

24.12.2024

**DL- 6
Ct. No. 23
Srimanta**

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

WPA 27638 of 2024

Sayan Adhikary

-Vs.-

The Union of India & Ors.

Mr. Siddhartha Sankar Mandal,

Ms. Arunima Das sharma

...for the petitioner.

Mr. Anirudhu Bagchi,

Ms. Sabita Roy

...for the respondents.

The petitioner participated in the recruitment process for appointment of Constable General Duty (GD) in Central Armed Police Forces (in short, "CAPFs"), SSF and Rifleman (GD) in Assam Rifles through the examination for the year 2024. The examination for the purpose of recruitment comprises of a Computer Based Examination (in short, "CBE" or Computer Based Test (in short, "CBT"). A candidate on being successful in the CBE/CBT, is called for Physical Standard Test (in short, "PST"), and on being successful in the PST, the candidate is called for Physical Efficiency Test (in short, "PET") and document verification. Pursuant thereto, a Detailed Medical Examination

(in short, "DME") is conducted. If the candidate is found fit in the DME, his name will be considered for being included in the selection list, wherefrom recommendations are to be made for appointment. The petitioner appeared in the DME on 3rd October, 2024 and was declared unfit on the ground of Multiple Nodules on scrotum. The selection process provides for a Review Medical Examination (in short, "RME") to be conducted if a candidate on being declared unfit applies for the same on the very next date. The petitioner applied for the RME. In the RME, the petitioner was detected of Multiple Ulcerative Skin Lesions with Nodules on Scrotum both sides. USG of Scrotum showed multiple hypoechoic lesions on the Scrotum skin. On the basis of such finding, the petitioner was declared unfit in the RME challenging which the writ petition has been filed.

The petitioner says that subsequent to RME, the petitioner had got himself examined as an out-patient in Tehatta Sub-Divisional Hospital, Tehatta, Nadia on 8th November, 2024 and in the Medical College and Hospital, Kolkata on 21st December, 2024. The certificate issued by the Medical Officer, Department of Surgery, Medical College and Hospital, Kolkata does not form part of the writ

petition but has been placed before the Court and is taken on record.

The report of the Medical College and Hospital, Kolkata says that the multiple scrotal cyst have been cured, no complain, no cyst is there at the present. The petitioner has been advised for review, if further complain arises. The report of the Tehatta Hospital says that nodules on the scrotum is normal and the petitioner is fit.

On the basis of the subsequent reports the petitioner says that a further opportunity should be given to the petitioner for being examined by an independent body to find out whether the petitioner is unfit on the grounds stated in the report of the DME and RME. The petitioner also says that the ground on which the petitioner has been declared unfit is not enumerated in the Revised Uniform Guidelines for Recruitment Medical Examination for recruitment of G.Os. and N.G.Os. in Central Armed Police Forces and Assam Rifles.

By referring to Clauses 6 and 7 of the said Guidelines it is submitted on behalf of the petitioner that the ground is not a notified ground under the said two Clauses for which a candidate can be declared unfit. The learned Advocate for the petitioner then relies upon two judgments, one

dated 30th November, 2024 passed by a Division Bench of the High Court in Delhi in WP(C)/14731/2024 (Staff Selection Commission & Ors. -Vs. Vineet Kumar). Relying upon the said Judgment the learned Advocate for the petitioner contends that this Court should interfere in the matter and direct a further medical examination of the petitioner through an independent/impartial body to find out whether the petitioner is unfit on the grounds noted by the DME and RME. The learned Advocate for the petitioner also says that the RME has been conducted in contravention of the settled provisions of law. It is submitted that the RME was not comprised of any specialist. The three members of the RME is an M.D. Doctor, a Gynaecologist and so far as the other member is concerned his qualification is not available from the seal and the stamp affixed to the report of the RME.

The petitioner then says that the ground on which the petitioner has been declared unfit is a remedial disease as will appear from the report of the Medical College and Hospital, Kolkata wherein it has been noted to have been cured. It is further submitted that since the disease is a remedial one in view of the judgment and order of the Hon'ble Supreme Court passed in Writ petition (Civil No.

444/2019)(Dharmvir Singh –Vs.- The State of Uttar Pradesh & Anr.) delivered on 19th July, 2019 this Court should direct holding of a further medical examination with the concerned specialist in the board. It is further submitted by the learned Advocate for the petitioner that there are several other incidents wherein orders have been passed in the writ petition directing further medical examination after the review medical examination has been conducted and refers to an order of this bench.

On behalf of the respondents it is submitted that the result of the Review Medical Board is the final and binding as per the employment notification. There is no scope of further medical examination. However, if this Court is of the opinion that a further medical examination is necessary the respondents will not stand in the way and shall abide by the said order. It is further submitted by the learned Advocate for the respondents that the final selection list for the 2024 examination has been published on 13th December, 2024. If the petitioner is sent for further medical examination then the selection process may be jeopardized. It is also submitted that the DME was conducted on 3rd October, 2024 while the RME on 7th October, 2024. The writ petition has been filed only

on 19th November, 2024 after a considerable gap of time.

