

10.03.2021
Item No. 22
Ct. No. 04
PG

M.A.T. 83 of 2021
With
I.A. no. CAN 1 of 2021

Koushik Paul
Vs.
Union of India & Ors.

Mr. Victor Chatterjee
Mr. Barnamoy Basak.....for applicant/appellant

Mr. Ashok Prasad.....for respondents

This is an intra-Court appeal. Parties appeared and participated in the hearing. As such, we dispense compliance with all formalities. We record that Mr. Prasad, learned advocate appearing on behalf of respondents waives service of notice of appeal.

On 22nd February, 2021 we had said as follows:

“Mr. Prasad, learned advocate appears on behalf of respondents/Union of India. He prays for adjournment to produce before Court either policy document or written instruction. Mr. Chatterjee, learned advocate appears on behalf of applicant/appellant and submits, the recruitment process will end.

Respondents are on notice and this Court will not allow them to frustrate purpose of the appeal. List on next Monday i.e. 1st March, 2021.”

Mr. Prasad had handed up his instructions and enclosures thereto, signed on 13th February, 2021 by the Assistant Commandant. What is relevant

from it is that there is reference to, inter alia, the following:

“E. Review medical examination (RME): Ordinarily there is no right of appeal against the findings of the Recruiting Medical Officer or Initial Medical Examination. If any Medical Certificate is produced by a candidate as a piece of evidence about the possibility of an error of judgment in the decision of Initial Medical Board/Recruiting Medical Officer, who had examined him/her in the first instance i.e. DME, an appeal can be accepted. Such Medical Certificate will not be taken into consideration unless it contains a note by the Medical Officer from Government District Hospital or above along with registration no. given by MCI/State Medical Council, to the effect that it has been given in full knowledge of the fact that the candidate has already been rejected and declared unfit for serving by CAPF Medical Board, or the recruiting medical officer. If the appeal of a candidate is accepted by CAPF Appellate Authority, his/her Review Medical Examination will be conducted by CAPF RME Board. The Decision of the CAPF’s Review Medical Boards will be final. No appeal will be entertained against the finding of the second medical i.e. Review Medical Examination.”

As per above extract, there must be a note by the medical officer from Government District Hospital along with particulars as required, to effect that the certificate has been given in full knowledge of the fact that the candidate has already been rejected and declared unfit for service by CAPF medical board. One of the certificates relied on by appellant is at page 85 of the stay application. It is a certificate dated 11th February, 2020. It certifies that appellant, a candidate of Constable (GD) Exam-2018 in CAPFs, had his photo and thumb impression appended as duly attested at the hospital (Regional Institute of

Ophthalmology). Certifier says there is knowledge that appellant had been declared medically unfit due to visual acuity both eyes 6/9. The certificate also contains opinion on error of judgment and certifies good vision at 6/6.

Mr. Prasad relied on three judgments;

(i) **Judgment dated 16th October, 2018** of a Division Bench of Delhi High Court in **Writ Petition (Civil) no. 879 of 2018 (Abhilash Kumar and Ors vs. Union of India and Ors.)**, paragraph 12, reproduced below:

“12. The aforesaid Guidelines leave no manner of doubt that any person who has a defective vision or is colour blind, is ineligible for recruitment in the CAPF or Assam Rifles. In fact, if any person is wrongly recruited despite having the aforesaid defects, he is to be promptly removed from service as soon as the defect is noticed and appropriate disciplinary action for major penalty is required to be initiated against the Doctor who had declared him ‘fit’.”

(ii) **Judgment dated 9th March, 2016** of High Court of Judicature at Patna in **Civil Writ Jurisdiction Case no. 22281 of 2011 (Union of India and Ors. vs. Vikash Kumar)**, paragraph 10 reproduced below:

“10. The argument of the Petitioner are required to be tested broadly on the principles laid down in the aforesaid judgments. The report of the experts of the Review Medical Board cannot be interfered with only because some doctor opined the other way. There is no allegation of bias or mala fide against any of the members of the Medical Board or the Review Medical Board. The conclusions drawn by the Medical Board cannot be negated on the basis of a civil

doctor, unaware of the physical standards required in the Para Military Forces. The opinion of the Board or the Review Medical Board cannot be said to be inchoate, casual, perfunctory or vague as there is no material to say so. Therefore, the High Court, in exercise of its power of judicial review should not have directed the medical examination by a doctor posted in the High Court and to order his appointment only on the basis of such report.”

