
(2002) 09 DEL CK 0089

In the Delhi High Court

Case No : Civil Writ Petition No. 129 of 2002

Surender Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-09-2002

Acts Referred:

Citation : (2002) 09 DEL CK 0089

Hon'ble Judges : Jiwan Dass Kapoor, J;B.A. Khan, J

Bench : Division Bench

Advocate : V.P. Sharma, for the Appellant; Maninder Acharya, for the Respondent

Final Decision : Dismissed

Judgement

Khan, J.—Petitioner was provisionally selected for appointment as Constable in CRPF subject to his medical fitness on 13.3.2001. He reported for appointment on 19.3.2001, but was found suffering from "Pulmonary Knocks" (TB) on medical examination and was declared temporarily unfit. He was, however, advised to file an appeal against this supported by the medical fitness certificate within thirty days. He claims that he approached MCD/RBTB Hospital and also GB Pant Hospital and was declared medically fit vide certificate dated 5.5.2001. He thereafter made a representation on 9.5.2001. On this he was called for a second medical opinion at Gurgaon on 31.7.2001, but was found unfit due by hypertension and tybyradi by the medical officer on examination. He was later informed by communication dated 10.10.2001 of being medically unfit of his enrolment in CRPF. He again filed an appeal to DIG (CRPF) and asked for a third medical examination but his request was rejected.

2. Petitioner has filed this petition challenging the rejection of his plea on the ground that once he was declared fit in reference to "Pulmonary Knocks" he could not be subsequently declared unfit for "hypertension and tybyradi" on second medical examination. He also complains that order dated 10.10.2001 declaring him unfit for enrolment was passed without any application of mind and

was vocative of Principle of Natural Justice. He also invokes a judgment of this court in Naresh Kumar v. Union in his aid to claim that he could be subjected to medical examination by an independent Board.

3. Respondents' stand proceeds on expected lines. According to them petitioner was selected provisionally subject to his medical fitness, under paragraph 1.10 of CRPF Manual. He was, however, found suffering from "Pulmonary Knocks" first and then from "hypertension and tubyradi" on second examination. He was, accordingly, declared unfit for enrolment. He could not be, Therefore, subjected to any further examination under CRPF Circular Order No. 8/84 which provided for one time appeal in the matter.

4. There is no dispute that petitioner's selection was provisional and was subject to his medical fitness. It is also a matter of record that he was found suffering from "Pulmonary Knocks" first and on re-examination from "hypertension and tubyradi".

5. His contention that his medical fitness could be determined only once in reference to "Pulmonary Knocks" because he was in the process of being tested for his fitness when he was found suffering from second disease. It is not that he was found suffering from second disease after his enrolment. Therefore, it was open to Respondents to ascertain his fitness at the time of second examination and to declare him fit or otherwise. And once he was found medically unfit, be that for "Pulmonary Knocks" and then for "Hypertension and Tubyradi" he could not claim any automatic right to appointment despite his first disease having been cured. Nor is there any contrary record to show that he was otherwise medically fit to be enrolled and that respondent had denied appointment to him on some frivolous or bogus medical opinion.

6. It is also not for this court to direct convening of an independent medical Board to test his medical fitness for the third time in the facts and circumstances of the case because it was not a case where there are two contrary medical opinions to warrant a third opinion in the matter. His plea that respondent had unjustifiably rejected his second appeal for convening third medical Board is also not liable to be accepted because respondent's Circular/Order dated 8/84 provides for one time appeal only. Clause 2 of this order reads thus:-

"If a candidate is not found fit in the medical standards he normally tends to run about from one medical officer to another. Under the circumstances due to variable conditions the results are bound to vary. To regularise this system, some guidelines for appeals are being laid down as Part-II of this instructions. The decision on the appeal will be final and no further requests for medical examination will be entertained in future at any level."

7. The rationale behind this is that candidates seeking appointment could not be allowed to file unending appeals for testing their medical fitness. Once they were found temporarily unfit, they were liable to be tested again on an appeal by way of a cross check. After the candidate was found unfit on this, it was the end of

tunnel for him. He could not claim his fitness in reference to one disease and ignore the other ailment from which he was admittedly suffering and on which employer had a right to declare him unfit.

8. Petitioner's reliance on a judgment of this court is also misplaced as no issue of cross medical opinion or a counter opinion was involved to warrant a third medical examination by an independent Board.

We accordingly find no merit in this petition which is dismissed.