

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No-673/2015

Order Reserved on 21.12.2015
Order Pronounced on: 05.01.2016

**Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)**

Shri Pankaj, 23 years (unemployed)
S/o Shri Baljeet Singh,
Roll No. 2201091095,
R/o Vill. Jharoti, P.O. Kanwali,
Sonepat-131403.

-Applicant

(By Advocate: Shri K.K. Sharma)

Versus

1. The Chairman,
Staff Selection Commission,
CGO Complex, Lodhi Road,
New Delhi-110003.
2. The Commissioner of Police,
Delhi Police, Police Headquarters,
I.T.O., New Delhi.
3. The Director General,
Indo-Tibetan Border Police Force,
Block 2, C.G.O. Complex,
Lodhi Road, New Delhi-110003.

-Respondents

(By Advocate: Shri Gyanendra Singh)

O R D E R

Per Sudhir Kumar, Member (A):

The facts of this case lie in a very brief compass. The applicant had applied for selection in the combined examination conducted by the Respondent No.1- Staff Selection Commission (SSC, in short) for the posts of Sub-Inspectors in Delhi Police, Central Armed Police Forces, and Assistant Sub-Inspectors in CISF Examination-2014. He passed the

written examination held at Delhi by the Respondent No.1-SSC, and was thereafter subjected to Physical Endurance Test (PET, in short) and Physical Standard Test (PST, in short) conducted by the Delhi Police under Respondent No.2, and as per Annexure A-3, he was held to be qualified in PET as well as the PST.

2. Thereafter the applicant was subjected to medical examination by the ITBP under Respondent No.3, and was declared to be unfit through Annexure A-1 dated 13/14.10.2014 due to the reason of 'Left Varicocele'. He filed an appeal in the prescribed form and presented himself before the review Medical Board on 06.12.2014, after which also he was again held to be unfit through Annexure A-1 (Colly).

3. On his own, the applicant later got himself examined at various other private and Government Hospitals, which certified that the applicant was fit to join the post for which he had applied. The applicant has submitted that he is fit for appointment in Delhi Police as his first choice, and in BSF as his second choice, and has assailed the two unfitness certificates issued by the ITBP authorities at the time of his original Medical examination on 13/14.10.2014, and Review Medical Examination on 06.12.2014. The applicant's contention is that he is entitled in law, and in equity, for being referred to a Review Medical Board to be constituted in any other Government Hospital including AIIMS, because of the fitness certificates as later obtained by him from

other Hospitals, both private and Government Hospitals. In the result, he had prayed for the following reliefs:-

- “1) Quash and set aside the opinion of the Review Medical Board to the effect that petitioner suffers from “Residual/Recurrent Varicocele Lt.” Vis-a-vis the FITNESS CERTIFICATE given by Government Hospital to the effect “No vericocele present” and “after due examination I declare him (applicant) medically fit for the said post”.
- 2) Direct respondents to initiate steps to refer the applicant to any other review medical board in any Government Hospital including AIIMS and/or specialist Medical Practitioner and seek the finding whether or not the applicant is medically fit for the post, as per his choice of preference in the fact of the UNFIT CERTIFICATE given by the Review Medical Board to the effect that the candidate is UNFIT on account of “Residual/Recurrent Varicocele Lt.”
- 3) Pass orders to nominate petitioner’s name to DELHI POLICE/B.S.F. HQs, or any other CPO in the order of preference as per choice opted by him, for issuance of appointment letter without further delay protecting his seniority with reference to his batch-mates in the event of petitioner being found medically fit to join the post on receipt of favourable finding from the referral hospital;
- 4) Pass order to pay cost of this uncalled for litigation; and
- 5) Pass any other order(s) as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case”.

4. The applicant had also relied upon a judgment of the Delhi High Court in W.P. (C) No.13809/2009 dated 18.12.2009 in **Dalip Singh Yadav vs. Union of India and Ors.**, but the facts of that case not being on all fours with this case, we need not discuss those facts here.

5. The respondents filed their counter reply on 09.09.2015 submitting that the applicant has not approached this Tribunal with clean hands and has suppressed certain material facts. It was further submitted that

when the recruitment was advertised in the Employment News/Rozgar Samachar on 15.03.2014, Note-III of Para 10 (D) of the Notification regarding Medical Examination had prescribed as follows:-

Note-III Medical Examination

“All the candidates who qualify in the PET will be medically examined by the Medical Officer of the CAPFs or any other Medical officer or Assistant Surgeon belonging to Grade I of any Central/State Govt. Hospital or Dispensary. Those who are found fit in the medical examination and qualify in the written examination also will be required to appear in the Interview (Personality Test) of 100 marks. Candidates who are found to be unfit, will be informed of the position and they can make an appeal before Review Medical Board within the prescribed time limit of 15 days. Decision of Re-Medical Board/Review Medical Board will be final and no appeal/representation against the decision of the Re-Medical Board/Review Medical Board will be entertained”.

