

**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

**MAT 2154 of 2023
With
IA No.: CAN 2 of 2024**

**Union of India and Ors.
Vs.
Yogesh Chhetri and Anr.**

With

**MAT 1571 of 2024
With
IA No.: CAN 1 of 2024
With
IA No.: CAN 2 of 2024**

**Komal Prasad
Vs.
Yogesh Chhetri and Ors.**

For the appellants in MAT 2154 of 2023 : Ms. Chandreyi Alam, Advocate
and for the proforma respondents/ Ms. Runu Mukherjee, Advocate
Union of India in MAT 1571 of 2024.

For the proforma respondent in : Mr. Siddharth Banerjee, Advocate
MAT 2154 of 2023 and for the appellant Mr. Anuran Samanta, Advocate
in MAT 1571 of 2024

For the respondent/writ petitioner in : Mr. Anant Kumar Shaw
Both the appeals Mr. Puspall Chakraborty
Mr. Prasanka Ganguly

Heard & Judgment on : August 19, 2024

DEBANGSU BASAK, J.:-

1. Two appeals are taken up for analogous hearing as they emanate out of the same impugned order dated May 15, 2023 passed in WPA 18617 of 2018.
2. For the sake of convenience since two appeals are heard analogously, parties in the two appeals are referred in the manner as they appeared in the original writ petition itself.
3. MAT 2154 of 2023 is at the instance of the Union of India and Border Security Force (BSF) authorities. Private respondent in the writ petition preferred an appeal from the impugned order which is registered as MAT 1571 of 2024.
4. MAT 1571 of 2024 which is at the behest of the private respondent in the writ petition.
5. The department reports that, there is 54 days delay in the private respondent of the writ petition in filing the appeal being MAT 1571 of 2024.
6. None of the parties objects to such delay being condoned.

7. In such circumstances, the delay in making and filing the appeal by the private respondent being MAT 1571 of 2024 is condoned.
8. IA No.: CAN 2 of 2024 in MAT 1571 of 2024 is disposed of accordingly.
9. By consent of the parties, during the hearing of the two appeals, we permitted the private respondent in the writ petition to address the Court first since the impugned order was adverse to the private respondent and he is the appellant in one of the two appeals.
10. Learned Advocate appearing for the private respondent submits that, BSF authorities undertook a selection process for the purpose of filling up advertised posts from the members of the public as well as in-service candidates. Private respondent competed for the post of Head Constable (Ministerial). Such selection process was initiated by the advertisement bearing No.9310 dated July 6, 2015.
11. Learned Advocate appearing for the private respondent in the writ petition draws the attention of the Court to the various clauses of the Revised Uniform Guidelines for Medical Examination Test (MET) for Recruitment of G.O.s and N.G.O.s in the CAPFS and AR dated June 9, 2015. He submits that, the modalities for medical examination of an aspirant are prescribed therein. He contends that, on an aspirant being declared medically unfit by the initial medical board, a review can be obtained before the review medical board.

12. Learned Advocate appearing for the private respondent in the writ petition submits that, his client was in service of BSF since June 3, 1997. He was at all point of time categorized as Shape-1 category in his entire service career till the time he participated in the recruitment process. He submits that, both at the initial medical board as also the review medical board, candidature of his client was sought to be rejected on the specious plea of Cubitus Valgus. He draws the attention of the Court to the two reports. He submits that, the initial medical board recorded a wrong opinion in rejecting the candidature of the private respondent after finding that the level of angle was 20 degree. He submits that, upto the 20 degree was the level of tolerance. Therefore, initial medical board passed a wrong opinion with regard to the fitness of his client.
13. Learned Advocate appearing for the private respondent refers to the review medical board report and submits that, the review medical board found the angles of the two arms of his client to be in excess of 21 degrees. He submits that, the initial medical board rejected the candidature of his client not only the ground of 'Cubitus Valgus' but also on three other grounds. The review medical board did not find anything wrong on the other three grounds but went on to classify his client unfit on the ground of 'Cubitus Valgus'.
14. Learned Advocate appearing for the private respondent submits that, since there were apparent discrepancies in the two reports, the employer

in its wisdom undertook a fresh medical board which allowed the candidature of his client. He draws the attention of the Court to the fact that his client stood first in the written examination. He also draws the attention of the Court to the fact that, fresh medical board was constituted subsequent to his client approaching the Madhya Pradesh High Court by way of a writ petition.

