

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

+ **WP(C) No.7675/2011**

% **Date of Decision: 30.01.2012**

Susanta Maiti Petitioner

Through Col. N.L.Bareja (Retd.), Advocate

Versus

Union of India & Ors. Respondents

Through Mr.Ankur Chhibber, Advocate.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE J.R.MIDHA

ANIL KUMAR, J.

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1. The petitioner has sought a direction to the respondent to treat the petitioner as medically fit, in terms of the fitness certificate issued by the DDU and consequently to issue him a letter of appointment to the post of Follower/Peon, a Group-D-M/Staff post in the CRPF or in the alternative to direct the examination of the petitioner by constituting an independent medical board or any other Government hospital. The petitioner has also sought directions to restrain the respondents from issuing any orders of appointment in the Group-D-M/Staff post in the CRPF to any persons pending the finalization of the writ petition and to keep one vacancy reserved for the petitioner. The petitioner has also prayed for directions to the respondents to pay

appropriate compensation/damage towards the sufferings and mental agony undergone by the petitioner on account of the unjustifiable acts on the part of the respondents for depriving the petitioner of his rights for appointment to the post of Follower/Peon in the Group-D-M/Staff post in CRPF.

2. The petitioner contended that he was engaged in the office of the Director General of Police as a casual worker on temporary basis against the regular sanctioned Group-D post on 24th January, 1995. Thereafter the engagement of the petitioner was renewed from time to time for short spells of three to six months.

3. The plea of the petitioner is that his services were terminated on 23rd September, 1996 along with a number of similarly situated persons though his services ought to have been regularized in terms of O.Ms dated 26th October, 1984 and 7th June, 1988.

4. The petitioner contended that he along with 21 other similarly situated persons had filed an original application bearing O.A No.2099/1999 seeking regularization in terms of DOPT scheme dated 10th September, 1993. However, the original application of the petitioner was disposed of by order dated 4th July, 2000 with the directions to the respondents to consider the case of the applicants. The petitioner thereafter, filed a writ petition being W.P(C) No.1535/2003 which was

disposed of by order dated 10th October, 2007 directing the respondents to consider the case of the petitioner in accordance with their rules, as and when the regular recruitment would take place, giving some weightage for the services rendered by the petitioner in the past, relying on the judgment of the Supreme Court in the case of State of Karnataka & Ors v. Uma Devi & Ors.

5. According to the petitioner a copy of the order dated 10th October, 2007 was sent to the respondents for its compliance by letter dated 25th October, 2007. However, no response to the same was received from the respondents. Because of the inaction of the respondents, repeated reminders were also sent by petitioner. Consequently the petitioner and other similarly situated persons were directed to report to GC-I, CRPF Ajmer, Rajasthan on 4th September, 2008 to participate in the recruitment process from 4th September, 2008 to 6th September, 2008. The petitioner, therefore, participated in the recruitment process.

6. He alleged that during the recruitment process he was found medically fit in respect of the physical test. Thereafter the petitioner was medically examined by the recruitment medical officer on 6th September, 2008 and he was asked to sign certain documents though nothing was explained to him regarding the contents of the same, nor was any communication given to him in writing regarding his medical status and fitness.

7. The respondents thereafter issued the consolidated instructions including the conduct of the medical examination and the recommendation for enrolling/recruiting persons to the CRPF by letter dated 24th November, 2008. The petitioner, however, was not given any letter of appointment, because of which after the lapse of considerable time he requested to be intimated about the status of the petitioner's recruitment to the CRPF.

8. Subsequently the respondent No.3, Inspector General of Police, Northern Sector, CRPF intimated the petitioner by letter dated 26th November, 2009 that the petitioner had been declared medically unfit by the recruitment medical officer during the course of his medical examination on 6th September, 2008.

9. The petitioner alleged that thereafter, he got himself thoroughly examined from the DDU Hospital (Govt.) where the petitioner was declared medically fit and a medical certificate dated 27th February, 2010 was issued to him. The petitioner thereafter, sent a notice dated 24th June, 2010 to the respondents seeking his recruitment in the CRPF on the basis of the medical fitness certificate issued by the DDU Hospital. However, the respondents declined the petitioner's request on the ground that he did not prefer the appeal within the stipulated period and therefore, he was not even permitted to appear before the

appellate medical board in terms of the instructions issued in November, 2008.

10. The petitioner also alleged that he had categorically cited the reasons for not having filed the appeal within the stipulated period on account of not receiving the Medical Board Proceedings and consequently he was not aware of the disease or the medical condition for which he was declared medically unfit. The petitioner also contended that since he was denied the copy of the medical board proceedings he even tried to procure the same by taking recourse under the Right to Information Act, 2005 which was also denied to him on the ground that the documents could not be supplied to him since the CRPF is exempted under Section 24 (1) of the RTI Act, 2005. Thereafter an appeal was also filed against the order of rejection, however, even the appeal was dismissed. Aggrieved by the dismissal the petitioner even preferred a second appeal which is pending before the CIC. Along with the petition, the petitioner has filed the communication dated 26th November, 2009 wherein it was categorically stipulated that the petitioner was verbally intimated about his medical unfitness by the CMO after the petitioner's medical examination and that the petitioner had also signed his medical unfitness report in lieu of knowing the reason for his medical unfitness.

