

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

% Date of Decision: 15.05.2012

+ **W.P.(C) No.1329/2012**

Vinay Kumar Vishwakarma ... Petitioner

versus

Union of India & Ors. ... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr.S.K.Pabbi & Ms.Shikha Roy, Advocates.

For Respondents : Mr.Abhimanyu Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

ANIL KUMAR, J.

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CM No.4900/2012

This is an application by the petitioner seeking to produce additional documents marked as Annexures P8 to P10.

Perusal of the application reveals that the documents sought to be produced by the petitioner, are copies of the Standing Operating Procedure (SOP) for the recruitment in the GREF Centre & Records and the certificate issued by the Military Hospital at Dehradun dated 8th June, 2011 and a write up on the description and definition of Hydrocelectomy from Surgery Encyclopedia. The documents sought to be produced by the petitioner are relevant for the determination of the

real controversies between the parties and there may not be any doubt about the genuineness of the said documents.

The notice of the writ petition has not yet been issued to the respondents. Consequently, the application is allowed and the documents, annexed as Annexure P8 to P10, are taken on record.

CM No.4899/2012

This is an application by the petitioner for filing an additional affidavit. The petitioner has disclosed that the petitioner had undergone a hydrocele operation in the year 2009, about 1½ years before the date of his medical examination on 18th May, 2011. This fact was not disclosed by the petitioner in his writ petition. The petitioner by way of the present application seeks to file an additional affidavit disclosing about the hydrocele operation performed on him in the year 2009.

The notice of the writ petition has not yet been issued to the respondents.

For the reasons stated in the application it is allowed and the additional affidavit of the petitioner dated 29th March, 2012 is taken on record.

W.P.(C) No.1329/2012

1. The petitioner has sought direction to the respondents to allow the petitioner to join the post of Mason in the Border Road Organization

and he has also sought the quashing of orders dated 18th May, 2011 and order dated May, 2011 declaring the petitioner medically unfit for the said post. The petitioner has further prayed that a medical board be constituted comprising of specialist doctors from the All India Institute of Medical Sciences for the medical examination of the petitioner.

2. The petitioner contends that the respondents had issued an advertisement vide ADVT No.01/2010 seeking appointments to the post of Mason in the category of OBC. The petitioner had applied for the post of Mason in the OBC category and according to him, he had successfully qualified the trade test and the interview.

3. According to the petitioner, he was informed by letter dated 3rd May, 2011 that he has been provisionally selected for the said post of Mason on the basis of trade test and interview and he was directed to report for the medical test on 13th May, 2011 and to produce all the documents by letter dated 3rd May, 2011.

4. The petitioner appeared before the Recruitment Zone, Rishikesh on 13th May, 2011 and produced all the relevant documents. The petitioner was, thereafter, asked to appear for the medical test on 18th May, 2011.

5. The allegation of the petitioner is that he appeared for the medical

test at Recruitment Zone, Rishikesh on 18th May, 2011, however, the medical officer without examining the petitioner, wrongly and illegally issued a declaration that the petitioner is temporarily medically unfit on account of following reason:-

“Post operated scrotal swelling”

6. The petitioner has contended that after being declared medically unfit he got himself examined at Puri's Sanjeevani Hospital, Rishikesh, however, the doctors at the said hospital after examining the petitioner declared him to be fit for the service. The petitioner has contended that in view of the medical report from the private hospital the medical report from Recruitment Zone, Rishikesh is falsified. According to the petitioner, he has been clearly discriminated against and his appointment to the relevant post has been declined with *mala fide* intentions, in as much, the doctors at the Puri's Sanjeevani Hospital, Rishikesh had found the petitioner to be medically fit and they had also given a declaration that he is not suffering from any diseases by certificate dated 25th May, 2011.

7. In view of an independent opinion obtained from the private medical practitioners, the petitioner had applied for a Review Medical Board. Even though the respondents had carried out the Review Medical test, however, the petitioner was again declared medically unfit on the same ground. The Review Medical Board carried out on May,

2011 had again held that the petitioner is unfit on account of post operated scrotal swelling. Despite the petitioner again declared medically unfit even by the Review Medical Board, the petitioner again got himself examined at Sitapur Hospital, Sitapur on 18th August, 2011. The petitioner contended that the doctors at Specialist Government Hospital at Sitapur too declared the petitioner medically fit and issued a certificate dated 18th August, 2011 to that effect.

