Satinder Singh Vs. Union of India and ors

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Court : Delhi

Decided On : Dec-19-2013

Judge : Gita Mittal

Appellant : Satinder Singh

Respondent : Union of India and ors

Advocate for Pet/Ap. : Mr. Anuj Aggarwal

Judgement :

$~20 *IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) No.7093/2013 Date of decision:

19. h December, 2013. % SATINDER SINGH Through : ..... Petitioner Mr.Anuj Aggarwal and Mr.Gaurav Khanna, Advocates. versus UNION OF INDIA AND ORS ..... Respondents Through : Mr.B.V.Niren, Advocate CORAM: HON'BLE MS. JUSTICE GITA MITTAL HON'BLE MS. JUSTICE DEEPA SHARMA GITA MITTAL, J.

(Oral) 1. By way of the instant writ petition, the petitioner who is serving as a Commandant with the Central Reserve Police Force, Group Centre, Rambagh, Srinagar seeks quashing of the findings of the Medical Board dated 28th March, 2012 and 16th May, 2013 by which the petitioner has been placed in Medical Category P-3 and P-2 respectively rendering him ineligible for promotion to the rank of DIG in CRPF. The petitioner has challenged the findings of these Medical

Boards inter alia on grounds of bias and vendetta.

2. The facts giving rise to the present petition are briefly noted hereafter. The petitioner has claimed that after his recruitment with the CRPF on 15th April, 1976 as Sub Inspector, he has been serving diligently and honestly with the organisation for the last 37 years. It is the petitioners claim, which is undisputed, that he is a world-level hockey player and has even coached the national team of India. The petitioner has acted as an Observer for the Olympic Hockey Tournament held at Atlanta in 1996. This has been said in support of the petitioners contention that he was medically fit at all material times.

3. It appears that while the petitioner was posted in 72 Battalion, CRPF, one Dr. Bindiya Nagar was posted there as a Medical Officer of the unit. In view of her failure to efficiently discharge her duties, the petitioner was compelled to issue several advisory letters to her calling upon her explanation and also deputing her to perform appropriate duties. One Sh. Ashok Kumar, Assistant Commandant in the unit was also issued advisory letters for his failure to discharge official functions diligently and efficiently.

4. As a result of these advisories, these two persons were nursing malafide and seeking to wreak vengeance against the petitioner. W.P. (C) 7093/2013 petitioner submits that being a medical specialist, Dr.Bindiya Nagar was able to build considerable influence on the other doctors posted in the area.

5. It appears that the petitioner was subjected to medical examination on 27th March, 2012 at the Composite Hospital, CRPF, Bantalab, Jammu. There is dispute with regard to the sugar level in the petitioners blood sample. We are restricting our consideration to the medical reports relating to these results. The bio chemistry report with regard to the petitioners blood sample in respect of sugar level in a report of the Annual Medical Check Up and Categorization effected on 28th March, 2012. This report refers to parameters of blood sugar level on 8th February, 2012 as follows: FBS - 166 mg/dl RPP - 253 mg/dl It is evident from the above, the same was within the permitted range and therefore, the petitioner could not have been placed in lower medical category or held unfit.

6. The report of 28th March 2012 refers to the petitioners sugar levels on 27th March, 2012 as follows: TEST Sugar (FBS) Sugar (R.P.P) W.P. (C) 7093/2013 BIOCHEMISTRY REPORT RESULT EXP. RANGE10370-110 Mg/dl 158 7. On 13th May, 2013, the petitioner was examined at the Group Centre Hospital, CRPF, Sri Nagar. He was referred by the Chief Medical Officer for evaluation to the Endocrinology Department, Sher-I-Kashmir Institute of Medical Sciences (SKIMS). While referring the petitioner for evaluation and specialist consultation, we find that the Chief Medical Officer of Group Centre Hospital, CRPF has also noted that the petitioners fasting sugar level was 90. It is undisputed that this was within the permissible limits.

