

Vipln Kumar Vs. Union of India and Another

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Court : Delhi

Decided On : Apr-30-2012

Judge : Anil Kumar & Sudershan Kumar Misra

Appeal No. : W.P. (C) NO. 2341 of 2012

Appellant : Vipln Kumar

Respondent : Union of India and Another

Judgement :

Anil Kumar, J.

1. The petitioner has sought the quashing of order dated 10th March, 2011 whereby the request of the petitioner for Review Medical Board had been accepted and the petitioner was directed to appear before the Review Medical Board Examination at FHQ, BSF Hospital-II, Tigri Camp, New Delhi on 25th March, 2011. The petitioner has also sought direction to the respondents to give appointment to the petitioner to the post of ASI (Steno)/Head Constable (MIN) in BSF.

2. The relevant facts for comprehending the disputes raised by the petitioner are that the petitioner had applied for the post of ASI (Steno)/Head Constable (MIN) in the BSF. The respondents thereafter, issued the letter dated 15th August, 2010 to the petitioner, bearing Roll No.11602767, directing him to appear in the written examination which was to be held on 19th September, 2010 at 25 Bn. BSF,

Chhawla Camp, New Delhi-110071. According to the petitioner, he qualified the examination and after qualifying the written examination, he was directed to appear for the physical examination, typing test, computer theory, practical and interview. The petitioner alleges that he qualified all these tests successfully.

3. Thereafter, the petitioner was called for the medical examination, however, after his medical examination as per result dated 20th December, 2010 the petitioner was declared medically unfit. The petitioner was declared medically unfit on account of allegedly having hypertension, DNS C Rhinitis, Tachycaralia, Knock Knee and Tremors C Rembryism.

4. By communication dated 20th December, 2010, the petitioner was also intimated that if he wanted to prefer an appeal against the findings of the medical examination, he should apply for obtaining the necessary medical fitness certificates from the medical practitioners (Specialist in the field) within a period of one month of the date of issue of the said letter.

5. The petitioner, therefore, applied for the Review Medical Examination after obtaining the medical fitness certificate from Dr. Deepak Joshi, who is a specialist in the field of Orthopedics. Dr. Deepak Joshi on examination had declared the petitioner to be medically fit for the post of ASI (Steno)/Head Constable (MIN). The petitioner also obtained a medical fitness certificate from Dr. Sudhir an ENT specialist, who also declared the petitioner medically fit. The petitioner further obtained a certificate from the Sports Injury Center indicating that the petitioner was fit. Regarding DNS C Rhinitis, the petitioner got himself medically examined by Dr. S.P. Kataria, who also declared him medically fit. Regarding hypertension, Tachycaralia, Tremors C Rembryism, the petitioner obtained a certificate indicating that the decision of the Medical Board of the respondents was on account of error of judgment. The petitioner thereafter, deposited the charges for the Review Medical Board by a demand draft of Rs.50/- and on fulfilling the terms and conditions for constituting the Review Medical Board, the respondents by letter dated 10th March, 2011 directed the petitioner to appear before the Review Medical Examination at FHQ, BSF Hospital-II, Tigri Camp, New Delhi.

6. The petitioner averred that he appeared on 25th March, 2011 for the Review Medical Examination Board, however, the Review Medical Examination Board did not declare the result and did not inform the petitioner about the result.

7. The petitioner further averred that he filed an application under the Right to Information Act, 2005 however, in reply to the same it was stated that the BSF is an organization listed in the Second Schedule of the Act and is thus exempted from the provisions of the said Act.

8. The petitioner further contended that he is medically fit and his fitness has also been certified by the specialized doctors at Safdarjung Hospital. Despite the petitioner appearing for the Review Medical Examination, he has not been intimated about his fitness, nor was the information disclosed by the respondents, and instead the respondents have tried to take shelter under the plea that the Right to Information Act, 2005 is not applicable to the Border Security Force. The petitioner, therefore, sent a legal notice dated 13th December, 2011.

9. Aggrieved by the action of the respondents in not declaring the result of the petitioner after appearing before the Review Medical Examination, the petitioner has filed the above-noted writ petition. The matter had come up for hearing on 23rd April, 2012. On that day, the respondents were directed to produce the record of the petitioner, pertaining to the Review Medical Board, and they were also asked to explain as to how it could be inferred that the petitioner suffers from hypertension and has knock knee so as to make him ineligible for the said post, being medically unfit.

10. Pursuant to the order dated 23rd April, 2012, the learned counsel for the respondents have produced the record of the Review Medical Board declaring the petitioner medically unfit, *inter-alia*, on the ground that the petitioner is having hypertension and knock knee. The concerned doctor, who had examined the petitioner for the Review Medical Board, has also appeared along with the counsel for the respondents.

