

Unreportable
* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ WP (C) No. 4563 of 2005

Reserved on : March 20, 2008
Pronounced on : May 02, 2008

Sumant Kumar

. . . Petitioner

through :

Mr. K.C. Dubey, Advocate

VERSUS

Director General, Border Security Force

. . . Respondent

through :

Mr. Dalip Mehra, Advocate

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE J.M. MALIK

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The petitioner herein had applied for the post of Assistant Commandant in BSF/CRPF/ITBP and SSB. Necessary written examination was conducted by Staff Selection Board in which the petitioner appeared on 2.3.2003. He was declared successful in the said written examination about which he was informed by the respondent vide letter dated 16.9.2003 and was called to appear in the next phase of selection, namely, Physical Efficiency Test. This was conducted on 22.3.2004 and he was declared successful in the said test as well. Next stage was the test of interview for which the petitioner was called on 23.3.2004. The petitioner was successful

therein as well. He was called for the medical examination at R.K. Puram, New Delhi on 24.3.2004. On the basis of this selection process, vide letter dated 19.7.2004, the petitioner was informed that he was declared successful for the post of Assistant Commandant, but was rendered medically unfit on the following grounds: (a) Keloid, and (b) Hypertension. Because of this reason the petitioner was denied the letter of appointment. He was, however, informed that he is at liberty to file an appeal with requisite fee and a medical certificate from a registered medical practitioner in the format attached with the said letter. The petitioner filed the appeal along with the requisite fee and medical certificates given by Dr. Charanjeet Singh, Dr. Vishwa Prakash and Dr. Arun Goel. Pursuant thereto, he was again examined by the Review Medical Board (for short, 'RMB'). It appears that this appeal of the petitioner was also rejected as his name was not included in the list of successful candidates. Letter dated 31.12.2004 was sent to the petitioner to this effect whereby declaring him as '*unfit*' in the review medical examination. The petitioner has stated in the petition that thereafter he got himself medically examined on several dates by different doctors at various reputed Government hospitals and all these doctors declared him medically fit. On the strength of those certificates, the petitioner made representation dated 28.1.2005 to the Inspector General (Personnel), BSF followed by reminder dated 20.2.2005. However, vide letter dated 22.2.2005, his

representation was turned down. At this juncture, the petitioner preferred the instant petition with the following prayers :-

- “a) Direct the respondents to consider the medical fitness reports submitted by the petitioner and to appoint him;
AND
- b) Direct the respondents to allow the petitioner to join the training with his batch mates as his police verification has already been completed;
- c) pass such order/s or direction/s which this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.”

2. To put in nutshell, the case of the petitioner is that only on the ground that the petitioner is hypertensive he has been declared unfit and not given appointment to the post of Assistant Commandant though duly selected for this post. However, every time he was examined by the doctors, other than at BSF, it is certified that he does not show any symptom of hypertension at all and was declared medically fit. These Government hospitals are Safdarjung Hospital as well as All India Institute of Medical Sciences (AIIMS). The petitioner, therefore, questions the credibility of the medical examination conducted by the respondent’s Medical Board as well as RMB and submits that the action of the respondents in declaring him medically unfit and not giving him appointment is unjust, improper, arbitrary and *mala fide*.

3. We may note that insofar as diagnosis of Keloid is concerned, which was a reason for declaring the petitioner medically unfit in the first instance, it did not remain the reason after conducting the RMB of

the petitioner by the respondents. The Keloid and hyper-tropic scar was on the left forearm of the petitioner which he got excised and grafted. The doctors had opined that he had no functional problem with the said hyper-tropic scar which, in any case, had been excised and split skin graft done. Even thereafter, medical opinion on review of the said scar was that the graft had well settled and there was no functional deficiency. Therefore, even in the counter affidavit filed by the respondents, the only ground on the basis of which the petitioner was declared unfit is that he is hypertensive and arguments were also addressed by counsel for the parties on this aspect alone.

4. According to the respondents, the petitioner was rendered unfit for his being hypertensive on the ground of systolic blood pressure reading being 140 mm Hg. and diastolic being 100 mm Hg., as against normal blood pressure of 120/80 mm Hg. It is further stated that when the petitioner applied for RMB, his request was acceded to and the RMB re-examined the petitioner on 11.10.2004 with the following doctors :-

- a) Dr. P.K. Dash, Chief Medical Officer (Physician) CRPF;
- b) Dr. Padma Choudhary, Senior Medical Officer (Ophthalmologist) from BSF; and
- c) Dr. Satish Kumar, Chief Medical Officer (General Surgeon), CRPF.

The above Medical Board again diagnosed the petitioner and found him medically unfit on account of hypertension showing Systolic blood pressure as 150 mm Hg and Diastolic 100 mm Hg. (as

against the normal Systolic Blood Pressure 120 mm Hg and Diastolic 80 mm Hg.). It is further explained that there is no provision for constitution of second RMB or third Medical Board.

