

12.02.2021.
Item no. 28.
Court No.13
ap

**W.P.A. No. 2913 of 2021
(Through Video Conference)**

**Rakesh Kumar Yadav
Versus
The Union of India & Ors.**

Mr. Palash Mukherjee,
Ms. Sucheta Mitra.

...For the petitioner.

Ms. Chandreyi Alam.

...For the UOI.

The petitioner is aggrieved by an order dated 17th October, 2020 passed by a Review Medical Board holding that the petitioner was unfit for the post of Constable GD in the examination process conducted in the year 2018.

The Review Medical Board on 17th October, 2020 found the petitioner unfit on account of “Right Testicular Microlithiasis post operative case of large Hydrocele” and for “Unhealthy Scar of Removal of Tattoo on right shoulder”.

The deficiency found in the initial medical examination conducted on 3rd February, 2020 were – (1) Hydrocele right side and (2) 6 x 6 cm. Tattoo mark of right shoulder.

The petitioner relies a report dated 21st October, 2020 issued by the College of Medicine & JNM Hospital, West Bengal University of Health Sciences,

Kalyani, Nadia. The said report issued by the Assistant Professor and Surgical Officer referred to USG report on 30th June, 2015 found no abnormality.

Counsel for the petitioner produces from the bar an alleged report of a Civilian Surgical also of JNM Hospital, Kalyani stating that the opinion of the initial Medical Officer of CAPF was incorrect and had sought review.

The petitioner would argue by reference to the Guidelines for conducting review (RME) that the Review must proceed on the basis of a fit certificate issued by a Civilian Government Hospital contradicting the initial Medical opinion of the CAPF.

Although Counsel for the petitioner produces at the bar a view of the Civilian Doctor, the same is wholly illegible and admittedly without any date. No reliance can, therefore, be placed on such a document.

Be that as it may, the Review Medical Board has, however, detailed out the reasons for medical unfitness of the petitioner.

It is now a well-settled principle of administrative law that the Appellate Reviewing Authority need not give detailed reasons when it agrees with a Subordinate Initial/First Authority.

The basis on which the Review Board's order is assailed being a document dated 21st October, 2020

which itself was based on USG report of 30th June, 2015, cannot be countenanced by this Court.

There is yet another reason why the certified medical unfitness of the petitioner cannot be interfered. Between the first medical examination i.e. in February, 2020 and the Review Medical Examination conducted in October 2020, the writ petitioner underwent surgery to remove his Tattoo.

A Review Appeal is conducted of a decision and facts existing at the time the first medical examination. If the writ petitioner undergoes any corrective surgery between the first medical examination and the review medical examination, the same must be viewed as an attempt to cover up a medical deficiency and circumvent the Rules. In fact, the Review Medical Board in no uncertain terms stated that the petitioner has an “Unhealthy and unhealed mark on the right shoulder” pursuant to a Tattoo removal surgery.

The petitioner has, therefore, clearly attempted to cover up his medical condition by corrective surgery. The petitioner has not approached the Review Board or this Court with clean hands (Pun intended)

Coming back the first disability, this Court is of the view that it is quite possible that a person may have no Hydrocele from the point of view of a Civilian Doctor and that too in the year 2015 but the views of the Civilian Doctor are not binding on the Medical

Board of CAPF. The CAPF Authorities are regained to follow their own Medical Guidelines. The said Guidelines are at Clause 6 Sub-Clause (25) clearly prescribe that large Hydrocele even if curable by surgery is a medical disqualification.

It is an equally well-settled principle of administrative law that if two views are possible and the administrative authority has taken one view, a Writ Court cannot impose the other view on the authority concerned.

Admittedly, the Review Medical Board herein comprised of three individual Medical Officers. The said Medical Officers have relied upon to a USG report of their own which has been examined.

Since a Review itself cannot be conducted unless accompanied by a contrary opinion of a Civilian Doctor, there is a presumption that the Review Medical Board has also considered any contrary opinion of a Civilian Doctor that the writ petitioner may have produced.

For the reasons stated hereinabove, this Court does not find any infirmity with the view expressed by the Review Medical Board on 17th October, 2020.

In view of the observations and discussions held hereinabove, the instant writ application must fail and is hereby dismissed.

There will be no order as to costs.

All parties are directed to act on a server copy of this order on usual undertakings.

(*Rajasekhar Mantha, J.*)