

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1991 OF 2019

Hardik Rameshkumar Vaghela
Aged : 31 years, Male,
Residing at : Plot No.738/1, Sector 4C,
Gandhinagar – 382 004.

...Petitioners

Versus

- 1 Union of India, Through Secretary,
Ministry of Home Affairs
New Delhi 110065
- 2 Dy. Inspector General of CISF,
(West Zone-I), CISF Complex, Sector-35
Navi Mumbai, Kharghar 412210.
- 3 Sr. Medical Officer, DME Board,
CISF NISA, Hakimpet Hyderabad (TS)
500 078
- 4 Chief Medical Officer
RME/ME Board, CISF/RTC Bhilai Post,
Purend, Bhilai East, Dist Durg,
State Chattigarh 494553.
- 5 Central Industrial Security Forces,
DIG, CISF (West Zone),
CISF Complex, Sector 35, Kharghar,
Navi Mumbai 410210
- 6 President Office
RMEME Board, CISF RTC Bhilai

...Respondents

Mr. Rushabh Thakkar, for the Petitioner.

Mr. D. A. Dubey, with Mr. Akash Kotecha, for Respondent
nos.5 – UOI.

**CORAM: B. R. GAVAI &
N. J. JAMADAR, JJ**

DATED: 21st February, 2019

JUDGMENT:- (Per N. J. Jamadar, J.)

1. Rule.

2. Rule made returnable forthwith. By consent of the
parties heard finally.

3. By this petition, the decision of Respondent nos.1 and 2 declaring the Petitioner medically unfit for appointment to the post of Constable/Driver in Central Industrial Security Force (CISF) based on the medical examination conducted by the Review Medical Examination Board, CISF, dated 24th July, 2017, is assailed.

4. The facts are few but peculiar:

In pursuance of advertisement dated 19th November, 2016, as a part of special recruitment drive, for filling up backlog vacancies of Scheduled Caste and Scheduled Tribe in the trade of Constable/Driver in CISF – 2016, the Petitioner had applied for appointment to the said post. The Petitioner cleared physical eligibility test. The Petitioner also successfully cleared written test and trade (driving) test. However, during the course of medical examination, the petitioner was declared medically unfit for two reasons: (i) Tattoo mark on outer aspect of right arm and (ii) Knock knee (inter malleolar distance greater than 5 cm). A Review Medical Board was constituted. After examination, vide certificate dated 24th July, 2017, the Review Medical Board found that the Petitioner did not suffer from knock knee. However, the Review Medical Board declared the Petitioner unfit for the reason that the tattoo on right arm

has not disappeared completely, despite laser treatment, which the Petitioner was then undergoing.

5. The Petitioner has assailed the aforesaid rejection, being wholly arbitrary and unreasonable. The Petitioner avers that the tattoo in no way disables the Petitioner from discharging the duties of Constable/Driver in CISF. There is no nexus between the said ground of rejection and the duties of the said post.

6. We have heard Mr. Thakkar, the learned Counsel for the Petitioner and Mr. Dubey, the learned Counsel for the Respondents.

7. The learned Counsel for the Petitioner urged that the action of the Respondents of declaring the Petitioner 'medically unfit' on the sole count of having a tattoo on a right arm, is unreasonable and arbitrary. The learned Counsel has invited our attention to a judgment of the Division Bench of this Court in the case of ***Shridhar Mahadeo Pakhare vs. Union of India & ors. (Writ Petition No.10026 of 2017 dated 30th January, 2018)***, wherein, an identical issue was decided in favour of the candidate. In opposition to this, the learned Counsel for the Respondents sought to justify the action of the Respondents on the ground that there is a clear stipulation in

the advertisement to the effect that the candidates having tattoo on any part of the body will be barred from recruitment in CISF.

8. A bare perusal of the record would reveal that the Petitioner has successfully cleared all the tests including physical fitness and trade proficiency. The opinion of the Medical Board that the Petitioner had a 'knock knee', has not been approved by the Review Board and it came to the conclusion that the Petitioner does not suffer from knock knee. The certificate issued by the Review Medical Board dated 24th July, 2017 records that though the Petitioner is undergoing laser treatment, yet the tattoo on right arm has not disappeared completely. It implies that the Petitioner has been making earnest efforts to get the tattoo removed by undergoing the prevalent treatment. From the nature of the employment i.e. Constable/Driver, which the Petitioner seeks, it does not appear that the existence of tattoo on the right arm would constitute a hindrance in effectively performing the duties of the said post. We cannot loose sight of the fact that in tradition bound societies, tattoos are inscribed on the body, often during early childhood, under the belief that it would protect the child from evil influence or bring luck. Such a traditional practice, ordinarily should not come in the way of

public employment unless there is an overwhelming justification for the same, in the context of the duties of the particular post. Nor it appears to be an irreversible medical condition.

9. Even otherwise, the judgment of this Court in the case of ***Shridhar Mahadeo Pakhare*** (supra) covers the controversy sought to be raised on behalf of the Respondents. In the said judgment, the Division Bench of this Court, has noted that for the post of Sub-Inspector in CISF, the advertisement issued provides certain relaxation as regards the tattoo mark on the body of the aspirants. The rationale of the said relaxation is the religious sentiments of the countrymen. The Division Bench, thus, found that it would not be permissible for the employer to treat the class of the employees differently and apply different parameters. The observations of this Court in paragraph 5 are material and seal the issue.

“In our opinion, it would not be permissible for the employer to treat the class of employees differently and apply different parameters. As has been recorded above, the religious sentiments of the individual need to be respected. For the reasons recorded above, we are of the opinion that the claim of the petitioner for employment need to be considered. The petitioner is otherwise found fit by the Medical Board, except on account of carving out the tattoo which has also been removed admittedly to the extent of 90%. We are of the opinion that the respondents need to be directed to consider the claim of the petitioner for employment since he has been found otherwise fit. The Writ Petition is thus allowed. The respondents are directed to consider the claim of the petitioner for employment to the post of 'constable/driver' in C.I.S.F. and the medical

opinion holding the petitioner ineligible on account of tattoo mark shall not be construed as an impediment for issuing an order of appointment in favour of the petitioner. Rule is accordingly made absolute. There shall be no order as to costs.”

10. Having regard to the facts of the case and the ground for declaring the Petitioner, 'medically unfit', and in the light of the aforesaid observations, we are of the view that the action of the Respondents of declaring the Petitioner 'medically unfit' for having a tattoo on the right arm, is unsustainable. We are, therefore, inclined to direct that the Petitioner's candidature shall not be rejected on the ground that the Petitioner has a tattoo on the right arm. We are, thus, inclined to direct Respondent nos.1 and 2 to consider the case of the Petitioner for appointment to the post of Constable/Driver. The Writ Petition, thus, stands allowed.

11. Rule is, therefore, made absolute in terms of prayer Clauses (b) and (c). In the circumstances, there shall be no order as to costs.

[N. J. JAMADAR, J.]

[B. R. GAVAI, J.]