11. The petitioner thereafter filed the present writ petition in which on 24th November, 2011 the show cause notice was issued to the respondents. They filed a counter affidavit dated 22nd December, 2011 categorically stating that the petitioner was working on daily wage basis, with the condition that his appointment was purely temporary and therefore could be terminated at any time without assigning any reasons. It was further contended that pursuant to the order dated 10th October, 2007 passed by the High Court in W.P(C) No.1535/2003 titled as 'Ex.C.N.Paid Vijay Kumar Sharma v. Union of India & Ors' the petitioner's case was considered for recruitment for the post of Follower/Peon. Even though the petitioner and the other candidates were overage, relaxation was granted pursuant to the directions of the High Court in order dated 10th October, 2007. Among the candidates who were considered after giving them age relaxation, only Sh. Vijay Kumar Sharma s/o. Sh.Nathi Lal Sharma was found medically fit and the petitioner was found to be medically unfit on account of having "K Chest". The petitioner had been intimated about his medical unfitness by the CMO on the spot and the petitioner had also signed on the forms in lieu of knowing the reason for his medical unfitness.

12. In the reply to the show cause notice the respondents categorically stated that the petitioner was found unfit by the board of officers during his medical examination due to "K Chest". The averment that the petitioner was unfit on account of "K Chest" was made in para

4(iii)-(iv); 4(vii) & 4(ix) of the reply to the show cause notice dated 22nd December, 2011.

13. The petitioner thereafter, filed a rejoinder to the reply to the show cause notice and contended that he had got himself thoroughly examined at the Government hospital, who had declared the petitioner medically fit. The petitioner, however, did not aver categorically that from the DDU hospital or any other hospital he had got himself examined to ascertain whether he is suffering from “K Chest” or not.

14. Along with the rejoinder the petitioner has also not produced any report from any Government hospital or any other hospital that certifies that the petitioner does not have “K Chest” or that despite having the disease of “K Chest” he is medically fit.

15. The learned counsel for the petitioner, Mr.Bareja has also relied on the decisions of this Court in W.P(C) No.634/2011 titled as ‘Anil Kumar v. Union of India & Ors’ decided on 1st February, 2011 and W.P(C) No.6150/2011 titled as ‘Surender Pratap Singh v. Union of India & Ors.’, decided on 5th December, 2011 in support of the pleas of the petitioner.

16. This Court has heard the learned counsel for the parties in detail and has also perused the original record of the respondents pertaining

to the petitioner, produced by them. The medical report dated 6th September, 2008 in para I categorically disclosed that X-Ray of the petitioner was taken and that the petitioner has "K Chest". In item No.27 the query that was specifically stipulated is as under:-

"27. Is there anything in the health of the candidate likely to render him unfit for the efficient discharge of his duties in service for which he is a candidate?"

The answer given is yes, T.B Chest.

In question No.31 regarding remarks of the medical officer on the overall health, the health certificate part I stipulates as under:-

"Remarks of medical officer on the overall health and physical fitness with reasons. The medical officer should also know any deficiency in physical standards and state whether it is likely/unlikely to be made up in the near future."

In answer to the said clause it is stated "X-Ray chest PA K.Chest. It is also stated unfit due to "K Chest".

17. The said health certificate is duly signed by the petitioner and is dated 6th September, 2008. Though the learned counsel for the petitioner, Mr.Bareja had insisted that for the said medical health certificate, no tests were carried out, however the enquiries were made from the petitioner who was present in Court and he admitted that the X-Ray of his chest had been taken.

18. No malafides have been imputed against the respondents nor do we find any such allegations being made by the petitioner which would

indicate or reflect any reason for the respondents to have falsely declared the petitioner as medically unfit. In the circumstances, this Court also do not believe that the respondents had not disclosed to the petitioner the reason for his medical unfitness on account of petitioner suffering from “K Chest”. In any case in the counter affidavit filed by the respondents it has been categorically stated in a number of paragraphs that the petitioner was found medically unfit on account of having “K Chest”. This allegation that the petitioner is having “K Chest” has not been specifically denied nor has the petitioner got himself examined from the DDU hospital for “K Chest”.

19. The petitioner has produced a fitness certificate dated 27th February, 2010 stipulating the details of BP, Pulse and other parameters of the petitioner. Even though, in the said certificate it is stated that the chest is normal, however, it is not disclosed as to how the doctor at the DDU hospital found out that the petitioner has a normal chest and that he does not have a “K Chest” which is equivalent to having TB of the chest. In order to properly ascertain that the petitioner has a normal chest, the least that the doctors at the DDU Hospital were expected to do, was to take the X-Ray of the petitioner’s chest. However, without taking the x-ray of the chest or without carrying out any other tests, the doctor of the DDU Hospital have given a certificate that the petitioner is medically fit.

