

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1879 of 2012

IN

Civil Writ Jurisdiction Case No. 22281 of 2011

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1. The Union of India through the Home Commissioner, Government of India, New Delhi.
 2. The Chairman, Staff Selection Commission (Central Range), 8, A.B., Bailey Road, Allahabad.
 3. The Director (Examination) Staff Selection Commission, (Central Range), 8, A.B., Bailey Road, Allahabad.
 4. The D.I.G., SHO, S.S.B., Purnea, Bihar.
 5. The Commandant, Chairman Met, S.D.B., Purnea, Bihar.
 6. The Commandant (Medical), Met, S.S.B., Purnea.

.... Respondents-Appellants

Versus

Vikash Kumar, son of Sri Dinesh Singh, R/O Village Saidpur, P.S. Khizersarai, District- Gaya.

.... Petitioner-Respondent

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Appearance :

For the Appellants : Mr. Sanjay Kumar, A.S.G.

For the Respondent : Mr. Rabindra Kumar Priyadarshi, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

C. A. V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 09 -03-2016

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 24th July, 2012 whereby the respondent, (hereinafter referred to as 'the petitioner'), earlier ordered to be examined by the High Court doctor, was declared medically fit for being appointed on the post of Constable in the Central Police Organizations. Thus a direction was issued for appointing the petitioner on the said post without any further delay.

2. In January, 2011, an advertisement was issued for



appointment of constables in different Central Police Organizations, such as CISF, CRPF, BSF and SSB. The petitioner was one of the candidates for the appointment to one of such post. The petitioner appeared in the physical test on 05.04.2011 in the campus of 159 Battalion of CRPF at Bodh Gaya. The petitioner was successful and was called to appear in the written examination held on 05.06.2011 at Patna. The petitioner was successful and called for medical test and was put up for medical examination in the SSB Camp at Purnea on 27.08.2011 in which the petitioner was not found fit to be appointed because of four infirmities, namely, (i) Pityriasis versicolor; (ii) Bitot's spots; (iii) right shoulder drooping; and (iv) tremor of head when vision is fixed.

3. The assertion of the petitioner is that he got himself examined at Pilgrim Hospital, Gaya, where no such defect was found. The petitioner applied for re-medical test along with certificate of the doctor. The petitioner was put under medical tests before the Review Medical Board at Jalandhar where a team of five doctors examined the petitioner. Such report of the Medical Board dated 27th of August, 2011 is that the petitioner is not fit on account of two infirmities such as infirmities Nos.1 and 3 in its report dated 30th October, 2011.

4. Thereafter, the petitioner approached this Court by way of a writ application. The learned Single Bench directed the doctor posted in the High Court to give his report in view of the assertion of the petitioner that he has no medical dis-infirmities. The said doctor

reported that the petitioner does not suffer from none of the infirmities and declared the petitioner to be a fit person. On the basis of such report, a direction was issued for appointment of the petitioner as Constable.

5. Learned counsel for the appellants argued that whether a candidate is medically fit or not is the satisfaction of the doctors of the Organization. In one such report, the Medical Board has found four infirmities, but on the representation of the petitioner, the Review Medical Board was conducted and found two infirmities. Once the Review Medical Board has found two infirmities, this Court, in exercise of writ jurisdiction, could not direct physical examination by a doctor posted in High Court, who is not well conversed with the requirements of a Para Military Force to certify the petitioner to be a fit person. Still further, the decision of the employer, as to whether a candidate is a fit person or not, should normally not be interfered with in the absence of any allegation of mala-fide or any other reason which may throw doubt on the conduct of the proceedings by the medical boards.

6. On the other hand, learned counsel for the Petitioner supported the order passed by this Court. He referred to the medical certificates regarding fitness of the petitioner.

7. We have heard learned counsel for the parties and found merit in the present Letters Patent Appeal. This Court, in exercise of writ jurisdiction, cannot act as a Court of appeal and that, too, in the



matter of physical fitness of a candidate. The petitioner was medically examined earlier by a Medical Board and found unfit for appointment. Subsequently, the Review Medical Board consisting of five doctors examined the petitioner and found him unfit, though on two accounts. This Court, in exercise of judicial review in the writ jurisdiction, cannot direct examination of the petitioner from a doctor posted in High Court. At best, even if the High Court was satisfied that there is some infirmity in the process of medical examination, the petitioner could be made to undergo medical tests by another Review Medical Board, but to order medical test by a doctor posted in the High Court unaware of the physical standards required in the Para Military Force cannot be said to be a legally acceptable action.

