issued to her on 23rd September, 2016. After clearing the PET, she was allowed by the respondents to appear in the Tier-II examination in December,

2016 and which exam she cleared in January 2017.

3. The petitioner's further case is that she was called for the medical examination test on 2nd May, 2017 and she was declared medically fit in all

respects except that she was found with a pregnancy of 5 $\frac{1}{2}$ months old and Brochymetatarsia (both sides). On the advice of a doctor, she

got herself medically examined on 4th May, 2017 by a specialist in the field, i.e. Dr. O.P. Meena and Dr. Geetanjali Natiyal, who are Orthopaedics

and Gynaecology specialists respectively, at the Dr. Ram Manohar Lohia Hospital in New Delhi. According to the petitioner, she was found fit by

both the specialists, and that the Brochymetatarsia did not create any problem for her in running/walking/wearing shoes. The petitioner applied

for a review medical examination and vide letter dated 24th June, 2017, the respondents directed her to appear before the Review Medical Board on

27th July, 2017 at Referral Hospital, ITBP, Greater Noida Referral Hospital/ CAPFs, CISF Campus, Surajpur, Greater Noida, Uttar Pradesh. The

petitioner accordingly appeared for the review medical examination on 27th July, 2017 at the said Referral Hospital where she was medically

examined by the doctors who found her to have no functional disability from Brochymetatarsia. However, the doctors declared her medically

unfit on account of 8 months pregnancy at that time.

4. Post her delivery, the petitioner approached the respondents for her fresh medical examination by the Staff Selection Commission. She was directed

to the office of the CISF, being told that her selection had been to the post of SI in CISF. The respondents issued to her a letter dated 19th January,

2018 for fresh review medical examination and for verification of documents. The fresh review medical examination was conducted on 7th February,

2018 at NHCC, CISF campus, Mahipalpur, New Delhi. She was subjected to extensive tests, including eye-test, and was declared medically fit by the

Review Medical Board.

5. The petitioner was issued the appointment letter on 20th September, 2018 and was asked to report to the NISA, Hakimpet, Hyderabad by 29th

October, 2018 with all the documents and duly filled up forms and duly attested by the concerned authorities. The petitioner reported to the Director,

NISA, Hakimpet, Hyderabad on 29th October, 2018 and once again, after due verification of the documents, she joined the post of SI in CISF on 29th

October, 2018 and began performing her duties as such.

6. The learned counsel for the petitioner, Sh. Ram Lal Roy, submitted that under the Rules, the medical examination prior to appointment was valid for

an entire year and under no circumstance could the petitioner have been subjected to a fresh medical examination at Hyderabad. Reliance has been

placed on the Circular of the Government of India dated 9th December, 2015 in this regard and which is reproduced hereunder for ready reference:

â?? Directorate General

Central Industrial Security Force

(Home Ministry)

Block No.13, CGO Complex,

Lodhi Road, New Dehi-110003

No.E-32023(1)/15/Recruitment/â?}-2013/Vol-3/2013 Dated: 09 Dec. 2015

To

DIG RTC MUNDALI

DIG RTC BARWAHA

Subject:-Combined recruitment of Constable/GD-2011, 2012 & 2013: Conduct of fresh medical examination on joining for basic training-

reg.

1. In continuation to this Directorate letter No.(4479) dated 19.11.2015 on the above subject

2. As per clarification received from MHA vide Endorsement No.1-14014/97/2015/RC-â?}8 dated 09.10.2015, the revised uniform

guidelines for recruitment medical examination will be effective from the date of issue i.e.20.05.2015. Therefore, all candidates of the year

2011, 2012 & 2013 need not to be put for fresh medical examination as per uniform medical guidelines issued by ADG/Medical vide letter

dated 20.05.2015.

3. However, as per Para -6 of Chapter -24 of Swamy's Establishment and Administration Manual, the validity period of medical

examination is one year. Hence all candidates whose medical validity period of one year has been expired except RME fit candidates may

be put through fresh medical examination at the Training Center by the Doctor of RTC before allowing them to participate in training.

