

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

+ **WP(C) No.7711/2011**

% **Date of Decision: 17.11.2011**

Amardeep Singh Petitioner

Through Mr. Rais Farooqui & Mr. S.Akbar Abdi,
Advocates

Versus

Union of India & Ors. Respondents

Through Mr. Himanshu Bajaj, Advocate for
respondent Nos.1 to 3

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

ANIL KUMAR, J.

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CM No. 17471/2011

Allowed subject to all just exceptions.

WP(C) No. 7711/2011

1. The petitioner has sought direction against the respondents to appoint him to the post of Constable-GD in BSF, CISF, SSB and CRP-2011 and to quash the review medical examination held on 17th October 2011 of the petitioner at SSB Academy, Srinagar, District Pauri Garhwal as well as a direction to the respondent to constitute a special

medical board for the medical examination of the fitness of the petitioner.

2. The brief facts to comprehend the dispute between the parties are that respondent no.2, The Staff selection Commission (N/R), invited applications online for the recruitment to the Post of Constable (GD) in BSF, CISF, SSB & CRPF in the month of January, 2011. Pursuant to which the petitioner submitted his application seeking combined recruitment for the post of Constable-GD. The petitioner was called for the physical test at the CRPF Camp, New Delhi and was given the Roll No. 2002000342. On 21st April, 2011 the petitioner appeared for the physical test and also qualified the same.

3. After the physical test, an admit card was issued for the written test at the Recruitment Centre Sh.Guru Ram Public School, Bindal, Khurbura Mohalla, Dehradun (Uttarakhand) on 5th June, 2011, for which the petitioner duly appeared for direct recruitment under the general category. The petitioner qualified the physical and the written examination. Thereafter, the petitioner was called for medical test and he was directed to appear on 27th July, 2011 at the Medical Centre at SSB Academy, Srinagar, District Pauri Garhwal, Uttaranchal -246174. After his medical examination, a memorandum was given on 30th July, 2011 declaring the petitioner unfit due to the specified reasons of : i)

Varicose Vein Rt. side; ii) Drooping Lt. shoulder and iii) Increased Carrying Angle Lt. side.

4. The petitioner contended that he was asked to get operated and obtain the necessary medical certificate from the medical practitioner and file an appeal for review of the medical examination, which had to be submitted within a period of 15 days from the date of the memorandum, and positively by 13th August, 2011, failing which his candidature for the said recruitment would be treated as cancelled without any further notice.

5. According to the petitioner, he approached B.L.Sharma, District Hospital, Meerut, UP and got a minor surgery/operation done on 2nd August, 2011 for the Varicose Vein Rt. side. Consequently, he was declared medically fit and was also issued a fitness certificate by the District Hospital, Meerut. The petitioner, therefore, sent an appeal on 3rd August, 2011 through registered post requesting a review of the medical examination, along with the medical certificate stating that the petitioner was operated for Varicose Vain Rt. Side on 2nd August, 2011 and that now he is fit. The certificate was issued by Dr.V.P.Singh having Registration No.28338 and it also noted that there could be an error in judgment regarding the Drooping Lt. side Shoulder and Increased Carrying Angle Lt. side.

6. Pursuant to the appeal, and the medical certificate submitted by the petitioner, he was called for review medical examination by letter dated 1st October, 2011 on 17th October, 2011 at the office of the Director, SSB Academy, Srinagar, District Pauri Garhwal (Uttarakhand). However, even after the review medical examination, the petitioner was declared unfit on account of “Varicose Vein operated”. Regarding the unfitness of the petitioner on account of the Drooping Lt. side shoulder and the Increased Carrying Angle Lt. side which was cited in the earlier examination, it was stated that there is “no significant Drooping and no significant Carrying Angle”.

7. The petitioner has contended that the “Varicose Vein” is not a serious ailment or defect and that he was not having any problem, as it is apparent from the facts that he had obtained the first position in the physical test conducted by the respondents at the CRPF camp on 21st April, 2011. However, since he was advised during the medical examination to get the operation done, he got himself operated for minor surgery and thereafter he is fit and has no problem at all. The plea of the petitioner is that declaring him unfit on the sole ground that “Varicose Vein Operated” is arbitrary, mala fide, biased and without application of medical rule of fitness. Hence in the circumstances, it ought to be held that the petitioner is medically fit for the recruitment for the post of Constable (GD) in BSF, CISF, SSB and CRPF. The petitioner also asserted that he is of a tender age of 21 years and that

his entire career shall be spoiled in case he is not given an opportunity for appointment inspite of being fit.

