



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.04.2021

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) No.16282 of 2020
and W.M.P. (MD).No.13616 of 2020

K.M.Manojkumar

... Petitioner

Vs

1.The Secretary

Staff Selection Commission
Block No.12, CGO Compled Lodhi Road,
New Delhi.

2.The Deputy Secretary

Staff Selection Commission,
Southern Region
2nd floor E.V.K.Sampath Building,
Chennai - 600 006.

3.The Directorate General CRPF

(Recruitment Branch)
Eastern Block 07
Level Level 04, Sector 01
R.K.Puram,
New Delhi - 110066

4.The Review Medical Examination board

(RME Board) ITPB Sivagangai RTC
Sivagangai, ITBPF, Vill-Illupaikudi,
PO-Podamathur, Dist. Sivagangai,
Tamil Nadu - 630 561.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the 4th respondent in his proceedings in Form No.4 of CONSTABLE (GD) EXAM 2018 REVIEW MEDICAL EXAMINATION REPORT dated 03.10.2020, quash the same and direct the respondents to select and appoint the petitioner as Constable in CAPFs.

For Petitioner : Mr.V.Panneer Selvam

For Respondents : Mrs.L.Victoria Gowri
Additional Solicitor General of India



O R D E R

The petitioner's candidature in the recruitment process for the post of Constable (GD) in Central Armed Police Forces (CAPFs), NIA, SSF and Rifleman (GD) in Assam Rifles Examination, 2018, pursuant to the notification, dated 03.10.2020, came to be rejected by the Medical Board on the ground that there is a post surgical scar on on right fore-arm and shoulder. The report is based on the Dermatologist opinion, dated 01.10.2020 of the Review Medical Examination, which states as follows :

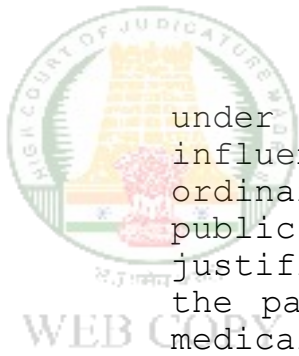
"Post surgical Scar on Right Forearm and Shoulder;
healed Scar without complication "

2.The guidelines for the recruitment process for the post of Constable (GD) in Central Armed Police Forces (CAPFs), NIA, SSF and Rifleman (GD) in Assam Rifles Examination, 2018, in Clause XI (3) permits tattoos with a size less than 1/4th on particular part. The petitioner had removed his tattoos and the opinion under RME, was that there is a Keloid formation, after removal.

3.The guidelines or the notification does not prohibit such Keloid formation, which is claimed to occur Post surgery of removal of the tattoos. As such, the same cannot be a reason for disqualification. Moreover, the Hon'ble Division Bench of Bombay High Court, in the case of **Hardik Rameshkumar Vaghela vs Union Of India Thru Secretary, and others** passed in W.P.No.1991 of 2019, has held that disqualification on the basis of a candidate bearing a tattoos or removal of the same, cannot be sustained.

4.The relevant portion of the order is thus

"8. A bare perusal of the record would reveal that the Petitioner has successfully cleared all the tests including physical fitness and trade proficiency. The opinion of the Medical Board that the Petitioner had a 'knock knee', has not been approved by the Review Board and it came to the conclusion that the Petitioner does not suffer from knock knee. The certificate issued by the Review Medical Board dated 24th July, 2017 records that though the Petitioner is undergoing laser treatment, yet the tattoo on right arm has not disappeared completely. It implies that the Petitioner has been making earnest efforts to get the tattoo removed by undergoing the prevalent treatment. From the nature of the employment i.e. Constable/Driver, which the Petitioner seeks, it does not appear that the existence of tattoo on the right arm would constitute a hindrance in effectively performing the duties of the said post. We cannot loose sight of the fact that in tradition bound societies, tattoos are inscribed on the body, often during early childhood,



under the belief that it would protect the child from evil influence or bring luck. Such a traditional practice, ordinarily should not come in the way of 928-WP1991-19.DOC public employment unless there is an overwhelming justification for the same, in the context of the duties of the particular post. Nor it appears to be an irreversible medical condition.

9. Even otherwise, the judgment of this Court in the case of Shridhar Mahadeo Pakhare (supra) covers the controversy sought to be raised on behalf of the Respondents. In the said judgment, the Division Bench of this Court, has noted that for the post of Sub-Inspector in CISF, the advertisement issued provides certain relaxation as regards the tattoo mark on the body of the aspirants. The rationale of the said relaxation is the religious sentiments of the countrymen. The Division Bench, thus, found that it would not be permissible for the employer to treat the class of the employees differently and apply different parameters. The observations of this Court in paragraph 5 are material and seal the issue.

"In our opinion, it would not be permissible for the employer to treat the class of employees differently and apply different parameters. As has been recorded above, the religious sentiments of the individual need to be respected. For the reasons recorded above, we are of the opinion that the claim of the petitioner for employment need to be considered. The petitioner is otherwise found fit by the Medical Board, except on account of carving out the tattoo which has also been removed admittedly to the extent of 90%. We are of the opinion that the respondents need to be directed to consider the claim of the petitioner for employment since he has been found otherwise fit. The Writ Petition is thus allowed. The respondents are directed to consider the claim of the petitioner for employment to the post of 'constable/driver' in C.I.S.F. and the medical 928-WP1991-19.DOC opinion holding the petitioner ineligible on account of tattoo mark shall not be construed as an impediment for issuing an order of appointment in favour of the petitioner. Rule is accordingly made absolute. There shall be no order as to costs."

10. Having regard to the facts of the case and the ground for declaring the Petitioner, 'medically unfit', and in the light of the aforesaid observations, we are of the view that the action of the Respondents of declaring the Petitioner 'medically unfit' for having a tattoo on the right arm, is unsustainable. We are, therefore, inclined to direct that the Petitioner's candidature shall not be



the right arm. We are, thus, inclined to direct Respondent nos.1 and 2 to consider the case of the Petitioner for appointment to the post of Constable/Driver. The Writ Petition, thus, stands allowed.

11. Rule is, therefore, made absolute in terms of prayer Clauses (b) and (c). In the circumstances, there shall be no order as to costs.

5.The aforesaid observation of the Hon'ble Division Bench of Bombay Court is also in favour of the petitioner herein. As such, disqualification of the petitioner's candidature by the respondents cannot be sustained.

6.Moreover, formation of keloid, is a condition of healing of skin and is not a permanent deformity. In other words, its a remedial defect. The Hon'ble Supreme Court in the case of ***Dharmvir Singh Vs. State of Uttar Pradesh and another*** passed in ***W.P.(Civil) No.444 of 2019 dated 19.07.2019***, had taken into consideration of remedial defects and subjected the candidate therein for re-medical defects and subjected the candidate therein for re-medical examination. Even on this ground, the petitioner herein would be entitled to succeed.

7.Accordingly, the impugned proceedings in Form No.4 of Constable (GD) Exam 2018 Review Medical Examination Report, dated 03.10.2020, is quashed. Consequently, the respondents are directed to subject the petitioner herein to further selection process without reference to the impugned disqualification of the Review Medical Examination, which has been quashed.

8.This Writ Petition stands allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar

NOTE:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

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Tamil Nadu - 630 561.

+1 CC to M/s.V.PANNEER SELVAM, Advocate (SR-15508[F] dated
08/04/2021)

Order made in
W.P. (MD) No.16282 of 2020
01.04.2021

TM/RM
MS/24.05.2021/5P.6C