

In the High Court of Judicature at Allahabad
Sitting at Lucknow

Neutral Citation No. - 2024:AHC-LKO:80957-DB

Court No. - 1

Case :- SPECIAL APPEAL DEFECTIVE No. - 549 of 2024

Appellant :- Parul Mishra

Respondent :- Union Of India Thru. Secy. Ministry Of Home Affairs
New Delhi And 2 Others

Counsel for Appellant :- Babita Awasthi, In Person

Counsel for Respondent :- A.S.G.I., Anand Swarup Rai

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Subhash Vidyarthi, J.

Order on IA-01 of 2024:

1. Heard the appellant Ms. Parul Mishra in person, Dr. Surya Bhan Pandey, the learned Deputy Solicitor General appearing on behalf of the Union of India and perused the materials placed on record.
2. The instant intra court appeal has been filed under Chapter VIII, Rule V of Allahabad High Court Rules, 1952 with a delay of 24 days as on the date of its filing i.e. 18.09.2024. It is accompanied by an application seeking condonation of delay in filing the appeal, which is supported by an affidavit.
3. In the affidavit filed in support of the delay condonation application, we find that just and plausible reasons have been disclosed by the appellant seeking condonation of delay. In absence of any objection and the explanation offered being bona fide, the application for condonation of delay is allowed and the delay in filing appeal is condoned.

Order on memo of special appeal:

4. By means of the instant intra court appeal filed under Chapter VIII, Rule 5 of the Allahabad High Court Rules challenging an order

dated 23.07.2024, passed by an Hon'ble Single Judge of this Court in Writ-A No.5521 of 2024.

5. The aforesaid writ petition was filed by the appellant seeking issuance of a writ of mandamus commanding the opposite parties to conduct re-medical examination of the appellant for ascertaining her suitability for appointment to the post of Head Constable Communication in Shashatra Seema Bal. The writ petition was dismissed after taking into consideration the submissions made by the Deputy Solicitor General that the appellant had been declared medically unfit by the Medical Board as well as by the review medical board, due to 'excessive hyperhidrosis present over palm'. This court dismissed the writ petition by observing that there was no plausible reason to direct the competent authority to conduct the re-medical examination of the appellant.

6. Briefly stated, facts of the case are that the Shashtra Seema Bal had issued an advertisement for making appointments to various posts, including some posts of Head Constable (Communication). The appellant appeared in the written examination and was declared successful. However, in medical examination she was declared unfit. A review medical examination of the appellant was conducted as per her own request. A copy of the result of review medical examination has been brought on record, a perusal whereof makes it manifest that the format of medical examination report mentions two options regarding the final opinion- **a. fit, b. unfit on account of__..** Initially option **b - unfit on account of__..** was struck out in blue ink with which the entire report was written. Subsequently, option **a-fit** was also struck out in red ink. The final opinion-**fit** written in a circle was changed by inserting a prefix '**un**' before fit written inside the circle which is apparent. It has been written in red ink-'unfit due to excessive hyperhidrosis present over palms.'

7. As there was visible interpolation in the review medical medical examination report and apparently originally the review medical

examination board had reported the appellant to be fit which opinion was subsequently changed, the special appeal was entertained.

8. The appellant has stated that she has been declared as medically fit for selection to the post of Head Constable (G.D.) in CAFB, SSF, Rifle Man (GD) in Assam Rifles and Sippoy in Narcotics Control Bureau Examination, 2022. Keeping in view the aforesaid facts the special appeal was entertained and a coordinate bench had passed an order on 18.10.2024 directing the appellant to present herself before the Principal of King George Medical University, Lucknow who was directed to constitute a medical board to examine the appellant with regard to her medical condition pertaining to hyperhidrosis (palm & sole) and blood clot present in the right ear canal and present a report before this court in a sealed envelop.

