

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

WRIT PETITION NO. 7251 OF 2022

Jitendrakumar s/o Mohanlal Yadav,
Aged about 22 years, Occupation – Student,
R/o Tayade Colony, Near Mahadeo Mandir,
Khamgaon, Tq. Khamgaon, District Buldhana. **PETITIONER**

VERSUS

- 1) Union of India,
through its Principal Secretary,
Ministry of Personnel, Public Grievances
and Pensions, Department of Personnel
and Training, New Delhi.
- 2) Staff Selection Commission,
through its Secretary,
Block No.12, CGO Complex, Lodhi
Road, New Delhi.
- 3) Detailed Medical Examination Rectt.
Board, through its Presiding Officer,
CT/GD-2021, Group Centre CRPF,
Nagpur.
- 4) Review Medical Examination Rectt.
Board, through its Presiding Officer,
CT/GD-2021, GC CRPF, Nagpur. **RESPONDENTS**

Mr. V.R. Deshpande, Counsel for the petitioner,
Mr. N. Deshpande, D.S.G.I. for respondent 1,
Mr. S.A. Chaudhari, Counsel for respondents 1, 3 and 4.

CORAM : ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.
DATED : 27th MARCH, 2023

ORAL JUDGMENT : (PER : R.B. DEO, J.)

Petitioner-Mr. Jitendrakumar Yadav, who has done well academically, is driven by the urge to serve the country by joining Central Armed Police Forces (CAPFs). The recruitment to the CAPFs is done on the basis of the selection process conducted by respondent 2-Staff Selection Commission, in so far as Group-B posts which are in the pay scale of Rs.10,500/- maximum or below and Group-C non technical posts. Respondents 3 and 4 are the Medical Examination Boards.

2. Staff Selection Commission published notice dated 17-7-2021 declaring the programme/schedule for recruitment examination for Constables in CAPFs, NIA, SSF and Rifleman (GD) in Assam Rifles Examination-2021. In response, the petitioner submitted online application form on 17-7-2021. The petitioner appeared for the examination and secured 69.16 marks. The name of the petitioner was included in the list of qualifying candidates for physical examination which was published on 25-3-2022. The physical examination was conducted on

18-5-2022 and the petitioner was found qualified to undergo the detailed medical examination. The petitioner appeared for the detailed medical examination on 24-9-2022. He was declared unfit vide memorandum of unfitness dated 24-9-2022. The petitioner applied for review medical examination which was conducted on 30-9-2022, and the petitioner was again declared unfit in view of a tattoo on his right forearm.

(a) The petitioner asserts that the tattoo was already removed before the review medical examination and all that remained was a scar.

(b) The petitioner submits that apart from the fact that there was no tattoo, the petitioner could not have been declared medically unfit. The petitioner submits that inasmuch as the only reason for declaring him unfit is non-existent and in any event untenable, the declaration that the petitioner is not medically fit falls foul of the constitutional mandate that the action of the State must be informed with reason and enthused with fairness.

(c) The petitioner is relying on a decision of the High Court of Delhi rendered in similar fact situation.

3. While issuing notice vide order dated 23-11-2022 we granted interim relief in the following terms.

“In the meanwhile, one post in the Maharashtra-General-Unreserved-Male category for the post of Constable (GD) in Central Armed Police Forces (CAPFs), NIA, SSF and Rifleman (GD) in Assam Rifles Examination-2021 shall be kept vacant.”

4. Respondents 1, 3 and 4 have filed affidavit-in-response dated 19-1-2023. It is submitted that the petitioner was re-examined by the Review Medical Board on 30-9-2022 and found unfit due to “visible tattoo over right forearm anteriorly”. The guidelines for recruitment medical examination in CAPFs and Armed Rifles dated 20-5-2015 are referred in the affidavit-in-response, and it is submitted that only tattoos on traditional sites of the body like inner aspect of the left forearm, which is non saluting limb or the dorsum of the hands are permitted. It is reiterated that the petitioner was declared unfit in view of the visible tattoo on the right forearm. The respondents deny the claim of the petitioner that the tattoo was removed prior to the review medical examination. Dealing with the submission premised on the judgment of the High Court of Delhi, it is not

denied that the Delhi High Court did direct re-examination by the Medical Board. The said order is distinguished on the premise that though the petitioner removed the tattoo mark before appearing for the review medical examination, the tattoo was found visible. Since the pleadings are not very clear, we extract the same verbatim -

“In this case condition is different as the petitioner has, already operated/removed his Tattoo mark before appearing in Review Medical Examination on 30-9-2022 in which Review Medical board (Constituted with 01 Chief Medical Officer, 02 Medical Officer), still found “Visible Tattoo over Right forearm anteriorly”. Accordingly, the petitioner was declared Unfit.”

