

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.32955 of 2016

ORDER:

Heard the learned counsel for the petitioner and Sri B.Narayana Reddy, learned Assistant Solicitor General, appearing for respondent Nos.1 to 3.

2. This Writ Petition is filed by the petitioner challenging the letter No.E-42099/NISA/ADM.IV/2015 dt.21-07-2015 of 3rd respondent, to set aside the same and to direct the respondents to conduct review medical examination for the petitioner.

3. A notification was issued by the Staff Selection Commission, Southern Region, Chennai for recruitment of Constables (GD) in the Border Security Force (BSF), Central Industrial Security Force (CISF) and Services Selection Board (SSB), 2011. Petitioner applied for the post of Constable. He appeared for the written examination on 05-06-2011 and later he was called for physical test for PET and PST in 2011 and he qualified.

4. On 10-08-2011, the Chief Medical Officer, CISF, National Industrial Security Academy (NISA), Hyderabad, conducted eye test to the petitioner in which petitioner was found unfit on the ground that he had defective colour vision.

5. Petitioner was advised to apply for review medical examination before the Medical Board at NISA, Hyderabad for review

medical examination by paying a sum of Rs.25/- at the State Bank of India, Tirmulgherry, Hyderabad.

6. Petitioner contends that he obtained a Demand Draft bearing No.383797 dt.17-08-2011 drawn on the State Bank of India for the said amount and sent it to 3rd respondent by enclosing a medical report dt.16-08-2011 issued by the Civil Surgeon, RIMS, Srikakulam, declaring the petitioner vision as normal.

7. Alleging that petitioner has not received any communication from the respondents to attend the review medical examination in spite of sending the amount of Rs.25/- to 3rd respondent as above, the petitioner has filed this Writ petition.

8. Petitioner contends that he gave a representation on 01-04-2015 to 2nd respondent seeking status of his appointment and in reply, 2nd respondent by letter dt.8/9-04-2015 informed him that his name was not found in the results published in Staff Selection Committee (SSC) and directed him to approach SSC, Chennai about the status of his selection.

9. Petitioner gave a representation to the Regional Director, Southern Region, SSC, Chennai on 21-04-2015 and in reply thereto, a memorandum dt.11-05-2015 was received by him asking the petitioner to approach the concerned CAPF (CISF, NISA, Hyderabad) for necessary action as the Regional Director, Southern Region, SSC, had no role in the matter.

10. Petitioner contends that he gave representations to DIG/NISA, CISF, NISA, Hakimpet, Hyderabad on 02-07-2015 and 18-05-2015 seeking status of his appointment in CISF, NISA and in reply thereto, 3rd respondent informed on 21-07-2015 that the petitioner had been directed to appear before the review medical examination on 17-12-2011 by letter dt.22-11-2011, issued by the CRPF, CH, Hyderabad; but he was found absent on 17-12-2011 for review medical examination; and this was endorsed by the Chief Medical Officer, 2BH, CRPF, Hyderabad.

11. Petitioner contends that this order of 3rd respondent is illegal and the respondents cannot blame him for not being present for review medical examination. He specifically denied receiving any communication to attend the review medical examination.

12. He further contended that when the organization is CISF/NISA, the CRPF, Hyderabad cannot address any letter on 22-11-2011 to the petitioner and the petitioner was not informed any earlier point of time to his representations about this absence for the review medical examination on 17-11-2011. Petitioner contended that the RIMS, Srikakulam, has certified him as having clear vision and therefore he should be allowed for review medical examination conducted by the respondents.

13. Learned counsel for the petitioner reiterated these contentions and stated that if the respondents conducted review medical examination, the petitioner did participate in the same.

14. On 08-10-2015, the Writ Petition was admitted. In W.P.M.P.No.42530 of 2015, this Court directed interim suspension of the letter dt.21-07-2015 of 3rd respondent and directed respondents to conduct review medical examination and pass appropriate orders within two weeks from the date of receipt of a copy of this order.

15. Thereafter, the Court on 12-09-2016 directed the respondents to produce the record in order to see whether communication dt.22-11-2011 was in fact sent to the petitioner and was acknowledged by him.

16. Matter was again listed on 27-09-2016. On that day this Court recorded that the record produced by respondents did not contain the signature of the petitioner and adjourned the matter.

17. On 21-11-2016, Sri B.Narayana Reddy, learned counsel for the respondents, has stated that the CRPF, CH, Hyderabad had instructed him to report to the Court that a call letter was sent to the petitioner *through ordinary post* on 22-11-2011 to appear for review medical examination on 17-12-2011 at CRPF, CH, Hyderabad. He also filed vacate stay petition W.V.M.P.No.4220 of 2015 to vacate the order dt.08-10-2015 in W.P.M.P.No.42530 of 2015 in W.P.No.32955 of 2015.