9. Accordingly, the appellant was examined by a Medical Board presided by the Chief Medical Superintendent of Gandhi Memorial and Associated Hospital, Lucknow. Five other doctors of KGMU from Department of Medicines, Dermatology, Clinical Hematology, Rheumatology and ear, nose throat were members of the Medical Board. The report submitted by the Medical Board to this court is as follows:

"Dermatology: Patient complains of sweating on palms and soles occasionally on stress. No other skin complaints swelling present on palm soles on examination.

Rheumatology: No features majestic of connective tissue disorder of arthritic/ Raynandes perimeter hyperhidrosis on palms & feet may be because of anxiety disorder. For this complains she should consult to physician.

ENT: Both tympanic membrane intact.

Medicine : Patient Parul Mishra is medically fit to join her duties."

10. After submission of the aforesaid report, the respondents have filed their objections to the special appeal annexing therewith a copy of the Revised Guidelines for Recruitment, Medical Examinations in Central Armed Police Forces and Assam Rifles issued by the

Government of India, Ministry of Home Affairs (Police Division-II), which inter alia provide as follows:

"11. Miscellaneous Conditions-

1)..

(2)..

3)..

4)..

5) Evidence of nervous instability:-

Attention should be paid to manifestation of nervous instability such as Restlessness, Tachycardia, Tremors, Rombergism, Hyperhidrosis, Prominence of eyes or enlargement of the thyroid etc.

In case the nervous instability seems to be due to anxiety, the candidate is to be kept under observation for some time and then re-examined. If the signs persist the candidate is to be rejected."

11. It has been contended on behalf of the respondents that the Medical Board of KGMU has not ascertained the fitness of the appellant keeping in view the aforesaid provision contained in the relevant guidelines.

12. It was recorded in the order dated 26.11.2024 passed by this court that:

"8. The learned counsel for Union of India has filed objections against the medical report annexing therewith a copy of the guidelines for recruitment medical examination in Central Armed Forces and Assam Rifles and he has submitted that the Medical board of King George Medical University, Lucknow has not conducted the medical examination keeping in view the aforesaid guidelines and, therefore, the appellant cannot be selected on the basis of the aforesaid report.

9. The guidelines for Medical Examination Test (MET) for Recruitment in CAPFs, NSG & AR inter alia provide as follows:-

5) Evidence of nervous instability:-

Attention should be paid to manifestation of nervous instability such as Restlessness, Tachycardia, Tremors, Rombergism, Hyperhidrosis, Prominence of eyes or enlargement of the thyroid etc. In case the nervous instability seems to be due to anxiety, the candidate is to be kept under observation for some time and then re-examined. If the signs persist the candidate is to be rejected.

10. From a perusal of the Review Medical Board's Report, it does not appear that the Board had noted any manifestation of nervous instability such as Hyperhidrosis. Had the Board observed Hyperhidrosis, the appellant ought to have been kept under observation for sometime and then re-examined, which was not done. The appellant could not have been rejected only if Hyperhidrosis persisted as a sign of nervous instability.

11. The learned Deputy Solicitor General has submitted that Hyperhidrosis has been recorded in the Medical Examination Report only as per the information provided by the petitioner herself. It indicates that no sign of Hyperhidrosis had manifested before the Medical Board and the appellant had acted fairly by disclosing all the facts.

12. As the aforesaid aspects have not been addressed in any of the three medical reports of the appellant, the learned Deputy Solicitor General has fairly submitted that the appellant should again be medically examined in the Command Hospital, Lucknow to ascertain her fitness for appointment to the post of Head Constable (Communication) in SSB.

13. The appellant has objected to this submission stating that she has already been medically examined thrice and in none of the examinations, any observation has been made by the medical experts which would render her unfit as per the provisions contained in the Uniform Guidelines For Medical Examination Test (MET) for Recruitment in CAPFs, NSG & AR. She has submitted that she had to incur expenditure for her medical examination in furtherance of the order dated 18.10.2024 passed by this Court.