8. Pursuant to the CRPF reference, the petitioner was subjected to a medical examination on 15th May, 2013 at SKIMS, Soura, Sri Nagar, which reported as follows:

SHER-I-KASHMIR INSTITUTE OF MEDICAL SCIENCES, SOURA, SRINAGAR PATIENT REGISTRATION CARD Rs. 10.00 Patient Type : OPD Card no:

0. HOSPITAL No.1305003592 15/05/2013 10:38:00 Day / Month / Year HH:MM:SS NAME : SATINDER SINGH G C RAMBAGH Srinagar RESIDENCE DIST/CITY MALE56Yrs SEX AGE REFERRED BY Unit : Endocrinology (101) Date Observations, Diagnosis, Treatment 15/5/2013 -Ref for evaluation Investigations - Asymptomatic -Had previously (Feb-2012) mild abnormality of glucose tolerance, repeat measures normal.-.Latest investigations revealing - Fasting glucose - 98 mg (3.5.2013) -HbA1c - 5.3% (3.5.2013) -As of now, there is no evidence of diabetes or impaired glucose tolerance.-. Has normal glucose metabolism. Sd/HEAD Deptt. of Endocrinology SKIMS Srinagar.

9. This expert evaluation and opinion was placed before the Review Medical Board of the petitioner which was conducted by the Chief Medical Officer, 82nd Battalion , CRPF.

10. The petitioner has made the grievance with regard to his Annual Medical Check up and Categorization which was purportedly conducted by the respondents on 28th March, 2012. A photocopy thereof has been placed before

this court. Mr. Anuj Aggarwal, learned counsel for the petitioner has drawn our attention to several unexplained interpolations effected therein. We find that while noting, the respondents follow a prescribed format which evaluates specified parameters regarding Psychological (S); Hearing (H); Appendage (A); Physical Capacity (P), eye sight (E). These go by the acronym SHAPE.

11. The photocopy of the document has been filed on record. The original was produced by learned counsel for the petitioner which has been perused by us. We find that the doctor who conducted the petitioners medical check up has initially recorded thus:

Pscychological (S) Hearing (H) Appendage (A) Physical Capacity (P) eye sight (E) S1 H1 A1 P1 E1 SHAPE - ONE

12. The original document which has been placed before us shows that after opining the petitioner as being in SHAPE ONE, the examining and reporting doctor - Dr. A.K. Gupta affixed his signature as well as his rubber stamp. It appears that thereafter for some reason the doctor changed his mind and he has scored out the petitioners physical capacity as P-1 and changed its grading to P-3. This doctor has scored out the word Shape One as well. However, he has failed to mention the categorization out of shape. In addition, the doctor has interpolated the words Newly Diagnosed Impaired Glucose Intolerance, Placed in SHAPE-3 (T-12).

13. Our attention is drawn to the further interpolation in this report. We find the blood sugar levels were mentioned as allegedly (F) 106 (PP) 170 without reference to any date. These levels have been squeezed into the form.

14. It appears that by the Directorate, CRPF referred the case of the petitioner to the Director General, Medical Branch. The Medical Branch sought comments of Dr.A.K.Gupta under cover of communication dated 9th July, 2013. This letter has been placed before us during the course of arguments and taken on record. It may usefully be extracted and reads thus:

DIRECTORATE GENERAL CENTRAL RESERVE POLICE FORCE, MEDICAL BRANCH, SAKET, SECTOR-IV, PUSHP VIHAR, NEW DELHI - 110017

No.M.III5/2013-D Dated the 09 July, 2013 To Dr.A.K.Gupta, Chief Medical Officer (SG) C/O ____ (illegible) CRPF, At Location. Subject:- REGARDING ANNUAL MEDICAL EXAMINATION. Medical report in respect of Shri Satinder Singh, Commandant, 72 Bn has been referred to this office for perusal and comments by Dte CRPF. The undersigned has gone through the report and observed that Shri Satinder Singh, Commandant, has been placed in SHAPE-3 (T-12) by you along with Dr. Rajeev Jasrotia, Medical Officer, 152 Bn CRPF, on 28/03/2012. In the instant case, the individual was subjected to Blood Sugar F and PP which was found high on 03 occasions. Whereas it is observed that vital and important marker to determine abnormality in glucose metabolism like HbA1-C has not been done. This simple and easy test would have put the matter out of dispute and would not have given an opportunity to the above-mentioned patient for further representation/ litigation. Also, HbA1-C would have substantiated the diagnosis.

