



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Reserved on: July 18, 2023**
Pronounced on: August 28, 2023
+ **W.P.(C) 463/2020**

DEEPIKA Petitioner
Through: Mr. Prateek Rathee, Advocate

Versus

UNION OF INDIA & ORS Respondents
Through: Mr. T.P.Singh, Senior Central
Government Counsel with AC
Mithlesh Kumar, SI Prahlad &
SI Amit Kumar, CISF

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. The present writ petition has been filed by the petitioner seeking quashing of orders dated 28.07.2019, 27.09.2019 and 25.11.2019 passed by the respondents.
2. Petitioner claims to have applied for the post of Sub-Inspector/Exe. in CISF pursuant to an advertisement issued by the respondents in the year 2016. After qualifying examination and selection process petitioner joined the services on 12.01.2018 and was posted in NISA, Hyderabad. On 13.02.2018, petitioner experienced abdominal pain and approached Yashoda



Hospital where she was advised to undergo medical examination. On 15.02.2018, petitioner underwent various medical examinations which suggested that she was suffering from *Choledochal Cyst*. The doctor opined that her pain was not related to the training and she could continue it and that the cyst, though required surgery, but not immediate. On 06.08.2018, petitioner again felt severe pain and visited CISF Hospital from where she was referred to CGHS approved hospital.

3. Petitioner has averred that on 07.08.2018, the respondents asked petitioner to go back home and get the surgery done or else her services will be discontinued. So, the petitioner was constrained to write to respondents that her financial condition did not permit her to undergo surgery. With the permission of respondents, petitioner visited Krishna Institute of Medical Sciences Limited on 01.09.2018 where estimated expense of Rs.1,05,013/- was given, which was submitted to the respondents. Petitioner visited the CISF Hospital on 29.09.2018 where it was opined that she was fit to resume training on 30.09.2018. Petitioner again visited Yashoda Hospital on 10.11.2018 and thereafter, Government Medical College Hospital, Chandigarh on 27.11.2018, where doctors opined that she was fit for any kind of physical exercise. Thereafter, petitioner visited Safdarjung Hospital on 28.11.2018 and upon being referred, visited AIIMS on 29.11.2018.

4. Petitioner has averred that she underwent standard Medical Board on 28.01.2019. Petitioner also visited Yashoda Hospital on 29.01.2019 where she was declared fit for physical exercise. Accordingly, petitioner joined her duty on 31.01.2019, however, respondents rejected the said opinion. Petitioner was again subjected to detailed medical examination and was



admitted to Osmania General Hospital, Hyderabad, where also petitioner was advised that she was not in dire need of surgery. However, yet again petitioner was subjected to follow-up on 09.05.2009.

5. On 04.07.2019, petitioner submitted a Certificate from Asian Institute of Gastroenterology certifying that she could do any kind of exercise and advised not an emergency surgery, however, respondents again asked the petitioner to undergo standard Medical Board from 03.07.2019 to 08.07.2019. During the medical examination, the doctor for the first time opined that petitioner was unfit for duty and her surgery was essential and life threatening. On the basis of the aforesaid opinion, the petitioner was terminated from services vide order dated 27.08.2019 passed by the respondents against which petitioner made a representation dated 05.09.2019 which was replied vide letter dated 27.09.2019 by the respondents.

6. Aggrieved against the termination order dated 27.08.2019, petitioner preferred an appeal which was rejected by the respondents in a mechanical manner vide order dated 25.11.2019.

7. At the hearing, learned counsel for petitioner submitted that petitioner had cleared the CISF examination on 12.01.2018 and she was performing her duties, including PT Classes and was declared fit by different doctors at different hospitals. The respondents have failed to appreciate that the respondents' CISF Hospital had also declared her fit to resume training on 29.09.2018. Despite so many opinions rendered by different hospitals, however, respondents have arbitrarily terminated the services of petitioner. Hence, a prayer for quashing of aforesaid orders is made by the petitioner.



8. To the contrary, learned counsel for respondents submitted that the petitioner has been suggested surgery for *Choledochal Cyst* which can be managed surgically, however, petitioner is not willing to undergo surgery and during 44 weeks of training she has been declared unfit for training and service. Learned counsel placed reliance upon CCS (CCA) Rules 1965 to submit that during the process of appointment or training the services of government servant can be terminated. Reliance was also placed upon Rule 25(2) of CISF Rules, 2001 in support of above submissions.

