



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on: 22.02.2024*
Judgment Pronounced on: 29.02.2024

+ W.P.(C) 14694/2023 & CM APPL. 58495/2023

RUSHIKESH BALSHIRAM BORHADE **Petitioner**

Through: Ms. Aadya Antya and Mr. Abhinav
Garg, Advs.

Versus

UNION OF INDIA & ORS. **Respondents**

Through: Mr. G. D. Sharma, S.P.C.G. for UOI
Mr. Hemendra Singh, Dy. Comdt.,
BSF.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

SAURABH BANERJEE, J.

1. As per facts, the respondents issued an advertisement dated 24.04.2019 for the post of Assistant Commandant (AC) in the Central Armed Police Forces (CAPF). The petitioner applied for the said post, appeared and cleared the written, physical efficiency test and personality on 20.11.2020 securing 278th rank. Thereafter, vide appointment letter dated 13.04.2023, the respondent no.2 appointed him to the post of AC in the Border Security Force (BSF) and directed him to join Tenakpur Training Academy by 15.05.2023.



2. As per procedure, re-medical examination of petitioner was to be conducted to detect/ discover any disease/ disability/ accidental injury incurred during the intervening period of initial medical examination, wherein, he was found '*Unfit*' by the Medical Board (**MB**) on 15.06.2023 as being 'overweight' and having '*left renal calculi with mild hydroureteronephrosis with haematuria*'. Thereafter, the petitioner was once again found '*Unfit*' as he was suffering from '*left renal calculi with mild hydroureteronephrosis*' by the Review Medical Board (**RMB**) consisting of three medical officers including a Specialist on 19.09.2023.
3. As per petitioner, he was unaware of anything as he was neither informed anything nor allowed to leave the Academy nor was sent for basic training till 04.11.2023, when he received the letter dated 25.10.2023 informing him for the first time that he had been declared '*unfit to undergo basic training*' as he was suffering from '*left renal calculi with mild hydroureteronephrosis*'.
4. Aggrieved therefrom, the petitioner has preferred the present petition under Article 226 of The Constitution of India seeking quashing of MB examination report/ impugned order dated 25.10.2023, passed by Forces Headquarters, IG (MED), BSF-respondent no.5 and a direction to respondent no.2 to consider him medically fit as per the report of the District Hospital, Pune dated 06.11.2023 as well as direction to the respondent no.2 to constitute an independent medical to determine the fitness of the petitioner as also a further direction to the respondent no.2 for inducting him to train alongwith 48th batch.
5. Learned counsel for the petitioner submitted that the RMB was conducted in a very casual/ mechanical manner and in violation of



Guidelines for Recruitment Medical Examination in CAPF since the petitioner was neither given a copy of the report of the medical examination nor of the RMB examination. She further submitted that the petitioner had to leave the academy after applying for a leave on the grounds of ailing mother, furthermore, since the petitioner was not getting any instructions from the respondents for his next course of action, he wrote an email dated 03.10.2023 to respondents for the same.

6. The learned counsel for the petitioner lastly submitted that the petitioner got an independent test done from the District Hospital, Pune on 06.11.2023 where no such anomaly was detected.

7. *Per-contra* learned counsel for the respondents submitted that the RMB examination of the petitioner was done by competent officers with one Specialist when he was found '*Unfit*' at the relevant point of time. He further submitted, in any event, the petitioner was well aware since before that he had to be fit at the point of joining for training.

8. We have heard the learned counsel for the parties and have perused the documents on record as well.

9. As borne out from the facts herein, the petitioner was, *admittedly*, initially rejected by the MB on 15.06.2023 and thereafter, once again, by the RMB on 19.09.2023 and on both occasions he was found suffering from '*left renal calculi with mild hydroureteronephrosis*'. Needless to say, the RMB was comprising of three medical officers including a Specialist, who, being expert in his field, had the full discretion to select or reject any candidate be it the petitioner as well.

10. As such, since the petitioner has been declared '*Unfit*' by two Specialist Forums, i.e. both the MB and RMB comprising of three medical



officers including a Specialist on diverse dates after a sufficient gap of time, in the considered opinion of this Court, there is hardly any possibility of there being any error in either of them. That being so and since both, MB and RMB have given a conclusive finding declaring the petitioner ‘Unfit’, the petitioner cannot ask for judicial review of the same. In fact, it is not plausible for this Court to go into the correctness thereof or deliberate thereupon or adjudicate thereon, especially under Article 226 of The Constitution of India. This is more so, whence it is now a settled law that judicial review in matters involving expert medical opinion under Article 226 of The Constitution of India is extremely minimal.

11. Also, as per trite law, this Court while dealing with the present petition under Article 226 of The Constitution of India is neither sitting in appeal nor in revision. Additionally, this Court is also neither a fact-finding authority for appreciating or reappreciating the genuineness or correctness or otherwise of any decision taken nor is required to go into the evidence recorded nor is required to carry out any alterations or corrections, save and except only if there is something gravely wrong and shocking to the conscience of this Court. Reliance is placed upon ***Chairman cum Managing Director, Coal India Limited & Anr. vs. Mukul Kumar Choudhuri & Ors.*** (2009) 15 SCC 620. The same view has since been reiterated in ***Pravin Kumar vs. Union of India*** (2020) 9 SCC 471; ***Bharat Coking Coal Limited & Ors. vs. AMR Dev Prabha & Ors.*** (2020) 16 SCC 759; ***State Bank of India vs Ajai Kumar Srivastava*** (2021) 2 SCC 612.

12. Reliance is further placed upon ***Union of India & Ors. vs P. Gunasekaran*** (2015) 2 SCC 610 wherein the Hon’ble Supreme Court, deliberating upon the similar issues involved, has laid down as under:-



“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence.*

13. Under Articles 226/ 227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based.*
- (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience.”*



13. For the afore-going discussions and the reasonings therewith, the petitioner has not made out a fit case for grant of the reliefs. In any event, the last date of induction in the 48th Batch has since long expired and their training has also since long commenced.

14. Accordingly, as per the factual position involved coupled with the settled position of law, finding no merit herein, the present petition alongwith the application, is dismissed.

SAURABH BANERJEE, J.

V. KAMESWAR RAO, J.

FEBRUARY 29, 2024/rr