

98
13.05.2022
Court No. 23
d.g.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 6443 of 2020
With
CAN 1 of 2020

Smt. Subhashree Subhamita Mishra
Vs.
Union of India & Ors.

Mr. Pratik Majumder,
Mr. Abul Mullick.

... for the petitioner

Ms. Chandreyi Alam (Gupta).

... for the respondents

The petitioner was provisionally selected for appointment to the post of Lady Constable in the Railway Protection Force (in short 'RPF') under South Eastern Railway and was called for a medical test on 18th September, 2019 at Kharagpur. The petitioner was declared "medically unfit" after being medically examined by the Divisional Medical Committee. The petitioner preferred an appeal in terms of Para 522 of the Indian Railway Medical Manual, which was also dismissed by an order dated 26th June, 2020. The petitioner alleges that the Appellate Authority without constituting a Medical Board and getting the petitioner examined through such Board, could not have been dismissed the appeal preferred by the petitioner.

Considering these submissions, I directed the respondents to file a report with the particulars indicated in the said order. A report has been filed today by the respondents, which is taken on record. After considering the report, I find that a vacancy still subsists.

The petitioner says that the Appellate Authority in view of the vacancy being there should be directed to constitute a medical board for re-examination of the petitioner by setting aside the order of the Appellate Authority dated 20th June, 2020.

It appears from the circular issued by the Government of India, Ministry of Railways (Railway Board) dated 7th July, 2017 that an appeal against the initial medical examination can be preferred before the CMD of the zone within a period of one month from the date of receipt of the decision from the personal department. It further appears therefrom that in all cases of appeal, the CMD has to form an opinion whether there should be a re-examination of the case of appeal. If CMD is of the opinion that re-examination is necessary, he may nominate a medical board for re-examining the candidate.

In the instant case, the appeal of the petitioner was considered by the CMD being the Appellate Authority. The CMD formed an opinion that re-examination of the petitioner is not necessary and, as such, did not recommend for constituting of a medical board.

The petitioner says that the CMD without giving any reasons have arbitrarily rejected the petitioner's appeal. The petitioner also says that since there is a vacancy as appears from the report filed by the respondents, no prejudice will be caused to the respondents if the petitioner is re-examined. The question of re-examination under the Indian Railway

Medical Manual, 2000 read with the notification dated 7th July, 2017 is left to be decided by the CMD.

In the instant case, CMD has refused to recommend the re-examination of the petitioner. This order is, therefore, not open to interference particularly in view that the reasons for the petitioner being declared medically unfit were specifically stated by the doctors who conducted the medical initial examination at has been considered by the CMD in the light of the appeal preferred by the petitioner.

The writ petition is, therefor, devoid of merits and the same is disposed of without any further orders.

Since the writ petition is dismissed, the connected application being CAN 1 of 2020 is also disposed of without any order.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)