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Court : Central Administrative Tribunal CAT Delhi

Decided On : Jan-27-2012

Judge : The Honourable Mr. Justice, V.K.Bali, Chairman & the Honourable Dr. Veena Chhotray, Member (a)

Appeal No. : Original Applications Nos.4282 of 11, 4284, 4287, 4289, 4290, 4294, 4296, 4299, 4300, 4301, 4360 & am

Appellant : Sandeep and Others

Respondent : Commissioner of Police Phq, Mso Building, Ip Estate, New Delhi and Others

Advocate for Pet/Ap. : For the Applicants: Ajesh Luthra, Advocate. For the Respondents: Amit Anand, Advocate.

Judgement :

Dr. Veena Chhotray:

1. These batch Original Applications have pertained to closely related facts and identical issues of law; hence they are being disposed by this common order.

The applicants in these OAs, provisionally selected candidates for the posts of Constable (Executive) in Delhi Police, are aggrieved at the delay in their

appointment. Though found initially 'unfit' in medical examination, they have subsequently been found 'fit'. However, the respondents have still certain reservations about the medical fitness of these candidates, considering the nature of duties involved. Hence, they have referred/are referring the matter to the Principal Health Secretary, GNCTD for further re-examination.

Through these OAs, the applicants are seeking directions of this Tribunal for accepting the recommendations of medical fitness by the subsequent medical board already having taken place and consider their appointment as Constables. Besides, all consequential benefits, including monetary and seniority benefits as per the batch-mates and juniors have been prayed. Award of costs of proceeding in their favour and passing any other order deemed fit under the circumstances are the additional prayers.

2. All these OAs are represented by the same counsels; the learned counsel Shri Ajesh Luthra for the applicants and the learned counsel Shri Amit Anand for the respondents. As the matter was listed on 16.1.2012, both the learned counsels were ad idem that these matters could be disposed on the basis of the Original Application in which pleadings are complete. (In OA 4562/2011, no counter has been filed). No interim directions got issued in these OAs.

3. The brief facts relevant for adjudication are summed up below:-

Except in two cases, all the applicants had participated in the Recruitment 2009 Phase I/II. The examinations had been conducted and the results declared in the same year. In the remaining two, the conduct of the examination and the declaration of the results were even earlier to that.

The applicants had been selected provisionally, subject to certain further verifications and checks, which inter alia included medical fitness. The common pattern in all these OAs is that in the first medical examination, the applicants were found 'unfit'. They were informed about it mentioning the ground for unfitness and an opportunity for making an appeal for re-medical was given. This, however, was subject to the stipulation of submission of two certificates issued by different medical specialists of the disease concerned certifying that on medical

examination of the candidates, they had found a possibility of an error of judgment in the decision of the medical authorities, who had initially done examination in that cases. Such appeals were to be filed within a stipulated time frame. The applicants in all these OAs filed such appeals accompanied by medical certificates from specialists in support of their medical fitness.

The re-examination for medical fitness was done in Government hospitals of the GNCTD, as directed by the respondents. This time, they were declared medically fit. In some cases on medical re-examination, the initial report was of temporary unfitness in six months but thereafter on a further re-examination, the fitness was certified.

However, the respondents, instead of issuing the letters of appointment after making other verifications, have kept all these cases in abeyance. They still entertain reservations about the medical fitness of these candidates for the nature of job of a Constable in Delhi Police. Accordingly, they have referred the matter to the Principal Secretary Health, GNCTD, with a request for re-examination. In some cases, the proposal is stated to being sent. No reply has still been received as per the respondents.

The medical unfitness in most of these cases is 'eye' related (8/11). Only in the following OAs, unfitness is on a different account:-

OA 4287/11 Yash Pal Singh B/L flat feet

OA 4296/11 Vineet Kumar B/L/T.M. Performation

OA 4300/11 Jasbir Singh (L) Knot Knee

In the cases pertaining to the eye related issues, except one i.e. OA 4282/11 dealing with glaucoma, the rest involve Lasik surgery and its future implications regarding the fitness to perform the duties of the post.

4.1 In ground taken by the respondents about the need for a further re-examination is the extremely arduous nature of duties of a Constable in Delhi Police. In certain cases, the views of the departmental officials earlier in medical

profession have also been referred, considering the specific peculiarities of the unfitness involved. Further, expert views with regard to the deformities concerned have been found necessary.

