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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 21.01.2022***

+ W.P.(C) 12556/2021 & CM 39536/2021

ROCKEY

..... Petitioner

Through Mr.Yashpal Rangi, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through Mr.Niraj Kumar, Sr.Central
Govt. Counsel, UOI.
Dr.Anil Kumar is present
through VC.**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (Oral)**

The petition has been heard by way of video conferencing.

1. The present petition has been filed seeking setting aside of the findings of the Initial Medical Board (in short, 'IMB') and the Review Medical Board (in short, 'RMB') dated 15.09.2021 whereby the petitioner has been declared medically unfit for induction in the Indo Tibetan Border Police Force (in short, 'ITBP'). The petitioner further prays for a direction to the respondents to medically examine the petitioner again by a team of expert doctors in a fair and transparent



manner and if found fit, appoint the petitioner in the ITBP with all consequential benefits.

2. It is the case of the petitioner that pursuant to the Notification for 'Recruitment for the Post of Constable (Driver)' dated 04.02.2018 (hereinafter referred to as the 'Notification'), the petitioner had applied against the vacancies for the post of Constable (Driver) in the ITBP. For the purpose of appointment, the petitioner appeared for the Written Test as well as the Documentation & Practical (Skill) Test and cleared both stages. Upon clearing these stages of the recruitment process, the petitioner was shortlisted and issued an admit card for verification of original documents and a Detailed Medical Examination (in short, 'DME') by the IMB.

3. The petitioner appeared for his DME before the IMB at Referral Hospital, Greater Noida on 13.09.2021 and 14.09.2021. The IMB vide its report dated 13.09.2021 declared the petitioner to be medical unfit on two grounds, namely '*defective distant vision Rt. Eye 6/12*' and '*fistula in ANO*'. However, no document with respect to the IMB was provided to the petitioner.

4. Aggrieved by the decision of the IMB, the petitioner appeared for his Review Medical Examination (hereinafter referred to as 'RME') before the RMB on 15.09.2021. They found the petitioner to be medically fit on one ground, namely '*distant vision Rt. Eye 6/6*'. On the second account, namely '*fistula in ANO*', the petitioner was



sent to Dr. Manoj Gupta, who then sent the petitioner to another hospital, that is, Sharma Hospital, Greater Noida but the same refused to examine the petitioner and sent him back to Dr. Manoj Gupta. Dr. Manoj Gupta declared the petitioner to be medically unfit on the second account, namely '*fistula in ANO*'.

5. The petitioner, pursuant to the information available with the stage-wise result of the recruitment process on the ITBP website, had sought a medical re-examination by a team of experts vide representation dated 10.11.2021 but to no avail.

6. The petitioner contends that after the decision of the RMB, the petitioner had got himself examined by the Medical Officer, Government Hospital, Bhiwani, Haryana on 30.09.2021, who found the petitioner to be medically fit.

7. The learned counsel for the petitioner submits that Dr. Manoj Gupta, who had conducted the RME of the petitioner at the RMB stage, was not a member of the RMB. The learned counsel for the petitioner further submits that though the certificate of medical unfitness issued by the RMB dated 15.09.2021 is signed by three doctors, only one doctor who signed the certificate was present at the time of the RME.

8. The learned counsel for the petitioner submits that the petitioner is currently serving in the ITBP as a Water Carrier since 2013 and has been found to be medically fit not only at the time of enrollment in the service but also every year during the Annual Medical Examination.



He states that the petitioner had been declared to be medically fit as recently as December 2021.

9. The learned counsel for the petitioner submits that the Notification states that there shall be a gap of fifteen days between the DME by the IMB and the RME by the RMB, which was not complied with in the present case. The IMB was conducted on 13.09.2021 and the RMB was conducted on 15.09.2021, resulting in a gap of merely two days as opposed to the advertised fifteen days' gap. He submits that '*fistula in ANO*' is only a temporary condition and if the RMB had been conducted with proper interval, the petitioner would have healed and been medically fit.

10. This Court, in its order dated 10.11.2021, had directed the learned counsel for the respondents to produce the original medical record of the petitioner. The Court had further directed a doctor, who was familiar with the facts of the present case, to be present in Court.

11. Pursuant to the order of this Court dated 10.11.2021, Dr. Anil Kumar has joined the proceedings today by way of online link. Upon being inquired, Dr. Anil Kumar submitted that he is a surgeon and had examined the petitioner. In such examination, the petitioner was found to be suffering from '*fistula in ANO*' at the RMB stage. He submits that though '*fistula in ANO*' can be cured by way of surgery and the post-operative recovery period is also relatively short, yet it is one of the disqualifications prescribed in the 'Guidelines for Recruitment Medical Examination in Central Armed Police Forces and Assam Rifles – Revised Guidelines as on May 2015' (hereinafter referred to



as the ‘Guidelines’). When inquired about the petitioner being declared medically fit in December 2021, Dr. Kumar stated that he was unaware of the said development, however, in any case, the same shall not be relevant in as much as the recruitment process is to be guided by the Guidelines and the thoroughness of the two medical examinations, one for recruitment and the other being Annual Medical Examination, is vastly different.

12. This Court also inquired Dr. Anil Kumar about why the RMB of the petitioner was conducted within two days from the conduct of the IMB, as opposed to the fifteen-day gap advertised in the Notification. Dr. Kumar relied upon the Office Memorandum dated 31.05.2021 (hereinafter referred to as ‘OM’) to submit that vide this OM, an amendment has been made to the Guidelines to mandate that the RMB be conducted in continuation of DME preferably on the next date of the DME.

