

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

...
WRIT PETITION NO. 302 OF 2022

Samadhan s/o Rama Patil .. PETITIONER
Versus

The Director General, CRPF and others .. RESPONDENTS

Mr. R.N.Ghuge, Advocate for the Petitioners
Mr. V.A. Bramhe, Advocate for Respondents

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**CORAM : NITIN JAMDAR &
ANIL L. PANSARE JJ.**

DATE : 21 MARCH 2022

P.C. :

Heard learned counsel for the parties.

2. The petitioner has sought to quash and set aside the order dated 8 May 2021 issued by the Respondent No.3-Commandant, Group Centre, Central Reserve Police Force (CRPF), Nagpur, whereby the appointment of the Petitioner to the post of Constable (General Duty) CRPF, was cancelled.

3. A notice dated 21 July 2018 was issued by the Respondent-CRPF inviting applications from the candidates to the post of Constables in Central Armed Police Forces, National

Investigation Agency, Secretariat Security Force and Assam Rifles. The Petitioner applied for the said post.

4. The Petitioner had attended the Physical Efficiency Test on 28 August 2019 at CRPF, Pune. The Petitioner was referred to medical examination at Government Medical College, Nagpur. In the medical examination held on 18 January 2020, at the time of recruitment, the Petitioner was declared fit. Thereafter, the Petitioner was provisionally selected for appointment as Constable (General Duty) by letter dated 2 February 2021. An offer of appointment was issued to the Petitioner on 13 February 2021. It was also stated that the findings/opinion of Recruitment Medical Board was valid for one year from the date of fitness to join the service. Since the period of one year had elapsed between the physical examination of the Petitioner at Pune, the Petitioner was directed to report to a detailed medical examination at Group Centre, CRPF, Pune. The Petitioner reported before the Board at Pune and, on 31 March 2021, the Petitioner was declared medically 'unfit'. In the said medical examination, the Medical Board declared the Petitioner unfit due to "soft tissue mallet finger of Rt. distal phalanx middle finger".

5. After the examination, the Petitioner's case was referred for opinion and necessary direction. The opinion was given on 1 April 2021 and referring to guidelines dated 7 April 2014, the Respondent-CRPF requested the Director General of Police, (Medical) CRPF, Nagpur to review the medical examination report.

The Review Medical Board had declared the Petitioner 'unfit' on 4 May 2021.

6. Since the Petitioner was declared unfit, the offer of appointment to the Petitioner was cancelled. Being aggrieved, the Petitioner is before us.

7. The learned counsel for the Petitioner firstly submitted that the Petitioner was considered fit in the detailed medical examination at the time of recruitment process and the opinion of the first medical examination cannot be simply discarded. The learned Counsel submitted that as per the guidelines dated 7 April 2014 referred to by the Respondents, though the validity of medical examination is for one year, the candidate should not be declared unfit on the same ground on which he was found fit in the recruitment medical examination. The learned Counsel submitted that the Medical Board while giving opinion on 4 May 2021 has not considered the opinion of the subject expert which would clearly show that the Petitioner cannot be considered as unfit. The learned Counsel submitted that the guidelines issued by the Government of India, Ministry of Home Affairs regarding recruitment medical examination in the Central Police force and Assam Rifles on May 2015 emphasises upon giving due weightage to the opinion of the subject expert. The learned Counsel for the Petitioner has relied upon the decision of the Division Bench of Delhi High Court in the

case of *Kartikeya Arora vs. Union of India and Others*¹ in furtherance of his submission. The learned Counsel submitted that the opinion of the Medical Board, therefore, is contrary to the guidelines and as the Petitioner was found medically fit at the time of recruitment, the opinion/ order of the Board dated 4 May 2021 will have to be quashed and set aside. This being the only reason the impugned order dated 8 May 2021 be set aside and the Petitioner be reinstated in service. The learned counsel for the Respondents has drawn our attention to the reply filed and to the Manual which is referred to in the Recruitment Manual.

8. The fact that one year period from the recruitment medical examination the offer of appointment has elapsed is not in dispute and therefore, at the time of joining the services, the Petitioner was examined again and thereafter upon clarification sought the Petitioner was examined by the Board. In both, the medical examinations conducted on 31 March 2021 and the examination by the medical Board, the Petitioner has been declared unfit.

9. As regards the contention based on first report of the medical examination is concerned, there is no application of mind in this medical examination to noticing this deformity as to whether it

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can be considered as fit for recruitment. The guidelines of 7 April 2014 relied upon by the Petitioner, wherein it is stated that if the candidate is found fit in the earlier examination, the same should not be generally deviated from cannot be considered as an absolute principle otherwise second examination will be meaningless. Further, from the facts of this case, there is no positive opinion in the medical examination at the time of the recruitment considering the deformity that inspite of the same, the Petitioner is found to be fit.

10. As regards the contention regarding the opinion/ order of the Medical Board dated 4 May 2021 and the opinion of the subject expert is concerned, the Board has referred to the opinion of the subject expert. The deformity in the middle finger has been noted. The subject expert has referred to loss of activity in daily living which is different than combative duties. The Board after noting the opinion of the subject expert has declared the Petitioner unfit as per the subject order 9 VII(3)(a) of the Recruitment Manual. This clause of Recruitment Manual permits loss of soft tissue of terminal phalanx of only of the little finger of one or both hands. The Petitioner has deformity on the middle finger. Clause 3 states that the deformities of the fingers or hand that impair normal functioning and that interfere with the satisfactory performance of combatised duties would be considered as disqualified.

11. There is no conflict between the opinion of other members of the Board and subject expert as regards the physical condition but the opinion of the Board is upon of the result of the physical condition. The Medical Board has given undue weightage and, in fact, has gone by the condition of the finger referred to in the opinion. The opinion of the subject expert as regards daily living is not the same thing as combatised duties upon which the Manual has placed emphasis.

12. In the decision of the Delhi High Court in the case of *Kartikeya Arora vs. Union of India and Others* (cited supra), the Medical Board had not given weightage to the clinical opinion or medical opinion of the subject expert. In the present case, as stated above, the issue is different. The issue is the implication of the condition. As per the Recruitment Manual Clause 3, the condition of the Petitioner in the opinion of the Recruiting authority will in combatised duties would amount to disqualification. The reply affidavit filed by the Respondent-CRPF has emphasised on this fact that there is vigorous training and considering their deployment and nature of duties of CRPF even minor difficulties would impact the functional efficiency in future.

13. This being the position, it is not possible for us to sit in appeal over the decision of the Respondents and the Medical Board. The fact that the condition exists is not disputed. This combatised

duty amounts to disqualification considering the aspect of clause (3) of the Recruitment Manual. The condition suffered by the Petitioner will amount to interference to combatised duties is a view to be taken by those who are aware of the nature of the duties.

14. In spite of the second medical examination against the Petitioners, the Respondents have constituted the medical Board, got the Petitioner examined. There is no reason for us to believe that there was any *mala fides* against the Petitioner nor it is the case of the Petitioner.

15. In light of the above, the relief as sought for by the Petitioner cannot be granted. The writ petition is rejected.

[ANIL L. PANSARE,J.]

sahare

[NITIN JAMDAR,J.]