



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.11392 of 2014

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

Lalit Kumar *Petitioner(s)*

-versus-

Union of India & Ors. *Opposite Party (s)*

Advocates appeared in the case through Hybrid Mode:

For Petitioner(s) : *Mr. Agasti Kanungo, Adv.*

For Opposite Party (s) : *Mr. Jateswar Nayak, CGC*

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-15.04.2024

DATE OF JUDGMENT: -25.06.2024

Dr. S.K. Panigrahi, J.

1. The Petitioner through this Writ Petition challenges the cancellation of his appointment on the ground that he is declared unfit by the CISF Medical Board. The report of the CISF medical authority declaring the Petitioner medically unfit is under challenge, which does not find any logic when the Petitioner has been recruited to CISF after being found medically fit. The report of the Review Medical Board does not disclose any reason while differing with the doctor of District Head Quarter Hospital and rejected simply indicating that the Petitioner is unfit as per general guideline.



- I. CASE OF THE PETITIONER:**
2. The brief fact of the case is that:
- (i) The Petitioner initially recruited to the (Central Industrial Security Force) "CISF" as Constable in the year 2008 and after completion of training at Arakonnam, served at many places, such as Ranchi, Bokaro and presently continuing at Damanjodi.
- (ii) One notification was published for recruitment of Sub-Inspector/Executive through LDCE Vide CISF, Directorate Letter No. 2297 dated 08.08.2013. The Petitioner applied for the post. By virtue of the Letter No 3701 dated 16.01.2014, the Petitioner was served with the Letter to appear the written examination pursuant to which, the Petitioner appeared in the examination. The Petitioner qualified for the same and his name finds place at Serial No. 159 of the select list.
- (iii) The Petitioner was called for physical verification and physical efficiency test on 26.02.2014. The Petitioner was declared unfit on the ground of single testis in the scrotum, as disclosed from the report of the Medical Officer.
- (iv) However, the Petitioner appealed to the IG/Administration, CISF against the medical unfitness after being medically examined on 27.02.2014 by Dr. R.P. Singh, SSG, (Special Security Group), District Hospital Greater Noida, wherein, he was declared medically unfit for the said post.
- (v) The Petitioner was intimated of the review medical examination Vide Letter No.603 dated 27.03.2014. The review medical examination, held



on 7.04.2014, the petitioner was again intimated unfit by the Doctor, CISF Hospital, Saket, New Delhi.

- (vi) It is submitted that the review medical examination declaring the Petitioner medically unfit is illegal, arbitrary and against the principle of law in as much as there is no reason, as to why the report differs from the HQ Hospital report.
- (vii) It is submitted that when the Petitioner has served the Department since last 5-6 year and recruited on being medically qualified, in absence of rules and instruction, cannot justify cancellation of Petitioner's appointment.
- (viii) It is submitted that the Opposite Parties have arbitrarily cancelled the appointment based on the review medical report and the petitioner should have been noticed and given an opportunity of hearing, when the Review Medical Board differs with the doctor of the District Head Quarter Hospital.
- (ix) Hence, this Writ Petition.

II. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES :

- 3. Learned counsel for the Opposite Parties earnestly made the following submissions in support of his contentions.
 - (i) It is submitted that his selection to the post of Constable/GD during the year 2008 has no relevancy with the present recruitment to the post of Sub- inspector/Exe (LDCE) in the year 2013. The recruitment to the post of Constable/GD and the recruitment to the post of Sub-inspector/Exe (LDCE) both are totally different, including the educational qualification.



The post of Sub-Inspector/Exe (LDCE) is a higher post than that of Constable/GD. Post of Sub-Inspector/Exe carries higher duties and responsibilities. Accordingly, the candidates those who fulfill all the eligibility criteria and qualify in all events of recruitment process will be selected and are appointed to the post. The medical examination for the post of Constable/GD conducted during the year 2008 and medical examination for the post of SI/Exe held during the year 2013 are entirely different. The Medical Boards for recruitment to the post of Sub-Inspector/Exe (LDCE) have conducted the Medical Examination as per the instructions issued by Ministry of Home Affairs.

- (ii) It is argued that the Petitioner was appointed to the post of Constable/GD in CISF during the year 2008. Personnel selected in the Armed Force of the Union who are required to perform duties with weapons are expected to be physically fit, mentally alert and perform their duties and undertake responsibilities with honesty and sincerity.
- (iii) It is contended that the applications were invited from eligible candidates for filling up the posts of Sub-Inspector/Exe through Limited Departmental Competitive Examination for the year 2013 vide CISF Directorate letter No.(2297) dated 08.08.2013. The petitioner is also a candidate and applied for the post in the above recruitment.
- (iv) It is emphasized that the petitioner has appeared in the written examination for the post conducted on 02.02.2014. He qualified the written examination.
- (v) It is further submitted that on appeal, the petitioner was allowed to appear in the Review Medical Examination at CISF, NHCC, Saket, New



Delhi. On 11.04.2014, the Review Medical Examination Board, after detailed examination, declared the Petitioner UNFIT on account of undescended testis (Left side).