13. We have considered the submissions made by both the parties.

14. Clause 9 (XIII) (3)(f)(iii)(1) of the Guidelines disqualifies a candidate with evidence of anal fistula from appointment. The same is reproduced hereinbelow:-

“DETAILED MEDICAL EXAMINATION

***XIII. EXAMINATION OF INGUINAL
REGION AND GENITALS:***

3. Look for-

(f) Perineum and Ano-rectal region:



(iii) Ano-rectal

1. Evidence of anal fistula is disqualifying.
2. xxx
3. xxx

Examination of ano-rectal region-

(i)*The cases of anal warts (Condylomata), Fistula in ano, Prolapse Rectum and hemorrhoids should be rejected.*"

15. In view of the above stipulation in the Guidelines, the submission of the petitioner that '*fistula in ANO*' otherwise curable and temporary, is of no assistance to the petitioner and cannot be accepted. It is not for this Court to determine the medical standards required for recruitment to the Armed Forces. It is to be remembered that officers of the Armed Forces are to work in most inhospitable and harsh environment and therefore, the medical standards expected of them at time of recruitment have to be stricter than any normal recruitment process. In any case, there is no challenge to the above clause in the present petition and therefore, the disqualification of the petitioner cannot be faulted.

16. As far as the submission of the petitioner that he has been declared in SHAPE-1 in his Annual Medical Examination, the same again is not relevant to the present petition. As explained by Dr. Anil Kumar, the level of medical scrutiny at the time of recruitment process is different from the Annual Medical Examination of the already recruited personnel of the Armed Forces. At the time of recruitment,



it has to be necessarily stricter as the recruitment of an unfit person would not only jeopardize the well-being of such person alone but also cause loss of efficiency of the Armed Force. It may also burden the Armed Force with an unwarranted administrative issue of later accommodating such person at position other than for which they were recruited or boarding out such person. Therefore, merely because the petitioner was found to be in SHAPE-1 in his Annual Medical Examination, it cannot cast a doubt on the impugned reports of the IMB and RMB.

17. As far as the submission of the petitioner that the RME was conducted immediately and without waiting for fifteen days, within which time the petitioner could have got himself cured, is also without any merit. At the outset, Clause 3(e) of Annexure-A to the OM prescribes that *“henceforth, RME of candidates will be conducted in continuation of DME preferably on the next day of DME”*. Therefore, no fault can be found on the part of the respondents conducting the RME of the petitioner within two days of the IMB.

18. Even otherwise, the purpose of the RME is not to give time to the candidate to cure the disqualification but to assure that the IMB has not made a mistake in examination of the candidate. Even Clause 7 of the Notification states that a candidate, who had been declared medically unfit in the DME, can submit an appeal for his RME with a duly-filled Medical Certificate as a proof of evidence about the error of judgment on part of the Recruitment Medical Officer. Clause 7 is reproduced hereinbelow:



“7. **APPEAL AGAINST DME:-**

A candidate declared unfit in DME if not satisfied with the findings of the Medical Officer, can submit an appeal for his Re-Medical Examination (RME) with duly filled Medical Certificate (at Annexure-VII) as a proof of evidence about the error in judgment on the part of the Recruitment Medical Officer.”

(Emphasis supplied)

19. This Court, in its judgment dated 03.01.2022 in ***Avin Dalal vs. Union of India & Ors.***, W.P. (C) 15179/2021 held that the purpose of the RMB is to ensure that no mistake has occurred in the DME of the petitioner. The purpose is not to grant time to the candidate to rectify the deficiencies or the ailments because of which they have been found to be ineligible for their applied post.

20. As far as the reliance of the petitioner on the Medical Certificate issued by the Medical Officer, General Hospital, Bhiwani is concerned, this Court in ***Km. Priyanka v. Union of India & Ors.***, W.P.(C) 10783/2020, has held that the standard of physical fitness for the Armed Forces and the Police Forces is more stringent than that for the civilian employment. It was held that it is the doctors of the Forces, who are well aware of the demands of duties and the physical standards required to discharge the same. Their report cannot be discarded and would, in fact, prevail over the report of private or even other government doctors. It was held as under:

“8. We have on several occasions observed that the standard of physical fitness for the Armed Forces and the Police Forces is more stringent than for



*civilian employment. We have, in **Priti Yadav Vs. Union of India** 2020 SCC OnLine Del 951; **Jonu Tiwari Vs. Union of India** 2020 SCC OnLine Del 855; **Nishant Kumar Vs. Union of India** 2020 SCC OnLine Del 808 and **Sharvan Kumar Rai Vs. Union of India** 2020 SCC OnLine Del 924, held that once no mala fides are attributed and the doctors of the Forces who are well aware of the demands of duties of the Forces in the terrain in which the recruited personnel are required to work, have formed an opinion that a candidate is not medically fit for recruitment, opinion of private or other government doctors to the contrary cannot be accepted inasmuch as the recruited personnel are required to work for the Forces and not for the private doctors or the government hospitals and which medical professionals are unaware of the demands of the duties in the Forces.”*

21. In **Joginder v. Union of India & Ors.** W.P.(C) 522/2021, this Court has reiterated that training and military operations are extremely demanding in terms of the medical fitness of a candidate and a private doctor or a doctor working in a Government hospital may not be in a position to comment on the required medical standards for the Force.

22. As far the allegations regarding the doctors signing the RMB certificate not examining the petitioner is concerned, the impugned certificate itself states that the unfitness of the petitioner has been determined on the basis of an opinion of a surgeon. Dr. Anil Kumar has explained that he is the surgeon who examined the petitioner and found him to be suffering from ‘*fistula in ANO*’. Therefore, the said challenge also has no merit and is rejected.



23. In view of the above, we find no merit in the present petition. The same is dismissed with no order as to cost.

NAVIN CHAWLA, J

MANMOHAN, J

JANUARY 21, 2022/AB