In the eye related cases, the largest number involve the concerned candidates admittedly having undergone lasik eye surgery before the second medical examination. The respondents have further consulted an eye surgeon of the AIIMS and taken the view:-

“Dr. J.S. Titiyal, Eye Surgeon, Dr. Rajender Prasad Centre for Ophthalmic Sciences, AIIMS, New Delhi was consulted on the issue and his views are submitted as under:-

Such candidates, who undergo Lasik eye surgery, are required to have compulsory eye check up every year.

They are not able to face heavy glare of light especially during night hours.

Before declaring such candidates fit, the following tests shall be got conducted to check the fitness of their vision:-

Dim Light vision (Mesopic vision)

Glare acuity

The executive cadre police personnel in Delhi Police are required to perform duty in extreme weather conditions in day and night. It has been ascertained from experts that while Lasik eye surgery on one hand corrects the vision but on the other hand seriously affects some other functions like contrast sensitivity, dim light vision, glare acuity etc.”

4.2 In OA No. 4282/2011 where problem pertains to glaucoma, in their counter affidavit the respondents have inter alia mentioned about having ascertained from the experts about glaucoma being a serious ailment, hence specific and expert views in respect of aspects such as Contrast sensitivity, Dim Light Vision (Mesopic Vision), Glare acuity at Guru Nanak Eye Centre, New Delhi vide this Hdqrs, letter dated 20.12.2012 have been considered necessary.

5. Being aggrieved with the stand of the respondents, it has been contended on behalf of the applicants about there being no valid ground whatsoever for re-medical examination, after the same having been certified by the medical board duly constituted by the respondents themselves, in Government hospitals of repute. The impugned decision would be averred to be arbitrary and capricious not supported by rules and not within the competence of the authorities. The learned counsel Shri Ajesh Luthra would take particular exception to mention regarding the confirmation of the contentious opinion of the respondents regarding the need for a further medical examination based on the views of certain departmental officials previously being in the field of medicine. The learned counsel would also cite the GOI instructions on the subject and would argue about the right for appeal against the findings of the medical authority having been conferred only in favour of the selectee. It would also be argued by the learned counsel that the respondents themselves have in certain cases rejected the requests for third medical examination on the ground of there being no such provisions as per the rules and the instructions.

An averment of the applicants having been discriminated to their disadvantage would also be made. The OA NO. 4282/11 (argued as a lead case) avers about initially more than 120 candidates having been rejected in medical examination and upon re-medical 90-95 reported to be fit. Of these also, around 65-70 are stated to have been appointed while the applicants and some others have been left out without any justifiable cause.

The occurrence of the delay in appointments is also contended to have affected the right to livelihood of the applicants. It has been pleaded in the OAs that the candidates, who got selected along with them and even in the subsequent recruitments, have already been appointed.

The rejoinder even raises the plea of the decision of the respondents being mala fide and abuse of the authority on the part of the respondents.

On all these grounds, the learned counsel Shri Ajesh Luthra would put up a passionate case for the Tribunal's intervention.

6. On the part of the respondents, a short reply by way of counter affidavit, has been filed. The rules containing no specific provision with regard to the third medical examination, has been admitted. However, despite that considering the peculiarities of the cases, a further satisfaction of the respondents, by way of obtaining medical opinion with regard to certain specific aspects concerning the disabilities in question, has been reiterated. This course of action has been justified on the ground of the very arduous and demanding nature of the post. The respondent's learned counsel Shri Amit Anand would argue about the right for ascertaining the medical fitness of a selectee as an inherent right of the employer. It would also be argued that medical fitness is a sine-qua-non before appointment. The learned counsel would rebut any discrimination on their part. Besides, the submission of the applicant's learned counsel about the rejection of their proposal at the Government level would also be rebutted by Shri Anand.

7. Having carefully considered the respective submissions and the material on record, our observations and findings about the various relevant aspects of the issues are as below:-

7.1 There can be no two views about the basic right to ascertain the medical fitness of a selectee before the appointment being vested in an employer. The only exception may be when arbitrariness may be involved. If, however, there are statutory rules or executive instructions, same have to be meticulously followed.

