

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 13650 of 2021

Reserved on : 25.09.2023

Pronounced on: 21.12.2023

Vikash Kumar Chouhan

...Petitioner

-Vs-

The Union of India & Ors.

...Respondents

Present:-

Ms. Shraboni Sarkar

... for the Petitioner

Ms. Indrani Chakraborty

Ms. Sarda Sha

...for the Respondents

Rajarshi Bharadwaj, J:

1. The instant writ petition has been preferred challenging the order passed by the Inspector General, STC BSF Churachandpur (Manipur) in STC/Trg/BSF/BRT/2021/8533-39 dated 2nd June, 2021 wherein the petitioner's fitness status, as determined by the "Review Medical Board," was declared as unsatisfactory.

2. The facts in a nutshell are that a procedure for recruitment was conducted by the Staff Selection Commission (hereinafter referred to as 'SSC') concerning the post of constable in CRPFS, NIA, SSF and Rifleman in Assam Rifles. The petitioner upon successful completion of all stages of process of selection, such as the computer Based Examination (CBE), Physical Standard

Test (PST), Physical Efficiency Test (PET) and Detailed Medical Examination (DME), was provisionally selected for recruitment on 8th March, 2021. Such appointment letter was issued upon a conclusive satisfaction regarding the medical fitness of the petitioner. The petitioner subsequently joined his duty at Churachandpur in Manipur on 2nd April, 2021.

3. It was categorically mentioned in the order of appointment that the Detailed Medical Examination conducted by the Recruitment Medical Board would remain valid for a period of one year which was further extended from one year to eighteen months by a memorandum dated 16th April, 2021 issued by the Under Secretary, Government of India Ministry of Home Affairs. Consequently, the finding of the Recruitment Medical Board stood extended till June-July, 2021.

4. During the validity of the Detailed Medical Report and subsequent to a three weeks period following the petitioner's commencement in service, a directive was issued mandating the petitioner to undergo a formal medical examination. Following the examination, the petitioner was deemed medically unfit on 18th April, 2021. Consequently, on 19th May, 2021, the petitioner was instructed to undergo an X-ray of his right hand. After a thorough review of the X-ray report on 20th May, 2021, the Orthopedic Surgeon from the Divisional Hospital, Government of Manipur, unequivocally declared the petitioner medically fit for the resumption and continuation of active service.

5. However, the petitioner received a notice dated 2nd June, 2021, issued by one Suresh Kumar, acting as the 2nd in command for Training, purportedly representing the Inspector General. The notice included the publication of a list of candidates, who were deemed medically unfit by a "Review Medical Board" that was convened from 18th to 28th May, 2021. The petitioner's name also appeared on the list, as he was supposedly declared unfit due to Sequelae Osteomyelitis Distal Phalanx (RT).

6. Thus, being aggrieved and dissatisfied with the order dated 2nd June, 2021 as well as the purported report of the Medical Boards, the petitioner preferred the present writ petition.

7. The Learned Counsel representing the petitioner has advanced the following arguments:

- I.** The compulsory stipulations outlined in the Border Security Force Act of 1968, along with the accompanying regulations, designed to safeguard enrolled personnel from unwarranted dismissal based on medical fitness, have regrettably not been adhered to.
- II.** Rule 25 of the Border Security Force Rules, 1969, explicitly details the procedures for establishing a Medical Board and the process for issuing retirement orders following the Medical Board's findings. Such protocols have been egregiously violated in the present instance, rendering the order dated 2nd June, 2021, null and legally invalid. Further, the conclusions reached by the Medical Boards have never been furnished to the petitioner. Consequently, it is unequivocal that the respondents have acted in blatant contravention of the fundamental tenets of natural justice, as well as the specific statutory obligations concerning the communication of said findings to the petitioner.
- III.** The respondents have also failed to recognize that, in accordance with Rule 25(7) of the Border Security Force Rules, 1969, it was obligatory for them to permit the petitioner to resume duty, given the pendency of the petitioner's representation as per Rule 25(4) of the aforementioned Rules of 1969.
- IV.** The Medical Board constituted during the period from 18th May, 2021 to 28th May, 2021, cannot be classified as a "Review Medical Board." This is because the Rules of 1969 expressly stipulate that a Review Medical Board can only be constituted subsequent to the issuance of a retirement order, and solely in response to a representation submitted by the concerned enrolled individual. However, as of today, the

petitioner has not been served with any retirement order in accordance with Rule 25(3) of the Rules of 1969.

