

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10448 OF 2019

SAYYAD NAIMALI KACHRUDDIN)
 Age : 29, Pratap Miljin Chawl,)
 Station Road, Amalner, Jalgaon,)
 Maharashtra - 424 401)...**PETITIONER**

V/s.

1 BORDER ROADS ORGANISATION)
 GREF Centre & Records, Alandi)
 Road, Visharantwadi, Pune,)
 Maharashtra 411 015)
)
2 GENERAL RESERVE ENGINEER)
FORCE, Gref Centre & Records)
 Dighi Camp, Pune, Maharashtra)
 411 015)
)
3 MINISTRY OF DEFENCE)
 Through the Secretary)
 Room No.234, South Block,)
 New Delhi - 110 011)
)
4 UNION OF INDIA)
 Through the Secretary)
 Ministry of Defence, South Block)
 New Delhi - 110 011)...**RESPONDENTS**

Mr. Kranti L.C. i/b. Mr. Kaustubh R. Gidh, Advocate
 for the Petitioner.

Mr.Ashok D. Shetty a/w. Mr. P. Khosla, Advocate for
 the Respondents.

**CORAM: DIPANKAR DATTA, CJ &
 V. G. BISHT, J.**

DATE : JANUARY 31, 2022

JUDGMENT : (PER : V. G. BISHT, J.)

1 Rule. Rule made returnable forthwith. By consent, heard finally at the stage of admission.

2 The petitioner seeks to assail the decision of Border Roads Organisation (hereafter BRO for short) to declare him Permanently Medical Unfit for a job as a Driver Mechanical Transport (Ordinary Grade) and set aside the finding of the Medical Review Board dated 4th May 2019 holding the petitioner Permanently Medical Unfit for the said post due to “Presternal Keloid Chest”.

3 Brief facts are as under :

The BRO published an advertisement for vacancies *inter alia* for the post of Driver – Mechanical Transport (Original Grade). The petitioner who has the requisite qualification and eligibility for the said post submitted his application for the same and was subsequently called for a Physical Efficiency Test and Practical Test on 23rd August 2018. The petitioner accordingly appeared and cleared the said test and then was called for the written test. After clearing the written test, he was notified that he had been provisionally selected for the said post and was called upon to undergo a Medical Examination on 18th February 2019. The petitioner underwent the Medical Examination and vide communication dated 19th February 2019 he was informed that he is found to be “Medical Permanently Unfit” due to Chest Keloids, Cardiac Murmur and Coarse Digital Tremor and that his candidature was liable to be cancelled. The petitioner was further asked to undergo and appear for a Medical Review on 23rd March 2019. The petitioner appeared for a Medical Review Examination at

Military Hospital, Kirkee on 23rd March 2019. However, vide notice dated 4th May 2019 he was declared “Unfit in Skin” due to “Presternal Keloid Chest” and accordingly his candidature was cancelled.

4 Being shocked that a non-debilitating skin condition could be a ground to declare him unfit for employment, the petitioner sought opinions from independent doctors, who were of the firm view that such a condition would not render him to be unfit for employment. Aggrieved by the said decision, the present writ petition is filed by the petitioner.

5 The respondents by filing affidavit-in-reply contend that if a candidate, who has been declared unfit by the concerned specialist after a Medical Review again, will not be given any further chance for re-medical examination/review and his candidature shall stand cancelled automatically.

6 The BRO is an integral part of the Armed Forces of India and the Medical Specialist of Military Hospital, Kirkee is the Competent Authority to decide the cases on the medical aspects. The Armed Forces medical standards vary from the civil medical standards as the physical and medical requirements for the services are unique and, therefore, the petitioner has no right to question the findings / opinion of the Service Specialists and to insist for accepting the findings/opinions of civilian medical practitioner.

7 According to respondents personnel of the BRO are deployed for construction of roads and bridges for Army and other agencies in extreme remote and far-flung areas of Northern and North-Eastern part of the country including high altitude and snow bound areas which have very harsh and

severe climatic conditions. Keeping in view of the working conditions, medical fitness of the personnel upto the desired standard is a vital prerequisite to meet the organizational requirement. Despite giving chances, the petitioner has been declared Permanently Medically Unfit. Therefore, his candidature was cancelled. The action taken by the department is in right perspective and has been taken in a deserving manner. In view of this, there being no merit in the petition, the same is liable to be rejected with costs.

8 By way of rejoinder, the petitioner contends that the affidavit-in-reply of the respondents has failed to establish to bring to light the particular concerns with “Keloids” that the petitioner has been diagnosed with, particularly as to how it affects the ability of the petitioner to render services as a Driver.

