



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

%

Date of decision: 15.03.2024

+ **W.P.(C) 3157/2024 & CM APPL. 12988/2024**

(16) **SHAILLY UPADHYAY**

..... Petitioner

Through: **Mr. Ankur Chhiber, Mr. Anshuman Mehrotra and Mr. Nikunj Arora,**
Advvs.

Versus

UNION OF INDIA AND ORS

..... Respondents

Through: **Mr. Vivek Sharma, SPC with Ms. Prerna Singh, Mr. Gokul Sharma, GP for R-1 to R-4 and Insp. Anil Kumar & SI Shrabanta Sarkar**

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

SAURABH BANERJEE, J.(ORAL)

1. On 21.10.2023, a notification was issued by the respondents inviting applications from sportspersons for the post of Constable (General Duty¹) in Group-'C' non-gazetted (Non-Ministerial) in Sashastra Seema Bal², for which the petitioner applied.

2. On 30.12.2023, after initial documentation and other requisite tests, the petitioner passed the Physical Standard Test³. Later, on 02.01.2024, the petitioner underwent a Detailed Medical Examination (DME),

¹ Hereinafter referred to as 'GD'.

² Hereinafter referred to as 'SSB'.

³ Hereinafter referred to as 'PST'.



memorandum qua which was passed on 03.01.2024, which revealed health issues, including perforation in the right ear, drooping left shoulder, malunited left clavicle shaft fracture, hallux valgus in both feet, and abnormal epidermal cells.

3. Thereafter, the petitioner underwent a Review Medical Examination on 04.01.2024 before the Review Medical Board⁴, which declared the petitioner unfit due to the malunited left clavicle shaft fracture with dropping of left shoulder on 10.01.2024.

4. Pursuant thereto, the petitioner visited Safdarjung Hospital, New Delhi, where a Doctor opined that despite the dropping of her left shoulder, she was fit for all physical activities, and the dropping of the shoulder would not impact working conditions.

5. Hence, the petitioner vide the present petition under Article 226 of the Constitution of India seeks quashing of the memorandum dated 03.01.2024 and review medical board order dated 10.01.2024 and direct the respondents to allow the petitioner to appear for a fresh medical examination before an independent board set up by the respondents in consonance with the MHA Medical Policy of 2015.

6. Learned counsel for the petitioner, relying upon the guidelines for recruitment medical examinations in Central Armed Police Forces and Assam Rifles, revised as on May 2015, which mentions the dropping of shoulders as *acceptable minor defects* in the body, submits that the health issues identified in the memorandum dated 03.01.2024, have never

⁴ Hereinafter referred to as 'RMB'.



interfered during the entire athletic career of the petitioner and the same was opined by the doctor at the Safdarjung Hospital, New Delhi.

7. Lastly, relying upon judgements of this Court in W.P.(C) No.10269 of 2022 titled as *Ayush Kumar vs. Union of India and Others*; W.P.(C) No.1759 of 2021 titled as *Sachin Kumar vs. Union of India and Others*; and W.P.(C) No.17612 of 2022 titled as *Gaurav Baisoya vs. Union of India and Other*, learned counsel for the petitioner submits that the petitioner is also entitled to another chance to undergo medical examination for successfully passing the procedural aspects and to be appointed as a Constable (GD).

8. *Per contra*, learned Panel Counsel for UOI, without filing any counter affidavit, relying upon the '*Guidelines for Recruitment Medical Examination in Central Armed Police Forces and Assam Rifles*'⁵ dated May, 2015 Manual submits that both the Detailed Medical Examination⁶ and the RMB constituted by the respondents comprise of specialised experts in their fields who are the final Medical Authority for determining the standard of recruitment of any candidate like the petitioner herein. It is under these circumstances that he lastly submits that in matters involving adjudication of medical condition of any candidate like the petitioner for recruitment, there is hardly any scope for interference by us.

9. We have heard the learned counsels appearing for all the parties and have also gone through the documents on record.

10. Before proceedings to adjudicate on the merits of this petition, we find that the petitioner herein, *admittedly*, was first declared medically

⁵ Hereinafter referred to as '**Guidelines**'.

⁶ Hereinafter referred to as '**DME**'.



'Unfit' in the first round by the DME Board on 03.01.2024 and was yet again declared 'Unfit' by the RMB on 10.01.2024, both times due to '*malunited left clavicle shaft fracture with dropping of left shoulder*'.

