
(2019) 10 CAT CK 0044
In the Central Administrative Tribunal
Case No : Original Application No. 327 Of 2015

Neeraj Kumar Malik

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 15-10-2019

Acts Referred:

Citation : (2019) 10 CAT CK 0044

Hon'ble Judges : Pradeep Kumar, Member (A), Ashish Kalia, J

Bench : Division Bench

Advocate : Asish Nischal, Aamir Shaikh, Hanu Bhaskar

Final Decision : Dismissed

Judgement

Pradeep Kumar, Member (A)

1. The applicant herein had applied for the recruitment advertisement issued by Staff Selection Commission (SSC) for the post of Sub Inspector in Delhi Police/ CAPF and Assistant Sub Inspector in CISF which was published in the Gazette of India in the year 2014. The said examination was to be conducted in three phases, namely,

- (a) written examination
- (b) physical efficiency test and
- (c) interview

2. The applicant appeared in the preliminary examination conducted on 22.06.2014. He was declared provisionally qualified for Physical Efficiency test, physical endurance test and medical examination on the basis of his performance in paper-I (OMR). The applicant qualified in physical endurance test and the physical standards test. Thereafter, he was subjected to medical examination which was conducted by the nominated agency, namely, ITBP, Chawla. The examining Doctor vide certificate dated 17.10.2014, declared the applicant unfit

due to the reason 'ALOPECIA TOTALIS'. This is said to be a chronic skin disease, which is manifested in that the person losses all his hairs from entire body and he is completely bald. This rejection certificate also stated as under:

"In case he/she prefers to file an appeal against the findings of medical examination, he/she is advised to apply for review medical examination in the enclosed Form No. CAPFs/SI/ASI(DE)-2 along with demand draft for Rs.25/- in favour of "DDO, Directorate General, ITBP, New Delhi", Payable at SBI, Service Branch, New Delhi. (Code 7687) after obtaining necessary medical certificate from the medical Practitioner as per Form No. CAPFs/SI/ASI(DE)-3, so as to reach to the addressee within a period of fifteen days from the date of Medical Examination i.e. positively by, failing which his/her candidature for the post of Sub-Inspector in Delhi Police, CAPFs/Asstt. Sub-Inspector in CISF shall be treated as cancelled without any further notice. If the appeal is not signed by the candidate and/or if the Medical Fitness Certificate is not signed by the Doctor, appeal will be summarily rejected."

3. The applicant got himself examined from a private medical practitioner of Jyoti Jain Hospital, Najafgarh who issued a certificate on 22.10.2014 in which para 3 & 4 of the certificate the Doctor also certified as under:

"3. In my opinion this is an error of judgment due to the following reasons:

Alopecia totalis is an Auto Immune disorder but it does not affect any physical activity & pt. can lead normal & healthy life.

4. After due examination, I declare him/her medically fit for the said post."

This certificate also contained a part No.2 to the effect that issuing Doctor is aware that the applicant was declared as unfit due to 'Alopecia Totalis'. Portion in italics is the handwritten portion and the rest is pre-printed.

4. The applicant also got himself examined by a Specialist of Dr. Ram Manohar Lohia Hospital (RML Hospital) on 24.10.2014. This Doctor also certified him fit. Entries made in this certificate read as under:

"3. In my opinion this is an error of judgment due to the following reasons:

Alopecia totalis will not have any impact on day to day activity/job.

4. After due examination, I declare him/her medically fit for the said post."

This certificate also contained a part No.2 to the effect that issuing Doctor is aware that the applicant was declared as unfit due to 'Alopecia Totalis'. Portion in italics is the handwritten portion and the rest is pre-printed.

It is also noted that the two certificates in para 3 & 4 above are on a exactly similar printed format.

5. Thereafter, the applicant made an appeal and he was subjected to re-medical examination by a Medical Board comprising of three different Doctors, i.e. by

those who had not examined him earlier. The Medical Board issued a certificate on 09.12.2014. The Board again identified the reason for medical unfitness as 'Alopecia Totalis'. The Board also took opinion of a skin Specialist. The certificate issued reads as under:

"1. Reasons for Medical Unfitness ALOPECIA TOTALIS

2. Brief of Review Medical Examination & finding thereof Alopecia Universalis O/E - Total absence of body hairs including eyebrows, eyelashes B/L Eyebrows tattooed : Opinion of skin specialist ----- No. OPD 14088716/09/12/14) enclosed herewith as follows:

Patient has Alopecia universalis, an autoimmune disorder.

