

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-2703/2017

Reserved on : 06.09.2018.

Pronounced on : 10.09.2018.

Hon'ble Ms. Praveen Mahajan, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)

Sh. Jai Kishan,
s/o Sh. Pratap Singh,
House No.113, Block 5,
Trilok Puri, Delhi-110091.

.... Applicant

(through Ms. Astha Nigam with Sh. Sidharth Banthia, Advocate)

Versus

1. Staff Selection Commission (NR),
Department of Personnel and Training,
Government of India,
Block No.12, CGO Complex,
Lodhi Road, New Delhi-110003.
Through its Regional Director(NR).

2. Review Medical Board,
BSF Camp. Composite Hospital,
Jalandhar, Punjab.

.... Respondents

(through Sh. Ashok Kumar, Advocate)

O R D E R

Mr. Praveen Mahajan, Member (A)

The applicant in the current O.A. has sought the following reliefs:-

- “(i) To stay the impugned order dated 15.07.2017 passed by the respondent no.2 and consider the Applicant without

considering the result of the Medical Examination (**Annexure A-1**).

- (ii) to stay the result of the Staff Selection Board till the pendency of these proceedings.
- (iii) or in the alternative to direct the respondent to reserve one post for the appointment of the Applicant according to the merit list, during the pendency of the present petition.
- (iv) to pass such other appropriate order and direction, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

2. The case of the applicant, in brief, is that the examination for recruitment of Sub-Inspector in Delhi Police & Central Armed Police Forces (CAPFs) was held by Staff Selection Commission (SSC) for Combined Graduation Level Examination, 2016 (CGLE-2016) for various posts of Group-B and Group-C posts. The applicant appeared in CGLE, 2016 and was declared qualified and appeared for medical examination. It is averred that he passed the physical endurance test and appeared before the Medical Board for his document verification and medical examination, who declared him 'unfit' for the post applied for because of presence of keloids on his chest. However, the applicant got himself medically examined in another Government hospital (Ram Manohar Lohia Hospital) to get another opinion. The Skin Specialist from Ram Manohar Lohia Hospital, New Delhi declared the applicant 'fit' for the post in their certificate dated 20.04.2017, stating that:-

"Certified that Mr./Ms. JAI KISHAN S/o Shri PRATAP SINGH age 28 Years, a candidate of SI (Direct Entry) for Delh Police, CAPFs/ASI in CISF-2016 whose photo and thumb impression are appended

above duly attested by me at Hospital was examined by me at Hospital Dr. Ram Manohar Lohia Hospital on date 20/04/2017.

2. I, the undersigned, has the knowledge that Mr/Ms JAI KISHAN S/o Shri PRATAP SINGH has been declared medically Unfit by the Medical Officer for the post of Sub-Inspector in Delhi Police, CAPFs/ASI in CISF-2016 due to Keloids on Chest (total 6).

In my opinion this is an error of judgment due to the following reasons :-

Keloids would not interfere in his duty is curable, non-infectious and is a common condition. It is mainly a cosmetic problem.

After due examination, I declare him/her medically fit for the said post.

Signature and name with seal of Specialist Medical
Officer of concerned field
Registration No DMC/R/807
(MCI/State Medical Council)
Designation Specialist, MD(Skin)
Name & Address of Govt. Hospital
(District Hospital and above)"

3. On applicant's request, he was asked to appear before the Review Medical Board on 15.07.2017 at BSF Camp, Composite Hospital, Jalandhar, Punjab. He was again declared 'unfit' because of having Keloids in front of his chest. The report of the Review Medical Board states that :-

"1. Reasons for Medical Unfitness

Multiple Keloids front of chest.

2. Brief of Review Medical Examination & finding thereof

Multiple Keloids front of chest.

3. Final Opinion

(a) **FIT**.....

(c) **Unfit on account of** multiple Keloids

Place:.....
Date:.....

