



W.P(MD)No.17478 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.04.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.17478 of 2020

and

W.M.P(MD)Nos.14623 and 14625 of 2020

Abiram

... Petitioner

Vs.

1.The Chairman,
Staff Selection Commission,
Block No.12, PGO Complex,
Noway Road, New Delhi -03.

2.Regional Director (SR),
Staff Selection Commission,
2nd Floor, EVK Sampath Building,
DPI Campus, College Road,
Chennai - 600 006.

3.The Deputy Inspector General
Recruitment Branch,
ITBP Sivagangai,
Illupalkudi,
Padamathur Post,
Sivagangai District.

4.The Deputy Inspector General (Med)
Recruitment Branch,
CRPF CH Bangalore,
Yelahanka,
Karnataka - 560 064.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records relating to the Form No.4 of Constable (GD) Exam-2018, Review Medical Examination Report dated 24.09.2020 on the file of the respondent No. 4 and quash the same and consequently direct the respondents to select and appoint the petitioner as Constable in CAPF (Central Armed Police Force) within a stipulated time that may be fixed by this Court.

(Prayer amended vide Court order dated 30.03.2023)

For Petitioner : Mr.H.Thayumanaswamy

For Respondents : Mr.K.R.Laxman
Central Government Standing Counsel

ORDER

Heard the learned counsel on either side.

2.The respondents issued notification on 21.07.2018 for filling up vacancies in the post of Constable. The petitioner wrote the written examination. He cleared the same. He also cleared the physical test. He underwent the medical examination on 12.02.2022. He was issued with e-admit card also. However on 24.09.2020, he received Review Medical Examination Report as 'unfit' indicating that he has underwent “ Refractive Correction Surgery”. The stand of the petitioner was that he never underwent



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any surgery and that some mistake has been committed in the review medical examination board. However, the petitioner's request was not accepted. That led to the filing of this writ petition.

3. When the matter was taken up for hearing, a learned Judge of this Court vide order dated 27.07.2022, passed the following order:

" The petitioner's candidature for selection to the post of Constable in the Central Reserve Police Force (C.R.P.F.) / Into-Tibetan Border Police, was rejected on the ground that he had undergone LASIK or other kind of vision refractive correction surgery in both eyes.

2.In order to ascertain as to whether such surgery was earlier performed on the petitioner's eyes, the Dean of Regional Institute of Ophthalmology, Chennai, is requested to assign a Senior Ophthalmologist to examine both the eyes of the petitioner and to certify as to whether any sort of refractive correction surgery has been performed on the petitioner's eyes and send a report on the same in a sealed cover to this Court. The petitioner shall appear before the Dean of the Regional Institute of Ophthalmology, Chennai, within a period of fifteen days from the date of receipt of a copy of this order.

3. Registry is called upon to forward a copy of this order to the Dean, Regional Institute of Ophthalmology, Chennai.

4. Post the matter on 26.08.2022."



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4. Pursuant to the said direction, the petitioner was sent for examination to the Special Medical Board, Regional institute of Ophthalmology and Government Ophthalmic Hospital, Egmore, Chennai. The following report has been received from them. The report was enclosed along with a communication bearing No.Na.Ka.4111/Maru/2022 dated 29.08.2022. The report reads as follows:

"Name ; Mr.Abiram

The Patient Mr.Abiram has undergone Ophthal examination at Regional Institute of ophthalmology, Egmore, Chennai 8 on 17.8.2022 Patient was found to have 6/6 vision both eyes.

Corneal Topography was done in Cornea department Regional Institute of Ophthalmology and Government Ophthalmic hospital, Egmore, Chennai -08.

Slitlamp Examination and corneal Topography of both eyes did not reveal any evidence of patient having undergone refractive corneal surgery."

5. In view of the aforesaid report, there cannot be any doubt that the petitioner's stand is correct and that he never underwent any refractive error correction surgery. When a similar issue came up before me vide order dated 08.03.2022, in W.P.(MD)No.16276 of 2020, I allowed the same in the following terms:



" 7. It has been definitely established that there is absolutely no evidence in support of the stand of the respondent that the petitioner has undergone refractive error correction surgery. The petitioner cannot be called upon to prove the negative. He can only make an assertion that he never underwent any eye surgery. If according to the respondent, the petitioner had undergone the said surgery, it is for the respondent to establish the same. Since a doubt arose in the mind of this Court, this Court decided to obtain expert opinion in this regard. The experts attached to two hospitals namely Madurai Rajaji Government Hospital, Madurai and the Regional Institute of Ophthalmology and Government Ophthalmic Hospital, Egmore, Chennai - 8, subjected the petitioner to a comprehensive examination and came to the conclusion that they do not find any evidence to show that the petitioner has undergone any refractive error correction surgery. Since that is the only ground on which the petitioner was disqualified, the impugned order is set aside.

8. The petitioner was eligible when he applied for recruitment. He had scored good marks in the written examination. He was also successful in the physical endurance test. The only reason for disqualifying him is what is mentioned above. Since the ground of disqualification has been demonstrated to be palpably erroneous, this Court has to necessarily interfere. The order impugned in this writ petition is set aside. The respondents 1 to 3 are directed to select and appoint the petitioner as Constable (GD), Central Armed Police Forces(CAPFs), NIA & SSF and Rifleman(GD) in Assam Rifles(AR). Such an order will be issued by the competent authority within a period of five weeks from the date of receipt of a copy of this



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order. While the petitioner will not be entitled to any monetary benefits, he will be placed on par with his batch mates. The monetary benefits will accrue to the petitioner with effect from the date of his appointment.

9. This writ petition is allowed. Consequently, connected miscellaneous petitions are closed. No costs."

6. The present writ petition is also allowed on the same terms. The competent authority will issue order appointing the petitioner as Constable within a period of 5 weeks from the date of receipt of a copy of this order. The petitioner will not be entitled to any monetary benefits for the past period. He however, will be placed on par with his batch mates. The monetary benefit will accrue to the petitioner with effect from the date of his appointment.

7. This writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

03.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No

Note: Issue order copy on **05.04.2023**
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WEB COPY

To:

- 1.The Chairman, Staff Selection Commission,
Block No.12, PGO Complex, Noway Road, New Delhi -03.
- 2.Regional Director (SR), Staff Selection Commission,
2nd Floor, EVK Sampath Building,
DPI Campus, College Road, Chennai - 600 006.
- 3.The Deputy Inspector General Recruitment Branch,
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G.R.SWAMINATHAN, J.

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