- (vi) It is submitted that the averments of the Petitioner are baseless and untenable. The Medical Boards have conducted the Medical Examination and Review Medical Examination in free and fair manner as per the instructions of Government of India/Ministry of Home Affairs. The Medical Boards have not committed any illegal or arbitrary acts against the principles of law.
- (vii) It is reiterated that it is fact that the Petitioner has put in 5-6 years of service in the Department. The Petitioner is still serving in this Department as Constable/GD for which he has been appointed earlier. But, this will not entitle him for his selection and appointment to a higher post ignoring the requirements of the recruitment procedure. The Petitioner's averments are false, as his appointment to the post of Constable/GD has not been cancelled at any point of time and is still holding the post and serving at CISF Unit, NALCO Damanjodi.
- (viii) It is submitted that averments of the petitioner are far from truth. The petitioner has never been issued offer of appointment to the post of Sub-Inspector/Exe in CISF and thus question for cancellation of his offer of appointment to the post of Sub-Inspector/Exe in CISF as well as giving him opportunity for personal hearing does not arise. Above all, the Petitioner has never been selected to the post of Sub-Inspector/Exe in CISF.



- (ix) Learned counsel for the Opposite Parties, accordingly, prays for dismissal of this Writ Petition.

III. COURT'S REASONING AND ANALYSIS:

4. Consequent upon qualifying the written examination, the Petitioner was called to appear in the Physical Verification, Physical Efficiency Test and Medical Examination on 26.02.2014 at CISF Unit, SSG, Greater Noida. As the petitioner qualified in the Physical Verification, Physical Efficiency Test, he was allowed to appear in the Medical Examination. After detailed examination, the Petitioner was declared unfit by the Medical Board on the ground of 'single testis' in his scrotum.
5. The post of Sub-Inspector/Exe (LDCE) is a higher post than that of a Constable/GD which carries higher responsibilities and duties. For selection to the post of Sub-Inspector/Exe certain educational qualification and other eligibility criteria including medical standards have been prescribed. Candidates those who fulfill all the eligibility criteria and qualify in all events of recruitment process including the medical examination are only selected and appointed to the post.
6. The Delhi High Court has confronted with a case of similar nature i.e. *Km. Priyanka v. Union of India & Ors.*¹, the Court has held that the standard of physical fitness for the Armed Forces and the Police Forces is more stringent than for the civilian employment. It was held that it is the doctors of the Forces who are well aware of the demands of duties

¹ W.P.(C) 10783/2020 (Delhi High Court)



and the physical standards required to discharge the same. It further held as under:

"8. We have on several occasions observed that the standard of physical fitness for the Armed Forces and the Police Forces is more stringent than for civilian employment. We have, in Priti Yadav Vs. Union of India 2020 SCC OnLine Del 951; Jonu Tiwari Vs. Union of India 2020 SCC OnLine Del 855; Nishant Kumar Vs. Union of India 2020 SCC OnLine Del 808 and Sharvan Kumar Rai Vs. Union of India 2020 SCC OnLine Del 924, held that once no mala fides are attributed and the doctors of the Forces who are well aware of the demands of duties of the Forces in the terrain in which the recruited personnel are required to work, have formed an opinion that a candidate is not medically fit for recruitment, opinion of private or other government doctors to the contrary cannot be accepted inasmuch as the recruited personnel are required to work for the Forces and not for the private doctors or the government hospitals and which medical professionals are unaware of the demands of the duties in the Forces."

7. The Petitioner's selection to the post of Constable/GD during the year 2008 has no relevancy with the present recruitment to the post of Sub-inspector/Exe (LDCE) in the year 2013. The standards prescribed for the recruitment to the post of Constable/GD and the recruitment to the post of Sub-inspector/Exe (LDCE) both are totally different, including the educational qualification. The post of Sub-Inspector/Exe (LDCE) is a higher post than that of Constable/GD. Post of Sub-Inspector/Exe carries higher duties and responsibilities. Accordingly, the candidates those who fulfill all the eligibility criteria and qualify in all events of recruitment process will be selected and appointed to the post. The



medical examination for the post of Constable/GD conducted during the year 2008 and medical examination for the post of SI/Exe held during the year 2013 are entirely different. The Medical Boards for recruitment to the post of Sub- Inspector/Exe (LDCE) have conducted the Medical Examination as per the instructions issued by Ministry of Home Affairs. Hence, the allegation of illegality, arbitrariness etc. cannot be held to be true in the absence of any material. The Department has no personal grudge or anything against the Petitioner, it has just tried to have the medical test as prescribed under the selection rules.

8. With respect to the aforesaid discussion and the cases cited hereinabove, this Court is not inclined to entertain the prayer of the Petitioner.
9. This Writ Petition is dismissed, accordingly.
10. Interim order, if any, passed earlier stands vacated.

(Dr. S.K. Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 25th June., 2024/*