2. You are hereby called upon to justify as to why the above-mentioned test was not done while conducting AME on 28/03/2012 in respect of Shri Satinder Singh, Commandant. Your reply must reach this HQrs within a reasonable period of time (postal time). Dr. H R RAGHAVAN IG/ DIRECTOR (MEDICAL) Dated the 09th July 2013

15. IG/Director (Medical) while writing the letter dated 9 th July, 2013 has informed Dr.A.K.Gupta about his failures as it is observed that vital and important marker to determine abnormality in glucose metabolism like HbA1-C has not been done. This test would not have given an opportunity to the patient for further representation.

16. Dr.A.K.Gupta responded this enquiry by a communication dated 22nd July, 2013 which has been placed by the respondents before us. In this communication, Dr.A.K.Gupta has attempted to divert attention and create prejudice against the petitioner. Instead of confining himself to medical expertise, he makes a detailed reference to an enquiry which the petitioner was facing at the instance of Dr.Bindiya Nagar. The doctor makes reference to all kinds of allegations against the petitioner and wrongly labels the petitioner as an old case of diabetes mellitus who was on drug treatment. It is to be noted that there is no material to support his

contentions. The query of the IG/Director (Medical) in the letter dated 9th July, 2013 was of a specific nature. This lends substance to the petitioners case that the doctor was acting malafide in connivance with Dr.Bindiya Nagar.

17. To shield his actions, this doctor claims to have given oral directions issued to the petitioner to undergo the HbA1-C report and that the petitioner had failed to do so. We may note that there is no material at all to support the same. There is nothing to suggest that any directions were given by the doctor to the petitioner to get any further test done.

18. During the course of the arguments today, Mr.B.V.Niren, learned central government standing counsel has sought to hand over photocopy of a handwritten document dated 8th February, 2012 allegedly containing the petitioners pathology report. This document does not contain the name of the petitioner. It is not signed by any person or authority. It is also not disclosed as to who scribed this page.

19. We also find that the letter dated 9th July, 2013 sent by the IG/Director (Medical) clearly states that HbA1-C test had not been effected upon the petitioner. In case it had been effected on 8 th February, 2012 as is now claimed for the first time, certainly Dr.A.K.Gupta would have referred to the report while responding to the letter dated 9th July, 2013. It would have been certainly reflected in the Annual Medical Examination and Categorization conducted by him on 28th March, 2012.

20. It is also noteworthy that so far as the medical categorization for CRPF personnel, who are not having prior history of diabetes and who are not under treatment, are concerned, the Guidelines issued by the respondents prescribe the following categorizations: P2: Those who have fasting and Post Prandial as for P1 above for at least 6 months with HbA1c between 7&8% on dietary restriction alone or with OHA; provided that there is no complication or Target organ involvement, including: No retinopathy of any grade on fundoscopy, No clinical or electro-physiological evidence of neuropathy, No neuropathy by clinical, bio-chemical or imaging criteria, Normal lipid profile, Normal ECG, No History or evidence of cerebro-vascular or peripheral vascular disease. P3: P5: Those who have uncontrolled fasting and PostPrandial sugar with OHA of needing insulin in smaller

dose additionally for control, with HbA1c more than 8% with or without any Target organ damage, but likely to reverse TOD with proper treatment and are likely to become non-insulin dependent. Patients on high dose of insulin, not responding to O.H.A., with complications and Target organ damage with obvious changes; and complete recovery in unlikely. For the new cases detected during A.M.E. the following procedure should be adopted. The newly detected case should initially be kept under category P3 (T-12). After 12 weeks if the individual fully complies and improves with treatment achieving parameters as given above, he/she be categorized as P2 (T-24). If he does not improve, he/she will continue in P3. In case of newly detected cases of Impaired Glucose Tolerance, the individual should be placed in category P2 (T12) if his parameters are of P2. If there is no CV risk factor or any target organ involvement, the individual is placed in P-1. If the parameters fall in the category of P1, then he be labelled as P1 (O-24) and then dealt with as given above for further categorization. In doubtful cases, complete GTT may be undertaken. If required, cases are hospitalized for 48 to 72 hours for close observation and final decision.

