

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

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Date of Judgment: 04.05.2010

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W.P (C) 13685/2009

BIRENDRA SINGH

.....Petitioner

Through: Ms.Rekha Palli,
Ms.Punam Singh
and Ms.Amrita Prakash,
Advocates.

Versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms.Lata Gangwani,
Advocate.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

GITA MITTAL, J. (Oral)

1. The petitioner has assailed the action of the respondents in denying him appointment to the post of Sub Inspector (Exe.) with the Central Industrial Security Force (hereinafter referred to as CISF) as well as the order dated 8th June, 2009 and the order of the Review Medical board dated 19.8.2009 both holding the

petitioner medically unfit for the appointment. There is no dispute on the material facts giving rise to the present petition and to the extent necessary, the same are noticed hereafter.

2. The petitioner was appointed as a Constable with the CISF on 25.08.2001. On 15.1.2005 while posted at Mumbai, the petitioner was bitten by a snake in the official barrack. He was taken to the nearest Government Hospital where, due to development of gangrene in his little toe of his left foot, the same had to be amputated. The petitioner contends that the same did not have any impact on his physical fitness and that he continued to efficiently discharge his duties. While at Mumbai, the petitioner remained posted at the International Airport.

3. With effect from 1.6.2007, the petitioner was transferred and posted with the CISF unit at the Indira Gandhi International Airport, New Delhi. Ms.Rekha Palli, learned counsel appearing for the petitioner points out that on account of the petitioner's dedication and commitment to duty and efficient discharge thereof, he was deputed on Commando Duty as part of the Quick Reaction Team (QRT) at the said airport at New Delhi. The petitioner continues to perform such duties as on date.

4. Our attention has been drawn to the notice dated 14.1.2009 whereby the respondents invited applications from eligible departmental candidates for filling up 360 vacancies of Sub-Inspector (Executive) in the CISF through a Limited Departmental

Competitive Examination ('LDCE' hereinafter for brevity) against the recruitment year of 2009. Only persons working in the post of Constable/GD, Head Constable/GD, Head Constable/Driver, Constable/Driver and Assistant Sub Inspector/Exe who had completed four years of service including the period of training as on 1.8.2009 were eligible to compete in this examination. The petitioner had completed more than four years as Constable/GD in which post he was recruited in the year 2001 and therefore was eligible to apply for appointment to the said post.

5. The petitioner's candidature was favourably considered by the respondents and he successfully undertook the written examination. Thereafter he was called to participate in the interview and he succeeded in the same as well.

6. In order to support the petitioner's contention that he was physically fit in every respect, Ms. Palli, learned counsel for the petitioner has pointed out that the petitioner was required to undertake the physical efficiency test after eligibility verification as per the prescribed selection procedure. The physical efficiency test, included the following tests:

- a) 100 Mtr race in 16 seconds
- b) 1.6 Kms race in 6.5 minutes
- c) Long Jump 3.65 Meters in 3 chances
- d) High Jump 1.2 Meters in 3 chances
- e) Shot Put (16 Lbs) 4.5 Meters in 3 chances

The petitioner has admittedly also successfully completed the physical endurance tests as well.

7. We are informed that so far as appointment to the post of Sub-Inspector (Executive) is concerned, for the reason that the same requires lesser degree of physical activity than the post of Constable, the respondents have allocated no marks for successful completion in the physical efficiency test. On the other hand, candidates seeking appointment to the post of Constable are given substantial consideration and marks for undertaking the physical efficiency tests.

8. The petitioner was thereafter required to undergo the medical test. Medical standards have been prescribed at Sl.No.5 (f) of the above notice dated 14.1.2009 which reads as follows:

“5 (f) **Medical Standard**

(i) **Eye Sight** – The minimum distant vision should be 6/6 and 6/9 of 2 eyes without correction i.e. without wearing of glasses.

(ii) The candidate must not have knock-knee, flat foot, varicose veins or squint in eye and should possess high colour vision. Must be in good mental and bodily health and free from any physical defect, which may interfere with the efficient performance of the duties.”

9. The submission on behalf of the petitioner is that the petitioner fully met the requisite standards, was completely fit and did not suffer from any kind of disability which was interfering in the efficient performance of his duties.

10. It has been also pointed out that the rules of service of the respondents require the petitioner to undergo an annual medical check-up and wherein an assessment is effected on the physical fitness of the CISF personnel. The petitioner had admittedly been

certified being in Medical Shape I in the Annual Medical Examinations conducted by the respondents for the year 2007, 2008 and 2009.

11. However, when the petitioner reported for his medical examination as part of the above selection process, he was issued a rejection slip dated 8.6.2009 wherein it was stated that the candidature of the petitioner cannot be considered on the ground of amputation of the little toe of his left foot.