11. The queries were made by the Court from the learned counsel for the respondents and the said member of the Review Medical Board regarding the

tests conducted by the Review Medical Board. The learned counsel for the respondents and the member of the Review Board are unable to produce any record which will demonstrate as to how the measurements for the knock knee and the finding of hypertension were taken by the Review Medical Board, so as to reach the inference that the petitioner suffers from knock knee and hypertension.

12. The learned counsel for the petitioner has contended that there are uniform guidelines for ascertaining the medical parameters of a candidate. Relying on the Uniform Guidelines dated 15th July, 2011, the learned counsel for the petitioner has contended that the guidelines contemplates that a candidate should not be rejected on the basis of a single high reading of blood pressure. He contended that in case the blood pressure of a candidate is found to be higher than 140 mm systolic and/or 90 mm Hg diastolic, at least two more readings should be taken in lying position at an interval of 6-8 hours before declaring him unfit. The guidelines provided for examination of the blood pressure in the policy dated 15th July, 2011 are as under:-

“BP should be recorded in all cases. Candidate should not be rejected on the basis of a single high reading. In case the blood pressure is recorded to be higher than 140 mm systolic and/or 90 mm Hg diastolic, at least 2 more recordings should be taken in lying position at an interval of 6-8 hours before declaring him unfit. BP should be recorded in both arms. The candidate should be asked to relax and should not be subjected to strenuous/stressful activity immediately prior to the recording.”

13. The learned counsel for the petitioner further contended that even with regard to ascertaining knock knee, in para 51 of the guidelines dated 15th July, 2011, the procedure for determining knock knee is provided, which contemplates that the candidate should be made to sit on stool with lower limbs hanging loose and the distance between the malleoli has to be measured. Learned counsel has contended that a candidate can be declared as having knock knee and thus medically unfit on account of it, if the measurement exceeds 5 cm. He has also pointed out that the guidelines contemplates a second method of examination which is to ask the candidate to lie flat on the ground by keeping his lower limbs

loose, after which the feet of the candidate is to be lifted and the distance between the internal malleoli has to be measured with the help of a card. Paragraph 51 with regard to knock knee in the uniform guidelines is as under:-

51. "Knock Knee: The candidate is made to sit on a stool with lower limbs hanging loose. The assistant then holds up the feet and approximates the medical condyles and the distance between the malleoli is measured. Measurement exceeding 5 Cms is a cause of rejection as knock knee. Second method for examination of knock knee is to ask candidate to lie flat on the ground with the lower limbs keeping loose. The assistant then lifts up the feet and approximates the medical condyles. The distance between the internal malleoli is then measured with the help of card."

14. The learned counsel, Mr.Saqib who appeared on advance notice contended that the Review Medical Examination of the petitioner was conducted on 25th March, 2011 and on the said date the uniform guidelines dated 15th July, 2011 were not applicable as they came into existence only later on. The learned counsel has therefore, relied on the Border Security Force Manual Vol.IX Medical Directorate stipulating the method for measuring blood pressure and knock knee and the grounds for rejection. He has referred to Rule 44(v) detailing about the acceptable blood pressure in a candidate and Rule 44(vi) regarding the method of checking blood pressure, which are as under:-

"(v) Blood Pressure: Blood pressure be measured with sphygmomanometer-meter. For candidates between 15-25 years 100 plus age roughly gives systolic pressure and those above 25 years 110 plus half of age gives rough estimate of systolic pressure. As a general rule a candidate with a blood pressure above 140/90 mm hg should be made unfit unless the candidate is hospitalized and thoroughly examined and investigated to exclude that the blood pressure is of transient nature due to excitement and without any pathological condition.

(vi) Method of taking Blood Pressure: The mercury manometer type of instrument should be used as a rule. The measurement should not be taken within 15 minutes of any exercise or excitement. The candidate, particularly his/her arm, is relaxed and he/she may be either in lying or sitting position. The arm is supported in a

horizontal position. The arm should be freed from the clothes. The cuff completely deflated should be applied with the middle of the cuff over the inner side of the arm and its lower edge an inch or two above the bend of the elbow.

The brachial artery be located by palpitation at the bend of the elbow and the stethoscope applied tightly and centrally over it below the cuff but not in contact with the cuff. The cuff is inflated to above 200 mm Hg and then slowly deflated. The level at which the column stands when soft successive sounds are heard represents the systolic pressure. When more air is allowed to escape the sounds will be heard to increase in intensity. The levels at which clear sound changes to soft muffled fading sounds, represents the diastolic pressure. The measurement should be taken in a fairly brief period of time as prolonged pressure of the cuff is irritating to the patient and will vitiate the readings. Rechecking, if to be done, should be after few minutes of complete deflation of the cuff. Some times as the cuff is deflated sounds are heard at a certain level, which may disappear as pressure falls and reappear at a still lower level. This “silent gap” may cause error in reading.”

