



W.A(MD)No.1378 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.01.2023
(Reserved on 02.01.2023)

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.A(MD)No.1378 of 2022
and
CMP(MD)No.10910 of 2022

R.Periyasamy

... Appellant

vs.

1. The Chairman,
Staff Selection Commission,
Ministry of Personnel, Public Grievances & Pensions,
Block – 12, CGO Complex,
Lodhi Road, New Delhi-110003.

2. The Regional Director,
Staff Selection Commission,
Southern Region,
2nd Floor, EVK Sampath Building,
DPI Campus, College Road,
Chennai-600 006.

3. The Deputy Inspector General,
Recruitment Training Centre,
Indo Tibetan Border Police Force,
Illupaikudi, Padamathur (PO),
Sivagangai-630561.

... Respondents

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PRAYER : Writ Appeal filed under Clause 15 of the Letters Patent, against the order passed in W.P(MD)No.14257 of 2020 dated 21.09.2022.

For Appellant : Mr.T.Sakthikumaran for
Mr.M.Govindarajan
For Respondents : Mrs.L.Victoria Gowri
Deputy Solicitor General of India

JUDGMENT

(Judgment of the Court was made by D.KRISHNAKUMAR, J.)

The appellant/writ petitioner has filed the instant intra-court appeal as against the order passed by the Writ Court in W.P(MD)No. 14257 of 2020 dated 21.09.2022.

2. According to the appellant/writ petitioner, the 1st respondent issued a notification dated 21.07.2018, inviting applications for the post of Constable (General Duty) in Border Security Force (BSF), Central Industrial Security Force (CISF), Central



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Reserve Police Force (CRPF), Indo Tibetan Border Police (ITBP), Sashastra Seema Bal (SSB), National Investigation Agency (NIA) and Secretariat Security Force (SSF) and Rifleman (General Duty) in Assama Rifles. The appellant applied for the same through online mode along with necessary fee and other relevant documents. The 2nd respondent called the appellant to appear for the written examination. The appellant has attended the written examination and secured 45.5239 marks and he also became qualified in the physical standard test. Thereafter, the appellant was called to attend the medical examination and he attended the same before the 3rd respondent on 29.01.2020, however, the 3rd respondent without examining the appellant properly, disqualified him on the ground of shoulder drooping and scoliosis. Based on the medical report, the appellant was rejected for selection to the aforesaid post. Therefore, the appellant filed the writ petition contending that he has no such deformity as found in the review medical examination conducted by the respondents and that the medical report does not disclose the percentage of deformity. The Writ Court considering the contentions



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of the appellant, passed an interim order to conduct a fresh medical examination for the appellant. Based on the said interim order, the appellant had appeared for the medical examination before the RME Board of Recruitment which conducted review medical examination and declared the appellant medically unfit for the aforesaid post. Based on the report of the said medical board, the Writ Court dismissed the writ petition on the ground that the appellant is suffering from scoliosis. Challenging the said order of the Writ Court, the appellant has filed this appeal.

3. Learned counsel for the appellant relied upon the report of RME Board of Recruitment and contended that the said report itself states that the appellant has only mild scoliosis. It is the specific contention of the learned counsel that as per Clause C(xlviii)(h) and (q) under the heading IV.Medical Examination of the Staff Selection Commission Notification dated 21.07.2018, Scoliosis more than 15 degree as measured by Cobbb's method alone will be a disqualification, but in this case, the medical board has not specified



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the degree of deformity of the appellant, whereas, it has been stated that the appellant has mild scoliosis and therefore, the rejection of the appellant for selection to the aforesaid post, is erroneous and the Writ Court failed to appreciate the said Clause in the aforesaid Notification in proper perspective and merely dismissed the writ petition holding that the appellant is suffering from scoliosis and therefore, the order passed by the Writ Court is liable to be set aside.

4. Per contra, learned Deputy Solicitor General of India appearing for the respondents has strongly objected to the aforesaid submissions of the learned counsel for the petitioner and contended that as per the report of the medical board, the appellant is not eligible for selection to the aforesaid post. As regards the contention of the learned counsel for the appellant that as per Clause C(xlviii)(h) and (q) of the Staff Selection Commission Notification dated 21.07.2018, Scoliosis more than 15 degree as measured by Cobbb's method alone will be a disqualification, the learned Deputy Solicitor General of India invited our attention to Clause 6(13) of the



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Guidelines for Recruitment Medical Examination in Central Armed Police Forces and Assam Rifles issued by the Government of India, Ministry of Home Affairs (Police Division-II), and submitted that the appellant has abnormal curvature of spine and therefore, he was disqualified. Further, as per the report of the RME medical board dated 06.05.2021, apart from scoliosis, the appellant has drooping shoulder (Rt side), a scar mark (surgical) in L3 and L5 region, and such other deformities and therefore, the medical board has rightly rejected the appellant for selection to the post of Constable which has been rightly appreciated by the Writ Court by dismissing the writ petition. Therefore, she prayed for dismissal of the writ appeal.

