



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

203

CWP-6706-2001 (O&M)
Date of decision: 17.03.2025

RAJNEESH KUMAR

.....Petitioner

VERSUS

UNION OF INDIA AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Ms. Alka Chatrath, Advocate with
Mr. Nikhil Singh, Advocate
for the petitioner.

Mr. Karan Bhardwaj, Advocate and
Mr. Pardeep Kumar, Advocate
Mr. Ishaan, Advocate
for the respondent.

VINOD S. BHARDWAJ, J. (Oral)

Challenging the order dated 18.09.2000 whereby services of the petitioner have been terminated with immediate effect, the instant writ petition has been filed.

2. Learned Counsel appearing on behalf of the petitioner contends that the petitioner had passed his Matriculation as well as Senior Secondary Examination from the Punjab School Education Board. As a sportsperson he participated in Junior Punjab Wrestling Championship conducted by the Punjab Wrestling Association in June 1992. He also secured 1st place in the 27th District Wrestling Championship 1993-94 in Junior Weight Category of



48 kg. His father worked as a Driver in the regiment, hence, he belonged to the ESM category. It is contended that the petitioner became a victim of terrorism on 06.08.1987 when the terrorists opened an attack on his family leaving 18 persons dead and forcing the remaining to save their lives by jumping from the roof. An FIR No. 166 was registered at Police Station Majitha under Section 302, 148, 149 of the Indian Penal Code, 1860, Section 25 and 27 of the Arms Act and Section 3 and 4 of the Terrorist and Disruptive Activities (Prevention) Act, 1987. In the said incident that took place on 06.08.1987, the petitioner lost tip of his little finger of the left hand. The said physical affliction however is not an impediment in the discharge of his functions. She contends that the respondent-ITBP had issued an advertisement for recruitment to the post of Constables wherein the petitioner had applied. He along with others, were put to physical proficiency test. The petitioner qualified the same along with the written test and interview. An appointment letter dated 15.01.2000 was accordingly issued to the petitioner. He was also found fit by the Medical Officer. The petitioner was, however, surprised on being served with the order dated 18.09.2000 whereby he was discharged from the I.T.B.P without assigning any reasons. She vehemently contends that the respondents have not followed the principles of natural justice and have not assigned any reasons for discharge/termination of the service of the petitioner. It was also averred that under similar circumstances, the respondents had retained one Shri Shakur Ahmed Gujjar, Constable/TLR in 24 BN, I.T.B.P. Force whereas the petitioner was discriminated and was discharged arbitrarily despite him having served with the respondent for a period of 09 months. She contends



that the circumstances under which the petitioner had lost the tip of his left little finger were also not taken into consideration by the respondents and that they took an extreme step of terminating the services of the petitioner.

3. She further contends that in the reply that was filed by the respondents, numerous objections have been pointed out with respect to the physical ailments of the petitioner apart from amputation of the tip of the little finger. They have also referred to the petitioner suffering from knock-knees, colour blindness and flat foot and the petitioner being of short height. It is contended that this Court had directed the PGIMER to conduct the medical examination of the petitioner and a report was received from the Medical Board of the PGIMER which reads thus:-

***MINUTES OF THE MEETING OF THE COMMITTEE
HELD ON 1.6.2010 AT 3.00 PM IN THE OFFICE OF
UNDERSIGNED REGARDING IMPLEMENTATION OF
THE ORDERS DATED 20.04.2010 OF THE HON'BLE
COURT PASSED IN CWP NO 6706 OF 2001 TITLED AS
RAJNEESH KUMAR VS UNION OF INDIA***

The following were present

- 1. Dr. M.S. Dhillon, Professor & Head, Deptt of Orthopaedics*
- 2. Dr R.K. Sen, Additional Professor, Deptt of Orthopaedics*
- 3. Dr. Amit Gupta, Associate Professor, Dept. of Ophthalmology*

As per Orthopaedics department Rajneesh Kumar was examined in Orthopaedics OPD vide CR No 829371 on 2nd Jun 2010.

On his clinical examination, he has got an amputation of the terminal phalanx of Lt. hand of little finger.

Clinically there is 2 cm of inter melleolar distance when both the knees abut each other.



On active heel raise the planter arches appear in both the feet.

The scanogram of the lower limbs shows normal femoro-tibial alignment. The X-ray of the feet do not reveal any evidence of pathological flat foot.

The scanogram and the X-rays are attached alongwith it.