5. Learned counsel for the petitioner submitted that in the second Medical Board/RMB, only the Blood Pressure of the petitioner was taken without any further tests, including ECG which was essential, on the basis of which he was asked to go and declared medically unfit. He submitted that this was not the proper procedure for declaring the petitioner as hypertensive. Referring to the book *Harrison's Principles of Internal Medicine*, 16th Edn. (Vol-II), he submitted that there could be different types and different levels of hypertensions. He referred to that portion of the book where '*Approach to the Patient*' is suggested. This *inter alia* suggests that when hypertension is suspected, blood pressure shall be measured at least twice during two separate examinations after the initial screening. He also pointed out that the authors of the book had remarked that 10-20% of the patients declared hypertensive in their doctors' offices are normotensive outside it. However, this diagnosis is relatively more common among the elderly and pregnant women as per the said book. It is also stated by the authors that the arterial pressure fluctuates in most persons, whether they are normotensive or hypertensive. Patients who are declared as having *labile hypertension* are those who sometimes, but not always, have arterial pressures in the hypertensive range. These patients are often considered to have borderline hypertension. Sustained hypertension

can become accelerated or enter a malignant phase, i.e. unusual in treated patients. *Accelerated hypertension* is defined as a significant recent increase over previous hypertensive levels associated with evidence of vascular damage on fundoscopic examination but without papilledema.

The submission of learned counsel for the petitioner was that in view of the aforesaid, there should have been a proper medical examination before the petitioner could be declared hypertensive and reading of the blood pressure the moment petitioner appeared before the RMB could not be considered as proper examination and declaring him hypertensive on the basis of one reading of his blood pressure. He submitted that normally on such occasions because of excitement and nervousness, sometimes the blood pressure goes up and that by itself would not be sufficient to adjudge a person as a hypertensive patient. He also submitted that in any case it should have been considered as a borderline case capable of treatment, which in fact happened in the case of the petitioner. The general non-drug measures adopted to treat such patients are : (i) relief of stress, (ii) dietary management, (iii) regular aerobic exercise, (iv) weight reduction (if needed), and (v) control of other risk factors contributing to the development of arteriosclerosis. Learned counsel for the petitioner submitted that the petitioner had topped in Delhi zone; he was at S.No. 31 in the All India merit and, therefore, he should not be denied appointment and his career marred at the beginning itself. He submitted that he could be posted in CRPF

without any hesitation as the duties therein were not very strenuous. He also submitted that the petitioner was ready to give an undertaking that if he develops this disease while in service and is invalidated because of this reason, he would not claim any benefit, including disability pension, etc.

6. We may note that while addressing the grievance of the petitioner that appropriate procedure was not applied to him while conducting review medical examination and diagnosing him as a good case of hypertension this Court vide its order dated 3.10.2005 directed that the petitioner be examined by the Medical Board which would follow the procedure prescribed in the handbook of the medical examination in arriving at the findings about the petitioner's hypertension melody. The said procedure contained in para 7 of the handbook was specifically taken note of in the order itself, which we reproduce below :-

"7. Blood Pressure

The board will use its discretion regarding Blood Pressure. A rough method of calculating normal maximum systolic pressure is as follows :-

- (i) With young subjects 15-25 years of age the average is about 100 plus the age.
- (ii) With subjects over 25 years of age the general rule of 110 plus half the age seems quite satisfactory.

N.B. As a general rule any systolic pressure over 140 mm and diastolic over 90 mm should be regarded as suspicious and the candidate should be hospitalized by the Board before giving their final opinion regarding the candidate's fitness or otherwise. The hospitalization report should indicate whether the rise in blood pressure is of a transient nature due to excitement etc. or whether it is due to any Organic disease. In all such cases X-ray and electrocardiographic examination of

heart and blood urea clearance test should also be done as a routine. The final decision as to fitness or otherwise of a candidate will, however, rest with the medical board only.

Method of taking Blood Pressure

The mercury manometer type of instrument should be used as a rule. The measurement should not be taken within fifteen minutes of any exercise or excitement. Provided the patient and particularly his arm is relaxed he may be either lying or sitting. The arm is supported comfortably at the patient's side in a more or less horizontal position. The arm should be freed from the clothes to the shoulder. The cuff completely deflated should be applied with the middle of the rubber over the inner side of the arm and its lower edge an inch or two above the bend of the elbow. The following returns of cloth bandage should spread evenly over the bag to avoid bulging during inflation. The brachial artery is located by palpitation at the bend of the elbow and the stethoscope is then applied lightly and center over it below but not in contact with the cuff. The cuff is inflated to about 200 mm Hg and then slowly de-deflated. The level at which the column stands when soft successive sound are heard represents the Systolic pressure. When more air is allowed to escape the sound will be heard to increase in intensity. The level at which the well heard clear sound change to soft muffed fading sounds represents the diastolic pressure. The measurements should be taken in a fairly brief period of time as prolonged pressure of the cuff is irritating to the patient and will vitiate the reading. Rechecking if necessary should be done only a few minutes after complete deflation of the cuff. Sometimes, as the cuff is deflated sounds are heard at a certain level they may disappear as pressure falls and reappear at as still lower level. This silent Gap may cause error in readings."

