

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: 19th November, 2020

+ W.P.(C) No.2340/2020

TEJBIR

.... Petitioner

Through: Mr. Akash Swami, Adv.

Versus

UNION OF INDIA & ANR.

...Respondents

Through: Mr. Neeraj, Mr. Sahaj Garg, Mr. Piyush
Berawal & Mr. Ankit Raj, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

CM No.8228/2020 (for exemption)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

W.P.(C) No.2340/2020

3. The petitioner, a candidate for recruitment to the post of Constables / Driver and Constables / Driver-cum-Pump-Operator (Driver for Fire Services) advertised in the Employment Newspaper dated 10th-16th February, 2018 by the respondents Central Industrial Security Force (CISF), has filed this petition impugning the rejection of his candidature on the ground of medical unfitness.

4. The petition dated 17th February, 2019 came up before this Court first on 3rd March, 2020 and thereafter on 16th March, 2020, when owing to non-availability of the Bench and owing to the prevalent pandemic respectively,

the petition could not be taken up for admission. Thereafter, the petition was being adjourned from time to time, again owing to the prevalent pandemic.

5. The petitioner, finally on 2nd November, 2020 filed CM No.29492/2020 seeking early hearing and which application has come up today before the Court. Considering that the relief claimed is of recruitment and which, if has not already concluded, may be concluding shortly, CM No.29492/2020 is allowed and disposed of and the petition is taken up for hearing today itself.

6. The petitioner, after clearing the earlier stages / examinations in the recruitment process, was medically examined by the doctors at NHCC Hospital, Mahipalpur, New Delhi, who declared the petitioner medically unfit on the grounds of (i) having tattoo mark admeasuring (2.5x01cm) on the internal aspect of right forearm; and, (ii) suffering from Hypospadias. The petitioner applied for review medical examination which was conducted on 27th June, 2019. Review Medical Board in its report dated 27th June, 2019, has found (a) “The Board examined the individual physically. Tattoo mark inner aspect of right forearm (2.5x01 cm) and found that at present there is no tattoo. It has been removed surgically. There is a well healed scar”; and, (b) “The Board examined the individual physically for Hypospadias and referred him to surgical specialist at Composite Hospital, CRPF, Jharoda Kalan for specialist opinion. Opinion of DOBSH MBBS, MS (General Surgeon) CMO (SG) dated 26.06.2019 states – O/E : Glanular Hypospadias present.” The Review Medical Board thus, declared the petitioner unfit on account of Glanular Hypospadias.

7. The petitioner, after waiting for nearly two months, made a representation dated 15th August, 2019 and which was rejected on 9th December, 2019.

8. This petition, filed after another two months and got listed after another month, contends that (i) the petitioner has wrongly been declared unfit merely on the opinion given by the medical examination team of doctors of respondents CISF and by the review medical examination team of respondents CISF; (ii) it is evident from the opinion of the concerned doctor of government hospital, Jhajjar, that the petitioner is medically fit; (iii) the doctors of the respondents CISF have done a wrong analysis; (iv) the doctors who examined the petitioner were not specialized in Urology; (v) High Court of Punjab & Haryana in judgment dated 17th October, 2019, in CWP No.29848/2019, titled ***Naveen Kumar Vs. Union of India & Ors.***, in view of the conflicting medical reports, directed the petitioner therein for fresh examination and for recruitment, if found fit; (vi) this Court in order dated 10th May, 2011 in W.P.(C) No.3125/2011 titled ***Naresh Kumar Vs. Union of India & Ors.*** found opinion of doctors of Central Reserve Police Force (CRPF) to have been proved to be erroneous in 88% of the cases; (vii) the doctors of the respondents CISF are incompetent; and, (viii) this Court, in plethora of judgments has directed independent examination and in which the petitioners therein were found fit.

9. In the present case, there is no inconsistency whatsoever between the opinion of the Medical Board and of the Review Medical Board. Medical unfitness, on the ground of tattoo opined by the Medical Board was not erroneous. The Review Medical Board found the petitioner to have got the tattoo surgically removed and for which reason the same did not found a

ground of unfitness. The opinion of the Medical Board and the Review Medical Board qua Hypospadias is consistent. The reliance by the counsel for the petitioner on the judgment of the High Court of Punjab & Haryana is thus misconceived.

