

(2021) 05 DEL CK 0236

In the Delhi High Court

Case No : Civil Writ Petition No. 1341 Of 2021, Civil Miscellaneous No. 3763,
3764 Of 2021

Pooja

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 27-05-2021

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Citation : (2021) 05 DEL CK 0236

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

Bench : Division Bench

Advocate : Ram Naresh Yadav, Jitesh Vikram Srivastava

Final Decision : Dismissed

Judgement

Amit Bansal, J

1. The petitioner applied for the post of Sub-Inspector in Delhi Police and Central Armed Police Forces (CAPFs) and Assistant Sub-Inspector in

Central Industrial Security Force (CISF) in the examination conducted by respondent no. 3 Staff Selection Commission (SSC), notified on 3rd March,

2018. Upon qualifying the written examination in Paper I, the Physical Endurance/ Standard Test (PET/PST) and the written examination in Paper II,

the petitioner appeared in the Detailed Medical Examination (DME) held on 17th September, 2020. The petitioner was declared unfit vide the

result/order dated 18th September, 2020 of the DME on account of â??Surgeries of right breast (i) In 2007- Lymphangioma Circumscriptum (No

documents available) (ii) In 2019- Breast Reconstruction at Artemis Hospital, Gurgaon (2017). Re-evaluation of patient.â? She preferred an appeal

against the above findings before the Review Medical Board (RMB), which on 3rd

December, 2020 declared her unfit on account of having been

â??Operated for Breast Reconstruction in 2019 with Silicone Implantâ??.

2. The present petition under Articles 226 and 227 of the Constitution of India has been filed impugning the result/order dated 18th September, 2020

of the DME and that of the Review Medical Examination (RME) conducted by the RMB dated 3rd December, 2020, both holding the petitioner unfit

for the aforesaid posts. The petitioner has further sought a direction from this Court restraining the respondents from declaring the final result of the

recruitment for the aforesaid posts and for the respondents to constitute an independent medical board at the Army Hospital (Research and Referral)

or in any other government hospital, to re-examine her. The petition first came up before this Court on 2nd February, 2021 when notice was issued to

the respondents. Pursuant to that, the respondents filed a counter affidavit and a short affidavit.

3. The counsel for the petitioner has submitted that (i) the Medical Guidelines are silent on medical unfitness on account of â??Breast

Reconstructionâ? or â??Surgery of Lymphangioma Circumscriptum on right breastâ?; (ii) the petitioner has fulfilled all the criteria laid down by the

respondents and that there is no evidence of any malignancy or deformity found in the petitioner; (iii) the RMB has not passed the order in accordance

with Medical Guidelines; (iv) the RMB comprising of three doctors did not consist of any specialists in the field the petitioner was declared unfit in. It

is also the case of the petitioner that she got herself examined on 21st September, 2020 and 22nd September, 2020 at two separate hospitals, including

one government hospital, both of which declared her fit for the desired posts and that the RMB did not take into consideration the certificates of

fitness issued to the petitioner by the aforesaid hospitals.

4. Per contra, the respondents in their counter affidavit have contended that (i) the RMB was duly constituted consisting of 3 expert medical

practitioners; (ii) there exists no provision in the â??Guidelines for Recruitment Medical Examination for recruitment of GOs and NGOs in the CAPFs

and ARâ?, as revised vide Office Memorandum (OM) of the MHA dated 20th May, 2015 (Medical Manual), for a candidate to be declared â??fitâ?

for recruitment based on any fitness certificate issued by a medical practitioner; (iii) the DME and RME were held as per the guidelines provided in

the Medical Manual; and (iv) the decision of the RMB is final and no appeal is permissible against the said decision. He has relied upon a number of judgments passed by this Court and the Calcutta High Court in support of his contention.

5. The respondents subsequently filed a short affidavit containing a copy of the medical opinion provided by General Surgeon, CMO(SG), Border

Security Force (BSF), who has opined that the presence of implants will cause hindrance in the discharge of professional duties by the petitioner.

Relying upon Clause 11(1) of the Medical Manual, the General Surgeon, CMO(SG), BSF justified the finding of the DME and the RME holding the

petitioner unfit for the desired posts. Clause 11(1) of the Medical Manual provides as under-

â??11 . MISCELLANEOUS CONDITIONS-

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

6. The petitioner has relied upon a certificate dated 21st September, 2020 issued by Consultant Plastic Surgery, Artemis Health Institute, Gurgaon,

Haryana to state that despite insertion of the implants, the petitioner can participate in all outdoor activities and trainings. To similar effect is another

medical fitness certificate issued by the General Surgeon, Civil Hospital, Rewari, Haryana that has been relied upon by the petitioner. It is not in

dispute that the petitioner has had surgeries in her right breast and there was a silicone implant in her breast. Once it is provided in the Medical

Manual that implants anywhere in the body will lead to rejection, it is not for this Court to judge whether such condition in the Medical Manual is

justified or not. It is also an admitted position that the petitioner has not challenged the Medical Manual or any part of the same.

7. It is the prerogative of the respondents, as the employer to lay down the medical requirements for employment. Unless the petitioner meets the

standard prescribed in the Medical Manual, no such direction as sought in the writ petition can be issued. Reference in this regard may be made to

recent decisions of this Bench in Ishwar Singh Vs. Union of India MANU/DE/0813/2021 (DB), Arun Kumar Vs. Union of India

MANU/DE/1834/2020 (DB) and judgement dated 18th May, 2021 in W.P.(C) 5353/2021 titled Madhusudhana P.S. Vs. Union of India

MANU/DE/0933/2021 (DB). It has further been held in decisions of this Court in

KM. Priyanka Vs. Union of India W.P.(C) 10783/2020 and

Dharmraj Jat Vs. Union of India W.P.(C) 8692/2019 [Special Leave Petition (Civil) No.8543-8544/2020 preferred against which, was dismissed on

16th July, 2020], copies of which have been filed by the respondents along with their counter affidavit, that once doctors of the Forces, who are well

aware of the requirements of the Forces in which the recruited personnel are 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. In fact, this Bench in its judgment dated 21st May,

2021 in W.P.(C) 4662/2021 titled Deepak Kumar Vs. Union of India MANU/DE/0944/2021 (DB) has held that the opinion of the medical experts of

the respondents has to prevail unless a doubt is created against such an opinion or any error in the conduct of the medical examination is shown. No

such case is made out in the present petition.

8. There is no merit in the petition.

Dismissed.