8. The learned counsel for the respondents, Mr.Bajaj, who appears on an advanced notice has produced the Uniform Guidelines for Medical Examination Test (MET) for Combined Recruitment of Constable/GD in CARFs and ARs. The said guidelines in para 20 (z) stipulates the conditions about the Varicose Vein which is a ground for rejection under the said guidelines. Para 20 (z) of the said guidelines is as under;-

“(z). Varicose Vein. The diagnosis of varicose vein should be made on the basis of dilatation and tortuosity of veins. Only prominence of veins should not be criteria for rejection. Operated cases of Varicose Veins should not be accepted”.

The guidelines in para 72 (f) deals with Varicocele Vein which is as under:

- “(i) Mild degree of varicocele in the left side uncomplicated and symptoms less should not be a bar to acceptance in an otherwise healthy individual.
- (ii) Moderate to severe degree of varicocele on the left side without any Testicular atrophy will be rejected.
- (iii) Varicocele on the left side with the atrophy will be rejected.
- (iv) Right sided varicocele of any degree will be declared unfit.”

9. The guidelines have also been framed for review by the medical board and para 3(c) of the guidelines for review by the medical board stipulates as follows:

“3(c) for vascular defects like Varicose Vain malformation colour doppler should be carried out.”

10. Learned counsel for the respondents, Mr.Bajaj, has also emphatically contended that in the notice dated 4th March, 2011 for Recruitment of Constables in Central Police Forces, 2010 para (IV) titled as Medical Examination sub para (iii) specifically states that the medical standard required is that the candidates must not have Varicose Vein.

11. Learned counsel has also refuted the plea raised on behalf of the petitioner that after his medical examination dated 30th July, 2011, the petitioner was asked to undergo operation for correction of the Varicose Vein on the right leg. Learned counsel has contended that since the guidelines for medical standards categorically stipulates that operated case of Varicose Vein will not be accepted, no one would have advised the petitioner to undergo a surgical procedure for correction of the Varicose Vein as it could not to be accepted.

12. This Court has heard the learned counsel for the parties in detail. This cannot be disputed that in the notice dated 4th March, 2011, it is

specifically stipulated in para (IV) (iii) (b) that the candidate must not have Varicose Vein. Uniform Guidelines as detailed hereinabove also categorically lays down that operated case of Varicose Vein shall not be accepted and that the diagnosis of Varicose Vein is to be made on the basis of the dilatation and tortuosity of the vein and not on account of prominence of the vein.

13. The petitioner has not refuted and cannot refute that Varicose Vein on Rt. side in him was detected on the basis of the parameters provided under the uniform guidelines.

14. Learned counsel for the petitioner is unable to disclose as to who had advised the petitioner to undergo the surgical procedure for correction of Varicose Vein on his Rt. side. Besides making a generic allegation that he had been advised to undergo surgical procedure, the petitioner has not imputed the said advice to any particular official of the respondent. In any case, it is not believable that despite knowing that the Varicose Vein being corrected by surgical procedure would not render the petitioner fit, any responsible officer of the respondents would advise the petitioner contrary to the medical standards laid down in the uniform policy.

15. The plea of learned counsel for the petitioner that Varicose Vein Rt. side is not a serious ailment or defect, which is apparent from the

fact that in the physical fitness test taken by the respondents the petitioner had performed very well, is irrelevant since the uniform policy as well as the notice dated 4th March, 2011 clearly puts a bar on candidates having Varicose Vein. Also, the said notice and policy laid down by the respondents has not been challenged by the petitioner. In any case, this Court in exercise of its jurisdiction under Article 226 of the Constitution of India does not sit as a court of appeal over the standards of medical fitness laid down by the respondents, but merely reviews the medical examination in which the decision is made. No ground has been raised on behalf of the petitioner challenging the medical examination with regard to the medical fitness parameters not being applied in case of the petitioner. The wisdom, advisability and relevance of the medical fitness parameters and standards laid down by the respondents for recruitment is ordinarily not amenable to judicial review, unless it can be demonstrated that the medical parameters for not selecting a candidate have been applied contrary to any of the rules and regulations or any statutory provision. The High Court in the facts and circumstances does not have to consider the facts that despite having Varicose Vein Rt. side, which is a factor for declaring the petitioner unfit for recruitment, it should not be considered as a ground for medical unfitness, since the petitioner performed well in the physical test conducted by the respondent. The respondents are entitled to take any policy decisions which may be necessary as per the requirements of

the forces, and it is not for the courts to deem them to be un-pragmatic subject to peculiar circumstances to each case.

