

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No-4124/2014

Order Reserved on 16.07.2015

Order Pronounced on: 13.10.2015

Hon'ble Mr. Sudhir Kumar, Member (A)

Hon'ble Mr. Raj Vir Sharma, Member (J)

Sh. Pummy,
S/o Shri Kabool Singh,
R/o H.No.190, Vadh Panna,
Village & Post Office,
Mundhela Kalan,
South-West Distt., New Delhi.

...Applicant

(By Advocate : Shri Ajesh Luthra)

Versus

1. Commissioner of Police,
PHQ, MSO Building,
I.P. Estate, New Delhi.
2. Deputy Commissioner of Police,
(Recruitment Cell),
New Police Lines,
Kingsway Camp,
Delhi-9.

....Respondents

(By Advocate : Ms. Sangeeta Rai)

ORDER

Per Sudhir Kumar, Member (A):

The applicant of this OA is before us having been aggrieved by the impugned order dated 17.02.2014 (Annexure A-1) passed by the respondents due to his having been again medically examined by a second Medical Board on 11.01.2014 and 15.01.2014 at Lok Nayak Hospital, and again being declared unfit. On account of **“Multiple (Congenital) sesamoid bones in B/L Feet with Hallux Valgus**

deformity (as per X-Ray Report)”, as per the medical examination report received, he had not been found medically fit for the post applied for by him. He had been issued a Show Cause Notice dated 17.02.2014, and then on 27.03.2014, through Annexure A-2, the respondents have cancelled his candidature for the post of HC [Asstt. Wireless Operator (AWO, in short)/Tele Printer Operator (TPO, in short)] in Delhi Police with immediate effect. Therefore, the applicant has approached this Tribunal with the following prayers:-

- “(a) Quash and set-aside the impugned orders/ actions of the respondents placed at Annexure A1 and A2 of the OA.
- (b) Direct the respondents to consider the applicant as medically fit and further process the case of the applicant for appointment to the post of Head Constable (AWO/TPO) and consequently appoint him to the said post with all consequential benefits.
- (c) If need so arise for grant of prayer (b) above, the respondents be directed to get the applicant medically examined for his functional abilities qua the discharge of duties and responsibilities required for the post in question.
- (d) Award all consequential benefits.
- (e) Award costs of the proceedings and
- (f) Pass any other order/ direction which this Hon’ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case.”

2. The facts of the case lie in a very narrow compass. The applicant had applied in response to an Employment Notification in the year 2010 for filling up various posts of Head Constable (AWO/TPO), and call letters had been issued to him. He was successful in the process of examination, and was directed to undergo medical examination at Dr. B.R. Ambedkar Hospital, Rohini, Delhi on 30.04.2013, and was examined

by the medical authorities on that date. However, subsequently, through letter dated 30.08.2013, he was informed that he has been declared unfit on account of **“Deformity in Both Great Toes”**, and a provision for appeal against the said medical opinion had also been indicated and stipulated in the aforesaid letter.

3. Before approaching the respondents, once again, the applicant got himself medically examined at another Government Hospital at Acharya Bikshu Hospital, Moti Nagar, Delhi, where the In-charge Medical Officer examined him and found him to be medically fit, and issued him a fitness certificate as at Annexure A-6, with the date of issuance of that certificate not indicated below the signatures, though on the left hand side, the date mentioned is 02.09.2013, with OPD No.50112. The applicant then got himself medically examined once again at the Primary Health Centre, Najafgarh, New Delhi, also and vide OPD No.101282 dated 20.09.2013 at Annexure A-7, the Medical Officer of the Rural Health Training Centre, Najafgarh, New Delhi also mentioned that the deformity was in both legs and in the joints, and gave a certificate that ‘otherwise the applicant is fit’, and he was advised for corrective surgery. The applicant got himself further examined by a Doctor at Kalyani Hospital, Nazafgarh, Delhi, who also issued a Medical Certificate, as at Annexure A-8 dated 06.09.2013, with OPD No.6126, in which the deformity in his limbs was mentioned, but the said hospital certified that clinically he is medically fit for normal activity.

4. Armed with all these certificates obtained by him on his own, the applicant approached the respondents by submitting his appeal for re-

medical examination dated 23.09.2013 through Annexure A-9, mentioning about his having been declared medically fit by the three hospitals at which he got himself examined through Annexures A-6, A-7 & A-8.