9. Learned counsel for respondents further submitted that termination of petitioner's services based upon the recommendation of the medical report submitted by Composite Hospital CRPF, cannot be faulted with. Learned counsel for respondents next submitted that all the doctors who have examined the petitioner suggested that the surgery is required though may not be urgent but after some time and so, the opinion rendered by the Composite Hospital is not baseless. Lastly, learned counsel submitted that the present petition is devoid of merits and deserves to be rejected.

10. To controvert the stand taken by the learned counsel for respondents, learned counsel for petitioner submitted in rebuttal, that at no point of time petitioner denied to undergo the surgery, she has been declared fit to join training and duty by different doctors and so her termination of service on this count is arbitrary and bad in law.

11. This Court had extensively heard learned counsel representing both the sides. Upon perusal of material placed before this Court we find that petitioner-Deepika had joined basic training with 44th batch SI/Exe w.e.f. 12.01.2018. However, during her basic training she was declared



temporarily unfit by the Chief Medical Officer (Selection Grade) National Industrial Security Academy (NISA) due to cyst (Choledochal Cyst). She was directed to appear before Standing Medical Board on 28.01.2019, however, her Standing Medical Board could not be completed for want of investigation. The respondents vide e-mail message No.546 dated 05.04.2019 directed the petitioner to get an opinion from the Gastroenterologist of Government Medical College prior to appearing before Standing Medical Board at NISA, Hyderabad. The respondents have taken the plea that though petitioner had appeared before the Standing Medical Board on 23.04.2019, however, failed to submit an opinion of the Specialist with all investigation reports. She was sent to Composite Hospital, CRPF, Hyderabad for appearing before Standing Medical Board on 02.07.2019. The Standing Medical Board vide communication dated 17.07.2019 held that petitioner is unfit to undergo basic training, as she is having Choledochal Cyst Type-IV A (A precancerous condition), Cholelithiasis and Chronic Erosive Gastritis, Duodenal Lymphangiectasis (which is not improved even after prolonged usage of PPI).

12. Relevantly, when petitioner was undergoing her basic training on 13.02.2018, she felt abdominal pain and approached Yashoda Hospital where she underwent various medical examinations and was diagnosed with Choledochal Cyst. In one of the prescriptions issued by the Yashoda Hospital dated 06.08.2018 in respect of petitioner it has been diagnosed as under:

“Pain is not related to the training. She could continue it. Pain is due to Choledochal Cyst which needs surgery electively.”



13. Thereafter, petitioner got herself examined at Krishna Institute of Medical Sciences Limited Multi Super Speciality Hospital, Secunderabad and the prescription dated 01.09.2018 prescribed as under:

“Uncomplicated Choledochal Cyst asymptomatic. No immediate need for surgery. Review 3 months with repeated US scan. Fit for physical exercise.”

14. Petitioner has also placed on record a copy of Certificate dated 15.09.2018 issued by Yashoda Hospital which reads as under:

“TO WHOMSOEVER IT MAY CONCERN

This is to certify that Miss Deepika has choledochal cyst which is asymptomatic now and doesn't need surgery now. It can be managed conservatively now. Training may be continued.

She may send in complications following surgery. Hence, deferred surgery indefinitely till she has symptoms. If any doubt in this regard, I may be contacted.

Kindly do the needful.”

15. Yet again petitioner got herself examined at Government Medical College, Chandigarh dated 26.10.2018 which reads as under:

“Fit for doing physical exercise.”

16. The Government Medical College Hospital, Chandigarh issued Medical Certificate dated 27.11.2018 to the petitioner stating that she is fit



for doing physical exercise, however, pursuant to directions of respondents to appear before Standing Medical Board on 22.04.2019, petitioner got herself examined at Osmania General Hospital, Afzalgunj, Hyderabad which opined as under:

“Final diagnosis-Choledochal cyst type 4a, with cholelithiasis

Summary: She is referred from CISF government hospital to the Dept. of Medical Gastroenterology OGH for evaluation of incidental detection of choledochal cyst.

