

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.121 of 2015

This the 9th day of August, 2018

**Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)**

Pankaj Beniwal
S/o Shri Amar Singh,
R/o RZ-706, A-1, Street No.17,
Sadh Nagar, Palam, New Delhi.

.....Applicant
(By Advocate : Shri Ranjit Sharma)

VERSUS

1. The Government of India
Ministry of Home Affairs,
North Block, New Delhi.
2. Directorate General
Border Security Force,
Block No.10, UGC Complex,
Lodhi Road, New Delhi.
3. Staff Selection Commission,
Through its Chairman,
Block-12, CGO Complex,
Lodhi Road, Delhi-3.

.....Respondents
(By Advocate : Shri S.M. Arif)

ORDER (Oral)

Ms. Nita Chowdhury, Member (A):

This Original Application is filed by the applicant seeking the following reliefs:-

- “i) quash medical unfitness certificate dt. 26.10.2013 (Annexure A1 supra) and Result of Review Medical Examination dt.27.12.2013 (Annexure A2 supra)

and direct the respondent to issue letter of appointment in favour of the Applicant;

ii) pass such other order/s as may be deemed fit & proper.”

2. Facts of the case, in brief, are that pursuant to advertisement issued by Respondent no.3 in the year 2013, the applicant applied for the post of ASI and Sub Inspector in Delhi Police, CAPF and CISF. The applicant appeared in the written examination which he successfully cleared the written test. Thereafter the applicant was appeared in the medical examination in which he was declared medically unfit vide certificate dated 26.10.2013. According to the unfitness certificate, the applicant suffered from the following:-

- a. Over Weight 80 kg
- b. Deformity of (RT) little finger
- c. Varicocele (L+)
- d. Tattoo mark over outer surface of Lt. fore arm.

2.1 The applicant got his tattoo mark removed on 4.11.2013 and 5.11.2013. So far as left side varicocele is concerned, the applicant himself examined at Sir Ganga Ram Hospital on 4.11.2013 and was discharged in stable condition which is evident from medical certificate.

2.2 On 6.11.2013, the applicant had got himself examined at Safdarjung Hospital where by certificate dated 2.11.2013,

he was declared slightly overweight. He further got himself examined by an who by certificate dated 6.11.2013 declared him fit and held that his little finger deformity had normal function.

2.3 On 27.12.2013, the applicant applied for review medical examination and by letter dated 5.12.2013, he was asked by the respondents to appear for medical examination on 27.12.2013 and vide certificate dated 27.12.2013, he was declared medically unfit due to deformity of right little finger.

2.4 Feeling aggrieved by the aforesaid decisions of the respondents, the applicant has filed this OA challenging the order dated 26.10.2013 (Annexure A1) and Result of Review Medical Examination dated 27.12.2013 (Annexure A2) on the grounds that the applicant has been declared medically fit by Safdarjung Hospital. He has also been examined by an Orthopedician, according to him; his right little finger has normal functions. Since the applicant is medically fit in all respects, the respondents are not justified in not issuing appointment letter to him; and the result of Review Medical Examination is arbitrary as the applicant has been examined by Safdarjung Hospital as well as an Orthopedician, he has been declared medically fit.

3. Pursuant to notice issued to the respondents, they have filed their replies.

3.1 In the counter affidavit filed by the respondent nos.1 and 2, they stated that applicant was short-listed along with other candidates for PET/MET on the basis of his performance in written examination conducted by Staff Selection Commission (SSC). Accordingly, he was issued a call letter to appear for PET/Medical Examination at CISF, SSG, GR, Noida. He appeared in PET/PST on 25.10.2013 and qualified in PET/PST. However, during the Medical Examination, he was declared 'UNFIT' by the Medical Board conducted on 26.10.2013 due to multiple reasons as mentioned above.

3.2 As per provisions, the applicant was given an opportunity to file an appeal for Review Medical Examination (RME) against the findings of the Medical Examination after obtaining necessary fitness certificate from the Medical Practitioner. He availed this opportunity and filed an appeal for RME alongwith necessary Medical Fitness Certificate issued by Dr. S.K. Gaur, Orthoplus Hospital, Najafgarh, New Delhi. His appeal was accepted and he was called to appear before a Review Medical Board constituted at Composite Hospital, CRPF, Jharoda Kalan, New Delhi on 27.12.2013. The said Review Medical Board consisted of Specialists. After due reports and detailed medical examination, the applicant was again found 'UNFIT' on account of deformity of Right Little Finger.

3.3 As per the instructions issued by MHA UO No.1.45023/10/2005-Pers-II dated 24.8.2004, there will be no appeal against the decision of the Review Medical Board. It is also clearly mentioned at para 10 (D) Note-III of the said Advertisement that “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.”

3.4 The respondent nos.1 and 2 further stated that final result of the said Examination was declared by SSC on 16.5.2014 and SSC had also allocated the selected candidates to all CAPFs. Thus, this OA suffers with delay and latches and it is hopelessly time barred.

3.5 They further stated that Dr. S.K. Pandey, Medical Officer (Orthopadic Surgeon), Safdarjung Hospital, vide his Report dated 2.11.2013 has confirmed that “there is minor congenital deformity in little finger of hand”. Hence, declaration of applicant as ‘UNFIT’ on account of deformity of right little finger in Review Medical Examination is in conformity with prescribed medical standards of candidates for recruitment of SI’s in Delhi Police, CAPFs and ASIs in CISF Examination, 2013. Moreover, responsibility of CAPFs (Nodal Force) nominated by MHA is limited upto conduct of PST/PET & MET as well as RME only. Further, allotment of candidates to user department is within the purview of

Recruitment Agency, i.e., SSC after final selection on the basis of performance of the candidates as per his merit.