4. As regards fresh medical examination of RME fit candidates, the following guidelines as circulated by MHA vide letter No.1-

45023/5/2012 â"Pers-II (Part File) dated 09.04.2013 as well as ADG/Medical, CAPFs vide UO dated 22.09.2014 (copies enclosed) are

issued for necessary action: -

(i) Fresh Examination will be conducted in respect of Review Medical Examination fit candidates. This medical examination will be limited to

only examination of any new deformity or disability acquired by the candidates after review medical examination already done at the time of

initial recruitment process and in which the candidates was declared fit. This Medical Examination will not in any way contradicted or

overrule the medical examination report of review medical examination in respect of any disability already considered and was declared fit.

(ii) If a temporary illness which can be cured within 6 â" 12 weeks is detected during fresh medical examination then the candidate will be

declared Temporary unfit and the certificate will be countersigned by Sr. Medical Officer. Such candidate will be reviewed after expiry of

the period for the same illness and final result of medical examination may be declared accordingly.

(iii) If during fresh medical examination deformity of permanent nature is detected other than those detected and considered during initial

medical examination of RME, then the medical examination will be done by a board of medical officers at composite hospitals of CAPFs.

(iv) Candidate may not be declared unfit/temporary unfit on the same ground on which he was found fit in previous RME at the time of

initial recruitment process.

5. This issues with the approval of the competent authority please.

Â Sd/-

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once no mala fides are attributed and the doctors of the Forces who are well aware of the demands of duties of the Forces in the terrain in which the

recruited personnel are required to work, have formed an opinion that a candidate is not medically fit for recruitment, opinion of private or other

government doctors to the contrary cannot be accepted inasmuch as the recruited personnel are required to work for the Forces and not for the

private doctors or the government hospitals and which medical professionals are unaware of the demands of the duties in the Forces.

10. The Circular dated 9th December, 2015 provides for the conduct of fresh medical examination on joining for basic training. It nowhere declares

that the pre-recruitment medical examination is valid for one year. In para 3, it only notes that since as per Para 6 of Chapter-24 of Swamy's

Establishment and Administration Manual, the validity period of medical examination is one year for all those whose medical examination had been

conducted prior to a year, hence the validity of the medical examination would have expired and therefore, all of them have to be subjected to a fresh

medical examination at the Training Center. Candidates covered by 'RME' were excluded. This does not mean that the petitioner was excluded

from a fresh medical examination prior to being allowed to participate in training.

11. It must be noted that the petitioner's pre-recruitment medical examination was conducted under the description as 'review medical

examination'. However, that was her first detailed medical examination, which she should have undergone at the time of her recruitment. Since

she was pregnant, she could not join the service. Even otherwise, the so-called first medical examination, which she claims she had attended, was in

June, 2017 and the so-called 'review medical examination' was also on 27th July, 2017. She joined only on 29th October, 2018 i.e. more than a

year from the dates of her medical examinations. Seen in this light also, the medical examination of the petitioner at Hyderabad was as per the

provisions of this very Circular. Furthermore, the respondents had adhered to this Circular when as per para 4(i), the fresh medical examination was

conducted limited to only examination for any new deformity or disability and she was found with a deformity in her sight. She was then re-examined

by a Board at Delhi. That the petitioner was suffering from 'distal vision'

was confirmed by the Board. Thus, no grievance on the basis of this Circular can be raised by the petitioner.

12. No doubt everyone values employment opportunities. But where certain eligibility criteria have been prescribed, it would be wrong for courts to meddle with those standards and water them down, because costs would have to be paid by the country subsequently. No candidate who does not fulfil the medical standards can be inducted, as it would be detrimental to the discipline in the Forces as such persons would be placed in "low medical category" and posted in "soft areas and duty", whereas the burden on others to serve at hard stations and posts would increase disproportionately.

13. We are unable to grant any relief to the petitioner. As rightly pointed out by the learned counsel for the respondents, she was on probation and therefore, her termination with nothing more, cannot be faulted.

14. The petition is accordingly dismissed.