

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

+ **WP(C) No.6913/2011**

% **Date of Decision: 07.02.2012**

Mahesh Kumar Meena .... Petitioner

Through Mr.A.K.Trivedi, Advocate

Versus

Union of India & Ors. .... Respondents

Through Mr.Sunil Kumar & Mr.Rajiv Ranjan Mishra,  
Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KUMAR**

**HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA**

**ANIL KUMAR, J.**

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1. The petitioner has sought directions for the constitution of an Independent Medical Board at the Army Hospital (R&R) or in any other Govt. Hospital to re-examine the petitioner and if found fit, to consider him for appointment to the post of Constable (VM) in BSF, by the respondents, with all consequential benefits accruing therefrom. The petitioner has also sought a declaration that the actions of the medical authority of BSF in declaring the petitioner medically unfit on account of having Varicose Veins while declaring another candidate, Sh.Sandeep Kumar, fit though he also had the same disease, is discriminatory and consequently to set aside the result of the medical examination and the review medical examination held on 19<sup>th</sup> May, 2011 and 6<sup>th</sup> July, 2011

respectively. The petitioner has also sought that the complete medical record in respect of the petitioner and Sh. Sandeep Kumar (Roll No.41300027) be also called for.

2. Brief relevant facts to comprehend the controversies are that the petitioner had applied for the post of Constable in the BSF pursuant to an advertisement. The pay scale for the post of Constable (Vehicle Mechanic) in BSF was Rs.5200-20200/-+ Grade Pay of Rs.2000/- and the petitioner was allotted the Roll No.41300030. The petitioner had appeared in the written examination and the physical test and he was declared successful. Thereafter, he had also appeared for the medical examination on 19<sup>th</sup> May, 2011 at STC Jodhpur. The result of the medical examination was given on the same day and it was declared that the petitioner was unfit due to Varicose Veins (Optd.)-C Varicose Veins feet. Though the petitioner was declared medically unfit, he was given an option to apply for the review medical examination, after obtaining the necessary medical certificate from a specialist medical practitioner of the concerned field, as per the proforma in Form No. Technician-2011/BSF/APL.

3. The petitioner stated that after he was declared medically unfit by the respondents, he had approached the Rajasthan Community Health Centre, Govind Garh (Jaipur), where he got himself examined by a medical practitioner, namely Dr.R.S.Roondla, a specialist in the field of

Surgery. The said medical practitioner found him medically fit and issued a certificate dated 20<sup>th</sup> May, 2011 stating that after surgery, there are no Varicose Veins in the petitioner.

4. On the basis of the medical certificate dated 20<sup>th</sup> May, 2011, the petitioner applied for a Review Medical Board. The Review Medical Board was held on 6<sup>th</sup> July, 2011 and was presided over by Dr. Shekhar Jaiswal, CMO (SG) 25 BE with two other members namely, Dr. Debashis Nag, CMO (SG) CH BS and Dr. (Mrs.) Millie Murmu, SMO 25. The review medical board declared the petitioner medically unfit on account of the petitioner being an operated case of bilateral varicosity Lower Limbs. It was further held that the petitioner is having bilateral varicosity in smaller vessels with evasting of bilateral calf muscles.

5. The petitioner contended that before approaching the Review Medical Board, the petitioner had also got himself medically examined in the Lok Nayak Hospital, New Delhi and that the doctor in the Hospital had found the petitioner medically fit. The concerned doctors of Lok Nayak Hospital had also issued a certificate dated 4<sup>th</sup> June, 2011 in this regard and in the certificate it was stated that no varicose veins were seen in the petitioner.

6. After the petitioner was declared medically unfit by Review Medical Board, the petitioner again approached the Sawai Man Singh

Hospital, Jaipur on 9<sup>th</sup> July, 2011 and Dr.Ram Manohar Lohia Hospital on 14<sup>th</sup> July, 2011. There the petitioner was allegedly examined by Dr.Neeraj Saxena MS (Surgery), Senior Surgeon, who had opined that the petitioner has no varicose vein. In this regard, the petitioner also produced the OPD reports dated 9<sup>th</sup> July, 2011 and 14<sup>th</sup> July, 2011 where was mentioned that the petitioner does not have varicose veins.