9 By way of sur-rejoinder, respondents controverted the said stand taken by the petitioner by contending that Review Medical Authority i.e. Military Hospital, Kirkee has commented and clarified that “Keloid is chronic and recurrent skin disorder and can gradually expand over years. Trivial local trauma which is unavoidable in military service is a known aggravating factor for keloid. Keloids also interfere with wearing of military clothing and equipment, affecting satisfactory performance of military duty thereby not meeting standards of recruitment in Armed Forces.”

SUBMISSIONS

10 The learned counsel for the petitioner has filed written submissions along with judgment. Similarly, learned counsel for the respondents have also placed on record written notes

of submissions along with judgments. We have carefully gone through the written submissions and as also the judgments in support thereof relied on by the learned counsel.

DECISION

11 Before we enter into the controversy whether BRO was justified in rejecting the candidature of the petitioner or not, we quickly would like to have a glance over the important instructions and the relevant rules which were appended to the Advertisement No.1 of 2016. Following are the relevant important instructions for our purpose :

“(l) The appointment of selected candidates is subject to his passing requisite Medical/Fitness Test.....”

“(n) Only medically fit candidates will be inducted.”

“(p) **Medical Standards**

Every recruit must be sufficiently intelligent, be free from various instability and be in possession of sound health. He shall have no constitutional or acquired disability as may in the opinion of the Recruiting Medical Officer render him unfit for duties in the Force particularly at high altitude.”

12 Similarly, as petitioner was provisionally selected, he was served with a letter “Call for Medical Examination : Driver Mechanical Transport (Ordinary Grade)” (Exhibit C). The relevant clause is as under :

“(3) **Medical Examination** :-

(a) You will have to undergo medical examination by the Medical Board of Officers from GREF/Armed Forces at GREF Center,

Dighi Camp, Pune-15. The physical standard and medical examination will be carried out as per the approved Standard Operating Procedure for recruitment in this department. Candidates declared permanent UNFIT by Medical Board of Officers due to being below physical standards with respect to height, no appeal can be made against physical measurements. However, if you are found temporary/permanent unfit due to any other physical and medical reasons, you will have the right to appeal against the said medical examination within 60 days of declaring temporary/permanent unfit. You will have to report for medical review at GREF Center, Pune 05 days in advance for medical review and same will be conducted at Military Hospital, Pune only.”

13 There is no dispute to the fact that the Recruiting Medical Board of Officers having examined the petitioner declared him permanently unfit on 19th February 2019 due to

- (a) Keloids Chest and Left Shoulder
- (b) Cardiac Murmur
- (c) Coarse Digital Tremor

The said findings are at page 51 of the compilation of the petitioner.

14 In the light of above instructions, as noted herein above, as per the policy, the petitioner, who was declared permanently unfit, had a right to appeal against the medical examination within a period of sixty days for review Medical examination. It is also clear from the record that this fact was brought to the notice of the petitioner vide letter dated 19th February 2019 (Exhibit D).

15 In view of above, the petitioner reported for Medical Review on 18th March 2019 and was further referred to Military Hospital, Kirkee being the Review Medical Authority. It appears that although he was declared fit for Cardiac Murmur and Coarse Digital Tremor, but he was again found medically unfit for “Keloid Chest in skin”. It is pertinent to note that thus on both the occasions, the petitioner was declared permanently medically unfit due to “Presternal Keloid Chest in skin”.

16 As per paragraph 6(B)(h)(i) of the Gazette Notification (Exhibit H) for conducting Physical Efficiency Tests, Physical Standards and Medical Standards, if a candidate who has been declared unfit by the concerned specialist after medical review again, will not be given any further chance for re-medical examination/review and his candidature shall stand cancelled automatically.

17 We are eager to point it out here that at the time of medical examination, the petitioner had also agreed and signed the declaration. In paragraph 2(b)(i) and (iii) of Part II of the GREF Medical Form No.GREF/MED/2A (Exhibit R2) certifying that “I will be medically examined as per the standard required for recruitment in GREF” and “The Recruiting Medical Officers and other specialists of BRO/Armed Force are the final authority for such matters for declaring me FIT/UNFIT.” Thus, this declaration in itself goes to show that the petitioner had submitted to the necessary requirements /rules of the BRO. It is also pertinent to note that no malafides are attributed on the part of Medical Board or for that matter Review Medical Board of any perceptible kind of malafides against the petitioner.