10. As far as the reference by the petitioner to the order dated 10th May, 2011 in W.P.(C) No.3125/2011 of this Court is concerned, the examination notification pursuant to which the petitioner applied and was seeking recruitment, provided for medical examination by doctors either of the CISF or by doctors chosen by the CISF. All those who have been recruited have also been examined by the doctors of the CISF or nominated by the CISF. It is not open to the petitioner to, after participation in the recruitment process and after having remained unsuccessful therein, contend that the doctors of the respondents CISF are incompetent. The petitioner, if had been recruited in respondents CISF, would have availed of the medical facilities provided by the same doctors and the challenge to the competence of the doctors who examined the petitioner as constituents of the Medical Board and the Review Medical Board is meritless and an afterthought and without any basis or particulars. We have today, dealing with similar contention, in judgment pronounced in W.P.(C) No.2355/2020 titled ***Deepak Kumar Vs. Union of India & Anr.*** opined that if the say of the petitioners were to be correct, the Medical Board and the Review Medical Boards constituted by the CISF ought to be disbanded and medical examination be done only by the doctors of the choice of those seeking recruitment. The same would be preposterous.

12. We may, in this context, notice that it is not the plea of the petitioner that the doctors constituting the Medical Board and the Review Medical Board were inimical towards the petitioner or had any other motives to find

the petitioner unfit. If such doctors are to be incompetent then their opinion not only qua the petitioner but also qua all those declared medically fit would be under a cloud and the entire recruitment process will come to a naught.

13. We have in ***Deepak Kumar*** supra also held that another medical examination cannot be sought and directed on the mere asking and for this Court to be persuaded to refer the petitioner for another medical test by some other doctors, the petitioner has to plead and show circumstances making this Court doubt the correctness of the opinion of the doctors of the Medical Board / Review Medical Board. The petitioner in the present case has not done so.

14. Moreover, the Medical Board and the Review Medical Board constituted by the respondents CISF are most suitable to judge the medical fitness of the prospective recruits to the respondents CISF inasmuch as the said doctors only are aware of the state of fitness required for performing the arduous duties in respondents CISF and are best placed to judge the same. The doctors in private practice or in government hospital who have never been exposed to the regime which personnel of a force like respondents CISF are required to follow, can never judge the fitness required for recruitment in respondents CISF.

15. We may also mention that the state of medical fitness, just like the state of law, is a matter of opinion and which may differ from professional to professional. Once the recruitment process in which the petitioner participated provided for opinion of the Medical Board and the Review Medical Board constituted by the recruiting employer, to be final, the said opinion cannot be substituted by the opinion of another doctor of another hospital or by this Court.

16. We need not elaborate further. Reference may be made to our judgments in *Priti Yadav Vs. Union of India* 2020 SCC OnLine Del 951, *Jonu Tiwari Vs. Union of India* MANU/DE/1524/2020, *Vani Viswanathan Vs. Union of India* MANU/DE/1678/2020 and *Shravan Kumar Vs. Union of India* 2020 SCC OnLine Del 924, holding that for a petitioner to succeed in impugning the opinion of the Medical Board and the Review Medical Board, the petitioner has to make out a case for this Court to doubt the correctness of the opinion and merely at the asking, a third opinion cannot be directed to be taken.

17. We have in fact asked the counsel for the petitioner, whether he has studied the Medical Manual, prescribing the medical standards on the anvil whereof the doctors of the Medical Board and the Review Medical Board which examined the petitioner judge the medical fitness of the prospective recruits.

18. The counsel for the petitioner states that he is not aware thereof.

19. The petition has clearly been filed under the impression that another medical review can be sought as a matter of routine and / or on mere asking and is misconceived.

20. There is no merit in the petition.

Dismissed.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

NOVEMBER 19, 2020

‘gsr’..

W.P.(C) No.2340/2020

Page 6 of 6