

15.05.2023  
06  
AN/Ct. No.07

**WPA 18617 of 2018**

**Yogesh Chhetri  
versus  
Union of India & ors.**

Mr. Ananta Kumar Shaw  
Mr. Puspall Chakraborty  
Ms. Srijita Nath

... for the petitioner

Ms. Chandreyi Alam

... for the Union of India

Mr. Anuran Samanta

... for the private respondent no. 6

The petitioner has prayed for issuance of a writ in the nature of mandamus to appoint the petitioner to the post of Head Constable (Ministerial) in Border Security Force (in short, B.S.F.) under Departmental Un-reserved Joint Category upon setting aside the revised merit list dated 04.05.2016.

Pursuant to the advertisement dated 04.07.2015 for filling up the vacancies of Head Constable (Ministerial) in BSF for the vacancy in 2014, the petitioner applied for the said post, participated in the first phase written examination held in 18.10.2015 and thereafter appeared for the second phase physical measurement, typing speed test, documentation and medical examination. The petitioner claims that the respondent authorities published the final result through the B.S.F. Website on 11.04.2016

wherein the petitioner was placed under Sl. No. 7. The petitioner claims that for some unknown reasons, the respondent authorities prepared a second panel which was published in the Website on 04.05.2016 wherefrom it appears that the petitioner was placed under Sl. No. 8 and the private respondent no. 6 was placed at Sl. No. 1.

Mr. Shaw, learned counsel appearing for the petitioner submits that the 6<sup>th</sup> respondent was declared “unfit” in the medical examination conducted by the authorities initially on 06.01.2016 and also in the review medical examination held on 14.03.2016. He submits that the respondent authorities, therefore, could not have published a separate list on 04.05.2016 by placing the 6<sup>th</sup> respondent in the first position.

Ms. Alam, learned counsel appearing for the respondent authority submits that the 6<sup>th</sup> respondent filed a writ petition before the Gwalior Bench of the Hon'ble Madhya Pradesh High Court and upon being served with a notice in connection with the said writ petition and after examination of the records, the Medical Directorate of the B.S.F. at New Delhi found variations in the findings of the Medical Boards at the time of initial examination as well as the review examination. She further submitted that since there was variation in the assessment of both the Medical Boards and in order to ascertain the correctness of the findings of the previous Medical Board, a fresh Medical Board was constituted to examine the medical standard of

Komal Prasad i.e. the 6<sup>th</sup> respondent. Ms. Alam contended that after the fresh medical examination was carried out on 21.04.2016 by the Medical Board consisting of three Medical Officers, the Medical Board found the 6<sup>th</sup> respondent as 'fit' for selection to the post of Head Constable (Ministerial) in BSF and thereafter the revised list dated 04.05.2016 was published.

Mr. Samanta, learned counsel for the 6<sup>th</sup> respondent submits that since the 6<sup>th</sup> respondent was declared unfit by the review medical board, he filed a writ petition before the Gwalior Bench of the Hon'ble Madhya Pradesh High Court alleging that there was an error in the opinion of the Medical Board at the time of initial medical examination as well as review medical examination. He submits that the authorities have rectified their earlier mistakes and the 6<sup>th</sup> respondent cannot be made to suffer for the mistakes committed by the Board. According to him, the 6<sup>th</sup> respondent was found fit upon the medical examination by the duly constituted medical board and, therefore, the 6<sup>th</sup> respondent was rightly appointed to the post of Head Constable (Ministerial) in BSF.

Heard learned counsel for all the parties at length and perused the materials placed.

Upon going through the materials placed, this Court finds that revised uniform guidelines for medical examination test for recruitment of G.O.s and N.G.O.s in the C.A.P.F.S. and A.R. was incorporated in Chapter 3 of

B.S.F. Medical Directorate which would be evident from the letter dated 09.06.2015.

The principal issue is whether the further medical examination after Review Medical Board gives his opinion can be sustained in law.

In the revised medical guidelines, it has been mentioned that the candidates with carrying angle upto 20 degree may be accepted if the same is not associated with abnormality of elbow joint. In the documents annexed to the affidavit-in-opposition filed by the respondent authorities, it has been mentioned that when the 6<sup>th</sup> respondent was initially examined by the medical board on 06.01.2016, he was declared unfit and upon a review made by the Medical Board, it was again found that the 6<sup>th</sup> respondent was unfit as he had the carrying angle above 20 degree.