3. Final Opinion

(a) FIT ..X....

(b) Unfit on account of Unfit due to Alopecia Universalis an autoimmune disorder.'

Portion in italics is the handwritten portion and the rest is pre-printed.

6. The applicant is aggrieved that he has been rejected for the said post even though the Doctor at RML Hospital (para 4 supra) had declared him fit. Applicant relied upon the judgments by the Principal Bench of this Tribunal in following OAs:

(1) OA No.369/2012 delivered on 14.08.2012 titled Kamal Singh Vs. Govt. of NCT of Delhi and another.

(2) OA No.531/2013 delivered on 29.11.2013 titled B.Surya Prakash Vs. Union of India and others.

(3) OA No.4457/2013 delivered on 23.02.2016 titled Deepak Yadav Vs. Staff Selection Commission and ors.

7. Per contra, the respondents opposed the OA. There are three respondents. Respondent No.1 is Union of India represented by Ministry of Home Affairs, respondent No.2 is SSC, i.e. the recruiting agency and respondent No.3 is Director General, ITBP, i.e. the agency who conducted the medical examination.

8. Respondent No.3 had made the following averments in their counter reply.

8.1 They have averred in their counter arguments that the applicant has been declared medically unfit on account of his medical condition. The disease of the applicant is chronic skin disease diagnosed as autoimmune disease whereby his own immune system attacks his own body. Therefore, this disease cannot be cured. In the line of his service, he has to perform duty in Armed Forces which can be in high altitudes as well as plains, where extreme of weather conditions have to be faced. It is difficult for him to serve in the organisation which is required to maintain law and order.

8.2 It was further pleaded by respondent No.3 that the petitioner was rightly

declared unfit in medical examination on 09.12.2014 by the Medical Board in terms of Ministry of Home Affairs U.O. No. I-45023/1/2006-Pers-II (Part-III) dated 07.02.2008 wherein it is specified that candidates with chronic skin disease are to be rejected. Attention was also drawn to para 4 (p) of said UO dated 07.02.2008 which is to the effect that persons presenting with chronic skin diseases like Leucoderma, Leprosy, SLE, Eczema, Chronic Fungal dermatitis are to be rejected.

9. Respondent No.2, namely, the SSC had also filed their counter reply. It was brought out that Note-III of para 10 (d) of recruitment notice deals with the medical examination and the same provides as under:

"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. Those who are found fit in the medical examination and qualify in the Written Examination also will be required to appear in the Interview (Personality Test) of 100 marks. 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.'

10. In the instant case, once the rejection on medical grounds was communicated to the applicant, he made an appeal and was examined by a Review Medical Board. The Medical Board has since rejected the candidate and this decision is final and there is no appeal or representation permitted against this decision.

11. The respondents pleaded that OA is required to be dismissed.

12. Matter has been heard at length. Sh. Asish Nischal, learned counsel represented the applicant and Sh. Aamir Shaikh for Sh. Hanu Bhaskar, learned counsel represented the respondents.

13. Facts of this case are not in doubt. The applicant herein had cleared the preliminary examination and was subjected to medical test. The examining Doctor declared the applicant unfit on account of disease 'Alopecia Totalis'. The applicant got himself examined by two other Doctors on his own who declared him fit. On this basis, the applicant made an appeal for a Review Medical Board. The Review Medical Board was constituted comprising of three senior Doctors. This Medical Board also declared the candidate unfit on account of same disease. This decision is in terms of policy directives issued by Ministry of Home Affairs.

14. It is noted from the certificate issued by the Review Medical Board that expert opinion from skin Specialist was also obtained. In terms of the scheme for examination and the provisions for medical examination, the decision by the Review Medical Board is taken to be final. The three Doctors, who were

comprising the Review Medical Board, have not examined the applicant earlier.

It was not the applicant's case that the Review Medical Board was biased against the applicant. The applicant was only pleading for a further examination by an independent Medical Board.