18 We are also quite mindful of paragraph 6(A) of Gazette Notification (Exhibit H) for conducting Physical Efficiency Tests, Physical Standards and Medical Standards which deals with Specified Medical Standards which are required for recruitment of candidates for their service in GREF (BRO) as per their job profile, charter of duties and anticipated deployment, including extreme remote areas, high altitude areas and difficult areas of hilly terrain etc.

19 We are also aware that employees who are appointed are deployed for construction of roads and bridges for Army and other agencies in extreme remote and far-flung areas of Northern and North-Eastern part of country including high altitude and snow bound areas which have very harsh and severe climatic conditions. Needless to say, the service conditions are quite treacherous and demand high level of physical and mental fitness.

20 In **Madan Lal and Others vs. State of Jammu and Kashmir and Others**¹ the Hon'ble Apex Court at paragraphs 9 and 10 has observed thus :

“9.....The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at

¹ (1995) AIR (SC) 1088

written test and oral interview, that they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted.”

“10 Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful.”

21 The enduring message from the material available on record is, first, that the petitioner submitted to all the requirements/ rules of the BRO after having cleared the written examination and, second, that after having undergone the medical examination and as also before Medical Review Board, he was found Permanently Medically Unfit because of “Presternal Keloid Chest”.

22 We have already pointed out that while undergoing all these processes, no malafides of whatsoever nature are attributed against the authorities. It is also clear from the Rules that once a candidate is found unfit again on review, no further chance will be given for re-medical examination and their candidature shall stand cancelled automatically. As far as the findings of the Review Medical Board Authority is concerned, we are not here to sit as an appellate authority for

the decision taken by the experts. Therefore, that controversy cannot be agitated again before us.

23 As far as the submissions of learned counsel for the petitioner to the extent that the second condition has no bearing on the ability of the petitioner in rendering services as required for the post of Driver is concerned, we also do not find any substance. There is little point in arguing that the petitioner is simply required to drive the vehicle. The learned counsel needs to be sharply reminded the service conditions as is noted in the preceding paragraph.

24 Of crucial importance here is the comments of Major Anwita Sinha, GD SPL (DERM & VEN) of MH Kirkee. Paragraph 3 is most relevant for our purpose which says “Keloid is a chronic and recurrent skin disorder and can gradually expand over years. Trivial local trauma which is unavoidable in military service is a known aggravating factor for keloid. Treatment of keloid requires frequent outpatient visits with some modalities of treatment aggravating the condition. Keloids also interfere with wearing of military clothing and equipment, affecting satisfactory performance of military duty thereby not meeting standards of recruitment in Armed Forces.”

25 Thus, from the above it cannot be simply said that the petitioner is expected only to drive vehicle and nothing else. It amounts to wearing of uniform and facing very severe climatic conditions in service which in turn, having regard to skin disorder, may harm or interfere with performance of his duties. As such, it needs to be said and repeated that by no yardstick the petitioner was found to have sound physical

condition subject to satisfaction of the Medical Board. Their subjective satisfaction cannot be questioned before us.

26 The learned counsel for the petitioner has also placed reliance in **Union of India vs. Ms. Satwinder Kaur**². In the said case, the respondent was a Computer Engineer and her job entailed work on the computer in an office environment. After having been selected by UPSC, she was found medically unfit. The respondent preferred original application before the Central Administrative Tribunal (CAT) , Principal Bench, New Delhi, which allowed the application against the order of the CAT. The petitioner Union of India filed the said writ petition. While rejecting the writ petition, Delhi High Court was of the view that merely because a disease may be chronic or incurable, it cannot lead to medical unfitness. It would need examination as to what is the nature of employment, what are the conditions of service, the nature of duties and responsibilities to be performed by the candidate, if appointed, and such other relevant considerations before answering the issue whether the candidate is 'fit' or 'unfit' for the job in question.

27 First of all, we make it clear that the factual position is quite distinguishable vis-a-vis case in hand. Secondly, we have consciously considered the nature of employment, the conditions of service and the nature of duties and responsibilities to be performed by the petitioner herein with BRO. On all the above counts, not only the BRO found the petitioner unfit, but we also put our stamp of approval and have already expressed that we do not want to sit as an appellate authority over the decision taken by the experts.

2 2014 SCC Online Del 3541

The case relied on and the case in hand both have peculiar characteristics, and therefore, the ratio laid down in **Union of India (supra)**, with due respect, is not applicable to the case in hand.

28 In view of above, we are not inclined to entertain the writ petition. Hence, the following order :

ORDER

- i) Writ Petition is dismissed.
- ii) In the facts and circumstances of the case, there shall be no orders as to costs.
- iii) Rule stands discharged accordingly.

(V. G. BISHT, J.)

(CHIEF JUSTICE)

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