

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3547 of 2011

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Om Prakash Goshwami S/O Sri Mahendra Goshwami Resident Of Village-
Belharia, P.S- Tekari, District- Gaya.

.... Petitioner

Versus

1. The Union Of India Through Inspector General, Bihar Sector, Central Reserve Police Force, Patna (Bihar)
2. The Inspector General Bihar Sector C.R.P.F., Patna.
3. The Commandant Rectt. Board At C.C.Muzaffarpur, Bihar.
4. The Dy.Commandant (Administration), C.C.C.R.P.F.Mokamaghat
5. The Medical Officer Of The Rectt. Board 2-1/C-153 Bn.Rectt. Cell Muzaffarpur.

.... Respondents

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Appearance :

For the Petitioner/s : Dr. Kumar Amitesh Chandra, Adv.

For the Respondent/s : Mr. S.D.Sanjay, A.S.G.

Mr. Anjani Kumar Sharan, CGC

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

3 08-07-2015

Heard learned counsel for the parties.

Having regard to the fact that the petitioner in this writ application has sought for the following relief:

“1(i) For issuance of an appropriate writ, order, direction quashing the office order bearing memo No.R II.10/2009-B5-Adm-3 dated 19.1.2011 issued under signature of respondent no.2, by which the petitioner claim for appointment on the post of Constable (GD) has been rejected wrongly.

(ii) For issuance of an appropriate writ, order, direction to declare that the order aforesaid has been passed without considering that what was the reason for constitution of a Medical Board which was not competent to do so.

(iii) For issuance of an appropriate writ, order, direction that the deficiency of the member of medical Board has

not been has not been stated therefore the order impugned is illegal, arbitrary and only with a view to save the illegal action by which the petitioner was send Hyderabad for medical examination in spite of the fact petitioner was once declared fir for appointment.

(iv) For issuance of an appropriate writ order direction that other applicants declared fit by the said medical Board have been appointed where as petitioner has been discriminated reason best known to the respondents.”

this Court has essentially to go into the question which has been remitted by an earlier order of this Court dated 17.9.2010 in C.W.J.C.No. 14580/2010.

The authority in fact has passed the impugned order dated 19th January, 2011 in compliance of the order of this Court which for the sake of clarity and convenience is quoted hereinbelow:

“ OFFICE OF THE INSPECTOR GENERAL, BIHAR
SECTOR, C.R.P.F., PATNA (BIHAR)

No.RII10/2009-BS-Adm.3 Dated the Jan' 2011

OFFICE ORDER

Shri Om Prakash Goswami [Roll No.09519210013968] was an aspirant for appointment to the post of Cosntable (GD) in CRPF. Consequent on qualifying physical measurement/ physical efficiency test/ written examination, the said petitioner was called for medical examination held on 13.3.2010 by the Medical Officer of Recruitment Board. After thorough medical examination of the petitioner, the Medical Officer of Recruitment Board

declared him medically unfit due to following reasons:-

(1) Defective vision 6/12 rt.Eye and 6/6 Lt eye

(2) Flat Foot.

02. The Medical unfitness was also communicated to the petitioner by the Medical Officer of Recruitment Board vide letter No. RII.1/2010-EC-6 dated 13.3.2010. Aggrieved with the result of the medical examination report, the petitioner preferred his appeal which was considered by the competent authority. Accordingly, he was called for review medical examination on 15.4.2010 at Composite Hospital, CRPF Muzaffarpur and declared medically fit against both the medical deformities.

03. However, at a subsequent stage it was revealed that the Review Medical Board convened to carry out the review medical examination of the petitioner on 15.4.2010, was not competent to render its opinion with regard to the "Defective vision" of the petitioner. Thus, the petitioner was again subjected to a fresh medical examination for "Defective Vision" by a Board of Ophthalmologists at Composite Hospital, CRPF, Hyderabad on 28.5.2010. The Board, after medically examining the petitioner rendered him medically unfit with the following remarks:-

Distant vision Rt. 6/12

Lt. 6/6

04. Since the petitioner was declared medically unfit, his candidature was rejected. The outcome of medical examination was also noted by the petitioner under his signature/ thumb impression. Aggrieved petitioner subsequently agitated the matter before the Hon'ble High



Court Patna in CWJC No. 4580 of 2010. The aforesaid writ petition was taken for hearing on 17.9.2010 in the court of Mr. Justice V.N.Sinha. While cogitating the facts and circumstances of the case, the Hon'ble Court raised suspicion as to why the petitioner was referred to Hyderabad when he was declared medically fit by the Review Medical Board on 15.4.2010. The writ petition was simultaneously disposed of directing the ISP, Bihar Sector, CRPF to consider the entire matter and pass appropriate order in accordance with law, as early as possible in any case within one month from the date of receipt of the order.

