

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No. 881/2021

Vaibhav s/o Shankar Durge

...Petitioner

Versus

State of Maharashtra and ors.

...Respondents

Mrs. D.I. Charlewar h/f. Shri A.P. Borkar, Advocate for the Petitioner

Mrs. K.S. Joshi, Incharge GP for the Respondent Nos. 1 and 2 - State

Shri C.J. Dhumane, Advocate h/f. Shri U.M. Aurangabadkar, ASGI for the
Respondent No. 4

**CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.**

DATED : 15 FEBRUARY 2021

P.C.:

Heard learned counsel for the parties.

2. The Petitioner is aggrieved by the order passed on 13 April 2020 by the Respondent No.4 wherein the appeal filed by the Petitioner against the findings of the detailed medical examination is rejected.

3. The Petitioner applied pursuant to an advertisement published on 21 July 2018 inviting the application for the post of Constables for Central Armed Police Forces, NIA and SSF and Rifleman in Assam Rifles. The Petitioner was successful in the examination and appeared for physical test. Thereafter, when the Petitioner was examined

by the Medical Board, it is opined that the Petitioner was unfit for appointment in view of defect to Varicose Veins both lower limbs.

4. The Petitioner was put to notice that if the Petitioner was desirous of filing an appeal against the findings of medical examination, he has to approach the Respondent No.2 within fifteen days along with photograph, thumb impression and candidate signature on fitness certificate be endorsed by the concerned medical practitioner of Government District Hospital. He was stated that fitness certificate is received without attestation, it will not be taken into consideration. The Petitioner filed an appeal along with a certificate issued by Dr. Sarita Durge, Specialist Medical Officer of Government District Hospital, Chandrapur. The appeal of the Petitioner was rejected by the impugned orders since the medical practitioner did not attest the certificate as above.

5. The learned counsel for the Petitioner has relied upon the order passed by this Court in Writ Petition No.482 of 2020, wherein Division Bench held that if the medical practitioner does not give such an attestation, a candidate cannot be faulted with and such defect is curable.

6. The learned counsel for the Respondent – Deputy Inspector General of Police submits that order holding the Petitioner unfit was passed on 23 January 2020, one year ago and the recruitment process pursuant to this advertisement is over since long and no effective relief can be granted to the Petitioner regarding the appointment.

7. Leaned counsel for the Petitioner submitted that if the Petitioner applies again, the finding that the Petitioner is medically unfit may come in his way.

8. We find merit in the contention of the Petitioner that if the medical practitioner does not attest the photo, thumb impression and signature of the candidate on the medical certificate, it cannot be considered as a fault of the Petitioner, as it is an omission by the medical practitioner and in such circumstances, opportunity can be given to the applicant to produce such a certificate with attestation. Therefore, the Petitioner has lost an opportunity of contesting the findings regarding he being medically unfit. We also take note of the contention of Respondents that the recruitment process is now over.

9. In these circumstances, we dispose of the Petition clarifying that in case the Petitioner applies again to some other recruitment process, the order / certification dated 23 January 2020 that the Petitioner is medically unfit should not be relied upon without further examination of the Petitioner, meaning thereby that the Petitioner's application for other recruitment process should not be nullify on the ground that the Petitioner is already certified as medically unfit.

10. With these clarification, Writ Petition is disposed of.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]