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XXX

XXX

MRCP revealed mild fusiform dilatation of extra hepatic bile duct (max diameter 9.5 mm) with extension of dilatation into right (4mm) left intra hepatic ducts (left duct dia-8.5 mm) likely choledochal cyst type 4a.

Surgical gastroenterology opinion taken-Advised elective surgery.

Patient is fit for any job.”

17. Petitioner has placed on record a copy of Certificate dated 04.07.2019 issued by Asian Institute of Gastroenterology, Somajiguda, Hyderabad which notes as under:

“She is diagnosed to have type IV choledochal cyst with cholelithiasis. She has been advised all relevant investigations and blood tests. Since her LFT is normal and advised not an emergency for surgery.



Patient can do any kind of physical exercise.”

18. Upon perusal of the aforesaid prescriptions and certificates issued by different medical authorities, this Court finds that the medical ailment suffered by the petitioner is not such which was not curable or required immediate surgery. In the present petition filed before this Court as well as in the appeal preferred before the respondents, the petitioner has sought permission to undergo requisite basic training as she has been declared fit by different doctors / hospitals to undertake training. The respondents by invoking provisions of CCS (CCA) rules, 1965 part V have terminated the services of petitioner vide Termination Order dated 27/28.08.2019 which reads under:-

“AND WHEREAS, in the light of medical opinion of the review medical examination board, established by Director Medical, CISF Headquarters, New Delhi, vide letter No. M-20015(SMB-1) CISF/DIR.MED/ NISA/2019-880 on dated 19.06.2019, CISF No. 180203226 L/SI/UT Deepika is suffering from Choledochal Cyst Type-IV A (A precancerous conditions even after prolonged usage of PPI). As per the opinion of the board she required undergoing elective surgery for which individual is unwilling, Chronic erosive gastritis needs to be managed surgically as the medical management has failed. As per the opinion of the board if not treated aggressively, it can lead to gastro duodenal perforation which is a life threatening condition.”



19. Though the aforesaid termination letter notes that petitioner is unwilling to undergo elective surgery, however, it is not the case of petitioner that she was advised urgent or immediate surgery or that she was unwilling to undergo surgery. On the other hand, different prescriptions clearly note that *petitioner was asymptomatic to choledochal cyst and no urgent surgery was required*. In the considered opinion of this Court, it was not appropriate on the part of respondents to invoke provisions of CCS (CCA) rules, 1965 part V to terminate the services of petitioner at the stage of training itself, which course otherwise could have been adopted only if at some later stage petitioner demonstrated chronic condition or during medical examination she was declared unfit for the job.

20. It is not disputed that from 12.01.2018 to 07.08.2018, petitioner had performed her training with excellent record, though the cyst was identified in the month of February, 2018. Meaning thereby, even after diagnosis of cyst, petitioner continued and performed her training for almost six months before her candidature was terminated. In the considered opinion of this Court respondents have acted arbitrarily while terminating petitioner's services.

21. This Court during the course of hearing in the present petition, vide order dated 18.05.2023 had observed that though there are different medical opinions of the Bard of Composite Hospital, CRPF, Hyderabad, therefore, direction was issued to RR Hospital to constitute a Medical Board and assess the petitioner while taking into consideration the earlier reports of Yashoda Hospital, Krishna Institute of Medical Science, Government



Medical College Hospital, Chandigarh and Osmania General Hospital, Hyderabad and the petitioner had agreed that the said report shall be final and binding.

22. In compliance of directions of this Court vide order dated 18.05.2023, Medical Examination Board was constituted on 03.07.2023, wherein it is opined as under:-

“Although candidate might develop symptoms due to her clinical conditions in future but it is unlikely to affect her training.”

23. The opinion rendered by the Medical Examination Board constituted on 03.07.2023 is no different than the one rendered vide earlier medical examinations in the years from 2016 till 2019. Accordingly, the present petition is allowed and the Termination Letter dated 27/28.08.2019 issued by the Deputy Inspector General, NISA, Hyderabad is hereby quashed.

24. The respondent-CISF is hereby directed to pass necessary orders within four weeks reinstating the petitioner with arrears of 50% back wages and seniority with her batch-mates.

25. With directions, as aforesaid, the present petition is accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 28, 2023

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