P.O.....
(Name and Signature with stamp)

Member-1.....
(Name and Signature with stamp)

Member-2.....
(Name and Signature with stamp)

Co-opted Member(if any).....
(Name and Signature with stamp)

NOTE: The decision of the Review Medical Board will be final. No appeal will be entertained against the findings of the Review Medical Board in Review Medical Examination."

Not satisfied, the applicant again got a medical checkup done at V.M.M.C. and Safdarjung Hospital on 21.07.2017. They have observed that:-

"Pt. has Keloids which is a non contagious and a curable condition."

4. In the counter, the respondents have stated that in the notice of the medical examination, it was clearly stated that all the candidates, who qualify in the PET will be medically examined by the Medical Officer of the CAPFs and the candidates found to be 'unfit' can make an appeal before the Review Medical Board. It is further mentioned therein that the decision of the Review Medical Board would be final that there would not be no appeal against the decision. The respondents aver that since the applicant has been declared 'unfit' by the Medical Board due to multiple Keloids, hence his candidature has been correctly rejected by the Review Medical Board.

5. During the course of hearing, learned counsel for the applicant, Ms. Astha Nigam vehemently argued that the decision of two prestigious hospitals is in favour of the applicant. Hence, he should not be deprived of his right of joining to the post that he had applied for. She also relied upon the following judgments in support of her averments :-

- (i) Hon'ble High Court of Allahabad in the case of **Vandana and Ors. Vs. State of U.P. and Ors.**, 2016(5)ALJ 674.
- (ii) Hon'ble High Court of Jharkhand at Ranchi in the case of **Man Mohan Soren Vs. UOI & Ors.**, WP(S).No.4919/2014 decided on 06/27.08.2015.

6. On the contrary, the learned counsel for the respondents Sh. Ashok Kumar stated that in accordance with Instructions contained in para-2 of Ministry of Home Affairs O.M. dated 24.08.2005, Review Medical Examination has been conducted in respect of the applicant on 15.07.2017. The Medical Board, comprised of 03 Members, who are experts in the field and they have categorically held that the candidate is 'unfit' cannot be allowed to join the respondent department for the post he has applied for.

7. The grievance of the applicant is that despite having medical opinions in his favour, he has been denied appointment to the post applied for, unjustly, by the respondents.

7.1 On the other hand, the respondents submit that since the Medical Board comprising of Experts found the applicant 'unfit',

hence he cannot be allowed to join the post, and his candidature has been rightly rejected.

8. The learned counsel for the applicant did not produce any Medical Journal in support of her averments at the time of hearing. However, on 24.07.2018 she has filed written submissions enclosing a copy of the medical report and Medical Journal on behalf of the applicant giving definition of "Keloid" by medical dictionary etc. She has also enclosed a copy of the fitness certificate issued by Lok Nayak Hospital dated 23.07.2018. There is also an endorsement on the written submissions that the same has been received by the learned counsel for the respondents Sh. Ashok Kumar.

9. We have considered the submissions of both counsels for the parties and examined the material available on record. As against a negative decision of the Review Medical Board, the applicant too is armed with positive opinions of two institutes of great medical repute (i.e. RML & VMMC and Safdarjung Hospitals), in his favour stating that Keloids are not contagious and are not likely to interfere with his official duties.

10. In view of the aforementioned facts and circumstances, we feel that it would be in the interest of justice if the matter is referred to Director, AIIMS for obtaining a considered and final opinion from the concerned department dealing with "Keloids" to put the

controversy to rest. It is made clear that the opinion received from AIIMS shall be final and binding on both parties.

11. The respondents are directed to refer the matter to Director AIIMS by way of a self explanatory note by enclosing the necessary medical certificates (for and against) for their conclusive finding/opinion. This exercise must be completed within a span of three months from the date of receipt of a certified copy of this order. The O. A. is disposed of with these directions. No costs.

(S.N. Terdal)
Member(J)

(Praveen Mahajan)
Member (A)

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