



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: May 20, 2024

+ W.P.(C) 5602/2024

AKSHAY CHOUDHARY Petitioner

Through: Mr. Pankaj Mehta, Advocate.

versus

UNION OF INDIA MINISTRY
OF HOME AFFAIRS & ORS.

..... Respondents

Through: Mr. Abdhesh Kumar
Chaudhary, CGSC with
Mr. Chetan Jadon, GP with
Ms. Shivangi Jadon and Ms.
Hemlata Singh, Advocates for
R-1 and 3.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

V. KAMESWAR RAO, J

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

“In the light of the aforesaid facts and circumstances, the Petitioner herein most humbly pray that this Hon’ble Court may graciously be pleased to: -

- i. Issue a writ order, or direction in the nature of certiorari or any other appropriate writ, thereby directing Respondent No.3 to quash the Review Medical Examination Report dated 28.12.2023;*
- ii. ii Issue a writ order, or direction in the nature of mandamus or any other appropriate writ to*



Respondents to reconstitute the Review Medical Examination Board for the Petitioner in consonance with the applicable guidelines;

iii. Issue a writ order, or direction in the nature of mandamus or any other appropriate writ to Respondents to constitute a fresh review medical examination board consisting of members from the Department of Dermatology for fresh medical examination of the Petitioner at the earliest;

iv. Pass any such/further orders or directions as this Hon'ble Court deems fit in the interest of justice."

2. It is the case of the petitioner and so contended by Mr. Pankaj Mehta, learned counsel appearing on behalf of the petitioner that the respondents had issued an advertisement/ examination notice on April 26, 2023 for making appointment to the post of Assistant Commandant (Group A) in the Central Armed Police Forces ('CAPF', for short).

3. That on December 8, 2023, the petitioner had undergone a surgery for removal of tattoo which was engraved on his right forearm. Subsequently, on December 19, 2023, the petitioner successfully cleared the written examination and was further called by the respondent No. 3/ ITBP, for Physical Standard Test (PST) / Physical Efficiency Test (PET) & Medical Standard Test (MST) / Review Medical Examination (RME) at 39 Battalion, ITBP, NOIDA, wherein, he was found unfit on the basis of tattoo mark of 'OM', which was engraved in Hindi on the inner anterior part of the right forearm.

4. On December 27, 2023, the petitioner diligently applied for the Review Medical Examination ('RME', for short). On December, 27 2023, itself, the petitioner again undergone a tattoo removal surgery.



Thereafter, on December 28, 2023, the RME took place, wherein the petitioner was declared unfit on the basis of unhealed / unhealthy scar present over the ventral surface of the right forearm.

5. It is his case that on April 20, 2024, the petitioner again visited the hospital where he has got the tattoo removal surgery done and on medical examination by the doctor, it was found that no residue of tattoo is visible on the hands of the petitioner.

6. Hence, it is his case that the conclusion drawn by the medical board / review medical board that the petitioner is unfit on the basis of unhealed / unhealthy scar of tattoo is totally misconceived / untenable. Moreover, it is his submission that if the re-examination is conducted today, the medical board / review medical board would be satisfied that the removal of tattoo is complete and the petitioner is fit in terms of the guidelines issued by the respondents themselves for appointment. He has relied upon the following judgments in support of his case:

- i. *Sunil Kumar vs Union of India and Ors. [SWP No. 2108 of 2016];*
- ii. *Shubham Sharma Vs Union of India & Ors. [2022/DHC/004749];*
- iii. *Himanshu Kumar Vs Union of India and Ors. [2023: AHC:105831].*

7. On the other hand, Mr. Abdhesh Kumar Chaudhary, learned CGSC, appearing for the respondents would contest the submissions made by Mr. Mehta, by stating that the advertisement/ examination notice, issued by the respondents clearly stipulates that every candidate is required to fulfill all the eligibility conditions for successful admission in the respondents' Force and the advertisement itself



stipulates that tattoo marked on traditional sites of the body like inner aspect of forearm, but only LEFT forearm, being not saluting limb or dorsum of the hands are to be allowed.

8. It is his submission that in the case of the petitioner, since the tattoo was on the front side of the right forearm, his case is not covered under the eligibility conditions clearly stipulated in the concerned advertisement. That apart, the medical position needs to be seen on the date when the medical examination / RME is held and not after four months thereof, as sought by the petitioner in the present case and as such, the present petition needs to be dismissed.

9. Having heard the learned counsel for the parties, the short issue which arises for consideration is whether the case of the petitioner was rightly rejected the Medical Board / Review Medical Board.

10. It is true that the advertisement clearly states that the candidates need to fulfill all eligibility conditions before even applying for the post in question. However, it is the case of Mr. Mehta that the petitioner has got his tattoo removed which was present on the front side of the right forearm only after he realizes that he successfully cleared the written examination. So, in that sense, the petitioner may be called as fence-sitter, but the fact remains that the petitioner got his tattoo removed from the right forearm.

11. It is the submission of Mr. Mehta that having got the tattoo removed from the right forearm, technically, there exists no tattoo on the right forearm of the petitioner and in that sense, the petitioner meets the eligibility conditions stipulated as under:



“(6) Tattoo Clause:

a) Content- being a secular country, the religious sentiments of our countrymen are to be respected and thus tattoos depicting religious symbol or figure and the name, as followed in Indian army, are to be permitted.

b) Location- tattoos marked on traditional sites of the body like inner aspect of forearm, but only LEFT forearm, being non saluting limb or dorsum of the hands are to be allowed.

c) Size- size must be less than $\frac{1}{2}$ of the particular part (Elbow or Hand) of the body.”

12. Strictly, there exists no tattoo post the tattoo removal surgery, and also, *prima facie*, the Tattoo Clause, does not stipulate that if a scar pursuant to removal of tattoo is unhealthy / unhealed, the same would lead to disqualification of a candidate, but we find that there was a cogent purpose for the Medical Board / Review Medical Board to examine the scar pursuant to the surgery to ensure that the visible part of the hand while saluting is clear in all respect. To that extent, the conclusion of the Review Medical Board, may be justified. But the fact remains that the Review Medical Board should not have examined the petitioner immediately after few days of surgery and should have given sufficient time to the petitioner to ensure healing of the scar and then decide the fitness / unfitness of the petitioner, as from the photograph of the petitioner’s right forearm at ANNEXURE P-6, as well as the opinion sought by the petitioner from a skin specialist at ANNEXURE P-7 on April 20, 2024, who opined that no residue of tattoo can be seen and 2-3 sittings, would be needed for complete clearance of post-laser hyper-pigmentation, *prima facie*, it appears that the scar might have healed. As such, this Court in exercise of its extraordinary jurisdiction



under Article 226 is of the view that the appropriate shall be that the respondents conduct re-examination of the petitioner's right forearm through a new Medical Board and come to a conclusion, whether the scar on the right forearm pursuant to removal of tattoo continues to be unhealed and unhealthy or has completely healed leaving no residue of tattoo. If the view of the Medical Board is in favour of the petitioner then the respondents shall, subject to availability of the vacancies in the grade of Assistant Commandant (Group A) take further action in respect of appointment of the petitioner as Assistant Commandant. Otherwise, the matter shall be treated as final against the petitioner. The aforesaid process of re-examination shall be completed within a period of six weeks from today as an outer limit and further action, if any, shall be taken as expeditiously as possible.

13. The petition is disposed of in above terms. No Costs.

V. KAMESWAR RAO, J

RAVINDER DUDEJA, J

MAY 20, 2024/jg