

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8370 of 2020

Vikash Kumar S/o Ramkeshwar Prasad resident of village- Solhanda, P.S.-
Makhdumpur, District- Jehanabad

... .. Petitioner

Versus

1. The Union of India through the Principal Secretary, Ministry of Home, New Delhi
2. The Staff Selection Commission, through its Secretary,
3. The Chairman, Staff Selection Commission, Central Region
4. The Director General of Police, Central Reserve Police Force, Block-7, Level-14, Section-01, R.K. Puram, New Delhi
5. The Inspector General of Police, Central Reserve Police Force, Patna, Bihar
6. The Dy Inspector General of Police, Group Centre C.R.P.F., Mokamaghat, Patna, Bihar
7. The Medical Officer, C.M.O., G.C., Central Reserve Police Force, Mokamaghat, Patna, Bihar

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Vinod Kumar
For the U.O.I.	:	Dr. K.N. Singh ASG with Mr. Manoj Kumar Singh CGC
For the Staff Selection Commission	:	Mr. Rajesh Kumar Verma Asstt. Solicitor General

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 13-01-2021

Heard learned counsel for the petitioner and the respondents.

2. The petitioner was an applicant for appointment as Constable GD in the Respondent-Para Military Force (for short 'the Force'). The Medical Board has found the petitioner to be suffering from certain physical fitness deficiencies. The petitioner, in the circumstance, has submitted his application for Review Medical Board along with certificate issued by the Deputy Superintendent of Medical College. The same has been rejected by the respondent-Force leading to filing of the instant writ petition.

3. The claim for Review of the Medical Examination made by the petitioner has been rejected by a communication of the



Deputy Inspector General of Police of Central Reserve Police Force, Mokama Ghat dated 20.03.2020.

4. The petitioner has prayed for quashing of this order dated 20.03.2020 and for direction to hold Review Medical Examination.

5. The petitioner's counsel submits that the petitioner has submitted the requisite Form along with a certificate issued by a Physician, specialist in Heart disease who is an Associate Professor, Medicine Department of Anugrah Narayan Magadh Medical College Hospital, Gaya. According to him, there is an error of judgment by the Medical Board that examined the petitioner, for reasons specified therein. As per his opinion, the petitioner is medically fit for the post.

6. The learned A.S.G. assisted by the Central Government Counsel has submitted that the application for Review Medical Examination was required to be accompanied with a certificate issued by Specialist of the subject under which the candidate has been found unfit at the Detailed Medical Examination (for short 'DME'), as per paragraph No. 9 sub para E of the notice of Staff Selection Commission issued for the recruitment in question. In the instant case, deficiencies in physical fitness at the DME were reported in relation to eye sight as well as Cardiac condition. The appeal for review of Medical Examination was thus required to be accompanied by a certificate issued by Specialist in the field of eye sight (Ophthalmology) as well as cardiology. This has not been done. Since the certificates were not issued by a doctor/specialist, as per requirement, the petitioner was not entitled to any review and the appeal seeking review of the medical condition by a Board has rightly been rejected. Reliance is placed on a recent judgment of this Court dated 01.12.2020 passed in



CWJC No. 8698 of 2020, wherein, this Court has rejected the claim of the petitioner, similarly situated as the instant petitioner for Review Medical Board, on similar grounds.

7. Having considered the rival submissions, this Court would take note of the fact that in the instant case, the petitioner has placed on record the judgment of the Allahabad High Court passed in *Writ- A No. 5049 of 2020 in the matter of Rupesh Kumar Vs. Union of India and others*, along with the analogous cases, wherein, the same objection was considered by the Allahabad High Court. Having considered the same submissions, the Allahabad High Court, in the said order, which is dated 17.09.2020, has rejected the same objections made by the Union of India in respect of the petitioners therein. Relevant extract of the order is being reproduced as it is considered useful by this Court to refer to the same:

