

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

+ **WP(C) No.8940/2011**

% **Date of Decision: 20.01.2012**

Prem Prakash Petitioner

Through Mr.Himansu Upadhyay & Mr.Shivam
Tripathi, Advocates.

Versus

Union of India & Anr. Respondents

Through Mr.Ravinder Aggarwal, Central Govt.
Standing Counsel.

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 directions to the respondents to conduct his Review Medical Examination, since his candidature to the post of Constable had been disqualified without assigning any reasons or giving any reply to the earlier review medical examination conducted on 30th April, 2011

2. Brief facts to comprehend the dispute between the parties are that the respondents had invited applications for the post of Constable in the Border Security Forces. The petitioner had applied

for the said post and he was informed to appear on 16th January, 2011 at 8:00 am at Saraswati Senior Secondary School, 142, Subh. Aash Nagar, Sheela Complex for the written test. On 12th February, 2011 the petitioner was declared successful in the written examination and was directed to appear on 9th March, 2011 at the Battalion office, Border Security Force, Hissar, Haryana alongwith his original documents and photographs for his medical examination.

3. Pursuant to the medical examination of the petitioner he was found to be medically unfit on account of 'knock knee' and 'spinal deformity' by letter dated 9th March, 2011. However, the petitioner was afforded the right to prefer an appeal against the findings of the medical examination by obtaining the necessary medical certificate from a Medical Officer within 15 days by 18th March, 2011.

4. The petitioner, therefore, obtained a medical certificate dated 9th March 2011 whereby he was declared medically fit by Dr. Ashok Saini, Medical Officer (Orthopaedician) General Hospital, Rewari, after which he sought for his appeal against the medical examination conducted by the respondents.

5. By letter dated 15th April, 2011 the petitioner was informed to appear before the Composite Hospital, Border, Security Force, Jalandhar Cantt. Punjab on 30th April, 2011 for his review medical examination. According to the petitioner thereafter, he did not receive any reply intimating the result of the review medical board, even though the recruitment process was completed. Neither did the respondents confirm to the petitioner anything nor did they give any reasons for the review application moved by him. The petitioner therefore, made a representation before the respondents and was informed that he had been declared 'unfit' on account of 'knock knee' and 'spinal deformity'.

6. The petitioner has contended that on receiving the declaration of his unfitness by the medical examination, he again got himself examined by the SMO, Rewari, Haryana and found that there was no infirmity of either knock knee or spinal deformity.

7. Aggrieved by the findings of the Review Medical Board the respondent filed an application under the Right to Information Act, 2005 to seek the reasons for him being declared unfit. However, according to the petitioner, his request was rejected by the respondents and no reasons for the same were given to the petitioner.

8. It is against the finding of the Review Medical Board that the petitioner has approached this Court under its writ jurisdiction, contending *inter alia* that on being declared fit by the SMO, Rewari and not having 'knock knee' and 'spinal deformity', he applied for the review medical examination, however till now neither have the results been declared nor have the reasons been assigned for not recruiting the petitioner to the post of Constable. According to the petitioner his right has been denied by the respondents in the most arbitrary manner, and he has the right to be re-examined by the Review Medical Board.

9. Learned counsel for the respondents who has appeared on advance notice has produced the dossier file of the petitioner including the reports of the Medical Board and the Review Medical Board declaring the petitioner unfit. The medical examination was carried out by the Senior Medical Officer, Dr.Lallan Kumar of 80 Bn., BSF, while the review medical examination of the petitioner was carried out by a board comprising of three experts namely Dr. Jagdev Singh, Chief Medical Officer, Sector Headquarter, BSF Abohar, Dr. Avinash, CMO (SG) and Dr.Sukhbinder Singh, CMO (SG) CH Jalandhar.

10. This court has heard the learned counsel for the parties in detail. This is not disputed that 'knock knee' and 'spinal deformity' will impact a candidate's fitness for enlistment to the Border Security Force. However, a case of mild knock knee with inter malleolar distance of 5 cm or less is a minor acceptable defect as per para 21 of the Uniform Guidelines for Medical Examination Test (MET) For Combined Recruitment of Constable/GD in CAPFs and ARs. Perusal of the medical report carried out by the Senior Medical Officer of 80 Bn. BSF reveals that though the reasons for the unfitness of the petitioner has been cited as knock knee and spinal deformity, it has not been specified whether it a case of mild knock knee with inter malleolar distance of 5 cm or less. However, for the reason of spinal deformity, the detail given is loss of lumbar lordosis and scoliosis.

11. After the petitioner was communicated the result of the Medical Board Examination carried out at 80 Bn. BSF, the petitioner obtained a certificate dated 9th March, 2011 from Dr. Ashok Saini, the Medical Officer (Orthopaedician), General Hospital, Rewari who acknowledged that the petitioner had been declared medically unfit on account of knock knee and spinal deformity. He however, declared that the petitioner is medically fit after medical examination. The said Medical Officer who certified the petitioner to be fit, however, has not given any reason or any other detail as to

how he has found the petitioner to be fit. The Civilian Medical Officer, General Hospital, Rewari also did not specify whether the petitioner is having a case of mild knock knee with inter malleolar distance of 5 cm or less, and therefore, he does not have knock knee that could disqualify his candidature, nor did he disclose that the petitioner does not have loss of lumbar lardosis and scoliosis, which were the grounds for inferring spinal deformity of the petitioner by the Medical Board of the respondents.

12. After the petitioner sought his review medical examination on account of the certificate obtained from the Medical Officer, General Hospital, Rewari, the review medical examination was carried out by a Board comprising of three experts at the Sector Headquarter, BSF, Abohar. In the review medical examination, again knock knee and spinal deformity on account of increase lardosis was deduced.