5. The respondents sympathetically considered his appeal for re-medical examination and directed the applicant to undergo a re-medical examination at Lok Nayak Hospital, New Delhi on 11.01.2014, as already mentioned above. The medical examination report of the Lok Nayak Hospital has not been produced before us by either sides, but as is apparent from the Show Cause Notice (Annexure A-1) issued to the applicant, the second Medical Board had also again declared the applicant 'Unfit' on account of his Congenital deformity, as already mentioned in Para-1 above.

6. The applicant then got himself further examined at the Sports Injury Centre at Safdarjung Hospital, New Delhi, on 19.04.2014, and as per Annexure A-13 produced by him, though the deformity was certified by the specialists of the Sports Injury Centre, the Doctor of the Sports Injury Centre had certified that he is capable of doing any normal type of activities, and though the deformity was recognized and mentioned, but no physical or medical disability was certified. The applicant has, therefore, felt aggrieved that since the functions of the AWO/TPO do not involve strenuous physical activities, and there is only a very slight curvature on his foot thumbs, and he had even been found fit and qualified in the physical endurance test conducted by the respondents, there could not have been any likelihood of his not being able to perform

the physical activities appropriately and adequately, and that the respondents have erred in rejecting his candidature.

7. In saying so, the applicant has taken the ground that he has been found fit by numerous dispensaries and hospitals, including the Sports Injury Centre at the Safdarjung Hospital, and respondents have to appreciate that when the applicant has even qualified their physical endurance test, to their complete satisfaction, the only very slight curvature in foot thumbs could be of no hindrance in the performance of his duties as a Head Constable (AWO). He has taken the ground that the medical examination conducted by the respondents has not considered the eligibility of the applicant qua his functional abilities or otherwise, in so far as the nature of duties of the post is concerned. Hence this OA.

8. In their counter reply, the respondents pointed out that the recruitment drive for filling up 603 posts of Head Constables (AWO/TPO) was launched by the Delhi Police, and the applicant's medical examination was conducted in view of the Instructions contained in Rule-24 & Appendix-XXX of Delhi Police (Appointment & Recruitment) Rules, 1980. Rule 24 (2) & (3) of the said Rules reads as under:-

“(2) The medical examination shall be conducted in accordance with the instructions contained in Appendix-XXX. The medical officer shall test the eye sight, speech and hearing of the candidate, his freedom from physical effects, organic or contagious disease, his age **or any other defects or tendency likely to render him unfit for police service. Candidate shall be rejected for any disease or defect likely to render them unfit for the duties of a police officer at any stage.**

- (3) The appointing authority may themselves reject candidates whose general standards of physique and intelligence are not satisfactory. Only those candidates shall be sent for medical examination who measure upto the requisite physical standards'

Further, Para (K) of the Appendix of the said rules reads as follows :-

The medical officer will reject a recruit for any disease or defect which is likely to render him unfit for the duties of the particular branch of the service in which he is desirous of being enrolled.

Note: The following points should not be over looked:-

- (i) Glandular swelling and enlarged thyroid.
- (ii) Prominence of eyes, squint, longstanding trachoma, nebulae or leucomata pannus.
- (iii) Polypus of nose, perforated plate, tonsils, adenoids.
- (iv) Insufficient sound teeth for efficient mastication, severe pyorrhoea.
- (v) **Loss or deformity of fingers, flat feet, hammer toes with painful corns or bursae on the dorsum of toes. Hallux valgus, hallux rigidus, knock-knee, deformity of chest and joints, abnormal curvature of the spine.**
- (vi) In veritate, cutaneous disease, fistulous condylemata, haemorrhoids prolapsed, varix or varicocele, undescended testicle, etc.

(Emphasis supplied)

9. It was pointed out that in the Note (v) below sub-Rule-3 of Rule 24, the deformity of Hallux Valgus, from which the applicant suffers, has been specifically mentioned. They had submitted that on his request and appeal for constitution of a Medical Board for his re-medical re-examination, the Special Medical Board had also medically re-examined him, and had again declared him 'Unfit' on account of "**Multiple (Congenital) sesamoid bones in B/L Feet with Hallux Valgus deformity (as per X-Ray report)**". It was submitted that since this particular deformity is specifically mentioned in Note (v) below sub-Rule 3

of Rule-24 of the Delhi Police Rules, 1980 (supra), a Show Cause Notice was issued to him, and his explanation was not found to be acceptable. It was submitted that there is no provision for a 3rd medical examination in the Recruitment Rules framed on the subject, and, therefore, the candidature of the applicant was cancelled. They had, therefore, prayed that the OA deserves to be dismissed.