8. On the basis of the said fitness certificate dated 18th August, 2011, the petitioner made a representation on 29th September, 2011 seeking that he should be declared medically fit and be appointed as a Mason. The respondents, however, rejected the representation of the petitioner and intimated the same to him by letter dated 19th October, 2011. The petitioner, in the facts and circumstances, has challenged the decision of the respondents declaring that the petitioner is permanently medically unfit for the post of Mason in the Border Road Development Board on the ground that the respondents have acted arbitrarily and malafidely as the bare perusal of the medical certificates produced by the petitioner show that he is medically fit, which fact has also been certified by the qualified doctors at Puri's Sanjeevani Hospital, Rishikesh and by the specialist doctor at Sitapur Hospital, Sitapur. In the circumstances, it is contended that the petitioner is not suffering from any health problems as has been alleged and declared by the doctors of the respondents. In the circumstances, the petitioner has

sought the quashing of the orders dated 18th May, 2011 and May, 2011 declaring the petitioner to be medically unfit and a direction to the respondents to appoint him to the post of Mason in Border Road Development Board or in the alternative to constitute a medical board comprising of specialist doctors from All India Institute of Medical Sciences for the re-examination of the petitioner.

9. The learned counsel for the respondents, Mr. Abhimanyu Kumar who appears on advance notice has refuted the pleas and contentions raised by the petitioner. The learned counsel for the respondents has contended that the petitioner deliberately did not reveal the fact that the petitioner had undergone the hydrocele operation with a view to mislead this Court. Relying on the Standing Operating Procedure for recruitment for GREF Centre & Records para 8(w) of the General ground for rejection, the learned counsel has contended that the said rule categorically stipulates that after 'Idiopathic hydrocele operation' if no scar is left then a candidate can be accepted and it will not be a ground of rejection, however, if the operation of Idiopathic Hydrocele leaves scar, such a candidate would be liable for rejection. The learned counsel contended that the petitioner was aware of this fact and, therefore, along with the main writ petition neither this fact was disclosed, nor was any document filed stating that the petitioner had undergone an operation for hydrocele, which has only been admitted by the petitioner subsequently in his additional affidavit, which has been

filed pursuant to the observations made by this Court. The learned counsel for the respondents has further contended that the petitioner was examined by the Medical Board and thereafter, the Review Medical Board properly, and that in any case no *mala fides* or any other type of malice has been imputed against the doctors of the Medical Board and the Review Medical Board. The Medical Board which examined the petitioner on 18th May, 2011 had declared the petitioner to be medically unfit on account of post operated scrotal swelling. In the circumstances, the respondents have contended that the petitioner cannot be allowed to contend that he was declared temporarily medically unfit as has been alleged by the petitioner. The learned counsel also contended that thereafter, the petitioner was again examined by the Review Medical Board and the Review Medical Board had also found the petitioner to be medically unfit on account of having post operated scrotal swelling. In reply to the representation made by the petitioner on the basis of the information obtained by him from the private civilian hospitals the respondents had categorically communicated to the petitioner by letter dated 19th October, 2011 that his case was reviewed by the surgical specialist on 8th June, 2011 who had declared him to be unfit on account of post operated scrotal swelling and thickened end (Post operated). The learned counsel for the respondents has contended that since the petitioner was found to be medically unfit by the Medical Board and the Review Medical Board there is no further procedure to re-examine the petitioner. The communication dated 19th October, 2011

declining the petitioner any further Review Medical Board is as under:-

“RECRUITMENT IN GREF FOR THE POST MASON
AGAINST ADVT 01/2010

1. Reference your application dated 29 Sep 2011 addressed to this office and Copy endorsed to others.

2. Your case for recruitment/appointment for the post of Mason has been perused by this office and it is informed that:-

(a) You were medically examined on 18 May 2011 by Recruitment Medical Officer and was declared permanent UNFIT for the following:-

i) (Lt) post operated scrotal swelling

3. On your appeal for review/re-medical examination on 23 May 2011, you were referred to Military Hospital Dehradun by CMIR vide letter No 16040/RTG/94/CMIR dated 23 May 2011 for review and specialist opinion of Surgical specialist.

