



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: April 29, 2024

+ W.P.(C) 2735/2024

(74) MR. NIKHIL TOMAR

..... Petitioner

Through: Mr. Ajay Veer Singh, Mr. Shubham Singh, Mr. Uday Ram Bokadia, Ms. Divya Garg, Mrs. Deepika Jain and Ms. Aditi Gupta, Advs. along with petitioner in person

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ravinder Agarwal, Adv. for R-3/UPSC

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed by the petitioner with the following prayers:-

“A . Pass direction(s)/Order(s) in nature of Mandamus or any other appropriate writ for the constitution of an Independent Medical Board at the Army Hospital (R & R), Delhi Cantt., or any other Govt. Hospital to re-examine the petitioner and if the petitioner is found fit to consider his appointment to the post of Assistant Commandant CAPF 's and to declare the action of the respondents declaring the petitioner as medically unfit incorrect, in view of the medical fitness given to the petitioner stipulating the absence of any difficulty due to the scars on the right index finger of the petitioner by two Govt . /Civil Hospitals;

B. Pass any such further order/orders or directions as this Hon'ble Court may deem fit, appropriate and proper in the



facts and circumstances of the present case.”

2. The challenge in this petition is primarily against rejection of the petitioner's candidature to the post of Assistant Commandant in ITBP, pursuant to a selection process undertaken by the UPSC for appointment to the CAPF's.

3. Suffice to state that the Medical Board/Review Medical Board has declared the petitioner unfit for the following reasons:-

CAPFs- ASSISTANT COMMANDANT EXAMINATION-2023

REVIEW MEDICAL EXAMINATION REPORT

Roll no. 0811690

Name of candidate : Nikhil Tomar

Father's Name Shri Dharamvir Singh Tomar

Identification Marks

- i. Cut mark on nose
- ii. Black mole on left cheek

Candidate signature (in presence of the Board)

1. Reason for Unfit – Surgical Scar mark on a Rt. Index finger destel phakan
2. Brief of examination & finding thereof
-Surgical Scar mark on a Rt. Index finger destel phakan
3. Opinion – Deep injury at the age of 3 years
(a) Fit – heded fibrotic scar at the site of *illegible*
phakan Rt. Index finger shortening of
destel phakan of Rt. Index finger custom to left index fifth opinion of
medical Brain & AIIMS *illegible* deformity will interfere with the *illegible*
performance of *illegible* & deeps

UNFIT Due to shortening of Rt. Index finger fibrotic scar following
(destel phakan *illegible*) injury Rt. Index finger

Place: CH.SSB GKP

Date : 10/01/24

Result of RME received

(Signature of the Candidate)

UNFIT



4. As noted from above, the respondents have rejected the candidature of the petitioner because of a fibrotic scar on the right index figure, which was caused due to an injury suffered by the petitioner at the age of three.

5. The submission of Mr. Singh, learned counsel appearing for the petitioner is that the petitioner had earlier appeared in the selection process in the Army and Navy and was successful in the physical examination and interview but did not join, as the petitioner was contemplating joining the Civil Services. He also relies upon the medical prescriptions of the All India Institute of Medical Science ('AIIMS', for short) and also the Safdarjung Hospital to contend that both the hospitals have found the petitioner fit. He submits that at least one opportunity be given for re-examination of the petitioner by the Army Hospital.

6. We are unable to agree with the submissions of Mr. Singh for the simple reason that the opinion of Review Medical Board is very clear that the petitioner had suffered an injury while he was three years of age, and the same will interfere with the performance of his duties.

7. We further note that even the AIIMS has stated that fitness has to be given by the Medical Board for the particular job/provision. It appears that the AIIMS has also noted the deformity in phalanx or right index finger. The reliance placed on the selection process carried out by the Army and Navy is concerned, it is difficult to say what kind of process was carried out for assessing the petitioner as nothing has been placed on record in that regard. Insofar as the prescription of the Safdarjung Hospital is concerned, it is recorded therein that the petitioner suffered trauma at three years of age; right second finger pulp swelling. Though the opinion is "*no tenderness for restoration of movement*".



8. In any case, we are of the view that the Review Medical Board has come to a conclusion that he shall be unfit to perform duties. This conclusion is in accordance with the guidelines issued by ITBP, more particularly, under the heading “*General Standards*”, which we reproduce under:-

“g) There should be free and perfect movements of all the joints.

xxxx

xxxx

xxxx

o) They must be in good mental and bodily health and free from any physical defect likely to interfere with the efficient performance of the duties.”

9. In view of the conclusion drawn by the Review Medical Board (as experts) and there are no allegation of *mala fide* against the members of the Review Medical Board, we cannot declare the opinion given by the Board as invalid, in the facts of this case.

10. We do not find any merit in this petition, the same is dismissed.

V. KAMESWAR RAO, J

RAJNISH BHATNAGAR, J

APRIL 29, 2024/ds