

Court No. - 6

Case :- WRIT - A No. - 6034 of 2018

Petitioner :- Rameshwar Lal Nitharwal

Respondent :- Union Of India Through Director General, Rpf
Railway Board, New Delhi And 4 Others

Counsel for Petitioner :- Sanjay Kumar Om

Counsel for Respondent :- A.S.G.I., Dhananjay Awasthi, Vikash
Chandra Tripathi

Hon'ble Yashwant Varma, J.

Heard learned counsel for the petitioner and Sri Dhananjay Awasthi, learned counsel who has appeared for the Union respondents.

This petition has been preferred seeking the following reliefs:

"1. To issue a writ order or direction in the nature of Mandamus commanding the respondents no. 4 & 5 to consider the diagnosis and the advice of SGPGI Lucknow and AIIMS New Delhi and thereby medically de-categorized the petitioner from the post of Sub-Inspector RPSF.

2. To issue a further writ order or direction in the nature of Mandamus commanding the respondents to consider the petitioner on any suitable, alternative post in accordance with the provisions of Para 1304 of IREM, 1989."

The reliefs are sought in the backdrop of the petitioner having undergone an appendicitis operation whereafter he claimed that he was unable to discharge the duties attached to his post while working as part of the Railway Protection Special Force (R.P.S.F.). The claim is essentially raised on the basis of the following reports. (A) a report by the S.G.P.I., Lucknow, Department of Gastroenterology dated 17 September 2015 in which it was noted that he should avoid wearing a belt permanently; (B) a report of inspection dated 9 December 2015 by the Out Patient Department of A.I.I.M.S., in which it was recorded that he may be considered for work that does not involve wearing of a belt; (C) another report of S.G.P.I. dated 4 October 2016 in which it was recorded that the petitioner should not wear a hard leather belt nor wear tight clothing/trousers. In light of the aforesaid reports which

were relied upon, the respondents of their own volition also constituted a Board of three doctors. This report which appears at page 84 of the paper book has found that there were no objective signs justifying the petitioner's complaint and at best he was to be retained in his original medical category subject to being permitted to wear loose belts and pants insofar as his uniform was concerned. A second Board which was constituted by the respondents again found that he may be kept under observation for a period of four months and may be given a job in his original category.

It is pertinent to note here that the reports and recommendations framed by the Medical Boards constituted by the respondents are not assailed in this writ petition. The Court also deems it apposite to highlight that in the report dated 9 December 2015 drawn by the Senior Resident, Department of Surgical Disciplines, A.I.I.M.S., it has specifically been observed that no surgical cause of pain is found on examination. This aspect assumes significance since the petitioner had claimed that it was post his appendicitis operation that he was rendered medically unfit.

The issue of re-categorization of staff is dealt with in Chapter -XIII of I.R.E.M., 1989 which clearly provides in para -1301 thereof that a railway servant who fails in vision or otherwise becomes physically incapable of performing the duties attached to his post should not be discharged and every endeavour should be made to find him alternative employment. Para -1301 which deals with categorization comes into play where a railway servant has been declared medically unfit for further service. It is pertinent to note here that in neither of the two reports submitted by the Board constituted by the respondents has the petitioner been found to be medically unfit. The Court also takes note of the fact that no submission has been addressed in aid of a contention that the work being assigned to the petitioner presently is not in tune with the recommendations made by

the Boards constituted by the respondents.

On a fundamental level of evaluating competing medical reports the Court only notes the following binding principles as laid down by a Division Bench in **State of Uttar Pradesh & 2 Others Vs. Rahul**¹, wherein it was observed as under:

"This Court in previous decisions has emphasized the need to preserve the sanctity of the recruitment process and of the care and circumspection which has to be exercised before the findings of an expert medical Board constituted by the authorities are interfered with in writ proceedings. Undoubtedly, the powers of the Court under Article 226 of the Constitution are wide enough to issue such a direction in an appropriate case. However, such directions cannot be issued merely on the basis of a request made in that behalf before the Court.

In a recent judgment of this Court in Union of India through Ministry of Railways vs. Parul Punia, this Court has emphasized the need for caution when candidates seek to question the correctness of the findings of a medical Board constituted under the recruitment process adopted by the authorities of the State, on the basis of a report obtained by the candidates. The Division Bench observed as follows:

"...In a number of such cases, candidates who have been invalidated on medical grounds produce expert opinions of their own to cast doubt on the credibility of the official medical report constituted by the recruiting body. In such cases, the Court may not have any means of verifying the actual identity of the person who was examined in the course of the medical examination by the Doctor whose report is relied upon by the candidate. Hence, even though the authority whose medical report was produced by the candidate may be an expert, the basic issue as to whether the identity of the candidate who was examined, matches the identity of the person who has applied for the post is a serious issue which cannot be ignored..."

Dealing with the parameters of the writ jurisdiction in such cases, the Division Bench observed thus:

"...Undoubtedly, in a suitable case, the powers of the Court under Article 226 are wide enough to comprehend the issuance of appropriate directions but such powers have to be wielded with caution and circumspection. Matters relating to the medical evaluation of candidates in the recruitment process involve expert determination. The Court should be cautious in supplanting the process adopted by the recruiting agency and substituting it by a Court mandated medical evaluation. In the present case the proper course would have been to permit an evaluation of the medical fitness of the respondent by a review medical

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board provided by the appellants. Otherwise, the recruitment process can be derailed if such requests of candidates who are not found to be medically fit for reassessment on the basis of procedures other than those which are envisaged by the recruiting authority are allowed. This would ordinarily be impermissible."

In the present case, we find absolutely no reasonable basis for the respondent to have invoked the jurisdiction under Article 226 for constituting a separate medical Board under the authority of the Principal of Motilal Nehru Medical College, Allahabad. In the interim order of the learned Single Judge, there was no safeguard to the effect that the medical examination would take place in the presence of a representative of the State to at least ensure that the issue of identity did not arise. But that apart, more fundamentally, the objection to the entire procedure which has been followed is that without any reasonable basis or justification, the recruitment process and the procedures which have been laid down have been supplanted under a judicial direction. This, in our view, would be impermissible."

On an overall conspectus of the aforesaid facts, this Court is of the considered view that the instant writ petition clearly lacks merit and must accordingly be dismissed.

Order accordingly.

Order Date :- 18.2.2019

Arun K. Singh

(Yashwant Varma, J.)