18. In the vacate stay petition also similar stand is taken that the petitioner was asked attend the review medical examination on 17-12-2011 by a letter sent by ordinary post, but the petitioner was found absent on that day and therefore the Chief Medical Officer, 2BH, Central Reserve Police Force, Hyderabad endorsed his remarks that petitioner was absent on that day.

19. It is contended that the petitioner, having been absent for the review medical examination, invented a plea that he did not receive any communication and if he had not received it, he should have brought it to the notice of the respondents. It is contended that the petitioner made his request only on 01-05-2015 which itself shows that he was not fit during the medical test for the post of Constable/General duty. It is pointed out that the medical test was done by the CISF, NISA Hospital, as per the order of the higher authority but for review medical examination of vision test, the Medical Board was formed by the higher authority and the test was to have been done by the CRPF Medical Board and that was why the call letter was sent by the CRPF. It is stated that the petitioner's conduct shows that he was not interested in the job and he cannot be allowed to seek any relief in the Writ Petition on the ground of laches.

20. From the facts narrated above, it is clear that the petitioner was initially found for having defective colour vision in the test conducted on 10-08-2011 by the Chief Medical Officer, CISF, NISA, Hyderabad and since the rules permitted the review medical

examination, petitioner applied for the same by sending a demand draft to 3rd respondent in August 2011 itself. This is not denied by the respondents.

21. The respondents however contend that the petitioner was asked to attend the review medical examination on 17-12-2011 through a letter No.nil dt.22-11-2011 of CRPF, CH, Hyderabad sent by ordinary post, but he did not attend it. Petitioner denied receipt of such letter. The respondents have not been able to produce any material before this Court to establish that the letter dt.22-11-2011 sent by ordinary post to the petitioner reached the petitioner at all. Since the respondents had alleged that they had sent such a letter, the burden is on them to establish that it reached him but they have failed to discharge the said burden.

22. Therefore, it has to be held that the petitioner never received the letter dt.22-11-2011 to attend for review medical examination on 17-12-2011 and therefore he cannot be blamed for being absent for the review medical examination on 17-12-2011.

23. No doubt the petitioner made a representation on 01-04-2015 to the 2nd respondent seeking review medical examination with a little delay, but in the facts and circumstances of the case, and having regard to the failure of the respondents to prove that their communication dt.22-11-2011 asking the petitioner to appear on 17-12-2011 for the review medical examination was served on him, I

am not inclined to deny relief to the petitioner on the ground of delay or laches.

24. As regards the plea of the petitioner that the CRPF had no authority to issue such a letter dt.17-11-2011, the said contention is not tenable since respondents have explained in their counter affidavit that review medical examination of the vision test is to be done by Medical Board formed by higher authority and the test was to be done by the CRPF Medical Board and that was why the letter dt.22-11-2011 was issued by the CRPF.

25. Although the CRPF was not originally impleaded as party, by order of Court, the Inspector General (Medical), CRPF, Chandrayanagutta, Boarkad, Keshavgiri (Post), Hyderabad-500005 was impleaded as 4th respondent on 21-11-2016.

26. Since the petitioner had appeared for the post of Constable in response to the notification for the SSC, Southern Region, Chennai in 2011 and had cleared the written examination on 05-06-2011 and also the physical test PET & PST; and since on the ground that defective colour vision, the Chief Medical Examination, CISF, NISA, Hyderabad on 10-08-2011, disqualified him, but the Civil Surgeon, RIMS, Srikakulam has declared petitioner's vision to be normal; in the interest of justice, petitioner is given one more opportunity to prove that his eye sight is normal by subjecting himself

to a review medical examination to be conducted by the Medical Board constituted by 4th respondent.

27. Accordingly, the Writ Petition is allowed; the 4th respondent shall cause Medical Board to be constituted for testing the petitioner's vision and determining whether the petitioner's eye sight is normal or not; petitioner is directed to appear before Medical Board constituted by 4th respondent on a date notified by 4th respondent within four weeks from the date of receipt of a copy of this order; and in the event that the petitioner's eye sight is found to be normal by the said Medical Board, the respondent Nos.1 to 3 shall be informed of the said result, and the respondent Nos.1 to 3 shall then consider issuing appointment letter to the petitioner on the said basis. No costs.

28. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01-12-2016
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