

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision :4th December, 2009

+ **W.P.(C) No.7993/2009**

DHANANJAY KUMAR Petitioner
Through: Mr.Praveen Kumar Singh, Advocate

versus

CRPF & ANR. Respondents
Through: Ms.Saroj Bidawat, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

PRADEEP NANDRAJOG, J.

1. With reference to the decision reported as 131 (2006) DLT 170 (DB) Anish Barla vs. UPSC, learned counsel for the petitioner states that notwithstanding a Review Medical Board being constituted, this court has jurisdiction to pass a direction to the CRPF directing that the petitioner should be forthwith issued a letter of appointment for the post of Assistant Commandant.

2. The factual backdrop of the claim of the petitioner is that having successfully cleared the written exam and the physical endurance test he was opined to be not fit for

appointment when the Medical Board gave an opinion that due to *LATENT SQUINT WITH MILD PTOSIS OF EYE*, the petitioner was unfit for appointment to the post of Assistant Commandant.

3. In layman's words, the petitioner is detected with a light squint i.e. both eyes could not focus simultaneously at the same point and the upper eyelid was dropping a little. The petitioner got himself examined at Dr. Rajendra Prasad Centre for Ophthalmic Sciences at All India Institute of Medical Sciences where an Ophthalmologist opined that the petitioner had a very mild dropping of the right upper eyelid but the same was within physiological limits and is unlikely to interfere with his field of vision and hence was not a hindrance for performing duties. Pertaining to the squint it was opined that the petitioner was having Exophoria of 2 pd BI for distance and 4 pd BI for near with good stereopsis.

4. The petitioner sought the constitution of a Review Medical Board while enclosing the opinion of the Ophthalmologist who had examined him at Dr. Rajendra Prasad Centre for Ophthalmic Sciences at All India Institute of Medical Sciences. A Review Medical Board presided over by an Ophthalmologist and having two more Ophthalmologists on the panel was constituted by CRPF. The Board reiterated the

non-suitability of the petitioner for employment on account of latent squint and mild ptosis of the right eye.

5. Conceding to the position that there is a dropping of the right eye upper eyelid, but alleging it to be mild and disputing that the petitioner is squint eyed, placing reliance upon the certificate given to the petitioner by the Ophthalmologist of Dr. Rajendra Prasad Centre for Ophthalmic Sciences at All India Institute of Medical Sciences, it is urged that the petitioner is entitled to the relief prayed for.

6. As regards the applicability of the decision in Anish Barla's case supra, suffice would it be to state that the taint found in the said case was that the Review Medical Board having no skin specialist or dermatologist as a member thereof was found to have given an opinion pertaining to an inveterate skin disease. It was held that an opinion of an expert on a subject would be valid if the expert had knowledge and was qualified to give opinion on the subject. In the instant case, all the Members of the Review Medical Board were Ophthalmologists and thus the ratio of Anish Barla's case does not get attracted to the instant case.

7. On merits, it is conceded by learned counsel for the petitioner that the dropping of the upper eyelid of the right eye would restrict the field of vision of the petitioner, but

learned counsel urges that the same would be minimal and in view of the certificate given by the doctor at AIIMS, it is apparent that the same would not hinder the performance of normal duties by the petitioner.

8. Now, obtaining a general certificate in generic terms is of no help for the reason the nature of work and duties to be performed at different levels may require a fitness of a better kind.

9. It is for the authorities at CRPF to decide as to what fitness levels are desired. Pertaining to vision, we may only note that an Assistant Commandant, CRPF would be expected to command troops in riotous conditions even in the dark and thus may require a perfect eye sight and a perfect condition of the eye.

10. Issues of fitness levels are a matter of policy and therefore would be outside the domain of court interference unless a challenge is made on the ground that the desired fitness is arbitrary, in that the same has no connection with the job to be performed. For example, a person who has lost two fingers of a hand may be sufficiently disabled to be a member of a Armed Force on account of the disability to handle a fire arm, but would be suffering no disability if required to be employed as a singer.

11. We note that there is no challenge made in the writ petition to the physical standard required to be achieved as desired by the respondent.

12. In the matter of expert opinion, the court cannot substitute its opinion with that of the expert. The only jurisdiction which a court would have would be to ensure that the opinion on the subject is given by an expert in the field and that the expert concerned has given his opinion based on standards accepted by the experts in the field.

13. Since the petitioner has been found unsuitable even at the Review Medical Board we see no scope to pass any further orders in favour of the petitioner.

14. The writ petition is dismissed.

15. No costs.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

DECEMBER 04, 2009
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