5. Heard the learned counsel for the parties and perused the materials available on record.

6. In the present case, pursuant to the notification dated 21.07.2018 the appellant has applied for selection to the post of Constable (General Duty) in Border Security Force (BSF), Central



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Industrial Security Force (CISF), Central Reserve Police Force (CRPF), Indo Tibetan Border Police (ITBP), Sashastra Seema Bal (SSB), National Investigation Agency (NIA) and Secretariat Security Force (SSF) and Rifleman (General Duty) in Assama Rifles. Vide order dated 24.09.2020 of the 3rd respondent, he had been medically rejected for selection to the said post on the ground of visual activity 6/9(R) & 6/9(L) scoliosis, surgical scar over L3-L5, right shoulder drooping. Challenging that order, the appellant filed writ petition. The Writ Court by interim order dated 01.04.2021 has issued the following directions:-

"As per the Staff Selection Commission Notification Class 'C' XLIII h, g (iii) Scoliosis more than 15 degree as measured by Cobbs method and the other difficulty namely earbone a small tympano steriotic patch in left ear are disqualification. The DME/RME reports do not specify the degree of Scoliosis nor indicates that the Cobbs method was conducted. As such, the disqualification based on the report of the RME is unreliable.

2.In this background, it would be appropriate to direct the respondent commission to conduct a fresh Medical examination, insofar as the three petitioners are concerned and the Review Medication Examination report shall be based on the



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diagnosis through Cobbs method and shall also reflect the degree of Soliosis. Since the petitioners are being subjected to retest the other medical condition pointed out in the RME, namely a small tympano steriotic patch in left ear, shall also be re-examined. The first respondent shall endeavour to complete the Review Medical Examination Test, within a period of 25 days from today and submit a report before this Court on or before 28.04.2021.

3.List the matter on 28.04.2021."

7. Pursuant to the aforesaid interim order, the appellant was subjected to review medical examination by the RME medial board and the said medical board declared the appellant as unfit to the aforesaid post. It is relevant to extract below the report of the RME medical board:-

"Clinical Examination:-

- Drooping shoulder (Rt side)
- A scar mark (surgical) tnt L3 L5 Region
- mild SCOLIOSIS tnt

Individual operated for Intervertebral disc prolapse L4 L5
mildline fenestration & Rt discectomy on date 19-12-2015

X-Ray Finding:-



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- mild lateral spine curvature of lumber spine
- Osteophytes are seen anterior aspect of L4-L5
- incomplete Sacralization

Opinion of Board:-

UNFIT"

8. Based on the said medical report, the Writ Court dismissed the writ petition. Challenging the same, the appellant/writ petitioner has filed this appeal.

9. The point for consideration is that whether the appellant is entitled for selection to the aforesaid post of Constable. The primordial contention of the appellant is that as per the report of the RME medical board, the appellant has only mild scoliosis. Further, as per Clause C(xlviii)(h) and (q) under the heading IV.Medical Examination of the Staff Selection Commission Notification dated 21.07.2018, Scoliosis more than 15 degree as measured by Cobbb's method alone will be a disqualification, but in this case, the medical board has not specified the degree of deformity. To substantiate the



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said contention, the appellant has relied upon the medical board's report of another candidate at page 111 of the typedset of papers, wherein, the medical board has mentioned the percentage of scoliosis suffered by the candidate therein. The appellant further stated that the Specialist after thorough check up, issued a certificate to the appellant to the effect that "no shoulder dropping and normal", as such, the appellant has no such deformity, but without considering the same, the respondents rejected the candidature of the appellant and the learned Single Judge also without appreciating these aspects, dismissed the writ petition.

10. As rightly contended by the learned Deputy Solicitor General of India, as per Clause 6(13) of the Guidelines for Recruitment Medical Examination in Central Armed Police Forces and Assam Rifles issued by the Government of India, Ministry of Home Affairs (Police Division-II), the appellant has abnormal curvature of spine. The aforesaid Clause 6(13) reads as follows:-



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"13) Abnormal curvature of spine (exact nature, e.g. kyphosis, scoliosis, lordosis etc. to be specified)"

11. Though the learned counsel for the appellant relied on Clause C(xlviii)(h) and (q) under the heading IV. Medical Examination of the Staff Selection Commission Notification dated 21.07.2018, and contended that Scoliosis more than 15 degree as measured by Cobb's method alone will be a disqualification and that the medical board has not specified the percentage of deformity while it has mentioned the same in case of another candidate, perusal of the RME medical board's report shows that apart from scoliosis, the appellant has other deformities as extracted supra. It is well settled that opinion of the experts cannot be found fault with unless the evidence contrary thereto is adduced. In the present case, no such proof has been produced to disprove the opinion of the medical board. Further, on the contentions of the appellant, though the Writ Court passed an interim order for conducting fresh medical examination for the appellant, in that review medical examination also, the appellant was



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found unfit to the post of Constable and based on the report of the medical board the Writ Court has rightly dismissed the writ petition. We see no ground to interfere with the order of the Writ Court.

12. Accordingly, the Writ Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K.,J.] & [R.V.,J.]
12.01.2023

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

1. The Chairman,
Staff Selection Commission,
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Block – 12, CGO Complex,
Lodhi Road, New Delhi-110 003.

2. The Regional Director,
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2nd Floor, EVK Sampath Building,
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D.KRISHNAKUMAR, J.
and
R.VIJAYAKUMAR, J.

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3. The Deputy Inspector General,
Recruitment Training Centre,
Indo Taibetan Border Police Force,
Illupaijudi, Padmathur (PO),
Sivagangai-630561.

PRE-DELIVERY JUDGMENT MADE IN
W.A(MD)No.1378 of 2022
DATED : 12.01.2023