

(2021) 08 KL CK 0079
In the High Court Of Kerala
Case No : Writ Petition (C) No. 2902 Of 2021

Vipin Viswanathan

APPELLANT

Vs

Staff Selection Commission Represented By Its Chairman

RESPONDENT

Date of Decision : 11-08-2021

Acts Referred:

Citation : (2021) 08 KL CK 0079

Hon'ble Judges : Anu Sivaraman, J

Bench : Single Bench

Advocate : Saijo Hassan, Rafeek. V.K., Benoj C Augustin, U.M.Hassan, P.Parvathy, Surya P Shaji, Manas P Hameed, Aathira Sunny, Eldho.N.Moncy, .P.Vijayakumar, M.Hemalatha

Final Decision : Dismissed

Judgement

Anu Sivaraman, J.

1. The writ petition is filed challenging Exhibits P2(a) and P2(b) reports of the Detailed Medical Examination (DME for short) issued by the 2nd

respondent as well as Exhibits P5(a) and P5(b) reports of the Review Medical Examination (RME for short) issued by the 3rd respondent. The

petitioners also seek directions to the respondents to constitute a Medical Board consisting of combatised medical officers and independent experts

from Government Medical Colleges for conducting medical examination of the petitioners and to conduct a further medical examination in respect of

the petitioners.

2. The RMEs which are complained of were conducted on 10.10.2020. This writ petition was filed on 3.2.2021. When the writ petition came up for

admission, it was noticed that in respect of all similar writ petitions which had been filed till January, 2021, an interim order had already been rendered

on 20.01.2021 directing the selection to go on to all posts except the posts to which the writ petitions had already been entertained. Those writ petitions were also heard and judgments were rendered on 7.4.2021. This Court, after examining the records of the Medical Examinations conducted by the respondents had found that in many cases the reports were supported by proper medical examinations by specialist Doctors and that no interference was warranted. However, in certain of the cases, where it was found that the rejections were not based on objective criteria, the respondents were directed to conduct a further examinations of the candidates through a Review Medical Board.

3. The learned counsel for the petitioners submit that delay on the part of the petitioners in approaching this Court is negligible and that even if there is some delay, the delay is not an absolute impediment and that this Court should exercise jurisdiction since similar cases have already been considered and allowed. The decisions of the Apex Court in *Inder Pal Yadav and others v. Union of India and others* [(1985) 2 SCC 648], *Tukaram Kana Joshi and others vs. M.I.D.C and others* [(2013) 1 SCC 353] and *State of Uttar Pradesh and others vs. Arvind Kumar Srivastava and others* [(2015) 1 SCC 347] are relied on.

4. A statement has been placed on record by the respondents. It is submitted that both the petitioners were found unfit in the DME as well as the RME on the ground of Hypertension with Tachycardia. It is submitted that the RME had been conducted as early as on 10.10.2020 and that the findings were confirmed by 3-4 different readings in accordance with the Guidelines for Recruitment Medical Examination in Central Armed Police Forces and Assam Rifles dated 20.5.2015. It is stated in paragraph 14 of the statement as follows:-

14. During DME, the candidates were declared unfit due to Hypertension with Tachycardia on 21/01/2020 and the candidates were again declared unfit in RME due to same reasons. The same was confirmed by four different readings/Blood Pressure recording which were mentioned in Form No.4 to each petitioner. Further,

the Blood Pressure of the candidates were examined four times at interval of two hours each. They were allowed to rest and relax in the arrangements made for the purpose at the Recruitment Centre for examining such similar cases by Medical/ Para-Medical staff who were readily available. The raise in Blood Pressure of the

petitioners have not transient in nature or due to excitement etc. or due to any organic diseases. The petitioners were inherently suffering from Hypertension with

Tachycardia as is evident from their Blood pressure which consistently showed higher readings than the prescribed level. Further, ECG, RFT tests were also

conducted before coming to a conclusion by the RME Board. As per para of 6(1) & (3) of Guidelines for Recruitment Medical Examination of CAPF and AR dated

20/05/2015, the disease of Hypertension and tachycardia is disqualification. As such instructions were scrupulously followed by the RME Board before coming to a

conclusion. The contention of the petitioner is therefore fallacious and denied.â??

5. It is submitted that admission of the petitioners in hospitals was not possible in the pandemic situation prevalent in the State at the relevant time. It is

also contended that the findings of the civil doctors which are relied on the petitioners are not binding on the respondents. Relying on the decisions of

the Apex Court and of the Delhi High Court in Priti Yadav vs. Union of India [2020 SCC online Del 951], Jonu Tiwari vs. Union of India [2020 SCC

Online Del 855], Nisanth Kumar v. Union of India [2020 SCC Online Del 808] and Shravan Kumar Rai v.Union of India [2020 SCC online Del 924], it

is contended that the criteria adopted for assessing fitness of persons for appointment in armed services being extremely different, there is no merit in

the contention that civil doctors had found the petitioners fit, since the civil doctors are not aware of the conditions in which the petitioners have to

carry out their duties.

6. It is further contended that not only is the writ petition delayed, but no explanation whatsoever is forthcoming in the writ petition as to the reason of

delay in approaching this Court. It is submitted that the writ petition is filed only as an experiment on knowing that this Court had permitted a Review

Medical Examination in some cases which have been filed before the Court well in time.

7. I have considered the contentions raised on either side. It being an admitted fact that the RME was conducted on 10.10.2020 and the petitioners

were declared unfit in the same, I find that there is absolutely no reason stated in the writ petition as to why the petitioners did not approach this Court

soon after they were informed of the fact that they have been declared unfit in the RME. This Court had admitted the writ petitions filed immediately

after the RME was conducted and even writ petitions filed in January, 2021 had been considered by this Court. An interim order was rendered by this Court setting apart the vacancies corresponding to the number of the petitioners in the admitted writ petitions and permitting the selection to go on in respect of all other vacancies. Thereafter, the records of the RME were called for and examined in full. By order dated 7.4.2020, the batch of writ petitions was also disposed of. In cases where objective criteria had been adopted for finding the applicants unfit, this Court had declined interference. However, in certain cases, where on examination of records, it was found that the criteria adopted were not satisfactory, further Review Medical Examinations were ordered. It is submitted that the said RMEs, as ordered by this Court, are also nearing completion. The petitioners had not come up before this Court on being told that they are medically unfit to participate further in the selection. It is apparently after the interim order was rendered by this Court in the batch of writ petitions that they thought it fit to approach this Court. The judgments relied on by the petitioners are authority only to the proposition that delay in approaching this Court need not be fatal in all cases and that a discretion is to be exercised by the writ court while considering a belated writ petition also. In the instant case since no reason whatsoever has been stated to justify the delay in approaching this Court and in view of the fact that the writ petitions are filed only after the interim order rendered by this Court in the batch of the writ petitions, I am of the opinion that the instant writ petition is belated. The writ petition fails and the same is accordingly dismissed.