6. It was submitted that the Medical Examination was the sole responsibility of the Central Armed Police Forces, and the Respondent No.1-SSC had no role whatsoever, and had prayed for the OA to be dismissed. Respondents No.2 & 3 never filed any reply, despite service of notice upon them.

7. The applicant thereafter filed rejoinder on 17.11.2015 more or less reiterating his contentions that when he had given his post preference in the order of preference (1) Delhi Police; and (2) BSF, the respondents could not have declared him unfit on the basis of the Medical Examination conducted by ITBP. He had prayed for a Review Medical Board to be constituted by respondents in any Government Hospital, or by any other Central Police Organization, and had also prayed that the OA be allowed to that extent.

8. Heard. During arguments, learned counsel for the applicant submitted that after having conducted the PET and PST through Delhi Police, as per the criteria and standards laid down by the Delhi Police, the respondents could not have totally disregarded applicant's preference for Delhi Police as his first choice, and BSF as his second choice, and rejected his candidature on the basis of the medical standard as applicable to ITBP, which are not applicable for either Delhi Police, or for BSF.

9. On the other hand, learned counsel for respondent No.1 submitted that no procedural irregularities had been committed by the respondents since the reason for unfitness given in the two Medical certificates of ITBP was that his condition would have rendered the applicant "unfit" to serve in the mountain region, at heights where the ITBP personnel are deputed. He also submitted that after having participated in the examination in response to a vacancy advertisement, the applicant cannot now be allowed to assail the process of examination at which he had been found to be unfit.

10. We have considered the facts of the case. As is apparent from the Note-III of Para 10 (d) of the advertisement reproduced by the respondents in their counter reply, and by us in para 5/above, the respondent themselves had not specifically prescribed that the Medical Examination of all the candidates will be conducted only and only by the

Medical Officers of Central Armed Police Forces. The prescription, therein, was that “**all the candidates who qualify in the PET will be medically examined by the Medical Officer of the Central Armed Police Forces or any other Medical Officer or Assistant Surgeon belonging to Grade I of any Central/State Govt. Hospital or Dispensary**”. Such being the case, the respondents cannot now wish away the certificate of applicant’s fitness at Annexure A-5, which has been granted to the applicant by the Assistant Professor of Department of Surgery, PGIMER & Dr. Ram Manohar Lohia Hospital, New Delhi, who certainly comes within the definition of “**Medical Officer or Assistant Surgeon belonging to Grade-I of a Central Government Hospital**”.

11. Further, it was nowhere prescribed in the advertisement by the respondents that while the PET and PST would be as per the Delhi Police criteria and standards, and those tests will be conducted by the Delhi Police, but that the Medical standards will be those of the Central Armed Police Forces, which are more onerous and strict than of the Delhi Police. In a recent case, the same Bench had, while deciding the OA No. 729/2014 on 26.11.2015 **Akshay Rajput vs. Union of India**, held as follows:-

“10. The only question that arises for our consideration is whether the reports of the Medical Board and Review Medical Board declaring the applicant as medically unfit for selection and appointment to the post of Sub-Inspector in Delhi Police/CAPFs, Asst. Sub Inspector in CISF, and IO in NCB, are sustainable in the eye of law.

11. In support of the medical reports declaring the applicant as medically unfit, respondent nos. 1 and 3 have referred to the Government of India, Ministry of Home

Affairs' UO No.I-45020/7/2012-Pers.II, dated 16.11.2012, which is reproduced below:

“Subject: Considering candidates having Tattoos on various parts of body for recruitment in CAPFs & AR-reg.

Instances have come to the notice of this Ministry that during various recruitments in CAPFs & AR, candidates having large number of Tattoos on various parts of body reported for enrolment. Since there were no specific instructions on the matter, as such CAPFs & AR have been facing difficulties for consideration of such candidates. Now, the matter has been considered in this Ministry and it has been decided that the below mentioned instructions be followed while conducting the recruitments:-

- a) Any candidate with a small engraving/tattoo of name or religious symbol on the inner face of the arms or hands is permitted for enrolment.
- b) Candidates having permanent tattoo on any other part of the body be debarred for recruitment in CAPFs & AR.

