

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.729 OF 2014

New Delhi, this the 26th day of November, 2015

CORAM:

**HON'BLE SHRI SUDHIR KUMAR, ADMINISTRATIVE MEMBER
AND**

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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Akshay Rajput,

s/o Sh.Rakesh Rajput,

R/o B-3/19, First Floor, Janakpuri,

New Delhi

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Applicant

(In person)

Vs.

1. Union of India,
through Secretary (Home),
Govt. of India,
New Delhi.

2. Staff Selection Commission,
through Regional Director (NR),
Block-12, CGO Complex,
Lodhi Road,
New Delhi 110003

3. The I.G.(Pers.)
Director General, BSF,
Block-10, CGO Complex,
Lodhi Road,
New Delhi 110003

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Respondents

(By Advocates: Mr.R.K.Sharma for Respondents 1 & 3; and Mr.S.M.Arif
for Respondent No.2)

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ORDER
RAJ VIR SHARMA, MEMBER(J):

In this Original Application, the applicant has prayed for quashing of reports of the Medical Board and Review Medical Board declaring him as medically unfit for selection and appointment to the post(s) of Sub Inspector in Delhi Police and Central Armed Police Forces, Assistant Sub Inspector in Central Industrial Security Force, and Intelligence Officer in NCB, and also for a direction to the respondents to treat him as medically fit, and to consider his case for selection and appointment in accordance with the recruitment notice.

2. The brief facts of the applicant's case are that Respondent no.2- Staff Selection Commission (SSC), vide its notice published in the Employment News dated 16.3.2013, invited applications for recruitment to the posts of Sub Inspector in Delhi Police and Central Armed Police Forces, Assistant Sub Inspector in Central Industrial Security Force, and Intelligence Officer in NCB. In response thereto, the applicant made application. He appeared in the written examination. On the basis of his performance in the written examination, he was shortlisted for Physical Endurance Test and Medical Examination. He appeared for and qualified in the Physical Endurance Test. Thereafter, he was subjected to Medical Examination. On medical examination, he was declared as medically unfit as there were large size Tattoo (permanent) marks over his both arms, and nape of neck. On appeal, his review medical examination was conducted. On review medical examination also, he was declared as medically unfit for the same reason.

Being aggrieved thereby, the applicant has approached this Tribunal in the present O.A.

3. In their counter reply, respondent nos.1 and 3, besides raising the question of maintainability of O.A. before this Tribunal, have stated that the applicant was declared as medically unfit on account of presence of extensive tattooing on his both arms and nape of neck, as per the reports of the Medical Board and Review Medical Board. They have referred to and relied on the Government of India, Ministry of Home Affairs' UO No.I /45020/7/2012-Pers.II, dated 16.11.2012 (Annexure R/2 to the counter reply) in support of the findings of the Medical Board and Review Medical Board.

4. In its counter reply, respondent no.2-SSC has stated that Border Security Force is the nodal agency for conducting the Physical Endurance Test and Medical Examination, and SSC has no role whatsoever therein. As per the instructions contained in Note III below Paragraph 10(D) of the recruitment notice, the decision of the Review Medical Board is final, and no appeal/representation against the decision of the Review Medical Board is entertained.

4.1 Respondent no.2-SSC has also filed a supplementary affidavit wherein it has, *inter alia*, been disclosed that the applicant scored 93.25 marks in Paper I, and 131.25 marks in Paper II, i.e., total 224.50 marks in the written examination. Since the applicant was declared as medically unfit on medical examination and review medical examination, he was not called for interview and was not further considered for selection.

5. The applicant has filed rejoinder replies controverting the stand taken by the respondents.

6. We have perused the records, and have heard the applicant in person, and Mr.R.K.Sharma and Mr.S.M.Arif, learned counsel appearing for the respondents.

7. The applicant contended that as per the medical certificate granted by Dr.Naresh Kumar, MBBS, MD (Medicine), Assistant Professor, Medicine, Maulana Azad Medical College, and associated Lok Nayak Hospital, New Delhi, the tattoos appearing on his body would not affect the discharge of duties of the posts. In the absence of any provision in the recruitment notice/rules to declare a person as medically unfit for selection and appointment to any of the posts advertised in the recruitment notice on account of presence of tattoo on her/his body, the reports of the Medical Board and Review Medical Board declaring him as medically unfit for such selection and appointment are unsustainable and liable to be quashed, and the respondents should be directed to treat him as medically fit, and to consider his case accordingly.

8. *Per contra*, it was contended by Mr.R.K.Sharma, learned counsel appearing for respondent nos. 1 and 3 that in view of the instructions issued by the Ministry of Home Affairs, vide its U.O. dated 16.11.2012(*ibid*), the applicant has rightly been declared as medically unfit both by the Medical Board and Review Medical Board, and, therefore, there is no scope for the Tribunal to intervene in the matter.

8.1 It was contended by Mr. S.M.Arif, learned counsel appearing for respondent no.2-SSC that as the applicant was declared as medically unfit for selection and appointment to the post(s) advertized, the question of calling him to appear for interview, and considering his candidature for selection did not arise.

9. In **Ravinder Kumar and others v. Staff Selection Commission**, W.P. (C) No.7356 of 2014, decided on 31.10.2014; **Ashish Chauhan and others v. Staff Selection Commission and another**, W.P. (C) No. 7757 of 2014, decided on 28.11.2014; and **Renu Hooda v. Staff Selection Commission and another**, W.P. (C) No.1316 of 2015, decided on 10.2.2015, the Honøble High Court of Delhi has accepted the plea of the petitioners in those cases that the Central Administrative Tribunal would have the jurisdiction to entertain the matters where Delhi Police happens to be one of the organizations catered to in the recruitment process, and the petitioners have applied to seek appointment in Delhi Police as well, besides giving their preference for selection and appointment to a post in any Paramilitary Forces. Therefore, we have no hesitation in overruling the objection raised by respondent nos. 1 and 3 regarding maintainability of the present O.A.

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

øSubject: 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 Indiaø

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.):

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

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER

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