21. In the instant case, the petitioner has contended that on 8 th February, 2012, when he was detected with higher blood sugar. He was given time to and he effected life style changes to bring it within the normal parameters. It was for this reason that the respondents did not effect the medical categorization of the petitioner on 8th February, 2012 but delayed it till 27th March, 2012 when his blood sugar levels reached within the normal limits.

22. As noted above, the petitioners blood sugar on 27th March, 2012, had come down to Sugar (FBS) 103 Mg/dl and Sugar (RPP) 158 Mg/dl. The respondents have submitted that the evaluation of the petitioner on 28 th March, 2012 was effected in terms of para 22.5 (c) of Standing Order no.04/2008 of the CRPF Department. It is noteworthy that despite this, no medicine was prescribed to the petitioner even on 28th March, 2012, for the reason that the doctors did not consider the petitioner to be diabetic.

23. Mr.B.V.Niren, learned counsel for the respondent has handed over an extract of the Standing Order no.04/2008 of the CRPF department dealing with Diabetes

Mellitus. We may extract hereunder the relevant portion so far as categorization of personnel as SHAPE P-2 or P-3 is concerned which reads as:

For the new cases detected during A.M.E. the following procedure should be adopted. The newly detected case should initially be kept under category P3 (T-12). After 12 weeks if the individual fully complies and improves with treatment achieving parameters as given above, he/she be categorized as P2 (T-24). If he does not improve, he/she will continue in P3. In case of newly detected cases of Impaired Glucose Tolerance, the individual should be placed in category P2 (T12) if his parameters are of P2. If there is no CV risk factor or any target organ involvement, the individual is placed in P-1. If the parameters fall in the category of P1, then he be labelled as P1 (O-24) and then dealt with as given above for further categorization. In doubtful cases, complete GTT may be undertaken. If required, cases are hospitalized for 48 to 72 hours for close observation and final decision.

24. Mr.Anuj Aggarwal, learned counsel for the petitioner, has pointed out that in case of newly detected cases of Impaired Glucose Tolerance, as per the Guidelines framed by the respondent, even if the Medical evaluation dated 28th March, 2012 was accepted, the petitioner was wrongly initially brought down to category P-3. The petitioners medical category even initially could not have been categorized as P-3.

25. So far as petitioners medical condition is concerned, according to the petitioner, he is fit, which gets fortified by the medical examination at the Sher-I-Kashmir Institute of Medical Sciences on 15th May, 2013. The Head of Department of Endocrinology has categorically opined that there is no evidence of diabetes or of impaired glucose tolerance and that the petitioner has normal glucose metabolism. From the previous history, the doctors have noted that it was only in February, 2012 that the petitioner suffered from mild abnormality of glucose tolerance and his blood sugar was within the normal parameters.

26. It is trite that courts cannot substitute the opinions of the medical experts. But it cannot be forgotten that medical experts are also human beings and prone to the some bias and influence. In the instant case, comity with a medical colleague Dr.Bindiya Nagar appears to have weighed with the doctor concerned which is

really unfortunate. It is apparent not only from the several guidelines and interpolations in the annual examination and categorization of the petitioner on 28 th March, 2012 but also from the fact that if the petitioner was truly suffering from diabetes mellitus, the doctor would have prescribed some kind of medicine or life style changes or any other as well as further tests and medical examination, which a senior personnel in CRPF would be required to undertake. In this background, the Annual Medical Check Up and Categorization of the petitioner to SHAPE P-3 as per the document dated 28th March, 2012 is certainly erroneous. In any event, having regard to the cuttings and overwritings thereon as well as the nature of explanation given by the doctor concerned in response to the letter dated 9th July, 2013 from the Inspector General/Director (Medical), the same inspires no confidence. We find substance in the petitioners contention that he has been wrongly medically downgraded to medical category P-3. The letter dated 23rd July, 2013 sent by Dr.A.K.Gupta supports the petitioners case that the same has been influenced by the doctors colleague.