- 8.** Learned Counsel on behalf of the respondents has contended that:
 - I.** The recruitment medical evaluation remains effective for a duration of one year from the date of determination of the fitness for service. In the event when a candidate enlisted for service subsequent to the expiration of the recruitment medical's validity period, the candidate has to undergo a medical assessment conducted by a medical officer to ascertain the presence of any illness or deformity that may have developed subsequent to the initial recruitment medical examination. The candidate shall be permitted to join the service if found to be in the state of "fit" health. Following the petitioner's enlistment at STC BSF Churachandpur (Manipur), a medical examination was conducted by the Medical Officer on 16th April, 2021, resulting in the petitioner being assessed as 'UNFIT' due to a deformity of the 'Right Ring finger'.
 - II.** The petitioner was provisionally selected for a position in the Border Security Force (BSF) and was instructed to report to the Special Training Center (STC) BSF Churachandpur on 1st April, 2021. Subsequently, the Ministry of Home Affairs (MHA) extended the validity of this selection by 18 months on 16th April, 2021, which was after the initial reporting date. According to the terms outlined in the appointment letter, a medical examination was conducted by a medical officer on 16th April, 2021 and the petitioner was deemed "Unfit" due to a "Right Ring Finger Deformity." A follow-up medical examination by the Review Medical Board on 28th May, 2021, confirmed the petitioner's "Unfit" status, citing "Sequelae Osteomyelitis Distal Phalanx (RT)." The petitioner had previously been declared unfit during the review medical board on 28th May, 2021 as well.
 - III.** The Special Training Centre (STC) BSF Churachandpur, in its order no. STC/Trg/BSF/BRT/2021/8533-39 dated 2nd June, 2021, provided the

petitioner with the reason for his "Unfit" determination, citing "Sequelae Osteomyelitis Distal Phalanx (RT)." It is crucial to recognize that the constabulary component constitutes a significant portion of the Central Armed Police Forces (CAPFs). The effectiveness and operational success of the force greatly depends on the suitability and fitness of personnel at this level. Therefore, it is imperative that candidates possess the requisite aptitude, capability, and overall fitness to serve in the CAPFs. The recruitment of constables is a critical process, and the medical officers of the CAPFs are well-equipped to assess the fitness of candidates considering the specific tasks, roles, and duties associated with paramilitary service. Rule 25 of the BSF Rules, 1969, does not apply to the petitioner, as he was never formally enrolled in the BSF; instead, he was provisionally selected for the position.

9. On perusal of the documents brought to the Court and considering the submissions made on behalf of the parties, this Court is of the view that there is no dispute that a personnel of armed forces is presumed to be of sound mental and physical condition at the time of joining the service and if such personnel is discharged from service on account of disability, the onus is upon the employer to prove the same. In the present case, the petitioner was rejected from service based on the findings of the Medical Board duly constituted in accordance with the existing instructions refuting his claim. Moreover, there is no dispute in the fact that the petitioner ab initio had a deformity in his right hand's ring finger thereby making him not entitled to any relief as the respondent authorities cannot be directed to appoint a candidate who is not physically fit to perform his duties in the Paramilitary Force. Wherein the working of the force mainly depends on the capability and effectiveness of the personnel at this level.

10. The mandatory requirements which have been incorporated in the Border Security Force Act, 1968 and the Rules, specifically Rule 25 of the Border Security Force Rules, 1969 framed thereunder for protecting the

enrolled persons against arbitrary termination on the ground of medical fitness shall not be applicable in the present case as the petitioner was provisionally recruited and was never enrolled in BSF. Thus, no statute or regulation could be invoked against the petitioner. Similarly, the appeal preferred by the petitioner against the finding of the Second Medical Examination as well as seeking an extension of the Detailed Medical Examination Report shall also not be subject to the BSF Acts and Rules owing to the petitioner's lack of enrollment. Thus, the respondent authorities were correct in turning down the selection of the petitioner as a constable since he was provisionally selected subject to being medically fit.

11. For the foregoing reasons, the writ petition is devoid of any merits and is consequently dismissed. All pending applications are accordingly disposed of. However, there shall be no order as to costs.

12. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata

21.12.2023

PA (BS)