

22.08.2022
Item No.15
Crt. No.11.
KB

MAT 1032 of 2022
with
IA No. CAN 1 of 2022
with
CAN 2 of 2022

The Union of India & Ors.
Vs.
Soumen Ghosh

Mr. Ajit Kumar Chaubey
Mr. Kushal Chatterjee
.... For the Appellants.

Mr. Malay Bhattacharyya
Mr. Subhrojyoti Ghosh
...For the Respondents.

In Re : CAN 1 of 2022.

Party/parties is/are represented in the order of their name/names as printed above in the cause title.

The appellants/Union of India/Central Reserve Police Force (*CRPF*) submit that the appeal is barred by delay.

In support of the prayer for condonation of delay, the appellants rely upon CAN 1 of 2022, which is an application under Section 5 of the Limitation Act, 1963.

Heard the parties on the question of condonation of delay .

Perused the contents of CAN 1 of 2022.

This Court is satisfied that sufficient cause has been made out for condoning the delay.

Accordingly, the delay stands condoned.

The appeal and its connected application, being CAN 2 of 2022, stand formally admitted on board for consideration on merits.

CAN 1 of 2022 stands accordingly **disposed of**.

In Re: MAT 1032 of 2022
with
CAN 2 of 2022.

Next, MAT 1032 of 2022 with CAN 2 of 2022 are taken up for consideration on merits.

The appellants file a Compilation of Documents with copy served on Learned Counsel for the Respondent No.1/the writ petitioner.

The appellants argue that under the Rules of recruitment of Central Reserve Police Force (*CRPF*), the writ petitioner's appointment as Constable cannot be sustained since he is suffering from medical condition of *Congenital Umbilical Hernia*.

It is submitted that the particular condition of the writ petitioner of *Congenital Umbilical Hernia*, could not be detected at the point of initial recruitment. However, after the offer of appointment was made to the writ petitioner, the Review Medical Board found the writ petitioner to be unfit on the ground of *Congenital Umbilical Hernia*.

It is further submitted that the Rules of Recruitment, *inter alia*, provide that any type of Hernia

is a general ground for rejection of appointment. It is also pointed out that *Congenital Umbilical Hernia* is not a *Minor Acceptable Defect* under the rules of recruitment. Therefore, the offer of appointment to the writ petitioner was rightly cancelled.

Mr. Bhattacharyya, Learned Counsel appears for the Respondent No.1/the writ petitioner and submits that the petitioner was referred to the Eastern Command Hospital for an opinion as to whether his medical condition rendered him unfit for duties. The Eastern Command Hospital has declared the writ petitioner to be *medically fit* and stamped its Report as *fit*.

It is also submitted by the writ petitioner that having regard to the Report of the Eastern Command Hospital, the Hon'ble Single Bench has set aside the offer of cancellation and permitted the writ petitioner to re-join his duties.

Having heard the parties in detail and considering the materials placed, the attention of this Court is drawn to the Order dated 18th November, 2021 in the writ petition. By the said Order, the Hon'ble Single Bench has been pleased to *inter alia*, direct as follows:

“The Eastern Command Hospital shall send the report of petitioner’s medical examination giving their opinion as to

whether the petitioner is fit or unfit for the job, the petitioner was offered in a sealed envelope to the Registrar General of this Court, who, in turn, shall submit such report also in sealed cover before this Court.”

Pursuant to the Order dated 15th November, 2021, the Hon’ble Single Bench has directed by its further Order dated 9th February, 2022 that the writ petitioner be allowed to continue in service. The Order dated 9th February, 2022 is under challenge before this Court in this appeal. It must be therefore understood that the appellant/*CRPF* has no objection to the Order dated 15th November, 2021 directing examination of the writ petitioner by the Eastern Command Hospital.

Next, having regard to the opinion of the Hon’ble Single Bench as expressed by the Order dated 15th November, 2022 to the effect that the Eastern Command Hospital shall report whether the writ petitioner is *fit or unfit for the job*, this Court finds the Report of the Eastern Command Hospital unambiguous in declaring the writ petitioner to be *medically fit* qua *Congenital Umbilical Hernia* with the further stamp on the Report of the word *fit*.

Therefore, in the view of this Court, the question posed by the Hon’ble Single Bench *vide* its Order dated 15th November, 2022 has been answered

unambiguously by the Eastern Command Hospital and such answer poses a legal hurdle before any Court of law to go behind the declaration of fitness by doctors who are experts in this field.

Furthermore, the opinion expressed by the Eastern Command Hospital appears to this Court to be in conformity with the Rules of Recruitment which include, *inter alia*, as a ground for rejection any congenital condition which may *impede* the efficient discharge of duties which, in the facts of this case, is not the position as would appear from the Medical Opinion (*supra*).

In the backdrop of the above discussion, the order of the Hon'ble Single Bench, having regard to the facts of this case, requires no intervention.

MAT 1032 of 2022 with **CAN 2 of 2022** stand accordingly **disposed of**.

All parties to act in terms of a copy of the order downloaded from the official website of this Court.

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

(Lapita Banerji, J.)

(Subrata Talukdar, J.)