14. Having considered all the facts and circumstances of the case, we find it appropriate to order another medical examination of the appellant by suitable expert Doctors working in Command Hospital, Lucknow only for ascertaining any manifestation of Hyperhidrosis indicating nervous instability, as the appellant has not been found unfit on any other count.

15. The appellant shall present herself before the Commanding Officer of the Command Hospital, Lucknow along with a certified copy of this order on 29.11.2024. The Commanding Officer concerned shall get her medically examined by suitable experts/panel of experts to ascertain whether there is any evidence of nervous instability in the form of Hyperhydrosis, which persists even after the appellant is kept under observation for some reasonable time and is re-examined thereafter, as per the provisions contained in Clause 11 (5) of the Uniform Guidelines For Medical Examination Test quoted above and shall submit the examination report to this Court, through the learned Deputy Solicitor General, by the next date of listing."

13. In furtherance of the aforesaid order, the appellant was examined by a 3 member panel headed by Colonel Vikas Pathania, Sr. Adv. & HOD, Dermatology, Base Hospital, Lucknow, Colonel Julie Sachdeva, MD (Med.) D.M. (Neurology), Sr. Adv. (Medicine) & Neurology and Lieutenant Colonel S.K. Saini, CI Spl (Psy) of experts doctors of Command Hospital, Lucknow on 29.11.2024. The report submitted by the aforesaid 3 member panel mentions that "*the board examined the candidate and the findings are as follows:-*

(a) Palmer Hyper Hidrosis Present."

Opinion of the Board of officers is that "Palmer Hyper Hidrosis Present".

14. As the aforesaid report does not make any mention of "evidence of nervous instability" mentioned in Clause 11 (5) of the guidelines quoted above and it does not categorically mention whether the appellant is fit or unfit for appointment to the post of Head Constable (Communication), on 03.12.2024 this court passed an order stating that the opinion expressed by the Medical Board deserves to be explained for forming an opinion one way or the other, for which the presence of Dr. Julie Sachdeva would be necessary before the report is relied upon as any report prepared by the Medical Board is necessarily to be according to the relevant Rule.

15. In furtherance of the aforesaid order Dr. Julie Sachdeva, M.D. (Medicine) & D.M. (Neurology), Command Hospital, Lucknow appeared before this court today. She was asked whether she was aware about Clause 11 (5) of the Guidelines issued by the Ministry of Home Affairs, Government of India for Recruitment, Medical Examinations in Central Armed Police Forces and Assam Rifle, to which she answered in the affirmative. The Court put a question to Dr. Julie Sachdeva that Clause 11 (5) would make a candidate liable to be rejected if he/she shows evidence of nervous instability, which may be manifested by restlessness, tachycardia, tremors, rombergism, hyperhidrosis, prominence of eyes or enlargement of the thyroid etc. and it was told that out of the panel consisting of three experts, Dr. Julie Sachdeva was called to assist the court because she was the only expert in the field of neurology, she answered that she had not found any neurological abnormality upon the appellant's medical examination so as to make her unfit for appointment. The dermatologist had conducted some tests by applying some chemical compound on the appellant's palm and when exposed to sunlight she had shown signs of hyperhidrosis. The appellant was examined by a Clinical Specialist (Psychologist) also but he did not find any symptoms of nervous instability such as restlessness or anxiety present in the appellant.

16. Clause 11 (5) of the guidelines mentions that in case any evidence of nervous instability seems to be due to anxiety, the candidate is to be kept under observation for some time and then reexamined. If the sign persists, the candidate is to be rejected. However, as no anxiety was found in the patient by the Clinical Psychologist, the appellant was rightly not kept under observation for some time and reexamined thereafter.