2. These instructions will also be applicable for the serving Force personnel.

Sd/ R.P.Sati
Under Secretary to the Govt. of India”

12. Rule 7 of the Delhi Police (Appointment & Recruitment) Rules, 1980, stipulates the following physical standard for selection and appointment to the post of Sub Inspector (Exe.):

“(5) **Physical standard** Sound health free from **No relaxation** defect/deformity disease, both eyes vision 6/12 (Without glasses, No Colour blindness)”

13. The medical standard for the posts in question has been stipulated in paragraph 10(C) of the recruitment notice, the relevant portion of which is reproduced below:

“10- (C) Medical standard (For all post)

Eye sight:

The minimum distant vision should be 6/6 and 6/9 of two eyes without correction i.e. without wearing of glasses.

The candidate must not have knock knee, flat foot, varicose vein or squint in eyes and they should possess high colour vision.

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

14. It is found that the instructions contained in the Ministry of Home Affairs' U.O. dated 16.11.2012 (*ibid*) were not incorporated in paragraph 10(C) of the recruitment notice. Admittedly, no addendum to the recruitment notice was issued by respondent no.2-SSC for inserting the said instructions in paragraph 10 (C), *ibid*. It is also not the case of respondent nos. 1 and 3 that the recruitment rules for the posts of Sub Inspectors in CAPFs and ASI in CISF and IO in NCB stipulate that any person having permanent tattoo on his/her body shall be debarred from recruitment in CAPFs & AR. As noted in paragraph 12 above, the Delhi Police (Recruitment & Appointment) Rules, 1980, do not prescribe that any person having permanent tattoo on his/her body shall be debarred from recruitment as Sub Inspector in Delhi Police. The terms and conditions contained in the recruitment notice being binding on the candidates and respondents, the medical fitness of the candidates had to be determined by the Medical Board and Review Medical Board as per the medical standard prescribed in the recruitment notice, and any deviation from the same would certainly render the findings of the Medical Board and Review Medical Board invalid. Therefore, the Medical Board and Review Medical Board ought not to have declared the applicant as medically unfit, solely on the basis of the Ministry of Home Affairs' U.O. dated 16.11.2012 (*ibid*). If respondent no. 1 decided that a person having tattoo marks on his/her body would be debarred from recruitment in CAPFs and AR, respondent nos. 1 and 3 ought to have brought the said instructions to the notice of respondent no.2-SSC for the purpose of inserting the same in the appropriate clause/paragraph of the recruitment notice, where medical standard was prescribed, either at the time of making requisition to the SSC for recruitment, or subsequently but before the recruitment process set in motion. Respondent nos.1 and 3, having failed to do so, are estopped from applying the said instructions to determine the medical fitness of the candidates during the recruitment process. Applying the said instructions during the recruitment process amounts to changing the terms and conditions of the recruitment notice, which is impermissible. We may add here that a person having tattoo marks on the body cannot be said to have suffered from any physical defect, or any disease, which is likely to interfere

with the efficient performance of duties by him/her, if he/she is appointed to any of the posts advertized in the recruitment notice. In the above view of the matter, we have no hesitation in holding that the impugned medical reports declaring the applicant as medically unfit are unsustainable and liable to be quashed.

15. In the light of our above discussions, we quash the impugned reports of the Medical Board and Review Medical Board declaring the applicant as medically unfit for selection and recruitment to any of the posts advertized in the recruitment notice, and direct the respondents to consider the applicant's candidature for selection and appointment in accordance with the terms and conditions of the recruitment notice within a period of three months from today.

16. Accordingly, the O.A. is allowed to the extent indicated above. No costs."

12. Here also, while it may be true that the applicant is unfit to serve in the ITBP at the high altitudes where the ITBP operates, but it may well nigh be possible that he is fit to serve in Delhi Police, and perhaps even in the BSF, which does not operate at high altitudes like the ITBP, and does not require such onerous and stringent medical requirements as are required in the case of ITBP.

13. It is also settled law that the Rules of the game in the process of selection cannot be changed to the detriment of the applicant once the process of recruitment has started. The applicant had never applied for ITBP, and had given his first choice as Delhi Police, and second choice as BSF, and was hoping to compete for either of these two. Therefore, to apply the more onerous ITBP medical standards in his case is a travesty of justice, to say the least.

14. Therefore, the OA is partially allowed, and the respondents are directed to conduct a fresh Medical examination of the applicant, as per the medical standards prescribed for Delhi Police and BSF both, and then consider his candidature afresh thereafter, as if the applicant had never been found medically unfit. If the candidate passes such medical test, he shall be entitled for being interviewed and for being considered for appointment against any posts only in Delhi Police or BSF, if he otherwise makes the cut as per his qualifying marks. There shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.