

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.4631 OF 2014

New Delhi, this the 26<sup>th</sup> day of April, 2016

CORAM:

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

**HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

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Gaurav Yadav,  
S/o Akhilesh Yadav,  
Aged around 24 years,  
R/o House No.971,  
Sector 22B,  
Gurgaon 122015  
Haryana

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Applicant

(By Advocate: Ms.H.Oberoi)

Vs.

1. Secretary,  
Government of India,  
DOP&T,  
Staff Selection Commission,  
Block No.12,  
5<sup>th</sup> Floor, CGO Complex,  
Lodhi Road,  
New Delhi 110504
2. Chairman,  
Staff Selection Commission,  
Block No.12,  
5<sup>th</sup> Floor, CGO Complex,  
Lodhi Road,  
New Delhi 110504

3. Regional Director (NR),  
Staff Selection Commission,  
Block No.12,  
5<sup>th</sup> Floor, CGO Complex,  
Lodhi Road,  
New Delhi 110504
  
  4. Review Medical Board,  
Through Chairman,  
Staff Selection Commission,  
Block No.12,  
5<sup>th</sup> Floor, CGO Complex,  
Lodhi Road,  
New Delhi 110504
- Respondents

(By Advocate: Mr.S.M.Arif)

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### **ORDER**

**Per RAJ VIR SHARMA, MEMBER(J):**

In this Original Application, the applicant has prayed for the following reliefs:

- õ(i) To call for the records of the case;
- (ii) To quash and set aside the impugned order dated 01.12.2014 passed by Respondent No.4 whereby the applicant has been declared UNFIT, for the post applied by him.
- (iii) To declare the action of the respondents in declaring UNFIT the applicant purely on the ground of Tattoo as illegal, arbitrary and unconstitutional;
- (iv) To direct the respondents to consider the candidature of the applicant without insisting on the medical opinion with regard to the Tattoo on the Right Arm.
- (v) Further if it is deemed necessary, respondents may be directed to constitute an independent medical board in any Govt. Hospital in Delhi to give their opinion on the question whether the tattoo is of any hindrance in the job of the applicant;
- (vi) To direct the respondents to consider the candidature of the applicant for the post applied for by him along with

other candidates and recommend the applicant for appointment.

- (vii) Allow the original application with all consequential benefits.
- (viii) to grant the cost and expenses of the OA in favour of the applicant; and,
- (ix) To grant any other relief as deemed just and proper by this Honøble Tribunal.ö

2. The respondent-Staff Selection Commission have filed a counter reply opposing the O.A.

3. We have perused the pleadings, and have heard Ms.H.Oberoi, the learned counsel appearing for the applicant, and Mr.S.M.Arif, the learned counsel appearing for the respondent-SSC.

4. The brief facts of the case, which are not disputed by either side, are that Respondent no.2-Staff Selection Commission (SSC), vide its notice published in the Employment News dated 15.3.2014, 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 on account of his suffering from -kyphoscoliosisø and having ÷18 cm x 08 cm sized Tattoo on Right Armø On appeal, his review medical examination was conducted. The Review Medical Board, vide its

report dated 1.12.2014 (Annexure A/1), found that the applicant did not suffer from ~~kyphoscoliosis~~ but declared the applicant as medically unfit due to ~~Large tattoo (18 cm x 08 cm) on right arm~~.

5. In the above backdrop, the applicant has contended that as per the opinion of the medical practitioner, the tattoo appearing on his right arm would not affect the discharge of duties of any of the posts by him. 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 report of the Review Medical Board declaring the him as medically unfit for such selection and appointment is unsustainable and liable to be quashed, and the respondents should be directed to treat him as medically fit, and to consider his case accordingly.

6. *Per contra*, the respondent-SSC have contended that conduct of Medical Examination was the sole responsibility of the CAPFs, and the SSC had no role whatsoever in the conduct of PET/Medical Examination. 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. As the applicant was declared as medically unfit due to his having ~~large tattoo on right arm~~, the question of calling him to appear for interview and considering his candidature for selection did not arise

7. The only issue that arises for our consideration in the present O.A. is as to whether the impugned report of the 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, is sustainable in the eye of law.

8. An identical issue came to be decided by this Tribunal in **Akshay Rajput Vs. Union of India and others**, OA No.729 of 2014, decided on 26.11.2015. In the said case, the applicant was a candidate for selection and recruitment 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, pursuant to the notice dated 16.3.2013 issued by the respondent-SSC. He was declared medically unfit as there were large size Tattoo (permanent) marks over his both arms, and nape of neck. The Tribunal, in paragraphs 11 to 15 of its order dated 26.11.2015, observed and held thus:

õ11. 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:

õSubject: 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) <b>Physical standard</b>	Sound health free from defect/deformity disease, both eyes vision 6/12 (Without glasses, No Colour blindness)	<b>No relaxation</b>
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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.ö

9. The ratio of the decision of the Tribunal in **Akshay Rajput Vs. Union of India** (supra) applies on all fours to the present case. Therefore, we quash the impugned report of the Review Medical Board declaring the applicant as medically unfit, and direct the respondent-SSC 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

10. Resultantly, 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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