3.6 They also stated that Medical Board followed all the guidelines issued by MHA in true letter and spirit, while conducting initial and Review Medical Examination of the candidates. Further Medical Board had no malice against the applicant to declare him unfit. It is mandatory for the Review Medical Examination of a candidate to obtain a fitness certificate from medical practitioner, however, decision of Review Medical Board is final and mere production of fit certificate by the candidates does not make him eligible for the recruitment.

4. In the counter affidavit filed by respondent no.3, it is stated that as the applicant cleared the written examination, PET/PST, therefore, he appeared in the medical examination and was declared unfit by the Medical Board constituted by the Nodal CAPF, i.e., BSF. The applicant himself examined by Doctors of Ganga Ram Hospital and Safdarjung Hospital. He applied for Review Medical Examination which was done on 27.12.2013 at the Composite Hospital, CRPF, Jharoda Kalan, at Group Centre CRPF, New Delhi at the instruction of BSF, the Nodal CPO. However, he was once again declared unfit in the Review Medical Examination. The 3rd respondent has no role in the conduct of medical/review medical examinations as it was the sole responsibility of the CAPF, as BSF was the

nodal agency for conduct of Physical Endurance Test (PET) and Medical Examination. Therefore, the 3rd respondent has been wrongly impleaded as respondent in the case.

5. We heard learned counsel for the parties and have carefully perused the pleadings on record.

6. Counsel for the applicant submitted that the documents annexed with the OA establish that the applicant is medically fit for appointment to the post in question as per the certificates of Ganga Ram Hospital, Safdarjung Hospital as also of an Orthopedician, who by certificate dated 6.11.2013 declared the applicant 'fit'. As such the decision rendered by the Medical Board and Review Medical Board are liable to be quashed and the respondents be directed to issue appointment letter in favour of the applicant.

7. Counsel for the respondents reiterated their stands as taken by them in their counter affidavits.

8. It is an admitted fact that at the initial stage of medical examination conducted by Medical Board, the applicant was declared unfit and was given an opportunity to prefer an appeal. As the appeal in such cases is permissible only when a candidate is able to produce a fitness certificate from medical practitioner or Govt. hospital, which certificate was produced by the applicant and consequently his appeal was entertained and a Review Medical Examination Board was

constituted for this purpose, which consisted of Specialists. This Review Medical Examination recorded the following finding vide Result of Review Medical Examination dated 27.12.2013:-

- “1. H-174 cm, cut 70 kg, BM/- 23.12 KG/M2, W/H Ratio-83/98=0.84 individuals cut WNL at per BM1 with no central obesity.
- 2. Deformity of Right little finger.....
- 3. No varicocele on left side.....
- 4. Tattoo removed surgically

Final Opinion

xxx

(b) Unfit on account of Unfit due to deformity of right little finger.”

9. From the above, it is clear that the applicant was declared unfit due to deformity of right little finger, which was the opinion of the Medical Examination authority and Review Medical Examination authority. It is not the case of the applicant that due to bias and malafide intentions on the part of the respondents, he was declared as medically unfit. The applicant's pleas that the aforesaid actions of the respondents are arbitrary on the strength of certificates issued by Safdarjung Hospital, Ganga Ram Hospital as well as an Orthopedician, copies of which are annexed with the OA; and the respondents are not justified in not issuing appointment letter to the applicant are not sustainable in the eyes of law as those certificates only gave an opportunity to the applicant

to prefer an appeal. As the applicant has submitted the said certificates within the permissible time, the respondents have entertained his appeal and accordingly constituted a Review Medical Examination Board in this regard. The said Review Medical Examination Board consisted Specialists, being an independent body, and has taken an independent decision with regard to suitability of the applicant having regard to the nature of the duties to be performed by the applicant, if he is so appointed to the post in question. Therefore, the decision arrived at by the said Review Medical Examination Board vide impugned Result of Review Medical Examination dated 27.12.2013 cannot be interfered with by this Tribunal as in exercise of its power of judicial review, this Court will not sit in appeal over the reports given by the civilian doctors and the reports of the initial medical board of the respondents and the appellate medical board. On account of the variance in the findings of the various doctors, a review medical board was constituted by the respondents, which has also opined that the applicant was unfit. In the absence of any procedural irregularity in conducting the review medical board and the procedure, this Court finds no reason to interfere with the findings of the review medical board on any of the grounds raised by the applicant.

10. It is a settled law that in academic and appointment matters, unless there is a clear violation of statutory

provisions, the Regulations or the Notification issued, the Courts shall keep their hands off since those issues fall within the domain of the experts. The Hon'ble Apex Court in ***University of Mysore vs. C.D. Govinda Rao***, AIR 1965 SC 491, ***Tariq Islam vs. Aligarh Muslim University*** (2001) 8 SCC 546 and ***Rajbir Singh Dalal vs. Chaudhary Devi Lal University*** (2008) 9 SCC 284, has taken the view that the Court shall not generally sit in appeal over the opinion expressed by expert academic bodies and normally it is wise and safe for the Courts to leave the decision of academic experts who are more familiar with the problem they face, than the Courts generally are.

11. In the result, for the foregoing reasons, we do not find any merit in the present case and the same is accordingly dismissed. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

/ravi/