

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19246 of 2016

=====

1. Mukesh Kumar, son of Umesh Prasad Singh, resident of Village- Khairma, P.O.-
Gerua Pursanda, P.S.- Halsi, District- Lakhisarai.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Personnel & Public Grievance, Department of Personal & Training, Staff Selection Commission, Lodhi Road, New Delhi.
2. The Regional Director, Staff Selection Commission, Central Region, 21-23, Lonother Road, Allahabad.
3. The Inspector General, HQ., Border Security Force, North Bengal Frontiers, P.O.- Kadamtala, District- Darjeeling (West Bengal).
4. The Chairman, Board No.2, B.S.F. Campus, Kishanganj (Khagra Camp), P.O.+ District- Kishanganj, Bihar.

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Arun Kumar, Adv.
For the Respondent/s	:	Mr. S.D Sanjay, Addl. Soc. Gen. Mr. Rajesh Kumar Verma, CGC

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 13-11-2017

Mr. Arun Kumar learned counsel for the petitioner and Mr. Rajesh Kumar Verma, learned Central Government Counsel for the Union of India.

With the consent of the parties the writ petition has been heard with the view to final disposal at the stage of admission.

The petitioner a candidate for appointment on the post of GD Constable in the Boarder Security Force is aggrieved by the opinion of the Medical Examination impugned at Annexure-4 which declares him unfit on grounds of “Knock Knee”, a copy of which is present at Annexure-4. The petitioner after seeking medical opinion from the Sadar Hospital, Lakhisarai which differed with such opinion, a copy of which is at Annexure-5, filed an statutory appeal but even the Review Medical Board vide its report at Annexure-7 has endorsed the



earlier opinion to hold petitioner 'Knock Knee'.

Mr. Arun Kumar learned counsel for the petitioner in reference to the guidelines laid down for medical examination in recruitment in Central Armed Police Force, the National Security Guard and the Assam Rifles, a copy of which has been enclosed at Annexure-R/1 with particular reference to the guidelines framed for the Review Medical Board, has invited the attention of the Court to the stipulation at paragraph 3(i) to submit that it clearly stipulates that any opinion of "Knock Knee" and other similar deformities has to be in reference to X-ray plate which should be attached. He submits that this position is further clarified in the guidelines when it has cautioned the Review Medical Board not to give their opinion on clinical finding, which, issues requires a scientific evidence. It is taking note of the arguments that leaned counsel for the Union of India was required to respond by a supplementary counter affidavit and the statement made by an officer in the rank of Deputy Inspector General as found at paragraph 9 and 12 confirms how mechanically affidavits are being filed in Court by high official without bothering to satisfy themselves from statutory prescriptions.

For the sake of convenience, the statement made in paragraph 9 and 12 of the supplementary counter affidavit is reproduced hereinbelow:

"9. That it is submitted that investigation required for measurement of knock knee is bone scan of both leg including hip joint to ankle joint in one X-ray plate and this facility of X-ray was not available at Medical College and Hospital, Kishanganj (Bihar) at that time. For sake of



argument, if the Petitioner would have been advised for taking x-ray plate from any other higher medical Centre, no fruitful result would have been achieved except waste of money and time of the Petitioner being a confirmed case of 'knock knee-Inter-malleolar distance 7.5 Cms', which was clearly visible and noticeable to the Review Medical Board. The Petitioner was accordingly examined by the Medical Boards in terms of the prevailing guidelines and accordingly was found suffering from the aforesaid deformity and was declared unfit.

12. That it is submitted that since the Petitioner was a confirmed case of Knock Knee-Inter Malleolar distance 7.5 Cms, which was very much visible and noticeable to the Review Medical Board, the said Review Medical Board consisting of three Medical Officer, without opting for X-Ray plate of the petitioner, has jointly reached to the conclusion that the petitioner is suffering from the aforesaid infirmities, as such the Petitioner was declared Unfit in the Review Medical Examination, as the infirmities were beyond permissible limits.”

(Emphasis is mine)

A plain reading of the stand taken shows that simply because there was no facility available at Kishanjanj and since according to deponent it would not bear fruitful result and since according to him the deformity was noticeable by naked eye, that he has supported the impugned action even though the guideline in force are contrary to his opinion.

In this context, I also deem it necessary to refer the guideline present at paragraph 3(i) and the advice found there below which spells out the duty cast on the Medical Officer concerned as well as the Review Medical Board, to record their opinion, only on the basis of Scientific evidence.

“3.

- (i) For Knock knee, bow leg, cubitus valgus and varus deformities, X-Ray plate with findings should be attached.”



It does not require too many words to hold that the report of the Review Medical Board at Annexure-7 endorsing the view of the Medical Officer at Annexure-4 is contrary to the guidelines in force, which binds them and which they are required to follow. The opinion of the Deputy Inspector General of Police in view of such clear stipulations is pathetic, to say the least.

For the reasons discussed, the declaration of unfitness by the Medical Officer at Annexure-4 together with the opinion of the Review Medical Board in so far as it endorses the finding of “Knock Knee” on the petitioner without carrying out any scientific investigation, as mandated under the rule, is not sustainable and is accordingly quashed and set aside.

The matter is remitted to the Inspector General respondent No.3 for constituting a Medical Board afresh, who would be required to follow the rules before recording their opinion on the issue and let the exercise be completed preferably within week of receipt/production of a copy of this order.

The writ petition is allowed with the direction aforementioned.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	01.12.2017
Transmission Date	NA