17. Dr. Julie Sachdeva informed the Court that it is a practice amongsts the doctors forming Medical Board for examination of candidates to declare candidate suffering from hyperhidrosis as unfit whether or not hyperhidrosis is an evidence of nervous instability. She

explained to the Court that hyperhidrosis can be present for numerous reasons, nervous instability being only one of them. It can be also due to diabetes, hormonal disorders, malignancy or it can even be idiopathic (i.e. without any plausible reason).

18. Normally while exercising its powers of judicial review, this court refrains from interfering in experts' opinions. However, the power of judicial review can be exercised in appropriate cases when the expert's opinion is divided or when the expert's opinion does not take into consideration the relevant provision of the applicable rules as in such cases, the Court can see whether there is any material to establish that the candidate is unfit as per the provisions contained in the relevant Rules.

19. Clause 11 (5) of the Guidelines quoted above does not mention hyperhidrosis as a ground for declaring a candidate medically unfit. What it provides is that in case a candidate is suffering from nervous instability, which may be manifested through hyperhidrosis or through restlessness, tachycardia, tremors, rombergism, prominence of eyes or enlargement of the thyroid etc. the candidate is to be rejected. However, even in such cases if the nervous instability seems to be due to anxiety the candidate is to be kept under observation for some time and then reexamined. If the signs persists, the candidate is to be rejected.

20. In the present case, the review medical board has mentioned hyperhidrosis (palms and soles) present in the appellant, but its original opinion was that the appellant is fit for being appointed. This report was subsequently altered so as to declare her unfit due to excessive hyperhidrosis present over palms. The word 'hyper' itself means excessive and 'excessive' has been written before 'hyperhidrosis' only to give a semblance of gravity of the symptom of hyperhidrosis. However, there is no mention in the review medical examination report that the appellant has been found to be suffering from nervous instability, which would be a ground for her rejection as per Clause 11 (5) of the aforesaid guidelines.

21. The medical examination report submitted by a Six Member Panel of expert doctors of KGMU has categorically opined that the appellant is fit for appointment. The 3 Member Expert Medical Board, Command Hospital, Lucknow has merely mentioned that the appellant is suffering from hyperhidrosis. This panel has not mentioned that the appellant is suffering from nervous instability nor has it declared her medically unfit for appointment. The expert neurologist who was a member of the Medical Board constituted by Command Hospital, Lucknow has categorically stated that she as well as another member of the Medical Board who is an expert psychologist, did not find any abnormality in the appellant warranting her declaration as unfit for appointment. The only abnormality has been found by a Dermatologist in the form of hyperhidrosis present over palms.

22. In view of the aforesaid peculiar facts and circumstances of the present case, when the appellant has been initially declared fit by the review medical board, which report has subsequently been altered, she has been declared fit by the Six Members Expert Medical Board of doctors of KGMU and she has not been declared unfit by the 3 Member Expert Panel of Command Hospital, Lucknow the mere mention of presence of hyperhidrosis, without same being found to have been a manifestation of any nervous instability, would not warrant rejection of her candidature for appointment of her appointment to the post of Head Constable (Communication).

23. Accordingly, the special appeal is ***allowed***.

24. The impugned judgment and order dated 23.07.2024, passed by writ Court in Writ-A No.5521 of 2024 dismissing the writ petition is set aside and the petition is allowed. A writ in the nature of mandamus is issued to the respondents to consider the candidature of the appellant for appointment to the post of Head Constable (Communication) as per her merit in the open selection and to pass necessary orders in this regard, within a period of two weeks from

today and denial of this right merely on the medical ground is overruled in the peculiar facts discussed above.

25. Before parting with the case, the Court puts on record its appreciation for the assistance rendered by Colonel Dr. Julie Sachdeva, MD (Med.) D.M. (Neurology), Sr. Adv. (Medicine) & Neurology by explaining the intricacies of her field of expertise to enable the court to arrive at this decision.

[Subhash Vidyarthi, J.] [A.R. Masoodi, J.]

Order Date :- 04.12.2024
Anupam/Ram.