As per Ophthalmology department:

As per comments of Dr Amit Gupta: His visual actuity was 6/6 (unaided) in both eyes. His colour vision, as tested on Ishihara chart and Lantern test, was within normal limits.

Sd/-

*Dr Ramesh Sen
Member*

Sd/-

*Dr Amit Gupta
Member*

Sd/-

*Dr. Mandeep Dhillon
Chairman (Medical Board)*

4. Referring to the above, she contends that so far as the defect of vision or colour blindness is concerned, the same has been reported by the PGI to be within normal limits. The Medical Board has also held that the x-ray of the foot does not reveal any evidence of pathological flat foot and as such the reasons cited by the respondents are not cogent. Learned Counsel contends that even though the respondents have placed a heavy reliance on the report of Review Medical Board dated 20.09.2000, however, the petitioner had already been discharged on 18.09.2000, hence, the order of termination/discharge preceded the report of the Review Medical Board. She thus submits that the foundation of the order of discharge is not well corroborated, hence, the impugned order is liable to be set aside.

5. No other argument has been raised nor any judgment cited by the Counsel for the petitioner.



6. Responding to the above, Counsel for the respondent submits that even though the petitioner was found fit for recruitment and was issued the appointment letter on 15.01.2000, however, at the time of taking finger print for petitioner's Service Book/record, it was noticed that the little finger of his left hand was amputated. Thereafter, the petitioner was sent for medical examination in the authorized ITBP Hospital, Ramgarh. A report was submitted by the Inspecting Doctor to the effect that the petitioner is an old case of amputation of left little finger being a crush injury. The said report dated 24.04.2000 has also been appended along with the reply. The matter was thereafter brought to the notice of the Deputy Inspector General, ITBP vide letter dated 10.05.2000. A subsequent message was received from the office of the Director General, ITBP on 04.07.2000 to constitute a Review Medical Board. The Review Medical Board reported that the petitioner was not at par with the required standards for the recruitment. The petitioner was found to be colour blind, had gross knock-knees, was 1cm below the standard height and his vision was 6/36 in both the eyes apart from the terminal phalanx of left little finger being amputated. He contends that accordingly, the order of termination was passed under Rule 14 (2) of the ITBP Rules, 1994 which are extracted as under: -

"14. Probation.

1. A person appointed through direct recruitment as an officer, subordinate officer or enrolled person shall be on probation for a period of 2 years;

2. The Central Government in the case of officers and the authority prescribed in rule 13 in the case of subordinate



officers and enrolled persons may, for the reasons to be recorded in writing, extend the period of probation for such further period or periods not exceeding 2 years or may during the period of probation, terminate his services, without assigning any reasons:

3. The provisions of sub rule (1) and (2) shall also be applicable to a person on his initial promotion as an officer. Persons who do not complete the period of probation satisfactorily are liable to be reverted to the former rank."

7. Learned Counsel further contends that so far as the contention of the petitioner that another person with an amputation of his finger having been retained in service is concerned, the said person was already in service of the ITBP when he lost the phalanx of his finger. The same being an injury sustained during the course of his duties, the case of the petitioner, who is a Probationer and in whose case the amputation/disability has been noted at the very inception, cannot be equated to that of Shakeel Ahmad Gujjar. He further submits that as far as the report dated 02.06.2010 of the PGIMER, Chandigarh is concerned, it does not dispute that the petitioner had got the terminal phalanx of the little finger of his left hand amputated. The said report neither makes any mention of the petitioner being below the standard height nor reports on the issue of knock-knees. Even though the PGIMER Chandigarh report mentions that the petitioner did not have any problem of pathological flat foot or vision defects, yet, other physical standards have not been disputed. To the said effect, the report of the Review Medical Board thus holds the field. It is further stated that the petitioner has not filed any



replication or rejoinder disputing the factual aspect and consequently, their stand that the petitioner does not meet the physical standards prescribed for induction into the service remains intact. The order of termination would hence nonetheless remain valid on the said count. He further submits that since the petitioner was a probationer, a show cause notice was not required to be served. He further contends that the Service Rules specifically provide that in case an employee is found unsuitable at any point in time due to any of the reasons, his services can be terminated immediately. It is further submitted by him that even though the order of termination is dated 18.09.2000 and the forwarding letter of the report of the Review Medical Board is dated 20.09.2000, however, the medical examination had actually been conducted on 13.09.2000. A mere delay in dispatch of the report cannot be construed to mean that the authorities were not in the knowledge of the report. The same was only an intra-departmental communication and procedural delay in sending the same will not invalidate the order of termination. He further places reliance on a Division Bench judgment of Allahabad High Court in the matter of ***“Md. Arshad Khan versus The State of U.P. through Additional Chief Secretary, Principal Secretary and others”*** reported as ***2020 SCC OnLine All 283*** to contend that the opinion of the Medical Board or the Review Medical Board cannot be ignored when there is nothing on record to dispel or counter the findings so recorded by the Review Medical Board. The relevant extract of the same is reproduced hereinafter below: -