7.2 To begin with, in due observance of the principles of natural justice, all the applicants have been given a right to appeal for a second medical examination after they were adjudged medically unfit by the first board. Without questioning the credentials of the second medical board justifying their fitness, the respondents have, however, justified a further due diligence in the matter before taking a final view. As per the submissions made through their short counter affidavit, the consideration prompting such a view is a concern for the fitness of these candidates to perform the exacting nature of duties as a Constable in Delhi Police. Seven out of eleven cases-involving lasik surgery-has the opinion of an ophthalmic surgeon from AIIMS as the basis for a need for further consideration. Certain specific aspects have also been mentioned. In the case of glaucoma,

reservations are considering the same being a serious ailment. In the other three cases where the problem pertained to legs, feet or knees, the issues are the implications of such disabilities for the performance of the duties demanded for this post. Under these circumstances, a view has been taken for a further examination. For this also, instead of taking a decision at their own level, a reference has been made to the Government.

Given the factual justification, we do not find the same per se as being arbitrary.

7.3 The plea of hostile discrimination has not been supported by any proofs on behalf of the claimants. Despite a specific query from the Bench, as to whether any instances could be cited where in similar cases, the respondents had taken a different and discriminatory view; the learned counsel for the applicants would not be able to cite any such instance. Hence, we cannot act upon the plea of discrimination.

7.4 However, the delay involved in the entire process is a material factor. As is stated above, these cases pertain to the recruitments of the year 2009 and some even prior to that. The conduct of the examination and the declaration of the results had taken place in the year 2009 or earlier than that. Even the second medical examination justifying the fitness of the candidates were some time around mid 2011. As stated in the counter reply by the respondents, the reference to the Principal Health Secretary has been made on 20.12.2011 (mention of the date 20.12.2011 seems to be a typographical error). In some cases, such a reference is stated to be in process. The net result is that even after the medical fitness of all these candidates having been certified some time around Mid 2011 and after a lapse of more than six months, there has been no final decision on the part of the respondents. Such a protraction cannot be justified as per the principles of fairplay and natural justice; nor is the righteous concern of the respondents to be foolproof about the fitness of these candidates before appointment matched by the requisite promptness to take the final decision at the earliest.

In its decision *Man Singh Vs. State of Haryana and Ors.* (2008) 1 SCALE 750, the Hon'ble Apex Court laying down the principle of about fair play and reasonable being the touchstone of any administrative action, had observed:-

“Any act of the repository of power whether legislative or administrative or quasi judicial is open to challenge if it is so arbitrary or unreasonable that no fair-minded authority could ever have had it.”

8. To conclude, after close look at the facts of these cases and the issues involved therein; we do not agree with the averments of discrimination, arbitrariness or mala fide in the action of the respondents. We also do not consider the proposed further medical examination as in contravention of the relevant instructions and thus, beyond their competence. However, the delay involved in executing this decision and taking a final view is not found to be justified on the touchstone of fairplay and reasonableness. Therefore, the present cases are found to be appropriate ones for issuance of directions to the respondents for taking time-bound decisions.

Resultantly, these OAs are disposed with the following directions:-

The final decision regarding the conduct of a further medical examination is to be taken by the respondents expeditiously and not later than four weeks from the date of receipt of a copy of this order. This would apply both to the cases where proposals have already been referred to the Government and where they are being referred.

In the event of a further medical examination, the same also would be conducted most expeditiously and in any case not later than six weeks from the date of such a decision.

The applicants would be kept suitably informed at both the stages.

Parties would bear their own costs. Copies of these orders are to be served by the Registry by deputing special messenger to the respondent No.1-the Commissioner of Police.

I have gone through the judgment prepared by Hon'ble Dr. Veena Chhotray, Administrative Member. I am in complete agreement with the reasons given by the Hon'ble Member in coming to the conclusions as have been arrived at. I may, however, add few lines in support of the reasons given by the Hon'ble Member.

The primary emphasis on the part of the learned counsel representing the applicants was that the rules or instructions, as the case may be, do not provide for a third medical examination. If a candidate may be medically rejected, it is only his right to ask for a second medical examination, which, it is urged, would necessarily imply that the employer has no right for a third medical check-up. There is no merit in the contention of the learned counsel, as providing a second medical check-up may give right to a candidate to question the findings of the medical board declaring him unfit, but the same would place no embargo on the right of the employer to put a candidate to third medical check-up. The rules do not contain any restriction as to the right of an employer to be doubly sure as regards medical fitness of a candidate. The right of an employer to verify the state of health of a candidate and antecedents is inherent. In the present case, the applicants are seeking employment in Police. Surely, if the selected candidates to be appointed in Delhi Police may not be totally physically fit as per the requirements of the job, it would be the right of the employer not to offer employment to them. In the circumstances thus, if some doubts have crept in, we find nothing wrong for the employer to be doubly sure as regards the state of health of the applicants.

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