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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 3208/2016

RAVI KUMAR

..... Petitioner

Through: Mr.Rakesh Kumar Yadav, Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr.Dev.P.Bhardwaj, CGSC with
Mr.Surender Kumar, Satya Prakash
Singh, Advs. for UOI.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

1. The petitioner Ravi Kumar had applied for recruitment to the post of Constable (GD), in the selection process which was conducted by the Staff Selection Commission, Allahabad. This selection process was initiated vide advertisement published in the year 2011.
2. On clearing Physical Endurance Test and Physical Standard Test, the petitioner had appeared in the written examination. On the basis of the marks secured, the petitioner had qualified for appointment as Constable (GD) in Border Security Force, Central Reserve Police Force and Sashastra Seema Bal. He was asked to undergo medical examination. He was declared fit and eligible for appointment. However, the petitioner was not appointed as he had not indicated his preference in Column 17 of his application form and had left the said column blank.

3. The selection process became subject matter of a writ petition filed by the petitioner and other candidates in the High Court of Allahabad. Similar challenges were also made by the non-selected candidates before this Court. WP(C) No.8004/2014 and others filed before the Delhi High Court were allowed vide order dated 21st November, 2014 with certain directions. The order refers to an earlier decision dated 14th December, 2012 in Writ Petition (C) No. 7651/2012. The operative portion with the directions reads:

“In the light of the said decision taken by the Ministry of Home Affairs and by following the directions given by the Division Bench of this Court vide order dated 14th December, 2012, passed in WP(C) No.7651/2012, this Court disposed off a batch of the said writ petitions making a note that the grievance of these petitioners who were being denied appointment only because of the fact that they had left column No.17 blank or had not properly recorded their preference in the said form in terms of the order dated 16th May, 2014, although they were higher in merit stands redressed. The relevant part of the said judgment is also reproduced as under:-

“In the light of the said decision taken by the respondents, the grievance of all these petitioners who were being denied appointment only because of the fact that they left column No.17 blank or did not properly indicate their preference in the said form in terms of the order dated 16th May, 2014, although they were higher in merit stands redressed. The petitioners would be required to give their unconditional undertaking to the effect that they shall not claim any seniority or any consequential benefit qua those who are placed in the select list or the reserve list. These petitioners shall be filing their undertakings within a period of two weeks and the SSC shall carry out the entire exercise of allocating these petitioners to the respective forces within a period of two

months as an upper limit.”

We are completely at loss and flabbergasted to know that despite the mandamus in rem being directed by the Division Bench of this Court, vide order dated 14th December, 2012, almost two years back, yet similarly placed petitioners are approaching this Court still. One of the prima purposes of issuing a general mandamus was that the Court is not flooded with a spate of Writ petitions but the said object and spirit of the order, as usual, has been defeated by the respondents. To our utter surprise in such like cases, instead of conceding to the prayer of the petitioners, the respondents chose to oppose the writ petitions on flimsy and untenable grounds and such kind of approach being adopted by the respondents cannot be appreciated. We thus, allow the present writ petition filed by the petitioners and the respondents are directed to consider the case of the petitioners for inclusion of their names in the select list and subject to their fulfilling all other eligibility conditions, the petitioners be issued with an appointment letter to the post of Constable/GD in BSF, CISF, CRPF or SSB, ITBP or Assam Rifles.

With the aforesaid directions, the present petition stands disposed of.”

4. Pursuant to the said judgment, the respondent no.2 /Staff Selection Commission, Block No.-12, CGO Complex, Lodhi Road, New Delhi, issued a revised final list dated 20th February, 2015 in which the petitioner was declared to be qualified for the post of Constable (GD) in the Border Security Force (BSF). The petitioner was accordingly issued appointment letter dated 21st September, 2015 and the petitioner joined duty on 28th October, 2015, at 25 Battalion, BSF, Najafgarh Road Chhawla Camp, New Delhi-71.
5. After joining, the petitioner was again asked to undergo

medical examination and was declared medically unfit on account of poor distant vision vide report dated 30th October, 2015. The petitioner thereafter produced medical fitness certificate dated 4th October, 2015 issued by the Chief Medical Superintendent, District Hospital, Aligarh which opined the petitioner as medically fit. The petitioner filed an appeal before the Review Medical Board, which stands rejected vide opinion dated 11th January, 2016. As per the Review Medical Board, the petitioner has defective distant vision in both eyes.

6. Aggrieved, the petitioner has filed the present writ petition on various grounds.

7. The primary contention of the petitioner is that he was medically examined and had been declared fit in 2011. The petitioner asserts that he should not be subjected to fresh or repeat medical examination due to delay in the recruitment process for the faults of the respondents. The petitioner had to approach the High Court to seek relief, for failure to include him in the select list.

8. The respondents in their counter affidavit have stated that after the decision of the High Court, a fresh revised list of 2530 successful candidates was published on 20th February, 2015. These candidates had given an undertaking that they shall not claim any seniority or any consequential benefits viz the candidates who were included in the earlier select list or reserve list. These candidates would not claim back wages and were to be adjusted against the vacancies for 2014-15.

