

19.02.2021.
Item no. 26.
Court No.13
ap

**W.P.A. No. 8533 of 2020
(Through Video Conference)**

**Nitya Gopal Ghosh
Versus
Union of India & Ors.**

Mr. Sanajit Kumar Ghosh,
Mr. Madhusudan Mukhopadhyay.
...For the petitioner.

Ms. Debapriya Gupta.
...For the UOI.

The BSF has produced the original medical records of the writ petitioner.

It appears from the said records that the petitioner was initially examined by one Dr. Mukesh Kumar Bairwa, Chief Medical Officer (SG), 34th BN of BSF and he was found unfit for poor dental condition and Hammer Toes Right 3rd & 4th investigation.

The petitioner thereafter obtained a certificate from the JNM Hospital, West Bengal University of Health Sciences, Kalyani, Nadia that the opinion of the BSF Doctor is incorrect. There is no opinion expressed with regard to the dental condition of the petitioner.

The petitioner preferred an appeal against the initial unfit report dated 28th January, 2020. The petitioner along with his appeal, also annexed the opinion of another Civilian Dentist Doctor, Pritam Ghosh of Dr. R. Ahmed Dental College Hospital at

Calcutta where it was certified that the petitioner had no significant dental problem.

The petitioner, in addition thereto, also produced a certificate of a Dentist of JNM Hospital, West Bengal University of Health Sciences, Kalyani, Nadia where certain medication was prescribed for the petitioner's dental condition. After routine examination, it was found that there was restoration at numbers 7 and 6. He was advised proper brushing. It was further opined by the Civilian Dental Surgeon, one Dr. D. Sarkar that the petitioner was "fit for the need" on over all examination.

Prior thereto on 26th September, 2020, one Dr. Mrs. Menka Bharti, Chief Medical Officer, 80 BN, BSF had referred the petitioner to a Dental Specialist for OPG and expert opinion.

Be that as it may, the Review Medical Board comprising of three separate Doctors, namely, Dr. Monojit Khlabhi, Dr. Arun Kumar Singh and Dr. Mrs. Menka Bharti unconditionally opined that the petitioner did not have Hammer Toes but found very poor oral hygiene and other defects in the teeth of the petitioner.

This Court finds that the entire decision making process of the Medical Hierarchy of the BSF in the case of the petitioner is in order. The decision making process also cannot be faulted.

This Court cannot sit in appeal over the findings of the Review Medical Board.

Counsel for the petitioner would lastly argue before this Court that since one of the members of the Review Medical Board had herself asked for an expert opinion on the dental condition of the petitioner, the opinion of the civilian Doctor, namely, D. Sarkar dated 28th September, 2020, should be final and conclusive. He therefore, calls upon this Court to ignore the views of the three Doctors and accepts the views of the Doctor D. Sarkar, who is a Dental Surgeon.

This Court is of the view that no matter how specialized a Civilian Doctor may be in his area of work, it is only the BSF and the Doctors of the Force, who can take a final call on the physical and medical condition of a candidate for the post of Constable GD in any of the CAPF Forces.

It is equally well-settled that when two views are possible in respect of a matter and the Authorities have taken one view, a Writ Court cannot and does not impose the other possible view on the Administrative Authority.

For the reasons stated hereinabove, no order can be made as prayed for in this writ petition. 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.*)