

GAHC010246852023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6839/2023

JOHIRUL ISLAM,
S/O MOYNAL SHEIKH, R/O BANAIMARI PT-IV,
P.S.-GAURIPUR, DIST-DHUBRI, ASSAM, PIN-783339

VERSUS

1. THE UNION OF INDIA AND 3 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF PERSONNEL, PUBLIC
GRIEVANCES AND PENSIONS, BLOCK NO. 12, CGO COMPLEX, LODHI
ROAD, NEW DELHI-110003.

2:THE REGIONAL DIRECTOR, SSC,
NORTH EASTERN REGION, GUWAHATI,
HOUSEFED COMPLEX, LAST GATE,
BASISTHA ROAD, ASSAM SACHIBAYA,
DISPUR, GUWAHATI-06.

3:THE PRESIDING OFFICER,
DV/DME AND RME BOARD,
GC CRPF, GUWAHATI-23.

4:THE MEDICAL BOARD,
REPRESENTED BY CMO (SG),
IRLA NO. 5954, CHN,
P.O. RME BOARD, GC CRPF,
GUWAHATI-23.

5:THE MEDICAL BOARD,
REPRESENTED BY SMO,
IRLA NO. 11430,
138 BN. CRPF-ITANAGAR,
RME BOARD, GC CRPF,
GUWAHATI-2.

Advocate for the Petitioner : MR. A ALI

Advocate for the Respondent : DY.S.G.I.

- B E F O R E -
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
ORDER

29.11.2023

Heard Mr. A. Ali, learned counsel for the petitioner. Also heard Mr. U.K. Goswami, learned Central Government Counsel appearing for the respondents.

2. Learned counsel for the petitioner submits that the petitioner took part in the selection process for filling up the post of Constable (GD), Central Armed Police Force (CAPF) under Economically Weaker Section (EWS) quota for border districts.

3. The petitioner's counsel submits that though the petitioner had been found to be medically unfit by the Doctor who conducted the medical examination on 31.07.2023 due to Unequal Pupillary Reactions, he was found to be fit in the review medical examination conducted by two doctors when he was examined on 02.08.2023. However, the same two doctors again found the petitioner to be medically unfit on 05.08.2023. He submits that the petitioner thereafter went to one Dr. A. Mahanta, who found that the petitioner did not suffer from any medical problem.

4. Learned counsel for the petitioner also submits that the petitioner has also been found fit by the All Indian Institute of Medical Science (AIIMS), Guwahati, vide medical certificate dated 11.09.2023 and by one Dr. Rahil Chaudhary, Medical Superintendent, Eye 7 Hospital Pvt. Ltd., who is from Delhi.

5. Mr. U.K. Goswami, learned Central Government Counsel for the respondents submits that the petitioner has made the review medical examination report into two different review examinations. He submits that petitioner's attempt to make the review medical examination report held on 02.08.2023 to be two review medical examinations on 02.08.2023 and 05.08.2023 is not correct, as the same shows that it had been done only on 02.08.2023 and in the review medical examination, the petitioner was found to be medically unfit.

6. Mr. Goswami also submits that the report of Dr. A. Mahanta, who had apparently examined the petitioner on 05.08.2023, cannot be a basis for overruling the opinion of the doctors in the review medical examination held on 02.08.2023. He accordingly submits that the writ petition should be dismissed.

7. I have heard the learned counsels for the parties.

8. As can be seen from the writ petition and the annexures therein, the petitioner was first examined on 31.07.2023 and was found unfit. The petitioner was thereafter informed that as he had been found unfit due to Unequal Pupillary Reactions, he could apply for a review medical examination. Consequent to the above, a review medical examination of the petitioner was conducted by two doctors on 02.08.2023, wherein the petitioner was again found to be unfit due to Bilateral (B/L) Axonal Neuropathy in VEP.

9. Though the petitioner has tried to make out a case that two different review medical examinations were held on 02.08.2023 and 05.08.2023, it is clear from Annexure 8 (Page 34 and 41) that the review medical examination had been held only once, i.e. on 02.08.2023, wherein the petitioner had been found to be unfit.

10. The document shown to this Court by the petitioner's counsel, i.e. Page 41 of the writ petition, which he claims is the report of the second review medical examination of the petitioner held on 05.08.2023, shows the date "2/8/23". However, there is a number "05" shown beside the date "2/8/23". Though the petitioner has tried to make out a case that he had been found fit subsequently by one Dr. A. Mahanta, the medical certificate issued by Dr. Mahanta is not on any letter head. There is nothing known as to whether Dr. Mahanta is an MBBS doctor or otherwise. The copy of the original medical certificate issued by Dr. A. Mahanta shows that the same has been written in a blank page and nothing is known as to his address, his Registration Number as a doctor and where he works or his qualification. There is nothing known as to what degree he has.

11. The Out Patient Department card issued by the All India Institute of Medical Science, Guwahati showing the examination of the petitioner as 11.09.2023 shows the words "VEP within normal, both eyes". The report allegedly given by Dr. Rahil Chaudhary who is from Delhi, shows that GHT within normal limits. However, these are all questions of facts and not admitted facts. Further, there has to be a finality on facts.

12. This Court is of the view that as the review medical examination of the petitioner, which has been done by two doctors, one of which belongs to Gauhati Medical College and Hospital (GMCH), there is nothing more to be decided by this Court in this case, inasmuch as, the issue whether which medical report is correct or not correct, has been decided by experts. This Court is ill equipped to decide the issue. Further the petitioner has not been able to show as how the petitioner is entitled to have another review medical examination. As such, he may approach the authorities with his grievance, if so advised.

However, in the present case, this Court is not inclined to exercise its discretion or go any further in examining the case of the petitioner, inasmuch as, the petitioner has not been fair to this Court, as he has tried to pass off the review medical examination done by two doctors on 02.08.2023, as two review medical examinations and not one review medical examination.

13. In the case of *K.D. Sharma Vs. Steel Authority of India Limited and Ors.*, reported in **(2008) 12 SCC 481**, the Apex Court held that the party who invokes the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play 'hide and seek' or to 'pick and choose' facts. If material facts are suppressed or distorted, the very functioning of Writ Courts would become impossible. The Court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the Court does not reject the petition on that ground alone, the court would be failing in its duty.

14. In view of the above reasons, this Court is not inclined to examine this case further or to exercise its discretion in the present case.

The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant