

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

+ **WP(C) No.8131/2011**

% **Date of Decision: 18.11.2011**

Mr. Ravinder Kumar Yadav Petitioner

Through Ms.Jasvinder Kaur with Col.S.K.Singh,
Advocates.

Versus

Director General, ... Respondents
Border Security Force & Anr.

Through Mr.Ravinder Aggarwal, Central
Government Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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

ANIL KUMAR, J.

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1. The petitioner has sought quashing of order dated 16th December, 2010, rejecting his candidature to the post of Head Constable (Min.) in the Border Security Force and the order dated 25th March, 2011 of the Review Medical Board holding the petitioner unfit for the said post on account of the petitioner having 'knock knees'.

2. The petitioner had applied for the post of Head Constable (Ministerial) in the BSF pursuant to an advertisement given in the employment newspaper. The application of the petitioner was accepted and he was allotted roll number 11607889. The petitioner appeared in the written test on 19th September, 2010. Thereafter, he was asked to appear for the physical test on 30th November, 2010.

3. According to the petitioner, in the physical test he was found fit as his physical endurance, height, chest and eye sight was found to meet the minimum requirement. The petitioner thereafter appeared in the typing test on 5th December, 2010 and the computer proficiency test on 9th December, 2010.

4. The petitioner was medically examined on 16th December, 2010 at the Unit Hospital, 33 Batallion BSF, Hissar. Pursuant to the medical examination, the petitioner was declared unfit on account of having “knock knees”. By order dated 16th December, 2010, the petitioner was however, permitted to file an appeal against the finding of the medical examination before the review medical examination board after obtaining the necessary medical fitness certificate from a medical Practitioner (Specialist in the concerned field) and submitting the same within one month from the date of the order.

5. The petitioner, thereafter, got himself re-examined on 29th December, 2010 at the Civil Hospital, Rewari by an Orthopedic Specialist, Dr. Amandeep Singh. At the Civil hospital the petitioner was declared to be medically fit and a certificate was issued to that effect which was submitted by the petitioner to the respondents. The said certificate stated that declaring the petitioner having 'knock knees' was an error of judgment.

6. Consequent to the submission of the medical fitness certificate for a review medical board, the petitioner was re-examined at the Composite Hospital, Border Security Force, Jalandhar Cantt. on 24th March, 2011. After re-examining the petitioner, he was again declared medically unfit on account of 'knock knees'.

7. The petitioner has challenged his unfitness on account of "knock knee", inter-alia, on the ground that the medical board and the review medical board did not give any attention to the detailed process that is required to be performed in order to infer the definite conclusion regarding 'knock knees'. The petitioner relied on the decision of a Coordinate Bench in W.P(C) No.5469/2011 titled as 'Samandar Singh v. Union of India & Ors.' decided on 2nd August, 2011 holding that the empirical facts, based on which an opinion is rendered, should be penned by the doctors so that the Court or any other forum is able to understand the reasoning of the medical board for declaring a

candidate medically unfit especially as the detailed procedure for ascertaining the physical parameters are provided under the uniform guidelines of the respondents. The Court in the said order had observed that the earlier writ petitions were disposed of directing the respondents to conduct medical examination of such candidates in whose cases there were no empirical data available, at the Army (Research and Referral) Hospital, Delhi Cantonment.

8. The petitioner also challenged declaring him unfit on the account of “knock knees” on the ground that the medical examination conducted on him at the Civil Hospital, Rewari did not find any deformity with him, rather he was given a medical fitness certificate endorsing his medical fitness and declaring that holding the petitioner medically unfit is an error of judgment. The petitioner asserted that the review medical board had not even taken into consideration the other fitness certificate given by the other hospital prior to the medical examination by the review medical board. The petitioner has contended that there is no delay in seeking the relief in terms of the decision of this Court in the case of Samandar Singh (Supra) who was also rejected on the ground of ‘knock knees’ and in whose case the matter was referred to Research and Referral Hospital where the said candidate was declared medically fit. In the circumstances, it is contended that the petitioner was declared medically unfit mechanically and that the review medical board had only reconfirmed his unfitness in a

mechanical manner, despite a medical fitness certificate by the Safdarjung Hospital, merely with a view to confirm its earlier finding.

9. The learned counsel for the respondents, Mr. Ravinder Aggarwal, has appeared pursuant to advance notice served on the respondents and has produced the Dossier file of the petitioner. He has contended that the petitioner was declared unfit on account of “knock knees”. Even after the review medical board, the petitioner was found to have knock knees which is a ground for holding a candidate unfit and, therefore, the petitioner is not entitled for any directions as sought by him. He also contended that the certificate obtained by the petitioner from Civil Hospital, Rewari also does not detail as to how the test was done to ascertain whether the petitioner has ‘knock knees’ or not and as to how there was an error of judgment in assessment by the medical board of the respondents.

