



2024:DHC:7514



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 09th September, 2024*

+ W.P.(C) 6961/2018 and CM APPL. 26375/2018

SH. MOHAN SINGHPetitioner

Through: Mr. Sachin Chauhan, Advocate.

versus

LOK SABHA SECRETARIAT
AND ANR.

.....Respondents

Through: Mr.Pramod Gupta and Mr.Harsh
Jaiswal, Advocates**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 read with Article 227 of the Constitution of India assailing order dated 05.03.2018 whereby candidature of Petitioner for the post of Security Assistant Grade-II (Technical) in Lok Sabha Secretariat ('LSS') has been cancelled and seeking a direction to the Respondents to appoint the Petitioner to the said post with all consequential benefits including seniority. Petitioner is an Ex-Serviceman who was enrolled in the Indian Army on 28.12.1990 and discharged from there on 30.06.2012. Petitioner is receiving disability pension from the Army on account of Coronary Artery Disease ('CAD').

2. Factual matrix to the extent necessary is that LSS issued an Advertisement No.02/2016 inviting applications from eligible Ex-Servicemen for appointment to the post of Security Assistant Grade-II



(Technical) and the eligibility conditions including educational qualifications as well as job responsibilities were duly stipulated therein. Relevant part of the advertisement is as follows:

“2. **EDUCATIONAL QUALIFICATION AND TECHNICAL EXPERIENCE**

*Ex-Servicemen possessing Educational qualification of 10+2 in Physics, Chemistry and Mathematics from a recognized Board or Diploma in computer Science/Computer Engineering/Electrical/ Mechanical/ Electronics and Communication recognized by a University/AICTE** and Technical Experience as under:-*

Exposure in handling/installation/ maintenance of microprocessor based access control system/ CCTV system/ anti-sabotage equipment/ computer controlled radio communication system/ electronics instruments/ latest computer operating system in LAN/ WAN environment/ handling of UNIX/AIX etc. based main frame server with wide area network/ visual basic and crystal reports.

Preference will be given to persons possessing Bachelor's degree in relevant discipline of science/ engineering.

3. **UPPER AGE LIMIT:** 45 years as on 05.09.2016. However, there will be no age limit for the employees of Lok Sabha Secretariat. Provided that such applicant has completed three years' continuous service in Lok Sabha Secretariat as on 05.09.2016.

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5. **Job Responsibility:**

The selected candidates will be required to perform the following duties:-

- (i) *Manage High Bandwidth Wide Area Network, Network, Network Security & Redundancy, day to day maintenance of Windows Server, IBM Server, Back up Strategy, Disaster recovery etc. to take regular backups, schedule the backup programs, update antivirus software, install application software, data base administration etc.*
- (ii) *Analysis, monitoring and recording of CCTV Cameras, retrieving of data for DVR/NVR, setting up triggers for various alarm conditions.*
- (iii) *Monitoring, recording and controlling all communication operations and retrieving data from voice logger and preparing transcripts.*
- (iv) *Handling of equipment including explosive detectors, NLJD, Search Cameras, X-Ray Machines, Bomb Blankets etc. for carrying out anti-sabotage checks.*
- (v) *Any other duty assigned to them from time to time.”*



3. Petitioner applied for the post of Security Assistant Grade-II (Technical) as he fulfilled the eligibility criteria and submitted all the requisite documents including marksheets and certificates pertaining to educational qualifications and experience as well as copies of discharge book/recommendation for civil employment issued by the Indian Army. Petitioner was interviewed by the Board of Officers of LSS on 15.12.2016 and vide letter dated 07.04.2017, he was offered appointment, subject to production of documents mentioned therein for verification.

4. It is averred that document and police verification was completed by August, 2017 and thereafter vide letter dated 26.07.2017, Petitioner was directed to get himself medically examined by the Chief Medical Officer Government Hospital, Karauli along with copy of enclosed medical certificate proforma, photographs, his statement and declaration etc. As per the Petitioner, he was declared medically fit for employment and the Senior Medical Officer ('SMO') issued a certificate dated 09.08.2017, certifying that Petitioner did not suffer from any disease, bodily infirmity etc. which could be a disqualification for employment in LSS, despite the Petitioner disclosing that he had CAD.

5. As the joining of the Petitioner was being delayed, he sent a letter dated 10.10.2017 enclosing certificate dated 12.04.2012 and disability certificate dated 16.08.2017 to LSS and sought joining at the earliest. However, instead of calling upon the Petitioner to join, LSS issued the impugned Memorandum dated 05.03.2018 cancelling the candidature of the Petitioner on the ground that Petitioner would not be able to perform the rigorous duties inherent in the technical job of Parliament security and challenging the said order, this writ petition was filed.



6. Mr. Sachin Chauhan, learned counsel for the Petitioner argues that the candidature of the Petitioner has been arbitrarily and illegally cancelled, ignoring the fact that the Medical Officer authorized to conduct the medical examination of the Petitioner at Government Hospital, Karauli, certified that Petitioner suffered from no disease or bodily infirmity etc. and was fit to perform the duties in LSS. This medical examination was a part of the selection process initiated by LSS and once the medical authority declared the Petitioner medically fit, it was not open to the Security Head at LSS, who is a non-medical person, to re-assess the medical fitness of the Petitioner and cancel his candidature by giving a contrary opinion.

7. It is further argued that at all stages of selection, right from the beginning, Petitioner had himself declared his medical status and informed LSS that he was suffering from CAD and was discharged from the Army with disability pension. Moreover, the advertisement does not mention any specific medical criteria or a particular disability or medical condition, which was to be a disqualification for appointment as Security Officer in LSS. Competent Authority has also glossed over the crucial fact that along with copy of the discharge book issued by the Army, Petitioner had also submitted a certificate wherein the case of the Petitioner was recommended for civil employment by President of the Medical Board at Command Hospital, Pune and this is indicative of the fact that even at the time of discharge from the Army, Petitioner despite his condition of CAD was fit for civil employment and it goes without saying that a person fit for the Indian Army will be fit for the job of a Security Officer in LSS. Moreover, CAD has been a long standing disease and has never hampered the discharge of duties in the Army and will not do so in performance of duties of Security



Assistant Grade-II (Technical). It is also argued that the impugned order violates the aims and objects of the provisions of the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as the “Disabilities Act”) which provides for granting equal job opportunities to persons, who are specially abled.

8. Mr. Pramod Gupta, learned counsel appearing on behalf of LSS opposes the writ petition and submits that after the advertisement was issued by Joint Recruitment Cell, LSS to fill up vacancies in the grade of Security Assistant Grade-II (Technical), interviews were conducted and a panel of 65 persons was prepared on 03.02.2017 in which Petitioner was at serial No.63. Pre-appointment formalities were initiated which included document and police verification as well as medical examination. Once it came to light that Petitioner was suffering from CAD and drawing disability pension from the Army, matter was examined and deliberated upon and then placed before Joint Secretary (Security), who is the Competent Authority and overall in-charge of the security in the Parliament House Complex, for his decision. Taking into account the job responsibilities and description, it was decided that Petitioner was not medically fit for the post in question, looking at the rigorous duties inherent in the technical jobs related to Parliament security.

9. It is argued that the job of the post in question requires physical fitness of the highest order and Security Assistants are required to physically move to underground areas also such as the ducts during anti-sabotage checks. Security of the Parliament requires great degree of alertness and no compromise can be made with the required physical fitness of security personnel considering the VVIP movement all day long. There is little doubt



that a person suffering from a heart ailment cannot be expected to perform the onerous duties required for the post besides the fact that the pressure of job, alertness required etc. would be harmful for Petitioner's own health. Petitioner's reliance on the fitness certificate issued on 09.08.2017 to urge that the Medical Officer certified him to be medically fit for the job, is completely misconceived inasmuch as the certificate is a pre-typed format and the officer has merely filled the name of the Petitioner and the word 'NIL' without any indication whether the Petitioner was examined with respect to his heart ailment before rendering this certificate.

10. Mr. Gupta further contends that Petitioner only has a right to participate in the selection process but does not acquire any vested right to seek appointment and moreover, it was well known to the Petitioner that his candidature was provisionally accepted and was subject to clearing the medical examination and police verification. On account of his medical condition, Petitioner's candidature has been rightly cancelled after due deliberation and no infirmity can be found with the impugned order. It is true that medical fitness certificate issued to the Petitioner by the Indian Army certifies him suitable for civil employment, however, work in the technical wing of Parliament Security Service is extremely strenuous and different from any other civil/ministerial assignment. Reliance by the Petitioner on Disabilities Act is misplaced as the post in question has not been identified suitable for persons with disabilities keeping in view of the functional requirements of LSS.

11. Heard learned counsels for the parties and examined their contentions.

12. Petitioner claims appointment to the post of Security Assistant Grade-II (Technical) in LSS with consequential benefits. The post was advertised



by Advertisement No.02/2016 published by LSS in 2016 and is tenable by Ex-Servicemen. Petitioner cleared the selection process which involved a personal interview and was placed at serial No.63 in the select panel. Petitioner was offered appointment, however, owing to medical unfitness his candidature was cancelled vide the impugned memorandum dated 05.03.2018 on the ground that he would not be able to perform the rigorous duties inherent in technical jobs related to Parliament security.

13. Learned counsel for the Petitioner has primarily contended that Petitioner is medically fit for the job and for this reliance is placed on a medical certificate issued by SMO, Karauli on 09.08.2017; discharge book from the army; and a certificate from Command hospital, Pune that Petitioner was fit for civil employment. Before proceeding further to examine these documents, it would be essential to note that the post in question is of a Security Assistant in LSS and there can be no doubt that the duties required to be performed are both onerous and rigorous, requiring physical and medical fitness of the highest degree and thus LSS had detailed the 'Job Responsibility' in Clause 5 of the advertisement itself, which is extracted in the earlier part of the judgement.

14. Mr. Gupta has rightly argued that no compromise can be made with the physical and medical fitness of a security personnel, who is to look after the security of VVIPs as also manage network security, IBM server, disaster recovery etc. on a day-to-day basis and monitor all communication operations as well as handle equipment including explosive detectors, NLJD, Search Cameras, X-Ray Machines, Bomb Blankets etc. for carrying out anti-sabotage checks for which one is required to work underground in the ducts etc. and these onerous duties cannot be performed by a person



suffering from a serious heart ailments such as CAD, which would also pose a risk to Petitioner's own health.

15. It is also brought forth in the counter affidavit that when it came to light that Petitioner was suffering from CAD, matter was examined and deliberated at the highest level and Joint Secretary (Security), who is the overall in-charge of security in Parliament House Complex was consulted. He was of the opinion that Petitioner will be unable to perform the rigorous duties, which the post demanded and only thereafter Petitioner's candidature was cancelled. It is a settled law that it is not within the scope and ambit of the jurisdiction of this Court while exercising powers of judicial review under Article 226 of the Constitution of India to substitute its view with the view of a Competent Authority, who is best suited not only to lay down the job requirements but also to examine if a particular candidate fulfils the same. The limited interference is where the decision is arbitrary and/or contrary to any rule or policy or *malafide*, which is not the case here. The Competent Authority i.e., Joint Secretary (Security), has taken a conscious decision that the Petitioner will be unable to perform the onerous duties of a Security Assistant in the Parliament Complex and Petitioner is unable to refute the same by any material, which may warrant an interference.

16. Petitioner may have had a case, if he was able to show that the medical opinion was in his favour. However, Petitioner has failed to cross this threshold. The fitness certificate issued by SMO, Karauli does not even remotely suggest that Petitioner is fit to perform the duties of a Security Assistant in a high security zone such as the Parliament House. In fact, as rightly pointed out by Mr. Gupta, it does not even reflect any medical examination for the heart condition and/or a finding that Petitioner suffers



2024:DHC:7514



from CAD and/or this medical condition will not obstruct performance of the duties required to be carried out. The certificate is a standard pre-typed proforma in which the SMO has only filled the name of the Petitioner with his age and the word 'NIL', the connotation of which cannot be understood. It is no longer *res integra* that no candidate acquires an indefeasible or vested right to claim appointment merely by being placed in a merit list or even by issuance of offer of appointment, which in this case was even otherwise provisional and subject to medical examination and police verification. I am unable to agree with the Petitioner that despite an opinion of the Competent Authority in LSS that Petitioner will not be able to carry out the security duties on account of his medical ailment, direction be issued to LSS to appoint him. Reliance on provisions of Disabilities Act is equally misplaced as the post in question has not been identified as suitable for persons with disabilities, keeping in view the functional requirements of the secretariat and even otherwise, it is not the case of the Petitioner that the vacancy in question was reserved for a PwD candidate.

17. For all the aforesaid reasons, the writ petition cannot be entertained and is accordingly dismissed, being devoid of merit.

18. Pending application also stands disposed of.

JYOTI SINGH, J

SEPTEMBER 9, 2024/jg/DU