20. In the circumstances, this Court is unable to infer that on 6th September, 2008 when 'K Chest' was detected in the case of petitioner after taking his X-ray, he was intimated about it. This also cannot be believed that the medical unfitness of the petitioner was not disclosed and that the petitioner had signed the said report in blank. It cannot be accepted that the petitioner had not known that he is not entitled for recruitment to CRPF on account of having " K Chest".

21. On the basis of alleged fitness certificate dated 27th February, 2010 and in the absence of any other contrary opinion disclosing that the petitioner is not suffering from 'K Chest', the petitioner can neither contend that he is medically fit nor can he claim that he is entitled for a review medical board nor can it be held that the petitioner is medically fit for appointment to the post of Follower/Peon, a Group-D-M/Staff post with the respondents.

22. The learned counsel for the respondents has also pointed out that the petitioner was found medically unfit on 6th September, 2008 and that the policy regarding the candidate not being satisfied with the finding of the medical officer and therefore, claiming a review medical examination came into effect only on 24th November, 2008. The policy dated 24th November, 2008 also contemplates that a review medical examination can be conducted only if there is fresh evidence in the form of a certificate/note by a medical practitioner stating that the candidate

in question is medically fit and also that the said medical practitioner has full knowledge of the facts that the candidate has already been declared medically unfit for the service in the CRPF by a medical officer.

23. Therefore, even to claim for the review medical board, the petitioner ought to have categorically denied on the basis of reliable medical opinion that he does not have “K Chest” and that he is not suffering from any TB of the chest. The petitioner knew that he had been declared unfit on account of “K Chest” on 6th September, 2008 but he did not disclose the said fact while obtaining the alleged fitness certificate dated 27th February, 2010 from the doctor of DDU hospital, who had opined that the chest of the petitioner is normal without even taking an X-Ray or indicating any other parameters and conditions or reasons about the chest of the petitioner from which it could be inferred that the petitioner has a normal chest.

24. Consequently even according to the subsequent policy regarding the review medical board, in the absence of any reasonable certificate from the DDU hospital or any other hospital refuting the findings of the medical board of the respondents that the petitioner has “K Chest”, the petitioner is not entitled for the review medical board.

25. The precedents relied on by the petitioner are also distinguishable and do not advance the plea taken by the petitioner. In Anil Kumar

(supra) it was held that large number of candidates report for recruitment and that the doctors are hard pressed for time and thus discrepancies occurs in the measurements of chest especially regarding expanded and unexpanded chest. In these circumstances the counsel for the parties had agreed to refer the matter to the medical officers of the Medical and Health Centre attached to Delhi High Court, who were thereafter sent there and the measurements of the candidate for unexpanded chest and expanded chest was again taken and it was found to be within the acceptable parameters. Therefore, the Court had held that candidate was entitled for his candidature to be further processed. The case of the petitioner is apparently distinguishable as there is nothing on record to show that the petitioner does not have “K Chest” nor has the specific averment made by the respondent that he is fit and does not have “K Chest” on the basis of any other medical opinion nor any such opinion has been produced before this Court.

26. In *Surender Pratap Singh* (supra) the dispute was whether the height of the petitioner is 169 cm or 170 cm. In the case of the said candidate his height was shown as 170 cm at the time of the Physical Endurance Test (PET) conducted by the authorities, however, his height was measured as 169 cm at NISA. Since in the records of the respondents there were two heights, 169 cm and 170 cm, therefore, this Court had directed the re-measurement of the height of the said candidate by another independent board and consequently, the Military

Base Hospital, Delhi Cantt., New Delhi was directed to measure his height. In contradistinction to the above-noted cases the petitioner in the present case was declared medically unfit on account of having “K Chest” and there is no report from any competent medical hospital based on relevant test including x-rays of the petitioner, stipulating that the petitioner does not have “K Chest”. Rather the petitioner did not even disclose to the DDU Hospital that he had been declared medically unfit on account of having “K Chest”, which is TB of the chest. The alleged fitness certificate dated 27th February, 2010 cannot be relied on in the facts and circumstances. In the rejoinder the petitioner has not even denied the specific averment made in the counter affidavits of the respondents that the petitioner has “K Chest” which is the reason why he was declared medically unfit and ineligible for appointment.

27. In the totality of the facts and circumstances and for the foregoing reasons there are no grounds to hold that the petitioner is medically fit and that he is entitled for a review medical board. The writ petition in the facts and circumstances is without any merit and the decision of the respondents not to hold the review medical board cannot be faulted. The petitioner is not entitled for appointment to the post of Follower/Peon, a Group-D-M/Staff post in the CRPF. The petitioner has failed to make out any such illegality, irregularity in the actions of the respondents which will require any interference by this Court in

exercise of its jurisdiction under Article 226 of the Constitution of India.
The writ petition is, therefore, dismissed.

CM No.17421/2011

This is an application seeking restraint against respondents for issuing any appointment letters for vacancies meant for Group-D-M/Staff post. Since the writ petition has been dismissed the petitioner is not entitled for any interim relief and application is also dismissed.

ANIL KUMAR, J.

J.R.MIDHA, J.

January 30, 2012
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