

MAT 28 of 2024
with
IA No. CAN 1 of 2024

Vikas Kumar Chouhan
Vs.
The Union of Inida & Ors..

Ms. Shraboni Sarkar
... For the Appellant

Ms. Indrani Chakraborty
Mr. Sardar Sha
... For the Respondents

1. The appeal is arising out of an order dated 21st December, 2023 passed in a writ petition filed by the petitioner/appellant.
2. The order passed by the Inspector General, STC BSF Churachandpur (Manipur) in STC/Trg/BSF/BRT/2021/8533-39 dated 2nd June, 2021 in which the petitioner was declared 'unfit' by the Review Medical Board.
3. Briefly stated that the recruitment was conducted by the Staff Selection Commission (hereinafter referred to as 'SSC') for recruitment to the post of Constable in CRPFS, NIA, SSF and Rifleman in Assam Rifles. The petitioner upon successful completion of all stages of process of selection, such as Computer Based Examination (CBE) Physical Standard Test (PST), Physical Efficiency Test (PET) and Detailed Medical Examination (DME) was provisionally selected for recruitment on 8th March, 2021. The letter of

appointment was issued on 8th March, 2021 upon conclusive satisfaction regarding the medical fitness of the writ petitioner. The petitioner subsequently joined his duty at Churachandpur in Manipur on 2nd April, 2021.

4. In the letter of appointment it was specifically mentioned that the Detailed Medical Examination (DME) conducted by the Recruitment Medical Board would remain valid for a period of one year which was further extended from one year to eighteen months by a Memorandum dated 16th April, 2021 issued by the Under Secretary, Government of India, Ministry of Home Affairs. Consequently the finding of the Recruitment Medical Board stood extended till June-July 2025.

5. During the validity of the Detailed Medical Report and subsequent to a three weeks period following the petitioner's joining the service, a directive was issued requiring the petitioner to undergo a formal medical examination. Following the examination, the petitioner was deemed medically unfit on 18th April, 2021. Consequently, on 19th May, 2021 the petitioner was instructed to undergo an X-Ray of his right hand. After a thorough review of the X-Ray report on 20th May, 2021, the Orthopedic Surgeon from the Divisional

Hospital, Government of Manipur, unequivocally declared the petitioner medically fit for the resumption and continuation of active service. However, the petitioner received a notice dated 2nd June, 2021 issued by one Suresh Kumar, acting as the 2nd in command for Training, purportedly representing the Inspector General in which the petitioner was declared to be medically unfit on the basis of the report of the Review Medical Board that was claimed to have convened from 18th to 28th May, 2021. The name of the petitioner appeared in the said list as he was supposedly declared unfit due to Sequelae Osteomyelitis Distal Phalanx(RT).

6. Learned counsel representing the respondents submits that since the petitioner did not join the service within the period of one year from the conclusion of all medical examinations under the relevant rules applicable to the petitioner at the relevant point of time, he was required to undergo a fitness test after the validity period of recruitment is over.

7. There is no dispute that the detailed tests that the petitioner had undergone before the appointment letter was issued on 8th March, 2021 had declared the petitioner fit for the duty at

Churachandpur in Manipur on 2nd April, 2021. Although the recruitment process was started in the year 2018 and concluded on 17th January, 2020 the petitioner was given the appointment letter on 8th March, 2021. The written instruction produced before us is completely silent with regard to the delay in issuing the letter of appointment. The writ petitioner was not responsible for the delay and the validity of the medical certificate for one year due to laches on the part of the respondents cannot be used and applied against the writ petitioner. He was found to be fit in all the examinations which, inter alia include a Detailed Medical Examination conducted on 17th January, 2020. Moreover, we find that the Orthopedic Surgeon had unequivocally declared that the petitioner was medically fit for the resumption and continuation of active service on a thorough review of X-Ray report dated 20th May, 2021.

8. In view of the fact that the petitioner was found by a competent authority to be physically fit and he was no way responsible for the delay in issuing the letter of appointment after one year cannot be denied the employment unless he had acquired any disease or injury from the date of

initial medical examination held on 15th January, 2020 to the date of his appointment. The medical certificate does not say that he had suffered from any disease or injury from the date of initial medical examination held on 15th January, 2020 but on a ground which was earlier considered by experts and held in favour of the writ petitioner.

9. On such consideration, we are of the view that the second round of medical examination was not needed. However, in view of the fact that the fitness of the personnel is of paramount consideration, we direct the Review Medical Board to re-examine the petitioner to find out whether he had suffered any disease or injury in the mean time which is likely to affect in discharging his duties if appointed to the post and to decide his fitness after taking into consideration the PST, PET and DME and the opinion of the Orthopedic Surgeon based on the X-ray report dated 20th May, 2021 within a period of three weeks from the date of communication of the order by either of the parties.

10. In the event the Review Medical Board found him to be fit in course of such medical examination, he should be given appointment immediately.

11. The impugned order is set aside. The appeal and the application are allowed.

12. In view of the above, the appeal and the application are disposed of with the aforesaid direction.

13. However, there shall be no order as to costs.

14. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)

