

Court No. - 20

Case :- WRIT - A No. - 8138 of 2023

Petitioner :- Sumit Kumar

Respondent :- Union Of India Thru. Ministry Of Home Affairs
Office Of The Director General New Delhi And Another

Counsel for Petitioner :- Ajay Shukla, Aman Deep Verma

Counsel for Respondent :- A.S.G.I.

Hon'ble Manish Mathur,J.

1. Heard learned counsel for petitioner and Shri S.B. Pandey, learned Senior Counsel assisted by Shri Varun Pandey, learned counsel for opposite parties.

2. Although as yet no time has been provided to the opposite parties to file their counter affidavit but instructions have been provided to learned counsel for opposite parties, in view of which, counter affidavit is being dispensed with and the petition is being adjudicated upon at the admission stage itself particularly since factual aspects are not disputed.

3. Petition has been filed challenging the Medical Examination Report dated 06.10.2023 and the result of Review Medical Board dated 07.10.2023 whereby petitioner has been found unfit for selection on the post of Constable (Cook/ Washerman) in the Sashastra Seema Bal (SSB). Further direction is also sought to the opposite parties to constitute a Medical Board and reconsider Medical Examination of petitioner.

4. Learned counsel for petitioner on the basis of instructions, however, does not press the prayer no.(i) and is laying emphasis on prayer no.(ii).

5. It has been submitted that an Advertisement was issued in the year, 2020 inviting applications for various posts of constable in the SSB, in pursuance of which petitioner applied for same and

was declared successful in the written examination. Thereafter medical examination took place and petitioner was declared unfit on the ground that his name was found tattooed on his right forearm. Review Medical Examination Report also confirmed the Medical Examination Report due to which petitioner was declared unfit for the aforesaid recruitment.

6. Learned counsel for petitioner has submitted that there was no such condition indicated in the Advertisement whereby tattoo of the name on the right forearm was disallowed. It has also been submitted that thereafter petitioner has erased the said tattoo from his right forearm and is eligible for medical examination as per guidelines of the Department due to which he is seeking reconstitution of the Medical Board. It is submitted that the recruitment process is still going on but Medical Board has been disbursed. Learned counsel has placed reliance on certain judgments and orders rendered by Coordinate Benches of this Court whereby such a relief has been provided.

7. Learned counsel appearing for opposite parties has refuted the submissions advanced by learned counsel for petitioner and has placed reliance on the revised guidelines issued by the Government of India, Ministry of Home Affairs issued in May, 2015 for Recruitment and Medical Examination in Central Armed Police Forces and Assam Rifles. He has specifically adverted to paragraph 11(3)(b) to submit that tattoos marked on traditional sites of the body like inner aspect of forearm is permitted, but only on the left forearm, being the non saluting limb or dorsum of the hands. It is thus submitted that since petitioner had his name tattooed on his right forearm which is the saluting arm, such a tattoo was impermissible in terms of the guidelines and this being the admitted fact, therefore, the petitioner has been rightly found unfit for selection by the Medical Board and Review Medical Board.

8. It is further submitted that the Advertisement does not require any such condition to be indicated therein and since such a prohibition is clearly indicated in the guidelines, they would have precedence over the Advertisement. It is further submitted that now the Review Medical Board has also been disbursed and therefore petitioner's request cannot be accepted.

9. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is admitted that petitioner had applied for recruitment on the post of Constable (Cook/ Washerman) and was declared unfit only on account of his name being tattooed on the right forearm.

10. With regard to the aforesaid aspect, the revised guidelines issued by the Government of India dated 20.05.2015 thus clearly indicates in paragraph 11 therein that only tattoos on the left forearm, being the non saluting hand is to be allowed.

11. However, an aspect requiring consideration is that in the Advertisement issued by opposite parties, the requirement pertaining to selection process particularly the Physical Efficiency Test (PET) and Physical Standard Test (PST) does not indicate any such prohibition. The eligibility conditions indicated in paragraph 5 of the Advertisement as well as disqualification indicated in paragraph 7 do not indicate any such prohibition or disqualification of a candidate having tattoo on his right forearm.

12. In case, such a prohibition was required to be resorted to by the opposite parties, it was incumbent upon them who have indicated such an aspect of disqualification in the Advertisement itself. That having not been done, in the considered opinion of this Court, cannot disqualify the petitioner.

13. It is also the aspect to be considered that petitioner in paragraph 14 of the writ petition has stated that subsequently he

has erased the aforesaid tattoo from the aforesaid right forearm and therefore he is now fit for being considered even as per the aforesaid guidelines.

14. Coordinate Benches of this Court in the case of *Avneesh Kumar and Others Vs. Union of India and Others, Writ-A No.320 of 2022* and in the case of *Himanshu Kumar Vs. Union of India and Others, Writ-A No.8063 of 2023* have issued such directions for constitution of Review Medical Board particularly in view of the fact that subsequently the petitioners therein had removed the offending tattoo.

15. This Court is in respectful agreement with the aforesaid judgments.

16. Considering the fact that no such prohibition was indicated in the Advertisement and the added aspect that petitioner has subsequently removed the offending tattoo, writ in the nature of mandamus is issued commanding the opposite parties to reconstitute the Medical Board for consideration of petitioner's candidature for the post of Constable (Cook/ Washerman) in pursuance to the Advertisement issued in the year, 2020.

17. Resultantly, the petition succeeds and is **allowed**, with the direction to reconstitute Selection Board within a period of three weeks from the date a certified copy of this order is produced before the concerned authority. In case, petitioner is found fit in the reconstituted Medical Board, he shall be permitted to participate in the remaining selection process.

18. Parties to bear their own costs.

Order Date :- 26.10.2023

Mohd. Sharif