

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.552 of 2015

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Dhanjeet Kumar Tiwari S/o Sri Vishnudev Tiwari R/o tiwari Chakia, P.S.
Bhore, Distt. - Gopalganj

.... Petitioner

Versus

1. The Union of India, through Secretary, Department of Home, Govt. of India at New Delhi
2. Secretary, Department of Home, Govt. of India at New Delhi
3. D.I.G., SHQ SSB Ranidanga, P.O. Susrutanagar, Distt. - Darjelling
4. Commandant, 12 Bn, SSB, Kishanganj, Near NH - 31, Biscuit Factory, P.O. AND Distt. Kishanganj (Bihar) - 855107

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Amresh Kumar Sinha, Adv.

For the Respondent/s : Mr. Rajesh Kumar Verma, CGC

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

5 18-05-2015 Heard learned counsel for the parties as with regard to the following prayer made in this writ application:

“(i) To issue an appropriate writ/ orders MANDAMUS directing the respondent authorities to allow the petitioner to appear in medical review test in light of appeal made on 14.7.12 by the petitioner before respondent no.4 for combined Recruitment of Constable (GD) for the year 2012-2013.”

2. Learned counsel for the petitioner submits that when the petitioner had qualified in the written test and had been subjected to medical examination by the first Medical Board, his candidature could not have been left midway only on account the first Medical Board declaring the petitioner medically unfit for the post of Constable, especially when there was a provision for the Review



Medical Board and the petitioner had also applied within time seeking such review of his medical test. He has further submitted that the declaration of the petitioner to be medically unfit by the first Medical Board in fact would stand a stigma against him in any future selection and therefore, this Court would initially direct the petitioner to be subjected to medical fitness by the Review Medical Board and thereafter also for his being considered for appointment in the category of the post of Constable on the basis of his marks secured in the written test.

3. Learned counsel for the respondents having filed the counter affidavit and also obtaining instruction from the Staff Selection Commission, Allahabad has basically made out a case of the petitioner being not found eligible to be called for Review Medical Board because in the category of the post of Constable in which the petitioner had sought to compete no one having the marks of the petitioner was either called for Review Medical Board or has been appointed. He explains that the petitioner only had obtained 64 marks in the category but the last candidate either called for review medical board or appointed from them had secured 67 marks. On these basis learned counsel for the respondents has proceeded that no useful purpose could have been served by calling for the review medical board, especially when

they were not coming in the zone of consideration as per the marks.

4. Learned counsel for the respondents has also clarified that the apprehension or self guided impression of the petitioner that once declaration of one medical board as unfit will never stand as a bar in the subsequent selection and the medical test because each selection followed its own procedure in which the candidates are subjected to medical examination upon becoming successful in the physical/ written test.

5. In the considered opinion of this Court mere appearance in the review medical board by itself cannot be of any use unless such report of the medical Board fitness by the review medical board can also lead to consideration for appointment of a candidate. Here in the present case the petitioner and alike him many others had initially appeared and had also successfully completed the physical/ written test and yet on being declared unfit by the first medical board were required to be called for review medical board and at that stage it was found that the candidate securing 67 and above in the category of the petitioner could alone be appointed. As there were many persons in between 67 marks to 64 marks there was no need for their further medical examination by the review medical board and to that extent the

following explanation of the respondents in paragraph no.12 would support the stand of the respondents which reads as follows:

“12. That the SSC Hqrs New Delhi vide letter No.10/05/2012-C1/2 dated 1.1.2013 addressed to Nodal Agency BSF has mentioned in para-2(i) that, “Candidates who have obtained marks equal to or more than the lowest marks obtained by the candidates already selected in Select list/ Reserve List/ Reserve List-2 for each CAPF and each category and are eligible to be called for RME and ‘YES’ has been indicated against such candidates” and accordingly SSC has forwarded the list of shortlisted candidates to be called for review medical examination for combined recruitment of Constable (GD) 2012-13 indicating the names of candidates who are eligible (i.e. the candidates who have secured the required minimum marks) to appear in Review Medical Examination with direction to issue call letters to the candidates by the Centre-in-charge who conducted MET of candidates.”

6. As noted above, the petitioner has secured only 64 marks and in his category last person appointed after being declared by the review medical board has secured 67 marks. The petitioner, however, has tried to highlight the case of one Niraj Kumar but then this Court finds that the category of Niraj Kumar apparently seems to be different on account of his candidature based on naxal area. Therefore, the case of the petitioner is not

comparable with the case of Niraj Kumar.

7. Nonetheless if the petitioner can still satisfy the authority that if anyone securing equivalent or lesser marks in his category has been called for the review medical board and also appointed on the post of Constable, his case may also be considered in similar manner and in doing so considerations this order shall not come in way of the petitioner.

8. With the aforementioned observation, this application is disposed of.

(Mihir Kumar Jha, J)

surendra/-

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