9. The SSC, while sending the dossiers to the respective Central

Armed Police Force i.e. Central Reserve Police Force, BSF, Central Industrial Security Force, etc. had required the force to scrutinise and check. It was for the forces to examine the educational qualification certificates, domicile certificate, scheduled caste or scheduled tribes certificates, if applicable.

10. Dossier of the petitioner did not have his medical certificate. It was missing and not traceable. However, it is not the case of the respondents that the petitioner was not medically examined and declared fit in 2011. In fact, it is accepted that medical examination and declaration that a candidate was fit for service is a mandatory prerequisite before the candidate is provisionally selected. This being the position we have to examine the contention of the petitioner as to the nature of the second medical examination in 2016.

11. The petitioner and the respondents in the present case rely upon circular dated 17th November, 2003 which is relevant and is reproduced in entirety:-

“To

*All Ftr. HQrs/Trg Institutions/All SHQrs/All Units
Base Hospital Kadamtala/Jalandhar/STS Tigri/
STS-II Bangalore/All STCs
FHQ MI Room, New Delhi
Composite Hospital Tekanpur/Srinigar*

*Sub: VALIDITY OF MEDICAL EXAMINATION OF CONST
(GD)/ENROLLED FOLLOWERS IN BSF*

Further to this Directorate letter No.13/62/87-CMO/BSF dated 10th Nov 1987 As approved by the Competent Authority the validity period of the medical examination for recruitment of Const (GD)/Enrolled Followers in BSF is hereby extended

from existing 90 days period of one year.

2) If a candidate is declared medically fit during the initial medical examination and joins the service for training/duties after a considerable lapse of time the Competent Authority may subject the individual to a re-medical examination if required and the medical officer/medical board will restrict its examination to detect/discover any disease acquired/disability/any accident/injury for the intervening period of his initial medical examination and the date of his joining the service for training/duties or otherwise and he should not be subject to a re-medical examination as is done during the initial stage. Such findings should be endorsed in the initial medical examination report of the individual as per the following Proforma:-

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3) A written declaration may also be obtained from the individual that during the intervening period of his initial medical examination and the date of his joining the service/training he did not suffer from any disease/injury and he has not been hospitalized/received treatment for any ailment nor concealed any facts before the examining medical authority which if detected at later stage would be a reason for his unfitness in the service.

4) Further if a candidate is found medically unfit for any medical reason during re-medical examination he will be produced before a duly constituted review medical board and the review medical board will restrict its examination to the reasons of his unfitness only and will not carry out the entire medical examination as required at the initial stage.

*Sd/17/X1/2003
Dr.D.S.Rajesh
Chief Medical Officer
Medical Directorate”*

12. Reading of the aforesaid circular would indicate that in case a

time gap between the date when the candidates were declared medically fit in the initial medical examination and the date of joining, the Competent Authority can direct fresh or re-medical examination. However, this re-medical examination is restricted to detection and discovery of any disease/disability/any accident/injury acquired during the intervening period between his initial medical examination and the date of joining service for training/duties. It is specially stated that the candidate would not be subjected to re-medical examination as is conducted during the initial stage.

13. In the present case, the petitioner was certainly initially declared as medically fit. There was a time gap between 2011 when he was declared medically fit and the date on which the petitioner had joined duty. The Competent Authority, therefore, was authorised and could have directed re-medical examination in terms of notification dated 17th November, 2003.

14. However, the said re-medical examination has to be restricted to an exercise to discover/detect any disease, disability acquired, accident or injury suffered in the intervening period between the initial medical examination and the date of joining duty/training. Entire or complete medical re-examination cannot be done as was done during the initial stage.

15. In the aforesaid circumstances, we would remit the matter to the Review Medical Board for fresh examination of the petitioner in terms of circular dated 17th November, 2003. The parameters fixed in the said circular would be kept in mind. We clarify, we have not expressed any opinion of the earlier observations of the Review

Medical Board conducted on 11th January, 2016.

16. The learned counsel for the respondent has submitted that the petitioner has undergone Lasik surgery and therefore, he is ineligible. He has relied upon decision of a judgment of Delhi High Court dated 4th August, 2016 in WP(C) 3214/2015 titled *Dalbir vs. Union of India & Ors.* The learned counsel for the petitioner has disputed the contention and submits that the petitioner has not undergone Lasik surgery. This aspect will have to be examined and considered by the Review Medical Board. A copy of the judgment will be made available by the respondents to the Review Medical Board.

17. The Review Medical Board to be appointed, should consist of Doctors/Specialists who have not earlier examined the petitioner. We would for objectivity, direct the respondents to refer the petitioner to the Army R&R Hospital, Delhi for the purpose of Review Medical Board. The said exercise would be completed within four weeks from the date when copy of this order is received.

18. In case the petitioner is found fit, re-appointment order in accordance with law will be issued. Treatment of the period between 30th October, 2015 and the date of joining will be decided by the respondents. Learned counsel for the petitioner on the said aspect has relied upon a judgment in the case of *Satnam Singh vs. Union of India & Ors.* in WP(C) 3210/2016 decided on 17th May, 2016. The said decision and ratio would be kept in view.

19. Writ petition is allowed in the aforesaid terms without any order as to costs.

Dasti under the signature of the Court Master.

SANJIV KHANNA, J

NAVIN CHAWLA, J

MAY 24, 2017
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