10. This Court has heard the learned counsel for the parties. This has not been disputed and cannot be disputed that in the case of Samandar Singh (supra) a Division Bench of this Court had held that the observations made by the Court in different writ petitions have been consistently ignored by the doctors of BSF, CISF as well as CRPF. The Court had been advising the doctors that the empirical facts should be penned or incorporated in their report declaring a candidate fit or unfit, so that the Court may perceive the reasons for declaring a candidate

ineligible on account of medical unfitness. The Court had also held that it becomes more difficult in cases where there is a contradictory opinion from a Civil Hospital holding a candidate medically fit, which opinion is obtained after due medical examination pursuant to a right given to a candidate to file an appeal within the parameters provided by the respondents. The observations made by a Coordinate Bench in the case of Samandar Singh (supra) are as under:-

“10. We have been advising that the empirical facts based whereon the opinion is rendered should be penned by the doctors so that this Court, or for that matter any other Court where the lis is brought, is able to understand the problem. As in the present case, the BSF doctors continue to record that the petitioner is knock knee and the petitioner has with him a contra opinion from a Civil Hospital where the doctor has opined that the petitioner is not knock knee. There is just no empirical data for the Court to look into the issue within the scope of a judicial review jurisdiction i.e. whether at all, the opinions are based on some empirical fact or are the opinions ipse-dixit of the opinion maker.”

11. Perusal of the Uniform Guidelines for MET of CT (GD) in CAPFs and ARs reveals that “mild knock knee inter maleolar distance 5 cms or less” is a minor acceptable defect. The said guidelines also incorporate in para 23 that the candidates declared unfit or rejected should be politely explained in detail about the cause of their rejection/disability so that they do not carry any wrong impression about the procedure. The said guidelines also provide procedure for ascertaining the knock knee in paragraph 51 which is as under:-

“51 Knock Knee: The candidate is made to sit on a stool with lower limbs hanging loose. The Assistant then holds up the feet and approximates the medical condyles and distance between the malleoli is measured. Measurement exceeding 5 cms is a cause of rejection as knock knee. Second method for examination of knock knee is to ask candidate to lie flat on the ground with the lower limbs keeping loose. The assistant then lifts up the feet and approximates the medical condyles. The distance between the internal malleoli is then measured with the help of a card.”

12. From the order dated 16th December, 2010 it is apparent that though the petitioner had been declared unfit on account of “knock knee”, however, no other details had been given. Even the Civil Hospital certificate does not give any reason to hold the petitioner medically fit. The certificate issued by the Civil Hospital, Rewari stipulates that the concerned doctor was aware that the petitioner had been declared medically unfit for the post of Assistant Sub Inspector (Steno)/ Head Constable (Ministerial) in the Border Security Force and it was also categorically noted that the opinion declaring the petitioner medically unfit is an error of judgment, but how is it an error of judgment has not been disclosed.

13. Moreover, the review medical board, without considering the yardsticks laid down for declaring a candidate medically unfit on account of ‘knock knees’ and despite a certificate from the Civil Hospital, Rewari holding the petitioner medically fit, without disclosing

any relevant facts or reasons again held the petitioner to be medically unfit. In similar circumstances, the other bench of this Court had passed the following orders:-

“11. The past practice followed by various Benches of this Court, noting that no empirical facts were before the Court, was to dispose of the writ petition with consent requiring the candidate concerned to be subjected to a medical examination at the Army (Research and Referral) Hospital, Delhi Cantonment with further consent recorded that opinion rendered by the doctors would bind the parties.

12. We follow the same precedent and thus dispose of the writ petition directing that the respondents would get in touch with the Commandant of the Army (Research and Referral) Hospital, Delhi Cantonment and would obtain a date when a medical board, consisting of at least 3 doctors, all of whom would be experts in the field of Orthopaedics, would examine the petitioner.

13. The Commandant of Army (Research and Referral) Hospital would indicate the date well in advance so that the petitioner can be informed of the date when he would appear before the Board.

14. On the date when the petitioner would appear before the Board, records with the respondents pertaining to the first medical examination as also the review medical examination conducted would be handed over to the Board by the respondents and likewise the petitioner would hand-over to the Board such documents which he has, pertaining to his medical examination at the Civil Hospital, Rewari.”

14. In the circumstances, two medical opinions without any empirical data holds petitioner unfit on account of ‘knock knee’ and one medical opinion holds him medically fit. Therefore, it is just and appropriate to subject the petitioner to another medical examination to be conducted at the Army (Research and Referral) Hospital, Delhi Cantonment. For

this purpose, the respondents would obtain a date with the medical board consisting of at least three doctors of the Army (Research and Referral) Hospital, Delhi Cantonment who will examine the petitioner to opine whether he has 'knock knee' as per the parameters laid down by the respondents. The date for the medical examination of the petitioner will be communicated to the petitioner well in advance so that the petitioner could appear before the board on the date and time communicated by the respondents. Before the medical board of the Army (R&R) Hospital, Delhi Cantonment, Delhi, the relevant record of the petitioner, that is, the first medical examination report, the Civil Hospital, Rewari medical certificate and the review medical board report should also be produced. The medical board while examining the petitioner shall take into consideration the relevant guidelines and the standards and procedure laid down for ascertaining the medical fitness of the petitioner in accordance with the uniform guidelines.

15 The respondents shall complete the directions as detailed hereinabove within 10 weeks. The petitioner shall be appointed to the said post in accordance with rules, if he is found fit by the above noted Medical Board. The opinion of the medical board shall be binding on the parties. A copy of this order be given dasti to the parties. With these directions the writ petition is disposed of.

CM No.18327/2011

In view of the directions to examine the petitioner by a medical board of the Army (Research and Referral) Hospital, Delhi Cantonment, no further directions are required and the application is disposed of.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

NOVEMBER 18, 2011.
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