05. Consequent on receipt of concurrence of competent authority for implementation of court order *ibid*, the matter was recalled by the undersigned. The petitioner Om Prakash Goswami [Roll No.09519210013968] was initially medically examined on 13.3.2010 by Dr. N.K.Prasad, Chief Medical Officer of 7 BN (Medical member of Recruitment Board) and declared unfit on following grounds:-

[a] Defective vision [6/12 rt 6/6 Lt eye]

[b] Flat Foot

06. Further in light of appeal submitted by Shri Om Prakash Goswami, he was medically reviewed on 15.4.2000 by a board of Medical Officers comprising of Dr. Prem Kumar, CMO (Selection Grade) and Dr. Chun Chun Kumar, Senior Medical Officer. Nevertheless the board of Medical officers assembled for conducting review medical examination were not specialized/ competent to render its opinion with regard to "Defective Vision", the

board crossed its sphere and limitation and declared the candidate medically fit against both the deformities. However, the omission was subsequently noticed and the petitioner was again subjected to fresh review medical examination specifically for “Defective Vision” at Composite Hospital, CRPF Hyderabad on 28.5.2010 by a board of Ophthalmologists comprising of :-

- (1) Dr. S.L.Nimesh, Eye Specialist, DIS (Medical)
- (2) Dr. S.K.Chakravorthy, M.S. (Oph), CMO (NFSG)
- (3) Dr. (Maj) Anil Prasad, Eye Specialist, MO

07. Consequent on proper examination of the eyes of the petitioner, the Medical Board declared him medically unfit due to:-

Distant Vision	Rt	6/12
	Lt	6/6

08. The Force is having acture deficiency of Ophthalmologists/ Eye Specialists. Therefore, in order to facilitate seeking opinion of Ophthalmologists/ Eye Specialists at Force level, a Board of such specialists is being convened at Composite Hospital, CRPF, Hyderabad/ New Delhi taking into account availability of such specialists. The Board of Ophthalmologist/ so comprised/ convened is only competent to review the medical examination of eyes cases and render its opinion. The medical examination of the candidate by a Board of Ophthalmologists was essential and in accordance with the requirement. There is no legal flaw or impropriety in seeking opinion of the board of Ophthalmologists/ Eye Specialists to determine medical fitness of Shri Om

Prakash Goswami [Roll No.09519210013968] which substantiates the petitioner medically unfit. Dr. Prem Kumar, CMO and Dr. Chun Chun Kumar, SMO are being advised suitably to desist and check such omissions in future.

[P. Valsakumar]

Inspector General.”

From reading of the aforesaid order few facts are admitted and are not being questioned and in fact had been noticed when in the earlier round the order of remand was passed by this Court, firstly that the petitioner was an applicant for the post of Constable and was subjected to medical examination on 13.3.2010 and was declared to be medically unfit on two grounds, namely, (i) defective vision 6/12 right Eye and 6/6 left eye, (ii) Flat Foot. The petitioner against this order had gone before the Review Medical Board and the Review Medical Board by its medical examination test on 15.4.2010 had declared the petitioner fit for both the aforementioned medical defects. The authorities, however, before making the appointment of the petitioner could come to know that the Review Medical Board which had examined the petitioner was not having any eye specialist so as to give an opinion on the defect of eye vision as reported in the first Medical Board dated 13.3.2010. Thereafter a three-man special Medical Board of Dr. S.L.Nimesh, Eye Specialist, DIG (Medical), Dr.



S.K.Chakravorthy, M.S. (Oph), CMO and Dr. (Maj) Anil Prasad, Eye Specialist, MO, was constituted which had again examined the petitioner on 28.5.2010 at Hyderabad. The said Review Medical Board had found the same defect as with regard to eye vision as it was recorded in the order of the first Medical Board dated 13.3.2010, namely, the petitioner had distant vision right 6/12 and left 6/6.

The learned counsel for the petitioner, however, has referred to paragraphs no. 9, 15 and 16 of the writ application to assail the aforementioned finding by specifically taking a plea of discrimination. According to him, if the report of the Review Medical Board was accepted in case of all other candidates why could the petitioner be subjected to non-examination at Hyderabad by the third Medical Board. He also questions why in the first place the Review Medical Board was constituted having no eye specialist. The answer of these two aspects has very much been given in specific terms in the impugned order and no error can be found in such reasons of the competent authority.

It has to be borne in mind that the judicial review in the matter of appointment and particularly laying down the norms of test of a police force cannot be examined by this Court as an appellate authority. Here in this case this aspect has been clarified

in the impugned order and infact also an admitted fact that the Review Medical Board had no eye specialist. The Review Medical Board infact is never constituted only for one particular type of case and therefore, in the case of the petitioner the Review Medical Board ought to have not given any opinion. Thus if this vital infirmity of the Review Medical Board was noticed by the competent authority, his decision of sending the petitioner for further examination by the expert at Hyderabad cannot be questioned by the petitioner, especially when he had also voluntary appeared before the Board at Hyderabad before raising any protest.

In any event a candidate cannot dictate the terms while seeking appointment and it is for the appointing authority to be satisfied with regard to fitness. Here in this case the petitioner wanted to be a member of disciplined armed force and if his physical fitness by way of eye vision was not found as per the specified prescribed standard, he could not have been appointed.

In that view of the matter, this Court does not find any error in the impugned order. This writ application is, accordingly, dismissed.

(Mihir Kumar Jha, J)

surendra/-

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