15. Learned Advocate appearing for the private respondent submits that, the writ petitioner herein filed an earlier writ petition being W.P. No.14806 (W) of 2016. Such writ petition was dismissed by an order dated September 20, 2018. No appeal was carried against such order. He contends that, the merit list was published prior to the dismissal of the earlier writ petition of the writ petitioner. Writ petitioner did not raise the same issues as sought to be raised in the present writ petition, in his earlier writ petition. Consequently, the issues sought to be raised now are barred by the principles of *res judicata* and/or *constructive res judicata*.

16. Learned Advocate appearing for the private respondent submits that, since there were errors in the first medical board opinion as also in the review medical board report, such errors were sought to be corrected by the employer *suo motu*. Employer retains such power inherently in order to choose the best suitable candidate in the selection process. No fault can be found with the employer undertaking a fresh medical board.

17. Learned Advocate appearing for the Union of India and the BSF authorities adopts the submissions and contentions made on behalf of the private respondent. In addition, learned Advocate appearing for the Union of India and the BSF authorities submits that, a clause in the selection process permits the errors to be corrected by the employer. The fresh medical board was formulated in view of the conflicting views of the two medical boards examining the private respondent.
18. Learned Advocate appearing for the writ petitioner submits that, the selection process and the rules and regulations governing the same, permits initial medical examination and, thereafter, a review medical examination if an aspirant is not satisfied with the result of the initial medical examination. He contends that, no way does the selection process prescribe an authority on the employer to undertake a fresh medical board. According to him, the employer acted in excess of jurisdiction in subjecting the private respondent to fresh medical board and preparing a merit list on the basis of the same. According to him, it tantamounts to changing the rules of games midstream.
19. Learned Advocate appearing for the writ petitioner submits that the order dated September 20, 2018 passed in W.P. No.14806 (W) of 2016 did not prevent his client from filing a fresh writ petition. In fact, he draws the attention of the Court to the second last paragraph of such order which permits his clients to take appropriate steps in accordance with law. He

submits that, subsequent to such order, his client filed a fresh writ petition in which the impugned order was passed. According to him, there was no infirmity in the impugned order.

20. Writ petitioner as well as the private respondent participated in a selection process commenced by the advertisement bearing No.9310 dated July 6, 2015 for the post of Head Constable (Ministerial). Both undertook the written examination in terms of the selection process. Private respondent was placed in the merit list as Serial No.1 in the written examination. His candidature was, however, subsequently rejected in view of the initial medical report and the review medical board opining that he was unfit for such post.
21. Initial medical board declared the private respondent as unfit on January 6, 2016. Private respondent was examined by the review medical board on March 14, 2016 by three doctors who also found him unfit.
22. Private respondent filed a writ petition before the Madhya Pradesh High Court. During the pendency of such writ petition, private respondent was asked to undergo medical examination by a fresh medical board constituted by the BSF authorities. Such fresh medical board found the private respondent to be fit by a report dated April 21, 2016.
23. The writ petition filed by the private respondent before the Madhya Pradesh High Court was withdrawn by the private respondent.

24. In course of hearing of the two appeals, we repeatedly requested the learned Advocates for the appellants in the two appeals to address us on the power of the employer to undertake a fresh medical examination of an aspirant in the selection process after such aspirant was declared unfit by the initial medical board and the review medical board.
25. In answer to such query, it is contended on behalf of the appellants that, such power was inherent on an employer to find out the best candidate and that, employer retained the power to correct any errors in the selection process.
26. No doubt, employer needs to find out the best candidate in the selection process. However, the selection process is governed by pre-declared rules. Employer needs to find the best candidates within the pre-declared rules. Pre-declared rules of the selection process do not permit a fresh medical board. It allows an aspirant to be medically examined by the initial medical board and if the aspirant is dissatisfied with the finding of the initial medical board, approach the review medical board for reconsideration of the decision.
27. In the facts of the present case, the private respondent was declared medically unfit both by the initial medical board as also by the review medical board.

28. The rules governing the selection process does not permit formation of a fresh medical board. Employer acted in breach of the rules governing the selection process in constituting a fresh medical board.

29. So far as the order dated September 20, 2018 passed in the earlier writ petition of the writ petitioner in W.P. No.14806 (W) of 2016 is concerned, such order records as follows:

“This order will not prevent the petitioner from taking appropriate steps, in accordance with law.”

30. Therefore, it cannot justifiably be contended that, issues sought to be raised in the present writ petition were barred by *res judicata* and/or *constructive res judicata* by reason of the order dated September 20, 2018 passed in the earlier writ petition.

31. In such circumstances, we find no merit in the two appeals.

32. **MAT 2154 of 2023** and **MAT 1571 of 2024** along with all connected applications are disposed of without any order as to costs.

(Debangsu Basak, J.)

33. I Agree.

(Md. Shabbar Rashidi, J.)