(a) The respondents specifically submitted that in accordance with the results declared on 07-11-2022, the recruitment process is almost complete and all the posts are filled in, and therefore, the interim order dated 23-11-2022 cannot be complied with. We may extract paragraph (xii) of the affidavit-in-response dated 19-1-2023 verbatim :

“(xii) AS TO PRAYER CLAUSE – The order passed by the authorities is as per Act and Rules and therefore the petitioner is not entitled for any relief much less the relief sought under the clause. Moreover, as per the result declared by the SSC, New Delhi on 07-11-2022, offer of appointments have already been issued to

selected candidates by the various CAPFs department i.e. BSF, CISF, SSB, ITBP, AR, SSF. Now the recruitment process has also been completed and all the posts in the category of the petitioner have been filled and therefore as per interim order dated 23-11-2022, no post can be kept vacant as the same has already been filled much prior to the filing of the present petition.”

5. During the course of hearing, it became obvious to us that the statement in paragraph (xii) extracted supra was incorrect, if not false, and we did express such *prima facie* view to the learned Deputy Solicitor General of India Mr. N. Deshpande. In response, an additional affidavit dated 10-3-2023 is filed by Mr. P.R. Jambholkar, Deputy Inspector General of Police, Group Centre, CRPF, Nagpur which asserts thus:

“3. It is submitted that this Hon’ble Court had passed interim order on 23-11-2022. Vide the said interim order, this Hon’ble Court directed the respondent to “In the meanwhile, one post in the Maharashtra-General-Unreserved-Male category for the post of Constable (GD) in Central Armed Police Forces (CAPFs), NIA, SSF and Rifleman (GD) in Assam Rifles Examination-2021 shall be kept vacant.

4. It is pertinent to mention here that before passing of the above interim order on 23-11-2022, the entire recruitment process was over on 07-11-2022. All the vacancies of Maharashtra State have been filled and hence no post could have been kept vacant.

5. It is submitted that the notice of recruitment para 1.6 and 13.13 clearly mentions that the candidates will

be considered for the vacancies of a State/Union Territory. Thus, the vacancies of Maharashtra State have already been filled before passing of the interim order by this Hon'ble Court. A copy of the said notice is annexed herewith as **Annexure R-I**."

6. However, presumably having realised that the earlier affidavits were not consistent with the factual position, a further affidavit dated 20-3-2023 is filed, which is again sworn by Mr. P.R. Jambholkar, which seeks permission to unconditionally withdraw the affidavit dated 10-3-2023, and also the statement in paragraph (xii) of the first affidavit, which statement is already noted supra.

7. While we would expect the respondents, as responsible paramilitary officers to be more careful in future, we are not inclined to pursue the matter further, and we permit withdrawal of the earlier affidavit/s as prayed.

8. We are not inclined to delve deeper in the controversy which is generated due to the narrative and the counter narrative as regards the existence of the tattoo on the date of the review medical examination. We may note that photographs are placed

on record, and there is no rebuttal, either to the submission or then the photographs, as regards the present position. We are clearly not required to follow the course adopted by the High Court at Delhi, inasmuch as before us it appears to be undisputed that at least as of now, there is no tattoo in existence.

9. It is not even argued that there is any other impediment in issuing the appointment order. In the present matter, and in the absence of the necessary pleadings, we are not inclined to delve deeper in the broader question as regards the tenability of the guidelines and the challenge on the premise of irrationality. Such exercise is clearly not necessary.

10. We quash the declaration of unfitness and direct that if the petitioner is otherwise qualified and eligible on the basis of the performance in the recruitment test, the appointment order shall be issued within the four weeks from the date this order is uploaded on the High Court Website.

11. We clarify that save and except the appointment within the timeline prescribed, the petitioner shall not be entitled to any other benefit nor shall he claim deemed date seniority or such or similar relief.

12. The petition is allowed in the afore-stated terms.

(Mrs. Vrushali V. Joshi, J.)

(Rohit B. Deo, J.)

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