11. Also, since the issue involved before us rests on the terms and conditions contained in the Guidelines and which is the guiding force containing the determining factors qua recruitment of any candidate like the petitioner, the relevant paragraphs thereof are reproduced hereunder :-

"5. General Examination

h. Should not have any obvious old/ mal united fracture of bones.

10. Investigations:

c) Chest X-ray PA

ix) Evidence of fracture, with features of mal-union, non-union or functional disability"

12. There is no qualm about the fact that the terms and conditions contained in the Manual being the gospel when it comes to recruitment of any candidate like the petitioner herein by the respondents, are the guiding principles for them to follow and abide as they are bound by the said Manual.

13. The aforesaid Manual also have been prepared by the specialized experts in their fields of the respondents, who, in their esteemed wisdom have chosen to device the criteria for determination of any candidate for the recruitment, as also the conditions for reference of such candidature to the RMB. The Hon'ble Supreme Court, while dealing with the aforesaid in *Union of India v. Lt. Gen. Rajendra Singh Kadyan* (2000) 6 SCC 698 has held as under:

"29. Critical analysis or appraisal of the file by the Court may neither be conducive to the interests of the officers concerned or for the morale of the entire force. Maybe one may emphasize one aspect rather



than the other but in the appraisal of the total profile, the entire service profile has been taken care of by the authorities concerned and we cannot substitute our view to that of the authorities. It is a well-known principle of administrative law that when relevant considerations have been taken note of and irrelevant aspects have been eschewed from consideration and that no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, the same cannot be attacked on merits. Judicial review is permissible only to the extent of finding whether the process in reaching decision has been observed correctly and not the decision as such. In that view of the matter, we think there is no justification for the High Court to have interfered with the order made by the Government."

14. Moreover, since both the DME and the RMB constituted by the respondents were comprising of specialized experts in their fields and since they have already rendered their valuable opinion independently on two respective occasions and declared the petitioner medically 'Unfit', there is hardly any scope for us to either interfere or sit over them in appeal over the said decisions/ opinions rendered by both the medically competent boards to draw any other conclusion.

15. Also, we find neither of the two opinions rendered by the DME or the RMB vitiated by any element of biasness, arbitrariness or *mala fide*. There is, thus, no occasion and/ or reason for doubting either of them. In fact, as per the settled position of law we have to be circumspect, wary and watchful in dwelling into such matters of correctness or analysis thereof or the appraisal thereof, especially when it is qua recruitment into the Armed Forces coupled with the fact that they are based on opinion(s) rendered by specialized experts in their fields.

16. Resultantly, the opinion obtained by the petitioner from the Safdarjung Hospital, Delhi can be of no assistance to her. This is more so as the yardstick required for recruiting someone like the petitioner by the



respondents in the Armed Forces are completely different from those of the General Public. In any event, the same does not support the case of the petitioner as the said opinion clearly recognises that she is indeed suffering from drooping shoulders, which is a ground of rejection by the respondents.

17. The Hon'ble Supreme Court while dealing with the matters of recruitment, recently in ***Telangana Residential Educational Institutions Recruitment Board v. Saluvadi Sumalatha***, 2024 SCC OnLine SC 235 has specifically held as under:-

16. Courts will have to be cautious and therefore slow in dealing with recruitment process adopted by the recruitment agency. A lot of thought process has gone into applying the rules and regulations. Merely because a recruitment agency is not in a position to satisfy the Court, a relief cannot be extended to a candidate deprived as it will have a cascading effect not only on the said recruitment of respondent no. 2, but also to numerous others as well. In such view of the matter, courts are duty bound to take into consideration the relevant orders, rules and enactments before finally deciding the case. In this regard, reliance is placed on the decision of this Court in Dalpat Abasaheb Solunke v. B.S. Mahajan, (1990) 1 SCC 305 where it was held:

“12. It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on the same grounds, the court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case



the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction.”

18. For the aforesaid reasons, we find neither any ground nor any reason for drawing any other inference from those drawn by the respondents on two stages on the basis of the Guidelines.

19. Therefore, the present petition along with the pending application, is dismissed, leaving the parties to bear their respective costs.

SAURABH BANERJEE, J.

V. KAMESWAR RAO, J.

MARCH 15, 2024/rr