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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Judgment: 15th July, 2021

+ W.P.(C) 2165/2021 & CM No.6288/2021(for interim direction)
MANISH NAILWAL Petitioner

Through: Mr. Ankur Chhibber, Advocate

versus

UNION OF INDIA AND ORS Respondents

Through: Mr. Rajesh Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

RAJIV SAHAI ENDLAW, J.

[VIA VIDEO CONFERENCING]

1. On 1st June 2021, following order was passed in this petition:-

“1. On 25th May, 2021, the following order was passed:-

“3. This petition was filed, impugning the finding of medical unfitness of the petitioner for recruitment as Head Constable (Radio Mechanic) in the respondents Border Security Force (BSF) (Comn Set-up).

4. The petitioner was found 'unfit' by the Medical Board on two counts i.e. (i) for having anal fissures; and, (ii) for having Varicose Veins in both lower legs.

5. The petitioner, after getting himself examined at Lady Harding Medical College & Hospital and at

Deen Dayal Upadhyay Hospital, New Delhi and both of which certified that the petitioner was not suffering from either of the two ailments, applied for Review Medical Board.

6. It is the case of the petitioner, that the Review Medical Board, on examination of the petitioner, though found the petitioner to be not suffering from varicose veins but still declared the petitioner 'unfit' for the reason of having "anal fissures in ANO". It is the further case of the petitioner that the petitioner, for examination of "anal fissures in ANO", was referred by the Review Medical Board to Sharda Hospital School of Medical Sciences and Research, Greater Noida, for the reason of not having the concerned specialist and though the petitioner does not have any document of the said examination at Sharda Hospital but was informed that the Review Medical Board declared the petitioner 'unfit' for the reason of specialist at Sharda Hospital opining the petitioner to be suffering from "anal fissures in ANO".

2. Vide order dated 25th May, 2021, we directed the counsel for the respondents Border Security Force (BSF) to produce the records of Review Medical Examination as well as the Medical Manual and also requested the presence of a Doctor of the respondents BSF to answer our doubts, if any.

3. The counsel for the respondents BSF has produced, (i) the document dated 8th January, 2021 of BSF Hospital, referring the petitioner for expert remarks of specialists, to the Sharda Hospital, qua Anal Fissures and Varicose Veins in both lower legs; (ii) the report dated 9th January, 2021 of Sharda Hospital to the effect, "no visible varicose veins..." and "asymptomatic fissures at 12 O'clock position in ANO" and also opining that the petitioner "may be

considered for BSF posting”; and, (iii) the Medical Manual i.e. Guidelines for Recruitment Medical Examination in Central Armed Police Forces and Assam Rifles as on 20th May, 2015 and which, at internal page 7, under the heading “General Grounds for Rejection”, at Serial No.21 states “Anal fistula, haemorrhoids and other anorectal diseases as specified later” and at internal pages 35 and 36 lays down the method of examination for anal warts (Condylomata), Fistula-in- ano, Pilonidal sinus, Prolapse Rectum, Fissure and External Piles and under the heading “Ano Rectal” provides, “1. Evidence of anal fistula is disqualifying; 2. Evidence of anal or rectal polyp, prolapse, stricture, or fecal incontinence is disqualifying; and, 3. Hemorrhoid (internal or external), with evidence of bleeding, disqualifying”.

4. Dr. Shambhu Kumar Jha, Chief Medical Officer (Selection Grade) and general surgeon of the respondents BSF, present in Court, on enquiry states that all kinds of fissures, though not expressly mentioned at Pages 35 and 36 of the Medical Manual aforesaid to be disqualifying, are disqualifying under the category of “other anorectal diseases” as mentioned at page 7 aforesaid. On further enquiry, whether Anal Fissure is the same as the Annul Fistula, he states that the two are different.

5. The contention of the counsel for the petitioner is that since the experts of Sharda Hospital had found the Anal Fissure of the petitioner to be asymptomatic and opined that the petitioner is fit for posting, the Review Medical Board erred in still disqualifying the petitioner for the reason of suffering from Anal Fissures. Attention is drawn to pages 43 and 44 of the Medical Manual aforesaid, laying down the procedure for Review Medical Examination and where it is inter alia provided that “Review Medical Board may get opinion of concerned specialists or super-specialists of Government Medical College and Hospital in case of any controversy”. On the basis thereof, it is

contended that the Review Medical Board, which admittedly did not have such experts and for which reason the petitioner was referred to Sharda Hospital, could not have rendered the opinion of the petitioner being unfit.

