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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 1288/2016 & IA No.5688/2016

Decided on: 19th February, 2016

IN THE MATTER OF
RAM VEER

..... 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, 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 issued a letter dated 27.3.2015, calling upon the petitioner to appear for his medical examination on 23.4.2015 at the CISF Unit, SSG Greater Noida, Gautam Budh Nagar, UP, where he was issued a rejection order dated

23.4.2015, declaring him unfit due to the following reason :

“Old injury Left Hand (2nd, 3rd and 4th Finger)
Shorting of Left Middle Finger”

3. The aforesaid rejection order 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 General Hospital, Alwar for an opinion and a Medical Fitness Certificate dated 24.4.2015 was issued by a Specialist at the said Hospital, who opined that the petitioner had “an old injury and now that the fracture of the middle finger has united well, he has got back the functioning of his left hand except shorting of middle finger, which has no significance”.

4. Armed with the aforesaid Certificate, the petitioner had filed an appeal before the respondents on 15.6.2015 for a review medical examination. In response, the respondent directed the petitioner to appear for his review medical examination at CISF NHCC Hospital, Saket, New Delhi on 7.7.2015. When the petitioner appeared before the said Hospital on 7.7.2015, he was referred to Safdarjang Hospital for a medical examination.

5. The Orthopaedic Surgeon at Safdarjang Hospital gave an opinion dated 16.7.2015 stating *inter alia* that the movement of the petitioner's finger was normal and there was no motor loss and the X-ray of the left hand showed shortening of the left middle finger. The petitioner presented the aforesaid report before the Review Medical Board at the CISF Hospital. After taking note of the said opinion, the Review Medical Board gave a report dated 17.7.2015, declaring the petitioner unfit on account of "Post Traumatic Shortening of proximal phalanx left middle finger". The ground for rejection was 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."

6. Aggrieved by the impugned rejection order, the petitioner had approached a private hospital at Jhunjunu for his medical examination and as per the Medical Fitness Certificate dated 20.10.2015 issued by the said Hospital, "there was no deformity of 2nd, 3rd, 4th finger except for shortening". It was also observed that functionally, the middle finger was fit.

7. Counsel for the petitioner states that in view of independent opinions 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. 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 an old injury in the left middle finger and further, that there is a shortening of the 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 prescribes 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.

9. 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.

10. We are also 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.

11. 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