“The submission of learned counsel for the Union of India that Dr. Syed Naushad Ahmad, Deputy Superintendent, Government Hospital, Jamui who certified that two of the petitioners were not suffering from High BP/Hypertension was not competent to issue the same as he is not a cardiologist, has also no force. The qualifications of Dr. Syed Naushad Ahmad are not in dispute. He has done Masters in Surgery and being a general surgeon in a government hospital, he was competent enough to examine the petitioners and certify that they were not suffering from hypertension. Under the recruitment scheme, as noted above, the only evidentiary value of his certificate is in formation of prima facie opinion that there could be an error of judgment on part of the medical officer who examined



the candidate in the first instance to warrant acceptance of the appeal for review medical examination of the petitioners. In the review medical examination, the petitioners will be subjected to medical examination by expert doctors. In case the petitioners were really not suffering from the ailments/shortcomings pointed out during the initial medical examination, they would succeed. On the other hand, if they do suffer from the ailments/shortcomings, they would be discarded. There is no right of further appeal against the decision of the review medical board. In case the certificates furnished by the petitioners are relied upon at this stage, the respondents would not suffer except that they shall have to hold a review medical examination. On the other hand, if the petitioners really do not suffer from any ailment/shortcoming, as alleged, but their appeal for review medical examination is rejected at the very threshold on the above ground, they would suffer irreparable loss and injury. In all events, therefore, the appeals preferred by the petitioners for a review medical examination should not be dismissed in the manner as has been done by the respondents.”

8. In view of such findings and relief granted to other persons similarly situated as the petitioner, this Court, earlier had allowed time to the learned ASG and the Central Government Counsel to ascertain whether the respondent-Force has assailed the order of the Allahabad High Court, or they have accepted the claim of such petitioner on the basis of certificate issued by a doctor who as per norms was not competent to issue the certificate. The



counsels have sought instructions and it has specifically been submitted that the orders of the Allahabad High Court has not been challenged. The petitioners (beneficiaries of the said judgment) have been allowed an opportunity of Review Medical Board. This relevant and material fact which was in existence, was not brought to the notice of this Court while the earlier writ petition bearing CWJC No. 8698 of 2020 was being considered by this Court. The respondent-Force has proceeded to consider the claim of candidates similarly situated as the petitioner, for Review Medical Board, in spite of a certificate having been allegedly issued by an incompetent doctor (other than specialist of concerned field) as per their submission. This Court does not find any reason, nor any grounds have been urged by the learned ASG or counsel for the Staff Selection Commission to justify the differential treatment to the petitioner in the matter of selection. The petitioner cannot be put to a disadvantage with the other similarly situated in respect of whom the Respondent-Force is allowing a Review Medical Board under similar facts and circumstances.

9. The respondents cannot be permitted to discriminate in the matter. On the one hand, they are allowing the appeal for a Review Medical Board based on certificate submitted by doctors who are not competent as per the norms. On the other hand, the Union of India is trying to enforce the requirement of certificate by a specialist doctor in these proceedings. The stand of the Union of India is clearly discriminatory. If such consideration is being allowed to candidates in the State of Uttar Pradesh, refusal to allow such consideration to candidates in the State of Bihar in the same all India process of selection is unintelligible. Candidates in any particular State cannot be put to a disadvantage. Respondents cannot be permitted to resist the same relief in respect of the



instant petitioner by relying upon the judgment of this Court in CWJC No 8698 of 2020, moreso, for the reason that these facts regarding the same employer allowing Review Medical Board to other candidates in the State of Uttar Pradesh based on certificate, which, as per their stand, is not issued by a specialist doctor, was not placed before this Court in the earlier writ proceedings arising out of CWJC No 8698 of 2020.