(iii) **Order dated 21st November, 2016** of a learned single Judge of, Mr. Prasad submits, Allahabad High Court in **Writ-A no. 54966 of 2016 (Shanti Swaroop Patel vs. Union of India and Ors.)** wherein was relied observation of a Division Bench of that Court. The relevant passage and quote therein are reproduced below:

“The Division Bench of this Court in the case of Union of India through Ministry of Railways v. Parul Punia bearing Special Appeal No. 968 of 2015 decided on 11.1.2016 has 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.”

We required, in this case, additional evidence for us to pass judgment since the certificate produced from Government hospital conformed with the

requirement of information in the instructions relied upon by respondents. The doctor certifying good vision has attested to the identity of the person, whose eyes were tested and gave the certificate, of good vision possessed, on full knowledge of a rival contradictory medical examination stating visual acuity 6/9. The requirements of identity as in **Shanti Swaroop Patel** (supra) stood taken care of. The facts in this case make views taken by paragraph 10 in **Vikash Kumar** (supra), inapplicable. Also rendered inapplicable on facts is **Abhilash Kumar** (supra).

For purpose of this additional evidence we, by our order dated 3rd March, 2021, required appellant to undergo eye test upon satisfactory certification regarding identity and testing of his eyes. The certificate to bear acknowledgement by the doctor, of having ascertained the identity of appellant. Appellant was directed to get his eyes tested at Sankara Nethralaya, Mukundapur, Kolkata. We made the direction in terms of provisions in order 41 rule 27 in Code of Civil Procedure, 1908. It was necessary because a government hospital had already duly certified appellant to have good vision.

Today, Mr. Chatterjee hands up certificate dated 5th March, 2021 issued by the concerned doctor in Sankara Nethralaya. Text of the certificate is reproduced below:

“TO WHOM IT MAY CONCERN

This is to certify that Mr. Koushik Paul (Our MRD No-4562930) a 26 year old gentleman came to our hospital for an eye checkup on 05.0003.2021.

His best corrected visual acuity were 6/5 and uncorrected visual acuity were 6/7.5 in both eyes. His colour vision for both eye 21/21. Intervention was NIL.”

Mr. Chatterjee submits, the test was conducted by requiring his client to read out from illuminated screen as opposed to a chart used by Government eye institutions/hospitals, who had certified his client to have vision 6/6. This submission cannot be taken note of since our said order dated 3rd March, 2021 was dictated in Court and appears to have been accepted by the parties on compliance effected, for purpose of production of additional evidence being said certificate dated 5th March, 2021. We accept the additional evidence for purpose of adjudication and disposal of the appeal.

Prayer in the writ petition was, inter alia, for quashing annexure ‘P-8’ and ‘P-11’ being the medical report and report of review medical board of respondents, whereby concurrent finding was appellant has visual acuity in both eyes at 6/9. We find said certificate dated 5th March, 2021 certifies visual acuity in both eyes at 6/7.5. Hence we quash reports being annexure-‘P8’ and ‘P11’ in the writ petition. Respondents are directed to consider said certificate dated 5th March, 2021 regarding appellant’s candidature. In event appellant is appointed or

recruited, well and good. If appellant is found, on said certificate dated 5th March, 2021, to be disqualified for appointment or selection, the basis of disqualification should be made known to him.

The appeal is allowed to the extent above and disposed of. The application (I.A. no. CAN 1 of 2021) is disposed of accordingly.

Mr. Chatterjee prays for expeditious follow up action by respondents. Court expects promptitude of respondents, in the matter.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)