8. The Hon'ble Supreme Court in *Veer Pal Singh versus. Ministry of Defence, (2013) 8 SCC 83* was examining the matter relating to premature release of armed forces personnel on the basis of the report of the Medical Board. The Supreme Court held that the Courts are extremely loath to interfere with the opinion of the experts, but there is no exclusion of judicial review of the decision taken on the basis of such opinion. The Court held that the opinion of the expert deserves respect and not worship and the courts and other judicial/quasi-judicial forums entrusted with the task of deciding the disputes relating to premature release/discharge from the army cannot, in each and every case, refuse to examine the record of the Medical

Board for determining whether or not the conclusion reached by it is legally sustainable. The Supreme Court held in paragraph 10 which reads thus:-

“Although, the courts are extremely loath to interfere with the opinion of the experts, there is nothing like exclusion of judicial review of the decision taken on the basis of such opinion. What needs to be emphasised is that the opinion of the experts deserves respect and not worship and the courts and other judicial/quasi-judicial forums entrusted with the task of deciding the disputes relating to premature release/discharge from the army cannot, in each and every case, refuse to examine the record of the Medical Board for determining whether or not the conclusion reached by it is legally sustainable.”

9. In a later judgment, the Supreme Court, in the case of *Union of India versus Manjeet Singh (2015) 12 SCC 275*, had occasion to examine the action relating to discharge of Armed Forces personnel on account of disability said to have suffered during the course of duty and held that the burden to disprove the correlation of the disability with the Army Service has been cast on the authorities by the Regulations, Rules and the General Principles and thus, any inchoate, casual, perfunctory or vague approach of the authorities would tantamount to non-conformance with the letter and spirit thereof, consequently invalidating the decision of denial. Relevant extract of the said judgment read thus:

“20.6. The burden to disprove the correlation of the disability with the Army service has been cast on the authorities by the Regulations, Rules and the General Principles and thus, any inchoate, casual,



perfunctory or vague approach of the authorities would tantamount to non-conformance with the letter and spirit thereof, consequently invalidating the decision of denial. Though the causative factors for the disability have to be the rigour of the military conditions, no insensitive and unpragmatic analysis of the relevant facts is envisaged so as to render any of the imperatives in the Regulations, Rules and General Principles otiose or nugatory. To the contrary, a realistic, logical, rational and purposive scrutiny of the service and medical profile of the member concerned is peremptory to subserve the true purport and purpose of these provisions.”

10. The arguments of the Petitioner are required to be tested broadly on the principles laid down in the aforesaid judgments. The report of the experts of the Review Medical Board cannot be interfered with only because some doctor opined the other way. There is no allegation of bias or mala-fide against any of the members of the Medical Board or the Review Medical Board. The conclusions drawn by the Medical Board cannot be negated on the basis of a civil doctor, unaware of the physical standards required in the Para Military Forces. The opinion of the Board or the Review Medical Board cannot be said to be inchoate, casual, perfunctory or vague as there is no material to say so. Therefore, the High Court, in exercise of its power of judicial review, should not have directed the medical examination by a doctor posted in the High Court and to order his appointment only on the basis of such report.

11. Learned counsel for the Petitioner relies upon a judgment of the Hon'ble Supreme Court in the case of *Rajesh Kumar*

and others v. State of Bihar and others AIR 2013 SC 2652, wherein the Supreme Court interfered with a process of written examination on account of erroneous model answer key. We do not find that the judgment in *Rajesh Kumar* (supra) is of any assistance to the argument raised by the learned counsel for the respondent as it was found that the model answer key of multiple choice questions was found to be erroneous. The principles laid down in the aforesaid judgment are not applicable in respect of physical standards to be assessed by the Medical Board.

12. In view of the above, the order passed by the learned Single Bench of this Court on 24th of July, 2012 in CWJC No.22281 of 2011 is not sustainable. Consequently, the same is set aside and the writ application is dismissed.

13. The Letters Patent Appeal thus stands allowed.

(Hemant Gupta, J.)

Navaniti Prasad Singh, J. I agree.

(Navaniti Prasad Singh, J.)

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