12. The petitioner has thereafter got himself medically examined in the department of Orthopaedics at the All India Institute of Medical Sciences ('AIIMS' hereafter) from the aspect of functional disability on account of said amputation. The petitioner was medically examined by the experts in the department of Orthopaedics at the AIIMS who have duly opined that the petitioner was fit to perform and continue in the uniformed service in which he was serving. It had also been certified that the petitioner's status will not cause any disability in the performance of his duties.

13. Based on the examination by the Specialists of AIIMS, the petitioner submitted an appeal in the prescribed format for examination by the Review Medical Board, enclosing therewith the medical fitness dated 18.6.2009 issued by the AIIMS.

14. The petitioner was consequently medically examined by a Review Medical Board on 19.8.2009 which reiterated the

petitioner's medical unfitness on account of the aforementioned amputation. The petitioner has thereafter submitted representations' to the respondents on 1.9.2009 and 21.10.2009 against the said rejection but has received no response at all.

15. In this background, frustrated with the treatment which was meted out to him by the respondents the petitioner made a request to the respondent and expressed his desire for issuance of a no objection certificate for allowing him to seek outside employment i.e. employment other than with the combined central paramilitary forces. It has been urged that by the stand taken by the respondent with regard to the petitioner's fitness, the respondents have thereby not only jeopardized any chance of petitioner's career progression in the CISF but have also put in jeopardy the petitioner's future career prospects in outside service even.

16. Our attention has been drawn to the communication dated 18.8.2009 issued by the Deputy Commandant/ADM of IGI Airport, New Delhi informing therein that applications submitted by CISF personnel for outside employment, other than to CPMF (Central Para Military Forces) may not be forwarded for issuance of no objection certificates. It has been pointed out that this communication is based on a letter dated 19.6.2009 issued by the office of Additional Director General of CISF to the effect that the matter had been reviewed and that it had been decided that the CISF personnel who are 'AVSEC' trained/Certified Screeners and

have applied for employment in higher posts in CPMFs only may be issued no objection certificate by the competent authority. However, those personnel who have applied for employment in higher posts elsewhere may not be issued no objection certificates. AVSEC is stated to be an abbreviation for 'Aviation Security'.

Needless to say, inherent in this communication is the desire and intention of the respondents to retain CISF personnel who have undergone the specialized training in the Aviation Security Course.

17. We are informed that the petitioner is stated to have successfully completed the basic AVSEC course from 2.9.2008 to 12.9.2008 for which he has been so certified on 4th of November, 2008 by the Dy.Commissioner of Security (CA). The petitioner has been identified as a competent commando and forms a part of the elite Quick Reaction Team of the CISF and is undertaking serious security functions at sensitive postings without any kind of complaint at all.

18. In this background the present writ petition has been filed making a prayer for quashing of the orders dated 8.6.2009 and 19.8.2009 and seeking a direction to the respondents to appoint the petitioner as a Sub-Inspector (Exe.) with all consequential benefits with effect from the date the other candidates selected in the LDCE 2009 were so appointed. In the alternative, the

petitioner makes a prayer for a direction to the respondent to invalidate the petitioner along with grant of disability pension.

19. The opposition of the writ petition by learned counsel of the respondent is primarily based on the ground that the appointment pursuant to the notice dated 14.1.2009 was not in the nature of a promotion but was appointment by the direct recruitment process. A competitive examination is conducted for the same by the respondents. The petitioner has to compete on merits with other departmental candidates and has to be free from any physical defect. Reliance has been placed on the proceedings of the medical examination conducted on 8.6.2009 and that of the review medical board conducted on 19.8.2009 to contend that the petitioner is medically unfit for appointment to the post of Sub-Inspector (Exe.). It has further been contended that in view of the circular dated 19.6.2009, a No Objection Certificate cannot be issued to the petitioner to seek outside appointment.

20. We have carefully considered the rival contentions of the parties. Even though the recruitment to the post of sub-inspector (Exe.) through the LDCE 2009 for which applications were invited by the communication dated 14.1.2009 is strictly not in the nature of a promotion, yet perusal of the notice would show that only departmental candidates were eligible for undertaking the written examination. No recruitment from personnel other than the notified personnel in the CISF is envisaged therein. Written and

physical standards have been prescribed as well as an interview. It needs no elaboration that the effect of successfully undertaking the selection process and the subsequent appointment to a higher post have the real impact of a promotion so far as the career-profile of the participating candidates is concerned. Therefore the opposition to the writ petition on the ground that the notice dated 14.1.2009 did not envisage promotion is misconceived. In any case, the orders which are passed against the petitioner will impact his career-progression which we now propose to examine hereinafter.