10. It would have been a different matter had the respondent Authorities assailed the order of the Allahabad High Court relied upon by the petitioner.. But, that is not the case. Admittedly, the respondents are allowing Review Medical Board to candidates similarly situated as the petitioner, based on certificates issued by doctors other than specialist in the field of alleged physical deficiency at the DME. Since this fact is before this Court in the instant proceedings it makes a world of a difference from the facts, based on which CWJC No 8698 of 2020 was earlier decided by this Court. In the instant case, it does not lie in the mouth of the respondents to resist Review Medical Board to the instant petitioner on the basis of a certificate issued by the doctor who is not specialist.

11. The above discussions and conclusions apparently places this Court in a situation where the same procedure and appointment process, in the context of application for Review Medical Board, based on certificate issued by a doctor, who is not specialist, has already been rejected by this Court earlier in CWJC No 8698 of 2020. This Court would observe that an additional or different fact in this case, which was not there in CWJC No 8698 of 2020, is that now the respondents themselves are allowing candidates similarly situated as the petitioner, consideration of their appeal, based on certificate issued by the



doctor who are not specialist. In the circumstances, the respondent-Union of India cannot be permitted to rely upon the decision of this Court passed in CWJC No 8698 of 2020 as the factual situation in the instant case, in view of the additional facts does not fit in with the factual situation in CWJC No 8698 of 2020, on which, reliance is placed by the respondent Union of India. This Court, therefore, shall not be swayed by the submissions advanced by the learned ASG placing reliance on decision of this Court in CWJC No 8698 of 2020. The petitioner cannot be put to a disadvantage, merely for the whims of the Authority who proposes to resist the claim of the petitioner in the same recruitment process for Review Medical Board based on certificate issued by doctor who is not specialist, while allowing similar consideration to candidates in another State. This Court, therefore, holds that in view of the new fact in this case that similar relief is being allowed by the respondent-Authorities in the State of Uttar Pradesh based on judgment in the case of ***Rupesh Kumar (Supra)*** this Court would distinguish the facts of the instant case with that in CWJC No 8698 of 2020 earlier decided.

12. The Court would not allow the respondents to place reliance on the earlier decision of this Court in CWJC No 8698 of 2020 as the new facts regarding the respondents entertaining similar claim in respect of other candidates in Uttar Pradesh is a significant factor altering the entire aspect in deciding the instant case. Since this fact was not before the Court in CWJC No 8698 of 2020, this Court would distinguish the instant case with CWJC No 8698 of 2020 and would hold that the respondents cannot place reliance on the same to resist claim of the petitioner in the instant proceedings.



13. In this connection, this Court would consider it useful to quote from a judgment of Apex Court in the case of ***Bharat Petroleum Corpn. Ltd. and Another vs. N. R. Vairamani and Another*** reported in (2004)8 SCC 579. The Apex Court in that case has held:

“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton(AC at p.761), Lord MacDermott observed(All ER p.14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge,..."



10. In Home Office v. Dorset Yacht Co. (All ER p. 297 g-h) Lord Reid said, "Lord Atkin's speech.....is not to be treated as if it were a statutory definition. It will require qualification in new circumstances." Megarry, J. in Shepherd Homes Ltd v. Sandham (No.2) observed: "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board Lord Morris said:(All ER p.761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

11.Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12.The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."



* * *

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

14. Having distinguished the instant case with that of CWJC No 8698 of 2020, this Court would allow the relief to the petitioner for the reason that similar relief to candidates in the same process of recruitment has been allowed by the Allahabad High Court in the case of **Rupesh Kumar (supra)**, which has not been assailed by the respondent authorities before the higher Court and pursuant to which, the respondent Authorities themselves are allowing the same relief to the candidate in another State.

15. Rejection of the petitioner's appeal for Review Medical Exam communicated under order dated 20.03.2019 by the respondent No 6 is quashed.

16. The writ petition is allowed.

17. The respondents are directed to constitute a Review Medical Board for re-examination of the petitioner within a period of one (01) week from the date of receipt/production of a copy of this order.

(Madhuresh Prasad, J)

shyambihari/-

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