15. The applicant had also drawn attention to a book, namely, Swamy's Complete Manual on Establishment and Administration for Central Government Offices (14th Edition- 2014), wherein attention was drawn to Chapter 24 on the title "Medical Examination on first appointment'. In this, there is a section on the topic "Appeals against the findings of Medical Authority', wherein following provision has been kept:

"Ordinarily there should be no right of appeal from the findings of a Civil Surgeon or an Authorized Medical Attendant, but that, if Government are satisfied on the evidence placed before them by the candidate concerned of the possibility of an error of judgment in the decision of the Civil Surgeon or the Authorized Medical Attendant, it will be open to them to allow re-examination by another Civil Surgeon or a Specialist or by a Medical Board, as may be considered necessary.

Xxx xxx xxx

If any medical certificate is produced by a candidate or Central Government servant as a piece of evidence about the possibility of an error of judgment in the decision of a Medical Board/Civil surgeon, or other Medical Officer who had examined him in the first instance, the certificate will not be taken into consideration unless it contains a note by the medical practitioner concerned to the effect that it has been given in full knowledge of the fact that the candidate has already been rejected as unfit for service by a Medical Board, a Civil Surgeon or other Medical Officer.

Xxx xxx xxx

If a candidate is declared medically unfit on account of visual acuity, an appeal preferred by him/her should be dealt with by a Special Medical Board, the composition of which should include three Ophthalmologists. Ordinarily, the finding of the Special Medical Board should be considered as final; but a second appeal shall be permissible in doubtful cases and under very special circumstances.'

It is noted that no special circumstances for such a review were brought out by the applicant.

16. Applicant has, however, not been able to bring out any special circumstances in the instant case and it was already admitted that the applicant is suffering from "Alopecia Totalis' disease.

17. In the relied upon judgment in OA No.369/2012, the applicant therein applied for the post of Constable (Executive) in Delhi Police. Medical Examination was to be conducted at ESI Hospital. The petitioner was declared unfit by the

Medical Officer. The applicant got himself examined at his own at some other hospitals and was declared to be fit. Thereafter, he was declared fit by ESI Hospital also on appeal.

However, the respondents conducted a re-examination again at ESI Hospital, Basai Darapur and wherein he was declared unfit.

In these two certificates by the ESI Hospital, it was noted that one of the Doctor was common and he has given two different opinions. Accordingly, the Tribunal directed to conduct another Medical Board of Orthopaedic Specialist.

In the instant case, there is no such background as the Doctor who has declared him initially unfit has not participated in the Medical Board. Accordingly, this judgment is of no help to the applicant.

18. In another case OA No.531/2013 relied upon the applicant, it is seen that the petitioner therein was rejected by the respondent - Railway on the ground that he has undergone Lasik surgery for improving his vision in the eyes. Even on the re-medical examination he was declared unfit on the same account. Subsequently, the applicant approached AIIMS and obtained a certificate that he had never undergone Lasik surgery.

It was in these circumstances that the Tribunal had directed for constitution of another Medical Board.

In the instant case there is no such issue as the occurrence of the disease 'Alopecia Totalis' is an admitted fact.

Accordingly, this judgment is of no help to the applicant.

19. In the third case relied upon by the applicant, i.e. OA No.4457/2013, it is seen that the petitioner therein had applied for two different recruitments; one for Constable (Executive) in Delhi Police and another for Sub Inspector in Delhi Police and CAPF. The physical standard test requirement for both these posts was same. However, for the post of Constable (Executive), the applicant was declared fit in physical standards test but for the post of Sub Inspector he was declared unfit. The applicant therein had never applied for CAPF but had applied for Delhi Police as his first choice.

However, in respect of Sub Inspector in Delhi Police, the physical standards of CAPF, which are different vis-a-vis those of Delhi Police and are more stringent, was applied and his candidature was rejected.

It was in these circumstances that OA was partly allowed for re-medical for Delhi Police. It is very clear that the circumstances of this relied upon OA are very different as compared to the instant case and accordingly this case is also of no help to the applicant.

20. The pleas put forth for another Medical Board, are not gaining acceptability. OA is without merit and the same is dismissed. No costs.