21. In the counter affidavit filed by the respondent, it is not disputed that the petitioner has remained posted at sensitive positions from the time he has joined the force. He was compelled to suffer the amputation of his little toe in the left foot on account of a snake bite while he was in the official barracks at Mumbai when posted at the International Airport. The amputation has not impacted the functioning of the petitioner at all and he has continued to remain posted at sensitive postings till 2007. Even when the respondents had to transfer the petitioner, he was not given a soft posting. Since 1.6.2007, the petitioner has been posted at the International Airport in New Delhi. It cannot be disputed that such a sensitive posting requires the security personnel manning the airport and discharging function of airport security to be in the fittest possible shape. Certainly the

amputation of his toe had no impact on the functions which the petitioner has been required to discharge.

22. The petitioner's fitness has been endorsed by the respondents who since 1.8.2007 have posted him as a Commando with the Quick Reaction Team. We are informed that prior to his assignment with the QRT, a Constable has to undergo a Quick Reaction Team course for a period of 35 days which is conducted at Aarakonam, Vellore District, Tamil Nadu. The petitioner has been posted as a Commando after having been shortlisted and having successfully undertaken this course.

23. Not a single complaint in the functioning of the petitioner has been placed before us. No deficit on account of loss of his little toe is also available or pointed out in the record or in the documents placed before us.

24. At this stage, it becomes necessary to notice an extremely distressing factor. An able soldier with the CISF has been declared as medically unfit. The fitness standard in relation to the amputation of a little toe obviously would have required an assessment by Orthopaedic experts. The perusal of the record of the medical examination conducted on 8.6.2009 and the counter affidavit would show that the petitioner has been certified as unfit by the Chief Medical Officer at the NHCC, Saket, New Delhi-17. Such a Chief Medical Officer does not appear to be possessing any training as an orthopaedic expert.

25. So far as the position of the Review Medical Board which had conducted the petitioner's medical examination on 19.8.2009 is concerned, we find that according to the counter affidavit the Board consisted of a medical specialist, surgical specialist and an ophthalmologist who examined the petitioner and after considering all the reports and physical examination, declared him unfit due to amputation of little toe of left foot. It is clearly evident that the Board which had re-examined the petitioner and certified him as unfit also did not consist of any expert of orthopaedics, the concerned speciality.

26. We find that this court had the occasion to consider a similar medical examination of a candidate by a board which did not consist a specialist of the discipline which was involved. In the decision in Anish Barla vs. Union Public Services Commission reported at 2006 VIII AD (Delhi) 622 appointment to the post of Assistant Commandant Group A in the Central Police Forces was involved. The petitioner had been rejected by the respondents on grounds of medical unfitness. The petitioner had assailed the rejection inter alia on the ground of the petitioner having been declared fit by a dermatologist of a recognized hospital of Delhi and that he had wrongly been declared medically unfit by a Board which did not include a specialist of the required field. Observations in para 4 of the judgment deserve to be considered in extenso which reads as follows:

“4. It may be mentioned by us that the above order has been passed by us on the basis of the statement made by the counsel appearing for the petitioner that the petitioner is now free from the aforesaid skin disease, and upon our noting with anguish from the record of the respondent that although the petitioner was held unfit for appointment on the ground of inveterate skin disease, none of the members of the Medical Board who had thus disqualified the petitioner had any experience in dermatology. This is, to say the least, most unfortunate and we record our disapproval of the manner in which the case of the petitioner has been dealt with by the respondent. We hope that the respondent will desist from committing such mistakes in the future and will bestow earnest consideration to such like cases since the very right to life and livelihood of a person may be adversely affected by the same.

27. It is apparent that despite this pronouncement made on 14.3.2006, the respondents have not paid any heed to the composition of the Board which examines the fitness of the candidates. It also shows that the respondents have not at all given any heed to the material facts of the case which have certainly a bearing on the fitness of the petitioner. Mere amputation of the little toe of the left foot by itself may not necessarily render a candidate unfit for appointment to a particular post. Further the impact of declaring him as medically unfit may render him unfit for continuation in the post which he was occupying at the time of his medical examination.

28. The respondents accept the fact that the petitioner was certified as being in Shape I category for the year 2007, 2008 and 2009.

29. It may be noted that amputation of a part of a body may not in all cases be necessarily sufficient to create a disability for appointment to a post. The very fact that a candidate seeking appointment is required to undergo a medical examination, manifests the intention that there has to be an assessment of the person's capabilities and fitness from the medical point of view. Different individuals have different capabilities. One person may have the capability to overcome the deficit, if any, created by such an amputation of the toe, while another person may not be able to do so. For this reason, it is essential that the fitness of a person is assessed only by experts of the specialty concerned. The respondents shall ensure that medical boards which are constituted in future for examining medical fitness of candidates, consist of members of the specialty concerned.

