

+ W.P.(C)No.4705/2010Date of Decision : 26th November, 2010

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RAM NATH JHA

..... Petitioner

Through : Mr. Jintendra Kumar Jha, Adv.

versus

DGP C.I.S.F.& ORS.

..... Respondents

Through : Mr. Abhishek Goyal, Adv. for
Mr. B.V. Niren, Adv.**CORAM :-****HON'BLE MS. JUSTICE GITA MITTAL****HON'BLE MR. JUSTICE J.R. MIDHA**

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

GITA MITTAL, J. (Oral)

1. The instant case raises a challenge to the denial of appointment to the petitioner to the post of Assistant Sub-Inspector/work (Ex-servicemen) on the ground that he does not have teeth.

2. It is the petitioner's contention that he lost his teeth while he was working with the Army, and since 2002 has been using the complete denture which had been fitted in the Military Dental Hospital and has been categorized as SHAPE-I throughout. The petitioner has submitted that he had retired from the Indian Army in 2008 and had been placed in category SHAPE-I at the time of retirement. The petitioner sought

employment with the respondents – Central Industrial Security Force Court ('CISF' hereafter) as an ex-serviceman which has been denied. It is contended that the petitioner is medically fit for re-employment.

3. The petitioner assails the rejection of the petitioner's candidature for re-employment as an ex-serviceman by the CISF on the ground that he has been certified as being medically unfit for the reason that he does not possess teeth.

4. It has been pointed out that even the Indian Army maintains separate standard of medical fitness so far as ex-servicemen who are seeking re-employment are concerned. The petitioner has urged that the CISF has no rules for recruitment of ex-servicemen. This position is not disputed.

5. Our attention is drawn to para-43 of the rules for DSC and APS personnel/Dockyard Apprentice (Navy) so far as dental standards are concerned. Para-43(c) provides that artificial dentures for ex-servicemen volunteering between the age of 30-45 years is permissible for re-employment.

So far as the dental standards and examination of teeth which are prescribed in the said Manual for Recruiting Medical Officers inter alia prescribes that "Ex-servicemen with well fitted dentures may be accepted for re-enrolment".

6. Our attention is also drawn to the standards of physical fitness test which have been prescribed by the army authorities. We find that the minimum standards prescribed for persons vary as per the age group of the concerned

personnel. A careful prescription of age wise graded criterion has been made.

7. The respondents have placed reliance on the fitness standards laid down by the CISF for initial recruitment. Judicial notice can be taken of the fact that the fitness level of an eighteen year old seeking initial recruitment cannot be the same as that of an ex-servicemen who is seeking re-employment after retiring beyond the age of 45 years.

8. The army authorities have applied their mind and prescribed standards whereas no such effort has been made by the CISF.

In view of the above, the certification of the petitioner's medical unfitness by the Chief Medical Office (SG), CISF RTC on 6th September, 2009 on the ground of absence of teeth and by the Review Medical Examination on the 7th April, 2010 for the same reason, is certainly arbitrary and without any basis. Admittedly, no rules for such evaluation are in existence.

This certification by the respondents on the sole ground of medical unfitness is also not based on any relevant material or criteria.

9. We find that the Military Dental Centre, Delhi Cantt. on the 12th of September, 2009 has examined the petitioner and has observed that the petitioner possesses denture and has certified that the petitioner is dentally fit for CISF.

10. The rejection of the petitioner's candidature on the sole ground of such finding of medical unfitness is, therefore, not

legally sustainable.

In view of the above, we make the following directions:-

(i) The petitioner shall appear before the Commandant, Army Hospital (Research and Referral), Delhi Cantt. with all records of his medical examination and treatment, if any, which may be in his power and possession, at 11.00 a.m. on 6th December, 2010.

(ii) The respondents shall also ensure that the complete original record relating to the medical examinations of the petitioner is placed before the Commandant, Army Hospital (Research and Referral), Delhi Cantt. on 6th December, 2010.

(iii) The Commandant, Army Hospital (Research and Referral), Delhi is directed to constitute a Board of concerned Specialists/Experts for examination of the petitioner in the matter. The records which are produced by the petitioner as well as the respondent shall be placed before the Board so constituted.

(iv) The medical board, constituted in terms of our order shall be at liberty to examine the petitioner as well as the above records produced by the parties, on a date and time appointed by it which shall be informed to both parties. The Board shall thereafter take an independent view in the matter uninfluenced by the reports produced by the parties. The Board may apply the prescribed

standards in army for evaluation of a candidate seeking re-employment for assessing the petitioner.

(v) The report as well as the standards being applied shall be communicated to both the parties.

(vi) If the report is found in favour of the petitioner, the respondents shall proceed in accordance with the directions made above and shall take a reasoned view within four weeks.

(vii) The order passed by the respondents shall be forthwith communicated to the petitioner.

This writ petition is allowed in terms of the above directions.

Copy of this order be given to counsel for the parties under the signature of the Court Master.

GITA MITTAL, J

J.R. MIDHA, J

NOVEMBER 26, 2010

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