27. The other limb of the argument of the petitioner is that the petitioner did not subject himself to a Review Medical Board within the stipulated time. It is suggested that the petitioner did not do so for the reason that his blood sugar level had not come to the required range. In this regard, the respondents have set out para 11 of para 5.2 (A) of the Standing Order No.04/2008 which reads as under:

Personnel put on low-medical category are required to be reviewed. The responsibility to bring such Officers/ personnel before the AMA/ review board lies with the concerned unit/ establishment. No prior approval is required for holding such reclassification as the concerned hospital/ AMA is already in picture about the expected date of review while conducting the earlier classification. In case of delay for more than 60 days, prior approval of the Medical Officer In-charge/ DIG (Medical) of the concerned administrative. Frontier/GC/Sector in the case of Ors; and of IG (Medical) of the nearest 100 bedded CH in case of GOs will be taken, forwarding him the details of the case with reasons for delay.

(underlining by us) 28. A reading of the above would show that the responsibility to bring such Officers/personnel before the Review Board lies with the concerned

unit/establishment and no prior approval for the same is required. The petitioner contends that inasmuch as he was posted as the Commandant, in terms of the above Standing Order, in case a review was really required, it was the duty of the DIG concerned to have referred the petitioner for a review medical board. In any case, given our finding on the Annual Medical Examination and Categorization dated 28th March, 2012, this contention loses any such significance.

29. Before this court, the petitioner has sought issuance of writ of mandamus directing the respondents to promote him to the post of DIG, Police. So far as the promotion of the petitioner is concerned, the respondents have stated that promotion to the rank of DIG is effected through a Departmental Promotion Committee (DPC) which considers inter alia the position of the disciplinary cases pending against the personnel during the selection process. The respondents have stated that the promotion of the petitioner to the rank of DIG was not withheld due to his low medical category but on account of some disciplinary proceedings conducted against him. It is pointed out that because of such disciplinary proceedings, the recommendations of DPC for the year 2008-09 and subsequent DPCs were kept in sealed cover. Vide an order dated 23rd September, 2013, a penalty of reduction to a lower stage in the time scale of pay by one stage without cumulative effect and without affecting his pension up to 30/12/13 only i.e. from Rs.52640/- to 50850/- w.e.f. 1/10/13 to 30/12/13 in the pay band of Rs.37400/- to Rs.67000/- with GP of Rs.8700/-, with further directions that the reduction of pay will not have the effect on pension has been imposed upon him. It is trite that upon the effect of the punishment coming to an end, the petitioner would thereafter be entitled to opening of the sealed cover.

30. Mr.B.V.Niren has pointed out that a complaint of sexual harassment at work place was made against the petitioner by Dr.Bindiya Nagar to the National Commission for Women for enquiry in accordance with the Vishakha guidelines. This complaint adverted to instances of 4 th December, 2011 and thereafter. On this complaint, an enquiry was conducted by the Central Level Sexual Harassment Committee of the respondents, which had found that there was no element of sexual harassment in case of the complainant. Only general harassment alleged was held to be partly proved. A preliminary enquiry was additionally conducted by

the respondents and it was found that the allegations made against the petitioner were completely disproved. It appears that the enquiry officer recorded the evidence of the complainant as well as other persons and concluded that the allegations against the petitioner were unfounded. The disciplinary authority, however, sought to disagree with the recommendations of the enquiry officer. The matter thereafter was placed before the Ministry of Home Affairs for consideration in accordance with law. The original record has been placed before us which has been examined. On the allegations which were made against the petitioner and the record of the enquiry as well as the views of the Disciplinary Authority, the Ministry in the note dated 27th November, 2013 has concluded thus:

12. Accordingly, the actions alleged to have been taken by the CO, completely seem to have fallen under the purview of his official duties and there is no evidence to establish that the warning letters issued by the Commandant were for any intention, other than the professional or official exigency for ensuring smooth functioning of his unit. This observation seems to be prima-facie correct in view of para-3 of the Defence-Statement (Pg. 250 of Vol-II of the Enquiry File), wherein the CO has categorically stated that the Complainant was an indisciplined officer as she had openly flouted and often disobeyed the orders/ directions of her seniors including the Commandant of the Unit on many occasions. This fact was also corroborated by Shri R.N. Baroli, Asstt. Comdt. (Now DC) in his statement relied upon by the SHC (Pg. 455/c Para-4 & 5, Vol-II).