30. It is pointed out by Ms.Palli that out of 360 vacancies advertised on 14th January, 2009, the respondents could not even find sufficient candidates who could meet the qualified marks for the posts by the LDCE 2009. It is contended that vacancies therefore are available for appointment of the petitioner.

31. It is unfortunate that a stand has been taken in the counter affidavit that the annual medical examination is only a formal and routine check-up. Such a stand in a counter affidavit filed by a Central Paramilitary Force Service requires to be deprecated. Fitness of the personnel manning these forces is an essential

requirement for their continued retention in the forces. It is clear that such a stand has been taken only as a defence to the present petition and is not the ground reality. Retention of unfit personnel in the force would have disastrous consequences and could impact national security as well. The annual medical examination in any force charged with security duties cannot and ought not be a mere formality or routine check-up.

32. In view of the above stand, this aspect deserves immediate attention of the Director General of the CISF. A copy of the counter affidavit shall be placed before the Home Secretary of the Central Government and the Director General, CISF for perusal who shall ensure that in case the annual medical examination is not being given the due and necessary importance, immediate steps in this behalf be taken.

33. We may also examine the alternate relief which has been sought by the petitioner. We find substance in the submission of Ms.Rekha Palli, learned counsel appearing on behalf of the petitioner that in the face of the respondents' certification of petitioner's medical status as unfit, the petitioner shall be prejudiced in all further promotions and that he would stagnate as a Constable with the CISF. It is contended that by the refusal of the no objection certificate to the petitioner, the petitioner is unfairly being denied opportunity to seek alternative employment so that he would have better career prospects

34. The respondents have sought to justify this refusal for grant of the no objection certificate on the ground of the communication dated 19.6.2009 issued by the office of the Additional Director General/Airport Sector, Central Industrial Security Force. This communication does not come in the way of such personnel who seek a no objection certificate for employment in higher posts in the CPMF's only.

So far as the petitioner is concerned it is obvious that he is an efficient AVSEC commando and giving satisfactory service to the CISF and the country. Yet he has been declared unfit by persons who were not experts in the discipline concerned. In case the petitioner has to be maintained as medically unfit, his continued retention with the CISF in the post of a constable only against his normal aspirations for seeking career progression is unreasonable, unfair and highly unjust.

35. In view of the above discussion, the petitioner is entitled to relief in the present writ petition. However, inasmuch as, certification of the petitioner's fitness by proper experts is essential for appointment to any post in the Central Paramilitary force, we order as follows:

(i) the orders dated 8.6.2009 and dated 19.8.2009 declaring the petitioner as medically unfit for the appointment to the post of Sub-Inspector (Executive) are hereby set aside and quashed.

(ii) We direct the Commandant, R & R, Delhi to constitute a board of experts to medically examine the petitioner and submit a report of his medical fitness. The petitioner shall appear before the Commandant with copies of all documents including his medical documents of 2007 to 2009, the reports of All India Institute of Medical Sciences and all other relevant service records on 10th May, 2010 at 11 AM. The board which is constituted by the Commandant shall examine the petitioner on a notified date and time will take into consideration the facts which are noticed in our present order as well as the said records. The respondents shall also produce before the Board all the records of the petitioner's examinations' in terms of the notification dated 14.1.2009 pursuant to his application, including the record of the medical examination and the review medical examination.

(iii) The report of the board constituted by the Commandant, R & R, Delhi Cantt. shall be submitted to the Director General, CISF. Copy thereof shall be furnished to the petitioner as well.

(iv) In case, the petitioner's fitness is certified in the report, the respondents shall forthwith take steps for appointing the petitioner as Sub-Inspector (Executive) with consequential benefits with other candidates who were selected in the LDCE-2009.

(v) In case, the petitioner is declared medically unfit for appointment, the respondents would consider the petitioner's

request for invalidating the petitioner and grant of disability pension in accordance with the applicable rules.

(vi) Orders in terms of the above directions shall be passed within four weeks of the receipt of the medical report from the Commandant, R & R Hospital, Delhi Cantt.

(vii) in case the petitioner is still aggrieved by the orders passed by the respondents, it shall be open to him to assail the same by appropriate legal proceedings.

This writ petition is allowed in the above terms.

Dasti to parties under signatures of the court master.

Copy of the order be sent to the Secretary, Ministry of Home Affairs and Director General, CISF in terms of the directions made in paras (i) to (vii) above.

GITA MITTAL, J.

INDERMEET KAUR, J.

May 04, 2010
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