10. No rejoinder was filed by the applicant.

11. Heard. During the arguments, learned counsel of both sides took us through the various documents and Annexures in the OA as well as the provisions of Rule-24 of the Delhi Police (Appointment & Recruitment) Rules, 1980 (supra), as already discussed above.

12. Learned counsel for the respondents had pointed out that the requirement of job applied for by the applicant was as follows:-

“c) The candidates selected through direct recruitment/absorption shall have to undergo 09 (Nine) months training programme at the Police Training College of wireless AWO Grade-III course having Radio Theory, Radio procedure, practical and typing. They will also be given training in knowledge of criminal law and procedure, practical police work, human rights etc. besides parade drill, firing unarmed combat and physical training as prescribed from time to time by the Commissioner of Police, Delhi. They will be required to pass the final examination conducted by the PTC. The training of those who do not pass would be extended by four months and during this period they would be given a maximum of two chances to clear the subjects in which they have failed, failing which their services shall be liable to be terminated under CCS (Temporary Services) Rules, 1965.

d) The candidate should be of sound health, free from disease, defect or deformity”.

13. We have gone through the numerous certificates which the applicant has gathered from different hospitals/dispensaries and Primary Health Centres of his own accord. All of them have mentioned about the concerned deformity being present, but have only stated that the applicant is otherwise fit for doing normal duties. However, as per the settled law in this regard, a candidate for an appointment has to be fit in accordance with the requirement of the employer, and the employer is fully within its rights to constitute a Medical Board to examine the candidature of the candidate. Just because he could pass the routine physical endurance test after his having been selected in the selection conducted by the respondents, when the Specialist Medical Board constituted first time, and the re-convened second Medical Board after his appeal, have both found and mentioned the deformity, which is specifically prohibited under the Note-V below sub-Rule-3 of Rule-24 of the Delhi Police (Appointment & Recruitment) Rules, 1980 (supra), in our opinion the conduct of the respondents in this regard cannot be faulted.

14. All the other Doctors, whom the applicant had approached on his own, may not have known the exact job requirements which the applicant was expected to perform in the post for which he had applied. The requirement of the job expected to be performed by the applicant and his capacity to perform those jobs, immediately or in future, could have been assessed only by the Specialist Medical Boards constituted by the respondents. When such specialist Medical Boards have already rejected

the candidature of the applicant twice, even during the medical re-examination, the other numerous medical certificates gathered by the applicant on his own from elsewhere, do not carrying any weight. Further, this Tribunal also is not in a position to place itself in the shoes of the Medical Boards and to re-assess the level of his physical deformity, and declare him as medically fit.

15. The learned counsel for the applicant had relied upon the judgment and order in OA No.110/2014 **Arun Kumar vs. Delhi Police** decided on 06.05.2015 by the same Bench, in which a 3rd medical examination had been ordered, because the question in that OA related to the percentage of deformity being within the permissible normal limits or not, and the question therein did not relate to a deformity which is totally prohibited within the Rule itself. So, the applicant cannot be derive any benefit from the order in OA No.110/2014 dated 06.05.2015 (supra).

16. Learned counsel for the applicant accepted that the deformity of Hallux Valgus had been found in the case of the applicant, and he had placed reliance upon the judgment of Hyderabad Bench of this Tribunal in OA No.519/1988 dated 29.03.1989 in **A. Sankara Reddy vs. Chief Medical Officer, South Central Railway and others**, as well as the judgment of the Hon'ble Rajasthan High Court in **Manish Kumar Jain vs. Bharat Sanchar Nigam Ltd. & Ors. 2009 (3) AISLJ 471**. Having gone through these judgments also, which relate to the individual facts and circumstances of those cases, we find that the applicant, herein, cannot be allowed to derive any benefit from the ratio of those judgments also.

17. Therefore, we do not find any fault in the process and procedure as adopted by the respondents, and the OA is, therefore, dismissed, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.