7. The petitioner contended that he had also sought information under Right to Information Act, 2005, seeking the photocopies of the documents by which he was declared medically unfit, however, his request was denied on the ground that the information sought by the petitioner did not fall within the ambit of Section 24 of the Right to Information Act, 2005 as the Border Security Force is a security organization and was listed in the Second Schedule of the Act and consequently, it is exempted from the provision of the said Act.

8. The petitioner also relied on a decision of the Division Bench of this Court in W.P.(C) No.3125/2011, titled as 'Naresh Kumar v. Union of India & Ors.', dated 10<sup>th</sup> May, 2011 stipulating that 30 cases, where the candidates were declared to be unfit by the CRPF, were referred to the Army Hospital (R&R) for medical examination after the said persons had produced the certificates from the Civil Hospital about their medical fitness. On re-examination, it was found that out of 30 such

disputed cases, the Army Hospital (R&R) had found 27 of such candidates fit for service.

9. The petitioner also contended that though he has been declared medically unfit on account of varicose vein, however, another candidate, namely Sh. Sandeep Kumar, who had been assigned the Roll No.41300027 and was placed at Sl.No.46 in the category of CT (Vehicle Mechanic) had been declared medically fit and successful inspite of having varicose veins. In the circumstances, it has been contended that the petitioner has been discriminated. The petitioner, therefore, has filed the above noted writ petition for seeking the relief as detailed hereinabove.

10. The petition is contested by the respondents who filed an affidavit of D.K.Upadhyaya, Dy. Inspector General Personnel, contending, inter-alia, that as per procedure of the recruitment, a candidate who is declared unfit in the medical examination is entitled to appeal against the findings of the Medical Board. The petitioner was also given the opportunity to appear before the Review Medical Board, however, even the Review Medical Board had opined that the petitioner is unfit on account of being an operated case of bilateral varicosity Lower Limbs. Thus, since the petitioner has bilateral varicosity in smaller vessels with wasting of bilateral calf muscles, he has been declared medically unfit

and therefore, the decision of the Review Medical Board cannot be termed to be arbitrary and illegal or perverse.

11. The respondents asserted that the operated case of Varicose Vein is not acceptable since the affected portion of vein is removed during the surgery leading to impairment of circulation of the blood, and also that such individuals are pre-disposed to development of varicose vein in other vessels as well. It was further asserted that patients with varicose vein have pain/heaviness of legs and inability to walk/stand for long hours. Such patients can also have dermatitis in the region and ulcers may develop in them and in due course of time, cancer may also occur at the site of ulcers. Relying on the new policy issued by ADG(Med) CAPF MHA, it was pointed out that candidates with operated case of Varicose Veins are not to be accepted.

12. The respondents asserted that no appeal against the decision of the Review Medical Board is contemplated and that the Review Medical Board comprised of three officers, who had carefully re-examined the petitioner before declaring him medically unfit.

13. Regarding the alleged discrimination viz-a-viz, Sh.Sandeep Kumar, having the Roll No.41300027, it was disclosed that he was declared unfit by the Medical Board on the ground of trifling varicose vein and hypertension. However, the Review Medical Board did not find

any tremors or varicosity in the said candidate. It has also been contended that the case of Sh.Sandeep Kumar was not that of Varicose Veins rectified by operation. The respondents categorically asserted that the Review Medical Board did not have any intention to make any candidate fit or unfit as per their own discretion or in an arbitrary manner. According to the respondents, the guidelines and specific instructions are followed by the Medical Board before rendering their decision and therefore, the pleas raised by the petitioner that an arbitrary decision had been taken in his case to declare him medically unfit is not correct.

14. The petitioner filed a rejoinder affidavit to the reply to the show cause notice/counter affidavit filed on behalf of the respondents and denied the pleas and contentions raised by the respondents.

15. This Court has heard the learned counsel for the parties, and has also perused the documents submitted along with writ petition and the counter affidavit, as well as the guidelines regarding the physical and medical examination of the candidates. The guidelines of 2005 details the general ground for rejection as well as acceptance of a candidate suffering from trifling defects. A slight degree of varicosity is considered to be a trifling defect under the guidelines of 2005. Learned counsel for the respondents has also referred to para 20 of the Uniform Guidelines for Medical Examination for Combined Recruitment for Constable/GD

in CRPFs and ARs dated 13<sup>th</sup> July, 2011 wherein the grounds for rejection have been detailed. Para 20 (z) of subsequent guidelines contemplates varicose veins as a ground for rejection with further qualification that operated cases of varicose veins cannot be accepted.