Assuming without admitting that the Court was closed for the annual vacation after 8th October, 2024 then also the Court had reopened on 4th November, 2024. That apart, the petitioner could have also moved the Vacation Bench owing to the fact that the selection process had reached the final stage to the knowledge of the petitioner on the RME having been conducted.

After hearing the parties and considering the materials-on-record, I find that the Review Medical Board has considered the USG report of the scrotum and have come to the finding as to the petitioner being unfit. The Board is an expert body admittedly comprising of three Doctors. Even though the qualification of one of its members cannot be identified from the seal affixed to the report at least one member was a specialist in medicine. It cannot be outrightly argued that there was no specialist in the Board even if I discount the other member being a specialized Gynaecologist. The opinion of the RME cannot also be brushed aside when it is found that the Board has considered the USG while giving its opinion. It is also improbable that the board should comprise of specialist from all sphere. In such a case the board

has to be constituent with innumerable members including specialists for all diseases on which the candidature can be rejected.

It is correct that the Court can interfere with the results of a RME but the same is on a limited scope keeping in mind that the parameters of a selection process is fixed after lot of discussion amongst experts and application of mind. It is evident from the judgment in Vineet Kumar (supra) that the Division Bench of the Delhi High Court has considered the findings of another Division Bench judgment of the Delhi High Court, the portions whereof are quoted in paragraph 13 of the said judgment. The grounds of interference are broadly classified as under :-

- (i) Breach of the prescribed procedure that is required to be followed during the examination;
- (ii) If there is notable discrepancy between the findings of DME and RME or the Appellate Medical Board;
- (iii) If the condition is one which requires a specialist opinion and there is no specialist on the Board which have examined the candidate;

- (iv) Where the Medical Board be it DME or RME or Appellate Medical Board itself refers the candidate to a specialist or to another hospital or Doctor for opinion.

The said judgment, however, clearly holds that opinion of private, or even Government Hospitals obtained by the concerned candidate cannot constitute a legitimate basis for referring the case for reexamination. In the case before the Division Bench in Vineet Kumar (*supra*) was one where the candidate was directed to be admitted in a hospital for three days to record his blood pressure. Applying the aforesaid provisions to the facts of the instant case, I am unable to accept the submission made on behalf of the petitioner that the petitioner cannot be rejected on the ground specified by the DME and the RME as the same does not find place in Clauses 6 or 7 of the said Regulations. The grounds in Clause 6 are the general grounds for rejection. All the disease which results in rejection of a candidate cannot be specifically notified in the Regulation as there may be innumerable disease which leads to rejection. Only the general grounds are enumerated in Clause 6. Similarly, Clause 7 speaks of the minor acceptable defects. It cannot be a complete list as there may be several other

minor defects which may be accepted and the candidate can be declared fit. On a reading of Clause 6, the ground of unfitness in the instant case can be included under Serial 19 of Clause 6 which includes chronic skin disease or under serial 1 of Clause 6 which speaks of the chronic disease. Even though it can be contended that a skin specialist was not part of the RME then also such contention of the petitioner cannot be accepted because the petitioner himself went to the Department of Surgery at the Medical College and Hospital, Kolkata and there was an M.D. Doctor in the board. The Medical Officer, Tehatta Sub-Divisional Hospital in his certificate has stated that there is no abnormality in the multiple nodules in the scrotum, this is normal and the petitioner is physically and mentally fit. This report though states that the multiple nodules on the scrotum are not abnormal but confirms the presence of multiple nodules in the scrotum. The report of the Medical College and Hospital, Kolkata refers to multiple scrotum cysts and does not speak of nodules it holds that there is no cyst and the depigmentation is within normal limits. None of the two reports show that the presence of multiple nodules on the scrotum is remedial disease or is not a ground for rejection. In

that view of the matter the judgment of the Hon'ble Supreme Court in Dharamvir Singh (supra) also does not assist the petitioner. That apart and in any event, the case before the Hon'ble Supreme Court in Dharamvir Singh (supra) was that of Deviated Nasal Septum (in short, DNS) which the Hon'ble Supreme Court found to be remedial and interfered with the report of the RME on that basis. So far as the decision of this Bench relied upon by the petitioner delivered in WPA/21561/2023 is concerned, the selection guidelines for the said examination were different from that of the present one and as such a further medical examination was directed to be conducted. This is not applicable in view of the stipulations made in the present selection process.

For the reasons, as aforesaid, I do not find that this writ petition requires any further scrutiny. The writ petition is, accordingly, dismissed.

All parties are to act on the server copy of this order duly downloaded from the official website of the Calcutta High Court.

(Arindam Mukherjee, J.)