16. This is no more res-integra that in policy matters this Court has a very limited scope of interference. In *Tamil Nadu Education Dept., Ministerial and General Subordinate Services Association v. State of Tamil Nadu and Ors.*, MANU/SC/0480/1979, the Supreme Court while examining the scope of interference by the Courts in public policy held that the Court cannot strike down a circular/Government Order or a policy merely because there is a variation or contradiction. The Court observed: "Life is sometimes a contradiction and even inconsistency is not always a virtue. What is important is to know whether mala fides vitiates or irrational and extraneous factors fouls the case.". In that decision that Court also observed:

"Once, the principle is found to be rational, the fact that a few freak instances of hardship may arise on either side cannot be a ground to invalidate the order or the policy. Every cause claims a martyr and however, unhappy we be to see the seniors of yesterday becoming the juniors of today, this is an area where, absent arbitrariness and irrationality, the Court has to adopt a hands-off policy."

17. A similar view has been reiterated in *Delhi Science Forum and Ors. v. Union of India and Anr.*, MANU/SC/0360/1996; *UP. Katha Factories Association v. State of U.P. and Ors.*, MANU/SC/0494/1996; and *Rameshwar Prasad v. Managing Director, U.P. Rajkiya Nirman*

Nigam Limited and Ors. MANU/SC/0580/1999. In Netai Bag and Ors. v. State of West Bengal and Ors., MANU/SC/0604/2000, the Supreme Court observed:

"The Court cannot strike down a policy decision taken by the government merely because it feels that another decision would have been fairer or wiser or more scientific or logical."

18. The Government is entitled to make pragmatic adjustments and policy decisions which may be necessary or called for under the prevalent peculiar circumstances. While deciding the said case, the Court referred to and relied upon its earlier judgments in State of Madhya Pradesh v. Nandlal Jaiswal, MANU/SC/0034/1986 and Sachidanand Pandey v. State of West Bengal, MANU/SC/0136/1987, in which the Court held that judicial interference with policy decision is permissible only if the decision is shown to be patently arbitrary, discriminatory or mala fide. A similar view has been reiterated in Union of India and Ors. v. Dinesh Engineering Corporation and Anr. MANU/SC/0575/2001. In Ugar Sugar Works Ltd. v. Delhi Administration and Ors. MANU/SC/0189/2001, it has been held that in exercise of the powers of judicial review, the Courts do not ordinarily interfere with policy decisions of the executive unless the policy can be faulted on the ground of mala fide, unreasonableness, arbitrariness or unfairness etc. If the policy cannot be touched on any of these grounds,

the mere fact that it may affect the interests of a party does not justify invalidating the policy.

19. In the circumstances, the plea of the learned counsel for the petitioner that Varicose Vein Rt. side, which had been corrected by surgical procedure, should not be a ground for declaring the petitioner to be medically unfit, cannot be accepted. If the petitioner is medically unfit, according to the uniform guidelines of medical standards laid down by the respondents, the petitioner is not entitled for any direction against the respondents to enlist him to the post of Constable (GD) as has been prayed for by the petitioner. Also there are no grounds for quashing the review medical examination conducted on 17th October, 2011 holding that the petitioner is medically unfit on account of Varicose Vein Rt. side being corrected by surgery. No cogent grounds have even contended for directing the respondents to constitute a special medical board for the medical examination to ascertain the fitness of the petitioner. This has not been disputed that the petitioner has Varicose Vein Rt. side and that it's correction by surgical procedure cannot be accepted, contrary to the yardstick laid down by the respondents as the medical fitness standards.

20. No other point has been urged on behalf of the petitioner. In the circumstances, the petitioner is not entitled for any direction to the respondents as prayed by him.

21. The writ petition in the facts and circumstances is without any merit and it is therefore, dismissed.

CM No. 17470/2011

Since the writ petition of the petitioner has been dismissed, the petitioner is not entitled for any direction as prayed by him.

The application for direction is, therefore, dismissed.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

November 17, 2011.

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