4. You were reviewed by surgical specialist on 08 Jun 2011 and declared UNFIT for scrotal swelling and thickened end (Post operated).

5. As per rules and Standing Operating Procedure in vogue on the matter, if any candidate found unfit during re-medical examination, no further chance will be given for re-medical examination and their candidature shall stand cancelled automatically. Therefore, no further chance will be given to you for re-medical examination and your candidature shall stand cancelled automatically.”

10. This Court has heard the learned counsel for the parties and have also perused the documents filed along with the writ petition, additional affidavit and additional documents filed by the petitioner. The learned counsel for the petitioner has not denied that the Standing Operating Procedure (SOP) for recruitment in the GREF Centre & Records is as per

the extract which has been filed by the petitioner himself as annexure P8. The general grounds for rejection in para 8 details various conditions on the basis of which the candidature of a candidate can be rejected. Para 8(w) is as under:-

“8(w): Idiopathic hydrocele, if operated upon and if no scar is left after operation should be accepted.”

11. This is not disputed by the petitioner that the Medical Board of the respondents had found post operated scrotal swelling and even the Review Medical Board had also found the same condition in the petitioner. Rather the Review Medical Board which was held on 8th June, 2011 had also noticed thickened end (Post operated) which makes the petitioner unfit for enlistment to the post of Mason in the Border Roads Organization.

12. The learned counsel for the petitioner has tried to argue about the purpose of hydroselectomy and how to diagnose it. He has contended that hydrocele is a congenital defect that is commonly corrected surgically and there are recommended alternatives and no known measures to prevent the occurrence of congenital hydrocele. In the circumstances, it is contended that the petitioner had no other option but to go for correction of hydrocele and in the circumstances, he cannot be declared medically unfit. Perusal of the Standing Operating Procedure (SOP) for the recruitment in the GREF Centre & Records

clearly reveals that a person who is operated for Idiopathic hydrocele is not medically unfit if the scars are left on account of operation. This condition for rejection has not been challenged by the petitioner and can also not be challenged in the facts and circumstances.

13. Perusal of the report of the medical examinations of the petitioner reveals that he has Post operated scrotal swelling and has thickened end (Post operated) which makes him medically unfit for enlistment to the post of Mason.

14. The learned counsel for the petitioner is also unable to show any regulation or rules under which the petitioner is entitled for yet another Review Medical Board or Appellate Medical Board for his examination after he was medically examined by a Medical Board on 18th May, 2011 and thereafter, by a Review Medical Board on 8th June, 2011. In the absence of any rules and regulations for any medical board to examine him again, the petitioner cannot claim as a matter of right that a Review Medical Board be constituted to examine the petitioner. No bias or any *mala fides* has even been alleged against any of the members of the Medical Board or the Review Medical Board. In the circumstances, the findings of the Medical Board and the Review Medical Board cannot be doubted and the petitioner is not entitled for the constitution of an independent Medical Board of the doctors of All India Institute of Medical Sciences as has been demanded by the petitioner.

15. For the foregoing reasons and in the totality of facts and circumstances, the petitioner cannot contend that he is medically fit and is entitled for appointment to the post of Mason in the Border Roads Organization. The findings of the Medical Board and the Review Medical Board also do not suffer from any illegality or any such irregularity which shall require quashing of the same by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The petitioner is also not entitled for the constitution of an independent Medical Board comprising of specialist doctors from All India Institute of Medical Sciences as has been sought by the petitioner. In the circumstances, the petitioner is not entitled for any of the reliefs sought by him and the writ petition is liable to be dismissed.

16. The writ petition is, therefore, dismissed. Parties are left to bear their own cost.

ANIL KUMAR, J

SUDERSHAN KUMAR MISRA, J.

MAY 15, 2012

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