*6. We are however not agreeable to the aforesaid contention. The Guidelines for Review Medical Examination only require the Medical Board to get the opinion of the concerned Specialists and which opinion, in our view, was confined only to the petitioner having “asymptomatic fissures at 12 O’clock position in ANO”. Whether the said medical condition makes the petitioner fit or unfit for recruitment in a force as BSF can only be opined by the Doctors of BSF who are aware of the rigours to which a personnel of BSF are subjected, as held by this Court in **Vani Viswanathan Vs. Union of India** MANU/DE/1678/2020, **Priti Yadav Vs. Union of India** 2020 SCC OnLine Del 951, **Akash Sharma Vs. Union of India** MANU/DE/2069/2020, **Nishant Kumar Vs Union of India** MANU/DE/1486/2020, **Sharvan Kumar Rai Vs. Union of India** 2020 SCC OnLine Del 924 and **Jonu Tiwari Vs Union of India** MANU/DE/1524/2020 [Special Leave Petition (Civil) No. 13492/2020 preferred whereagainst was dismissed on 17th December, 2020].*

7. Be that as it may, as recorded in the order dated 25th May, 2021 also, the petitioner in another petition before this Court, being W.P. (C) No.1176/2021, was also sent by the Review Medical Board, for examination to Sharda Hospital and was declared unfit also for the reason of suffering from Anal Fissures and vide order dated 6th April, 2021 in the said W.P. (C) No.1176/2021, finding that another Doctor of Sharda Hospital had given a contrary opinion, the petitioner therein was ordered to be examined by a Board to be constituted by Sharda Hospital; the said Board was constituted and reported the petitioner in W.P. (C) No.1176/2021 to be not suffering from Anal Fissures

and vide order passed yesterday i.e. 31st May, 2021 in W.P. (C) No.1176/2021, we have directed the recruitment of the petitioner therein to be processed further.

8. The counsel for the petitioner states that the Doctor who examined the petitioner in the present case was the same as the Doctor whose finding of the petitioner in W.P. (C) No.1176/2021 suffering from Anal Fissures was not accepted by the Medical Board aforesaid. For the said reason alone, it is felt that the petitioner be sent for yet another examination, this time by Army Research and Referral Hospital, New Delhi (R. R. Hospital).

9. Since a doubt has been cast about the opinion of the Review Medical Board, we direct that the petitioner be examined by the concerned subject Specialists of R. R. Hospital, for medical fitness on all aspects, as per the Medical Manual aforesaid of Central Armed Police Forces and Assam Rifles. The R. R. Hospital is requested to endeavour to commence the examination of the petitioner within one week and to render its report before the next date of hearing.

10. The counsel for the petitioner is granted liberty to present a copy of this order to the Registrar, R. R. Hospital, for compliance.

11. The respondents to immediately communicate this order to the Registrar of R.R. Hospital and to ensure examination of the petitioner as aforesaid by the R.R. Hospital, so that the report is before this Court before the next date of hearing.

12. List on 15th July, 2021.”

2. The Medical Board constituted by the Army Hospital (Research and Referral Hospital) in pursuance to the aforesaid order, has reported as under:-

“3. The board examined the candidate and findings are as follows:-

(a) Anorectal examination is normal – NO ANAL FISSURE

(b) Bilateral varicose veins both lower limbs with left saphenofemoral junction incompetence as confirms on Doppler.

4. Opinion of the Board of officers:-

UNFIT for bilateral varicose veins.”

3. The counsel for the petitioner contends that though the Medical Board ordered to be constituted, has negated the ground on which the Appeal Medical Board had declared the petitioner unfit but has reiterated the ground of medical unfitness which was stated by the first Medical Board which examined the petitioner and which was not found by the Appeal Medical Board which examined the petitioner.

4. The aforesaid reinforces what was observed by a Bench comprising of one of us (Rajiv Sahai Endlaw, J.) sitting with Asha Menon, J. in ***Shravan Kumar Rai Vs. Union of India*** 2020 SCC OnLine Del 924, ***Tejbir Vs. Union of India*** MANU/DE/2117/2020 and ***Vikash Choudhary Vs. Union of India*** MANU/DE/2074/2020 i.e. that the question of medical fitness is a matter of opinion, like legal opinion which can vary from one practitioner to another.

5. In our opinion, the interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India has to abide strictly by the principle of interference only when finding any error in the decision-making process and not in the decision otherwise on merits and which decision is in the sole domain of the Medical Board of the recruiting/admitting body with which a candidate, once recruited would be employed for decades and which would be burdened with a candidate though recruited, owing to medical reasons not performing the duties to perform which he/she is recruited. If interference with the findings of the Medical Board and the Appeal Medical Board, of medical unfitness are to be interfered with on the basis of opinion of outside doctors, even if they be of Government hospitals, there would be no end, with different medical experts giving different opinions.

6. We may mention, that since the petitioner had raised doubts about the expertise/competency of the doctors constituting the Medical Board and the Appeal Medical Board of the respondent, we in our order aforesaid had directed examination of the petitioner by the Army Research and Referral Hospital, New Delhi (R.R. Hospital) on all aspects. It is not open to the petitioner to, while challenging the opinion of the Medical Officers of the respondents in so far as against him, accept the opinion in so far as in his favour. Once a candidate approaches this court finding errors with the opinion of the doctors of the employer, the Court, even if directing reassessment, has to direct reassessment on all parameters and not just on the parameter on which the candidate has been found unfit.

7. The petitioner filed this petition, only seeking independent examination and in which examination the petitioner has failed.

8. There is no merit in the petition, which is dismissed.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

JULY 15, 2021

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