Para 20(z) of said guidelines is as under:-

“(z) Varicose Veins. 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.”

16. This cannot be disputed that under the guidelines of 2005, slight degree of varicosity was to be treated as a trifling defect and that the concerned candidate could not be rejected on this ground. However, a trifling defect would not require correction by operation. If the varicosity in a candidate had not already been corrected by the candidate by an operation, it would not have been possible for the Medical Board to infer whether the varicosity was of a slight degree or more. Though in the guidelines of 2005, the slight degree of varicosity is not defined, however, by any rational criteria it cannot be inferred that varicosity which requires surgical correction would be a case of slight degree. This ambiguity has been clarified by the respondents in the guidelines dated 13<sup>th</sup> July, 2011, which categorically stipulates the rejection of a candidate who is operated for a varicose vein.

17. The respondents have detailed the ramifications with regard to the operated cases of varicose vein, as it ultimately leads to impairment of circulation of the blood, and the fact that the individuals have their varicose vein operated, have a pre-disposition to developing varicose vein in other vessels. This has also been disclosed by the respondents that the patient with varicose vein have pain/heaviness of legs and inability to walk/stand for long hours and they can also have dermatitis in the region which may lead to development of ulcers and in due course of time, even cancer may also occur at the site of ulcer.

18. The petitioner in the rejoinder affidavit has mechanically denied this averment of the respondents without giving any rationale or opinion of any medical expert specifying that the averments made on behalf of the respondents is not correct. The Review Medical Board consisted of three officers and no *mala fides* or bias has been attributed against them. In the facts and circumstances, it is difficult to infer that the Review Medical Board would have declared the petitioner medically unfit mechanically or arbitrarily without any rational reasons.

19. The case of Sh.Sandeep Kumar is also distinguishable because from the record produced, it is apparent that in the case of Sh.Sandeep Kumar, having Roll No.41300027, there was no operation on the said candidate for rectification of his varicose veins. If the varicose veins of the said candidate did not require operation, nor did he undergo any

operation prior to his examination by the Medical Board, then his case would be covered under the medical guidelines of 2005 which contemplates slight degree of varicosity as a trifling defect and does not disentitle a candidate for enlistment on account of medical unfitness. In the circumstances, the plea of the petitioner about alleged discrimination is not sustainable.

20. The petitioner himself has not denied that he was operated for varicose veins. Consequently, the case of the petitioner cannot be of slight degree of varicosity. In the circumstances, the petitioner cannot claim that he should be examined by an Independent Medical Board of the Army Hospital (R&R), Delhi Cantt. or any other Hospital, as no *mala fides* or bias of any type has been imputed against the Medical Board of the respondents, BSF. Even on the basis of the decision of this Court in the case of Naresh Kumar (supra) he would not entitle for constitution of an Independent Medical Board, as in the case of Naresh Kumar (supra), observations were made against the Medical Boards of Central Reserve Police Force. Just because the percentage of error committed by the Medical Board of CRPF at a particular time was found to be very high, does not necessarily lead to a reasonable inference that even the Medical Board of the BSF would have committed similar error. Regardless, in the case of the petitioner there is an admission on his part itself that he had got himself operated for varicose veins. In the circumstances, the finding of the Review Medical Board that the

petitioner is medically unfit as he is an operated case of bilateral varicosity of Lower Limbs cannot be doubted, nor in the facts and circumstances, the petitioner will be entitled to have another Independent Medical Board constituted for his medical examination.

21. In the totality of the facts and circumstances, the rejection of the petitioner by the respondents for appointment to the post of Constable (VM) with the BSF on account of his medical unfitness cannot be faulted, nor can the decision of the respondents be termed to be illegal and arbitrary or suffering from any such irregularity so as to be interfered with by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

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

**ANIL KUMAR, J.**

**SUDERSHAN KUMAR MISRA, J.**

**February 07, 2012**

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