

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

M.A.T. 98 of 2021

With

CAN 1 of 2021

Md. Mohbasir

VS.

Union of India & Ors.

For the Appellant : Mr. Samim Ahammed
Mr. Arka Maiti
Ms. Ambiya Khatun

For the Union of India : Ms. Indrani Chakraborty
Ms. Sarda Sha

Heard on : July 26, 2024

Judgment on : July 26, 2024

DEBANGSU BASAK, J.:-

1. Appeal is directed against the order dated December 24, 2020 passed in W.P. No. 9441 (W) of 2024 dismissing the writ petition.

2. Appeal is at the behest of the writ petitioner. Appellant contends that his candidature to the selection to the post of Constable (General Duty) in Central Armed Police Forces was inappropriately rejected.

3. Learned advocate appearing for the appellant draws the attention of the Court to the materials on record. He submits that the ground for rejection of the appellant is a medical condition called "knock knee". He refers to the initial rejection of the candidature of the petitioner on such ground. He submits that thereafter the rules governing the selection procedure permit the appellant to appeal to the Medical Review Board on the basis of a contrary opinion obtained by the appellant. Appellant obtained a contrary opinion from an Orthopedic. He draws the attention of the Court to such document. He submits that thereafter the appellant was examined by the Medical Review Board. Medical Review Board, however, concurred with the initial finding that the appellant was suffering from "knock knee".

4. Learned advocate appearing for the appellant refers to the guidelines for Medical Review Board as laid down in the Guidelines For Recruitment Medical Examination in Central Armed Police Forces And Assam Rifles Revised Guidelines as on May 2015. He submits that so far as "knock knee" is concerned, X-Ray Plate with findings should be attached. This was not done.

5. Learned Advocate appearing for the appellant draws the attention of the Court to our order dated July 3, 2024 and submits that the Court required the authorities to submit report as to whether scientific evidence as to the alleged medical condition of the appellant was available or not. He refers to the report submitted in Court pursuant to the order dated July 3, 2024. He submits that the authorities are unable to provide any scientific evidence that the appellant is suffering from such medical condition.

6. Relying upon **2012 SCC Online Del 2458 (Vipin Kumar vs. Union of India & Anr.)**, learned advocate appearing for the appellant submits that, in the similar circumstances, the Division Bench of the Delhi High Court enforced the manner prescribed in the Border Security Force Manual Vol. IX Medical Directorate. He contends since the Medical Review Board in the facts and circumstances of the case did not proceed on any scientific evidence, such decision needs to be revisited. A Writ Court can interdict the same.

7. Respondents are represented.

8. Report submitted in Court in terms of the order dated July 3, 2024 be taken on record.

9. The petitioner participated in the selection process for the post of Constable (General Duty) in the Central Armed Police Forces. His

candidature was rejected on the ground that the appellant was suffering from a medical condition known as “knock knee”.

10. Aggrieved by such decision, the appellant invited the authorities for constitution of Medical Review Board. Constitution of a Medical Review Board under the selection procedure is permitted upon the candidate submitting a contrary view from any qualified doctor.

11. In the facts of the present case, appellant after being declared medically unfit applied for appeal against the declaration of medical unfitness on the basis of a Certificate dated February 11, 2020 issued by a doctor from Dr. R. Roy Orthopedic Unit-II.

12. The Certificate dated February 11, 2020 of such doctor states that there is no clinically detectable “knock knee” of the appellant.

13. The Certificate dated February 11, 2020 does not rely upon any scientific evidence to rule out that the appellant was not suffering from the “knock knee” medical condition. The evaluation of the appellant was made clinically. Therefore, there is one clinical opinion of rejection of candidature and one clinical opinion of fitness.

14. Review Board constituted pursuant to the appeal made by the appellant unanimously opined that the appellant was suffering from “knock knee”. The Review Medical Board consisted of three doctors.

15. We called for a report from the authorities by the order dated July 3, 2024 as to whether any scientific evidence was considered by the Medical Review Board or not. Report submitted pursuant to the order dated July 3, 2024 states that at present there is no scientific evidence available on record.

16. It is the contention of the appellant that the appellant was not scientifically examined by the Medical Review Board. We are unable to accept such contention on the basis of the report. The report is inconclusive either way. It merely says that there was no scientific evidence available on record. However, it proceeds to say that the Medical Review Board consisted of three medical officers who were competent enough to assess the fitness of the candidature of the appellant. With regard to detection of “knock knee” the report stated that clinical diagnosis is the mainstream for detecting IMD distance, X-Ray is only supportive to detect pathology bone.

17. Appellant participated in the selection process in terms of the notice dated July 21, 2018 bearing no. F. No. 3/2/2017-P&P-1. A copy of such notification is annexed to the report filed in Court. Such notification contains detailed procedure for assessment of “knock knee” amongst other deformities. Clinical examination is prescribed.

18. Appellant does not say that he was not clinically examined at the initial level or at the Review Medical Board level.

19. A Writ Court is concerned with the decision making process rather than the decision *per se*. In the facts of the present case, clinical diagnosis of “knock knee” condition is not ruled out at all by the selection procedure laid down. A clinical diagnosis is one of the methodology to arrive at a conclusion. Appellant was examined by five doctors in aggregate. The first doctor was from the authorities who declared the appellant unfit on “knock knee” medical condition. Appellant was thereafter examined by a civilian doctor who proceeded on clinical examination only to claim that the appellant did not suffer from any “knock knee” condition. Certificate issued by such doctor specifically refers to clinical examination of the appellant. Thereafter three other doctors from the authorities comprised in the Medical Review Board examined the appellant to concur that the initial finding of the “knock knee” condition.

20. Appellant, therefore, cannot be said to be denied an opportunity of being heard with regard to his medical condition. Procedure laid down cannot be said to be violated. Selection process is with regard to a Central Armed Police Forces. The authorities of the selection process considered given medical conditions to be inimical to the candidature of the aspirant. Authorities specified the medical conditions and the process for detection of the same. Clinical diagnosis is the procedure prescribed for detection of “knock knee”. It is trite law that, defence forces or the paramilitary forces or

Central Armed Police forces, can lay down norms which are stricter than a Civilian selection process.

21. **Vipin Kumar** (supra) concerns selection process of Border Security Force. Conditions of such selection are placed to arrive at a conclusion that the two selection processes are *pari materia*. In the facts of that case, the Court found that since no record was available, it was not possible for the Court to uphold the opinion of the Medical Review Board. There, the candidate was suffering from hyper tension and knock knee. Here it is only “knock knee”. Moreover, the selection process was for the appointment to the post of ASI (Steno)/Head Constable (MIN). Apparently, the duties so far as such post and the post at which, the appellant is aspiring to be appointed are different.

22. In view of the discussions above, we find no ground to interfere with the impugned order.

23. **M.A.T. 98 of 2021** along with the connected application are disposed of without any order as to costs.

24. Learned advocate appearing for the appellant applies orally under Article 134A for leave to appeal. He submits that, the point of law as to whether the guidelines are binding or not needs to be decided.

25. With respect, we are unable to accept such contention. It is not whether or not the guidelines are binding, the question before us was whether or not the medical condition of the appellant was such that, his

candidature was correctly rejected. No questions of law of any public importance arise in this appeal for a leave as prayed for to be granted.

26. In such circumstances, we find no ground to grant the Certificate as sought for.

(Debangsu Basak, J.)

27. I agree

(Md. Shabbar Rashidi, J.)

S.D.