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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 1299/2016 & CM APPL.5745/2016

Decided on: 19th February, 2016

IN THE MATTER OF
ABDUL HAMID

..... Petitioner

Through : Mr. A.K. Trivedi and
Mr. Abhishek Tiwari, Advocates

versus

UNION OF INDIA & ORS

..... Respondents

Through : Mr. Arun Kumar, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUNIL GAUR

HIMA KOHLI, J. (Oral)

1. The petitioner prays for issuance of a writ of mandamus, directing the respondent/CISF to consider him for appointment to the post of a Constable (Driver) by declaring him medically fit.

2. Mr. Trivedi, counsel for the petitioner submits that in the year 2014-15, the respondent No.2/CISF had issued an advertisement for recruitment to the post of a Constable (Driver) and the petitioner had applied in response. After clearing the written examination and the physical examination, the respondent No.2/CISF had directed the petitioner to appear for his medical examination on 22.4.2015 at the

CISF Unit, SSG Greater Noida, UP, where he was issued a rejection slip dated 22.4.2015, declaring him unfit due to the following reason :

“Partial amputation left middle finger”

3. The aforesaid rejection slip mentioned that if the applicant proposes to file an appeal against the findings of the medical examination, he should apply for a review medical examination to the respondent after obtaining a medical certificate from a registered Medical Practitioner in the prescribed form, within fifteen days. Accordingly, the petitioner had approached the Deen Dayal Upadhyay Hospital, New Delhi for an opinion and a Medical Fitness Certificate dated 29.4.2015 was issued by a Specialist at the said Hospital, who opined that the petitioner had “no bony deformity and was medically fit”.

4. Armed with the aforesaid Certificate, the petitioner had filed an appeal before the respondents for a review medical examination. In response, the respondent had directed the petitioner to appear for his review medical examination at CISF Hospital, Saket, New Delhi on 7.7.2015. When the petitioner appeared before the said Hospital on 7.7.2015, he was referred to the Ortho Surgeon of RH ITBP, New Delhi for a specialist opinion.

5. The petitioner was brought before the Review Medical Board at the CISF Hospital on 16.7.2015. After taking note of the opinion of the ITBP Hospital, the Review Medical Board gave a report dated 16.7.2015, declaring the petitioner unfit on account of "partial amputation left middle finger distal phalanx and chip fracture distal phalanx middle finger left hand".

6. Aggrieved by the impugned rejection order, the petitioner had approached an Orthopedic Surgeon at Sawai Man Singh Hospital, Jaipur for his medical examination. As per the Medical Fitness Certificate dated 27.7.2015 issued by the said Hospital, the petitioner was "able to hold major and minor objects with (L) hand" and he was declared him fit for defence job. Thereafter, the petitioner approached another Orthopedic Surgeon at Government B.D.M. Hospital, Kotpotli, Jaipur and as per the Medical Certificate dated 5.8.2015 issued by the said Hospital, "the petitioner was able to hold major and minor objects with Lt. hand" and he was declared him fit for defence job".

7. Counsel for the petitioner states that in view of independent opinions obtained from two different sources, the respondents ought not to have turned down the petitioner's candidature on the ground of medical unfitness. He requests that the respondent be directed to refer the petitioner to any other government hospital for his re-examination.

8. The ground for rejecting the petitioner's candidature is premised on the Guidelines for Recruitment Medical Examination in Central Armed Police Forces and Assam Rifles as revised in May, 2015 handed over by learned counsel for the respondents. Clause 3 of the said Guidelines that deals with the impairment/deformities of the "Hand and Fingers", states as below:

"3. Hand and fingers:

- (a) Loss of only soft tissue of terminal phalanx of little finger of one or both hands is to be accepted.

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- (c) Scars and deformities of the fingers or hand that impair normal functioning/free movement of fingers/hand to such a degree as to interfere with the satisfactory performance of combatised duties, are disqualifying."

9 As noted above, it is an undisputed position that all the reports referred to by the petitioner and enclosed with the present petition have opined that there is a partial amputation of the petitioner's left middle finger. In such circumstances, we are of the opinion that no useful purpose would be served by directing the respondents to conduct a fresh Medical Review Board. The ground for the rejecting of the candidature of the petitioner is the captioned Guidelines that prescribe that in the event of impairment of normal functioning/free movement of the finger/hands to such a degree as to interfere with the

satisfactory performance of combatised duties, the candidate would stand disqualified.

10. Having regard to the fact that the petitioner had applied for recruitment to the post of a Constable (Driver) in the CISF and he would be required to constantly use his hands for a firm grip on the steering wheel for steering the vehicle, a free and unobstructed movement of hands would be a necessary prerequisite as per the job profile.

11. We must be mindful of the fact that that ultimately, it is for the respondent as an employer to decide the benchmark of a satisfactory performance expected of a driver and the extent to which any impairment of the free movement of hands/finger would interfere with such a performance. In these circumstances, we decline to exercise our powers of judicial review by insisting that the petitioner be appointed to the post of a Constable driver in the CISF.

12. In view of the aforesaid observations, the writ petition is dismissed, along with the pending application.

**HIMA KOHLI
(JUDGE)**

**SUNIL GAUR
(JUDGE)**

FEBRUARY 19, 2016/sk/rkb