By applying the revised guidelines, it appears to this Court that since the carrying angle of the 6<sup>th</sup> respondent was above 20 degrees, the review medical board declared the 6<sup>th</sup> respondent as “unfit”. However, it is the stand of the respondent authorities that in view of the variations in the findings of the Medical Boards as well as the Annual Medical Examination Report conducted in respect of the 6<sup>th</sup> respondent, the authorities decided to conduct a fresh examination by a fresh medical board.

On a specific query made by the Court to Ms. Alam as to whether the rules permit conducting a fresh medical examination after the review medical board gives its opinion, she could not produce any rules or regulations in support thereof.

It further appears from the revised guidelines that there is no right of appeal against the findings of the Initial Medical Board, but if the Government is satisfied on the evidence placed before them by the candidate concerned, of the possibility of an error of judgment in the decision of the Recruiting Medical Board or Initial Medical Board, it will be open to them to allow re-examination by the Review Medical Board.

In the case on hand, the authorities have conducted a fresh medical examination of the 6<sup>th</sup> respondent by the review medical board after the review medical Board has given its opinion. From the result of Review Medical examination dated 14.03.2016 for recruitment to the post of Head Constable (Ministerial) in B.S.F. insofar as the 6<sup>th</sup> respondent is concerned, it appears that there is a note appended to such result which would be relevant for the purpose of deciding the issue involved in this writ petition for which the same is extracted below:

*“Note: The decision of the Review Medical Board will be final. No appeal will be entertained against the finding of the Review Medical Board in Review Medical Examination.”*

It appears from the above note that the decision of the review medical board will be final and no appeal will be entertained against the finding of the review medical board. The effect is that the opinion of Review Medical Board is conclusive and cannot be reopened.

Ms. Alam would contend that the further Medical Examination of the 6<sup>th</sup> respondent which was held on 21.04.2016 was permissible as the same was done after the authorities detected some errors/variations in the earlier Medical examinations and the same was not at the instance of the 6<sup>th</sup> respondent. Such contention is not acceptable for the following reasons. Firstly it is the admitted position that the decision to conduct a further Medical Examination was taken after being served with a copy of the writ petition filed by the 6<sup>th</sup> respondent and, therefore, it cannot be said that it was a *suo motu* decision and not upon an approach being made by the 6<sup>th</sup> respondent. Secondly, in the absence of any provision enabling the authorities to conduct a further medical examination after the decision of the Review Medical Board, such action of the respondent authority has to be necessarily held to be without jurisdiction. That apart such an exercise cannot be supported as there might be possibility of such action being tainted with arbitrariness.

In view thereof, this Court holds that the result of the Medical Examination of the 6<sup>th</sup> respondent as per the decision of the Review Medical Board dated 14.03.2016 is

conclusive. As a consequence thereof it is to be necessarily held that the 6<sup>th</sup> respondent could not have been placed within the zone of consideration for appointment to the post in question.

For all the aforesaid reasons, the decision of the authorities to place the 6<sup>th</sup> respondent at serial no.1 in the list dated 4<sup>th</sup> May 2016 and to appoint him to the said post calls for interference.

This Court is, therefore, of the considered view that the respondent authorities lacked jurisdiction to conduct a fresh medical examination of the 6<sup>th</sup> respondent by a fresh medical board on 21.04.2016. Accordingly, 6<sup>th</sup> respondent who was placed in the first position in the panel published on 04.05.2016 is declared as unfit for holding the post of Head Constable (Ministerial) in B.S.F.

In view thereof, the result of the medical examination upon fresh examination of the 6<sup>th</sup> respondent on 21.04.2016 stands set aside and quashed. The revised merit list dated 04.05.2016 also stands set aside and quashed and the panel dated 11.04.2016 is declared as conclusive. Since the writ petitioner was placed at Sl. No. 7 in the panel published on 11.04.2016 and it is not in dispute that there were 7 vacancies to the posts in question and also that the post which the 6<sup>th</sup> respondent was holding will consequently fall vacant, the authorities are directed to appoint the petitioner to the post of Head Constable (Ministerial) in the B.S.F. with effect from the

date the 6<sup>th</sup> respondent was appointed to the said post in question.

The writ petition stands **allowed**, without however, no order as to costs.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

**(Hiranmay Bhattacharyya, J.)**