13. On going through the records, it is also noted that the CO Shri Satinder Singh has issued various advisory letters to Shri Ashok Kumar (PW-4) and the complainant Dr. (Mrs.) Bindiya Nagar during the month of November 2011 (i.e. just before the framing of allegations on the CO by the complainant) in his official capacity.

14. Thus, it cannot be denied that the allegation by Dr. Bindiya Nagar and the testimony given by Sh. Ashok Kumar, AC, (PW-4) may be motivated by the advisory/ explanation letters issued by the CO to these two officers.

17. It is important to reiterate that the findings of the fact-finding authority i.e. EO (Pg. 322/c & 462/c, Vol-II) to the effect that there was no harassment caused by

the CO, ever having regard to the statements tendered by the witnesses and on the basis of the evidence (oral and documentary) collected by it. Even the specially constituted Sexual Harassment Committee to examine the angle of sexual harassment has ruled against any possibility of there being a sexual harassment caused by the CO. Hence the conclusion arrived at by the Dte. Gen. CRPF as to the presence of elements of sexual and mental harassment, does not appear to be justified.

18. Perusal of the complete record including the PE Report, EOs Report during the course of SHC enquiry and the evidences available on record, makes it clear that the actions of the CO, pertained towards accomplishing official work during the natural course of his regular duties. The entire case seems to be an attempt by the Complainant as an offshoot/ reaction on her being issued a Memorandum by the CO as mentioned at para 12 above under discharge of his official duties. Till that time there were no complaints/ alleged incidences between the two. Thus, the allegations are false and baseless and appears to be motivated.

19. In view of the above, kind approval of the Honble HM is solicited for rejection of the tentative disagreement note received from the Dte. Gen. CRPF, as none of the allegations can be said to have been proved against the CO, Shri Satinder Singh, Commandant so that a copy of report of the Committee and tentative disagreement note of this Ministry be conveyed to the Charged Officer for his representation if any, under the provisions of Rule-15(2) of CCS (CCA) Rules-1965.

31. This rejection has been approved upto the highest level, i.e. by the Minister concerned. The Government note records that the petitioner had issued such advisory letters dated 10th September, 2011; 4th November, 2011; 16th November, 2011 and 19th November, 2011 to Dr. Bindiya Nagar. Advisory letters were issued to Sh.Ashok Kumar, Assistant Commandant on 11th November, 2011; 14th November, 2011, 8th December, 2011; 27th June, 2012 and 1st September, 2012. These persons obviously nurtured the animus to falsely implicate the petitioner. The letter dated 23rd July, 2013 written by Dr.A.K.Gupta referring to the allegations of his colleague and proceedings based thereon thus

clearly manifests the interference and influence of his medical colleague Dr.Nagar to prejudice the petitioner.

32. The copy of the disagreement note dated 27th November, 2013 of the Ministry of Home Affairs duly approved has been placed on record and handed over to the petitioner. Needless to say it shall be open to the petitioner to proceed in the matter in accordance with law.

33. So far as the medical categorization of the petitioner is concerned, on 16th May, 2013, the Review Medical Board categorized the petitioner to medical category P2-T24. This is based on the Medical Board dated 28 th March, 2012. Given the error in down grading the petitioner in the examination of 28th March, 2012 as well as report of the Head of Endocrinology of the SKIMS, this medical categorization is also unsustainable.

34. In view of the above, we hereby quash the report of Medical Board and Review Medical Board dated 28th March, 2012 and 16th May, 2013 respectively.

35. Given the passage of time since the petitioner was last medically examined, it shall be open to the respondents to conduct a medical examination afresh. Having regard to the nature of the dispute, it is directed that the petitioner be medically examined by a board of experts to be appointed by the Commandant, Army Hospital (Research and Referral), Delhi Cantt., New Delhi. If the respondents deem a medical examination to be necessary, they shall approach the Commandant, Army Hospital (Research and Referral), New Delhi within a period of one week for fixing a date and time for examination of the petitioner on or before 30th December, 2013, who shall be informed of the same in writing. The report of the medical examination of the petitioner shall be placed forthwith before the Director General, CRPF for appropriate orders. This writ petition is allowed to the above extent. Dasti under signatures of Court Master. GITA MITTAL, J DEEPA SHARMA, J DECEMBER19 2013 rb