Regarding knock knee, he has contended that the said manual contemplates measurement to be taken with the body sitting upright on a chair and the legs fully extended in front and the knee just touching. The relevant Rule 20 in Chapter IV regarding knock knee is as under:-

“20. Knock Knee: Knock knee combined with tendency to flat feet and muscular weakness, is a disqualification. Where knock knee alone exists, a separation of internal malleoli of two inches will disqualify. The measurement will be taken with the body sitting upright on a chair, the legs fully extended in front and the knee just touching.”

15. This Court has heard the learned counsel for the parties. In order to determine the petitioner as medically unfit by the Review Medical Board, the petitioner ought to have been examined in the manner prescribed in the Border Security Force Manual Vol.IX Medical Directorate. The learned counsel for the respondents is, however, unable to produce any record which would indicate the compliance of the guidelines stipulated by the Review Medical Board while medically examining the

petitioner. Though it may not be necessary for the respondents to indicate each and every reading taken by the Review Medical Board in the final opinion declaring the candidate to be medically unfit and communicating the same, however, there has to be a record of taking the measurement, whether for hypertension or for knock knee, which in the present case would have led them to infer that the petitioner was medically unfit on account of these two deficiencies.

16. The learned counsel for the respondents has contended that it appears that no such record is available. If no such record is available it will not be possible for this Court to uphold the opinion of the Review Medical Board, whereby the petitioner has been declared medically unfit. The least the respondents were to ensure, was to comply with the methodology prescribed in their own manual in order to determine whether the candidate has blood pressure and knock knee.

17. In absence of any record, the respondents are unable to justify that the petitioner is medically unfit on account of hypertension and knock knee as has been contended on the basis of the final opinion of the Review Medical Board. The learned counsel for the respondents is also unable to produce any record to show that the final opinion of the Review Medical Board was, in fact, communicated to the petitioner.

18. In the circumstances, in order to ascertain fitness of the petitioner it will be appropriate to have the petitioner re-examined by an independent Medical Board to ascertain whether the petitioner suffers from hypertension and knock knee. Though the respondents can be directed to constitute a Review Medical Board in order to determine his medical fitness, however, in view of the fact that considerable time has passed and in order to negate any possibility of any bias on account of any observation made by this Court regarding non following of the procedure by the Review Medical Board of the respondents, in the facts and circumstances, it will be appropriate to have an independent Review Medical Board constituted to determine the medical fitness of the petitioner.

19. Since the new uniform guidelines dated 15th July, 2011 has already been implemented and the candidates have been selected after 15th July, 2011 on the basis of the criterion detailed in the said guidelines it will be appropriate to

determine the medical fitness of the petitioner in accordance with the parameters laid down in the guidelines dated 15th July, 2011. The relevant portions of the guidelines regarding knock knees and hypertension have already been reproduced above in the order.

20. Therefore, in the totality of the facts and circumstances and for the foregoing reasons the writ petition is allowed. The Director General of Medical Services (Army), DGMS-4B, AG's Branch, New Delhi-110001 is directed to constitute a Medical Board to assess the medical fitness of the petitioner ascertain whether he has hypertension and knock knee within one month of the date of this order. The Review Medical Board shall follow the uniform guidelines dated 15th July, 2011 in order to assess the medical fitness of the petitioner which are detailed in this order itself regarding hypertension and knock knee. The date, time and place where the petitioner has to appear before the Review Medical Board be intimated to the petitioner, at least one week before the date of the Review Medical Board. The Review Medical Board constituted by the Director General, Medical Service shall thereafter, submit its report within two weeks after conducting the review medical board of the petitioner to the respondent No.2 Inspector General, Border Security Force, Pers Diet: Rectt Section, Block No.10, CGO Complex, Lodhi Road, New Delhi-110003. In case the petitioner shall be found medically fit by the Review Medical Board constituted pursuant to the directions of this Court, the respondents shall process the case of the petitioner further for his selection/appointment to the post of ASI (Steno)/Head Constable (MIN) pursuant to the application of the petitioner on which the letter dated 15th August, 2010 was issued to the petitioner bearing his roll number as 11602767. With these directions the writ petition is disposed of.

Copies of this order be given dasti to the counsel for the parties. Copy of this order be sent to The Director General of Medical Services (Army), DGMS-4B, AG's Branch, New Delhi-110001 for compliance of the order.

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