13. The petitioner, thereafter, sent a complaint and application under the Right to Information Act, 2005 alleging corruption and violation of the right to equality by the Recruitment Board, Border Security Force, Jalandhar. The petitioner has alleged that he did not receive any reply to his representation, and thereafter, he filed the present writ petition contending, inter-alia that when he was declared as medically fit by the Medical Officer of General Hospital,

Rewari , the respondents have not declared the result, nor have they assigned any reasons for not recruiting the petitioner to the concerned post. The petitioner asserted that he has a right to be re-examined by the Medical Board when there is a difference of opinion between the SMO Rewari and the Medical Practitioner serving the BSF. The petitioner also asserted that he has cleared the examination and is physically fit and that he has been deprived of recruitment illegally on arbitrary and other reasons, which were neither conveyed to him, nor were they known to the petitioner.

14. In the circumstances, it is inevitable to infer that the petitioner does not have a case of mild knock knee with inter malleolar distance of 5 cm or less, but has in fact knock knee beyond the scope of minor acceptable defects and also has spinal deformity on account of increased lardosis and scoliosis. Scoliosis is a medical condition in which a person's spine is curved side to side, while Lumbar Lardosis is a medical condition when the low back curves too far in, which makes a person look a bit "swaybacked". Too much of a curve in the low back puts pressure on the entire back in turn entails poor movement. Knock knee is a condition in which the knees touch, but the ankles do not touch, which make the legs angle inward and it leads to difficulty in walking. Therefore clearly the reasons cited by both the Medical Boards are valid grounds for

disqualifying the candidature of the petitioner to the post of Constable. In any case the certificate obtained by the petitioner from the Civil Authorities does not reveal anything except a bald statement that the Medical Officer, General Hospital, Rewari had examined the respondents and had consequently declared him to be medically fit from knock knee and spinal deformity.

15. In the circumstances, there is nothing on the record to substantiate that the petitioner does not have knock knee and spinal deformity except a bald statement in the certificate by the Medical Officer, General Hospital, Rewari. The petitioner has also annexed a copy of the application under the Right to Information Act, 2005. However, it is pertinent to note that the copy of the said application is undated and it does not even disclose as to whom it was addressed to nor is there anything to show that the application in fact was even sent by the petitioner to any of the authorities of the respondents. In the undated and unsigned application the petitioner has claimed that during his review medical examination he was not medically examined but was instead asked by the physician present at the time if he had the money to clear the exam. When the petitioner replied in the negative, the physician allegedly enquired was if he has any relatives in the BSF service who could facilitate the clearance of his medical examination, which was again denied by the petitioner.

Therefore the petitioner has made allegations of corruption against the Medical Board of the BSF. However, in the writ petition there is no such averments made on behalf of the petitioner except that he has not been rendered any information under the Right to Information Act, 2005 and annexing a copy of such an application.

16. Learned counsel for the petitioner has also referred to a decision of this Court in W.P.(C)3124 of 2011, titled as 'Manoj Kumar v. Union of India & Ors.', decided on 10th May, 2011 in which reliance has been placed on the observation that in 30 cases of the persons who were alleged to be suffering from a medical disability by the CRPF, were referred to the Army (RR) Hospital. Among these 30 cases 27 persons, were opined to have been fully fit. In the circumstances, inference was drawn that errors have been committed by the doctors of CRPF in approximately 88% of the cases. The facts of the instant case is however distinguishable with the facts of the present matter. The petitioner in the present matter was examined by the Medical Officer of the Border Security Force and there is no observation in the case of Manoj Kumar (supra) that there had been errors to the extent of 88% in the medical examination conducted by the Medical Boards of the BSF. In any case, the certificate from the Medical Officer, Rewari obtained by the petitioner independently is extremely vague as no reasons have been

disclosed as to why the petitioner should not be treated as a case of knock knee and why he does not have spinal deformity. Moreover, a review medical board was constituted and the petitioner was duly re-examined by an entirely different Unit of Medical Officers who also concurred with the earlier opinion that the petitioner has knock knee and spinal deformity. In the circumstances, the ratio of the judgment relied on by the petitioner is not applicable and cannot come to the rescue to the petitioner. The petitioner has also relied on the case of Naresh Kumar v. Union of India & Ors., W.P.(C) 3125/2011, decided on 10th May, 2011, in which the medical examination by the CRPF was commented on adversely. The said case is also apparently distinguishable.

17. Apparently, the cases relied on by the petitioner are distinguishable and on the basis of the ratio of the above noted case, it cannot be held that the petitioner is medically fit. While appreciating a precedent, it must be remembered that the ratio of any decision must be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. A decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the

precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without having regard to the factual situation and circumstances in two cases. The Supreme Court in *Bharat Petroleum Corporation Ltd and Anr. v. N.R.Vairamani and Anr.*, (AIR 2004 SC 778), had held that a decision cannot be relied on without considering the factual situation. In the said judgment the Supreme Court had observed as under:-

" Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

18. In the totality of the facts and circumstances, it is not possible to infer that the report of Medical Practitioner of 80 Bn, BSF and that of the Review Medical Board conducted by the BSF, Regional Headquarter, Abohar are to be rejected in view of the medical examination of the petitioner done by the Medical Officer, General Hospital, Rewari. In the circumstances, the petitioner is not entitled for a direction to the respondents to conduct another review medical

examination of the petitioner. The writ petition is without any merit, and it is, therefore, dismissed.

ANIL KUMAR, J.

J.R.MIDHA, J.

January 20, 2012
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