7. After this order, the petitioner was again examined by the RMB on over a spread of three days, i.e. from 18th to 20th October 2005. He was admitted in BSF Headquarters Hospital at R.K. Puram, New Delhi. Based on the said examination, he was again declared medically unfit. The respondents have filed affidavit dated 3.1.2006 pointing out that the procedure contained in the handbook was duly followed. His blood pressure was monitored by three different doctors and para-medical staff between 18th to 20th October 2005, with both digital and mercury manometers in sitting, lying and

standing positions. The Board carried out the basic necessary investigation like blood urea/creatinine, creatinine clearance test ECG etc. Based on these tests and after reviewing the available medical documents of various hospitals, the board came to the opinion that the petitioner was suffering from *Labile Hypertension*. It is explained that the patients who are classified as *Labile Hypertension* are those who sometimes, but not always, have arterial pressure in the hypertension range. These patients are often considered to have borderline hypertension (Reference – *Harrison's Principles of Internal Medicine*, 16th Edn, p. 1468). The petitioner's blood urea is 61 mgs. and S. Creatinine 2.3 mg and renal changes which indicate concomitant renal, retinal involvement. The Medical Board, thus, opined that the petitioner was not medically fit candidate for recruitment in Central Police Organisations as it involves arduous nature of duties and, thus, declared him medically unfit for recruitment as Assistant Commandant (DE). It is submitted that the candidates who got appointment to these posts have to undergo rigorous training under strenuous conditions such as exercises at high altitudes ranging from 10,000 to 15,000 feet. In cases of those who are diagnosed for hypertension, their capacity to perform under strenuous conditions is compromised. The respondents have also enclosed copy of the Medical Report along with this affidavit.

8. It is clear from the above that the medical examination of the petitioner conducted from 18th to 20th October 2005, in compliance

with the directions given by this Court, is carried out after following adequate procedure. However, the Medical Board has again found that the petitioner's is a case of *Labile Hypertension*. Such an opinion of the Medical Board cannot be discarded when no procedural infirmity is found therein. This RMB consisted of very senior doctors with expertise in their field. They have opined that the petitioner is '*unfit due to Labile Hypertension (detailed comments typed overleaf)*'. In the detailed comments, the following is stated :-

"The candidate was admitted and his blood pressure was monitored by different doctors and para medical staff at different times spread over three days with both digital and mercury manometers in sitting; lying and standing positions. The board carried out the basic necessary investigations like blood urea/creatinine, creatinine clearance test ECG etc.

Based on these, and after reviewing the available medical documents of various hospitals, the board is under the opinion that the candidate is suffering from LABILE HYPERTENSION. Patient who are classified as labile hypertension are those who sometimes, but not always, have aretial pressure in the hypertension range. These patients are often considered to have borderline hypertension (Refernece – "Harrison Principle of Internal Medicine 176th edition – page 1468). His blood urea is 61 mgs and S.Creatinine 2/3 mg and retinal changes which indicate concomitant renal, retinal involvement.

As such, he cannot be a medically FIT candidate for recruitment in CPOs as it involves arduous nature of duties.

The board is of the opinion that Shri Sumant Kumar is UNFIT on medical ground for recruitment as AC (DE) due to LABILE HYPERTENSION."

9. This Court has neither necessary experience nor jurisdiction to sit over the said opinion rendered by the RMB. Though the petitioner was declared medically unfit second time by the RMB, in view of the allegations of the petitioner that at that time he was not properly

examined, fresh medical examination was ordered. The petitioner has again been diagnosed with the same disease. It hardly needs to be highlighted that the petitioner is seeking appointment in paramilitary force, which is not only a disciplined force but requires much more strenuous duties in comparison with civilian jobs. Even when the petitioner has been declared unfit for appointment to the particular post, in exercise of judicial review, when no procedural impropriety or *mala fides* are found in the exercise carried out by the respondents, it is not possible to issue *Mandamus* to the respondents to give appointment to the petitioner.

10. For all the foregoing reasons, we feel constrained to dismiss this petition. However, there shall not be any order as to the costs.

(A.K. SIKRI)
JUDGE

(J.M. MALIK)
JUDGE

May 02, 2008
nsk