“10. In a case where the recruitment process has been carried out as per prescribed statutory rules whereunder



a procedure has been prescribed for testing the medical fitness of candidates by a duly constituted Medical Board, the report of the Medical Board is not to be normally interfered with, solely on the basis of a claim sought to be set up by a prospective candidate.

11. In the instant case, the writ petitioner having been granted another opportunity by providing for a medical examination by the Medical Board constituted in terms of directions of this Court, and having again been found to be medically unfit thereby reaffirming the view taken by the District Medical Board and the Appellate Medical Board, set up by the recruiting agency, no further indulgence is required to be granted to him in this regard. This is, more so, since it is not the case of the petitioner that the decision of the Medical Board was arbitrary, capricious or not in accordance with the procedure under the relevant statutory recruitment rules.

12. No material has been placed on record, or otherwise referred, to suggest that the opinion of the Medical Board or the Appellate Medical Board could in any manner be said to be casual, inchoate, perfunctory or vague. We are therefore of the view that the Medical Board being an expert body, its opinion is entitled to be given due weight, credence and value.

13. A similar view has been taken in a recent judgment of this Court in Vivek Kumar v. State of U.P. and others, wherein it was held that matters relating to medical evaluation of candidates in a recruitment process involve expert determination and it may not be desirable to supplant the procedure prescribed therefor as laid down under the relevant recruitment rules and taking any other



view may have the effect of derailing the recruitment process.

14. In an Intra Court Special Appeal, no interference is usually warranted unless palpable infirmities or perversities are noticed on a plain reading of the impugned judgment and order.

15. In the facts and circumstances of the instant case, on a plain reading of the impugned judgment and order, we do not notice any such palpable infirmity or perversity. As such, we are not inclined to interfere with the impugned judgment and order dated 30.09.2019.

16. For reasons stated above, the Special Appeal is liable to be dismissed and stands, accordingly, dismissed.

8. Reference is also made to the judgment of the Allahabad High Court in the matter of ***“Ankit Kumar versus State of U.P. and others”*** reported as ***2021 SCC OnLine All 584*** wherein it has been held that the Court should ordinarily refrain from interfering with the opinion of the Medical Board and Review Medical Board, which is a body comprising of experts in respect of fitness of a candidate who is supposed to work in the police force. Powers under Article 226 have to be exercised cautiously and sparingly in exceptional circumstances only where it is demonstrable that the opinion of the Medical Board or Review Medical Board is palpably erroneous. He submits that in the present case, there is nothing on record to establish that the opinion of the Medical Board/Review Medical Board was palpably erroneous on all counts as noticed. Once the Medical Board of PGIMER has remained non-committal/non-responsive on various other



physical parameters/standards, the opinion of the Review Medical Board attains finality and cannot be substituted by the Government. The relevant extract of the judgment reads thus:-

“33. Thus, in this view of the fact, this Court believes that unless and until the candidate demonstrates by placing genuine and authentic material that the opinion of the Medical Board or Review Medical Board is erroneous or capricious or vague and smacks of malafide, the Court should refrain from interfering with the opinion of Medical Board and Review Medical Board which is a body constituted of experts to assess the fitness of candidate as per the norms and standards prescribed in respect of fitness of a candidate who is supposed to work in the police force.

34. It is no doubt true that this Court has power under Article 226 of the Constitution of India to interfere with the opinion of the Medical Board or Review Medical Board, but such power has to be exercised cautiously and sparingly in exceptional circumstances only in a given case where it is demonstrated that the opinion of the Medical Board or Review is palpably erroneous.

35. In the case in hand, there is no such material placed by the learned counsel for the petitioner to doubt the correctness of the opinion of the Medical Board and Review Medical Board.

Xxx xxx xxx xxx xxx xxx xxx xxx xxx

38. Thus, for the reasons given above, the writ petition lacks merit and is accordingly, dismissed with no order as to costs.

9. Learned Counsel contends that the advertisement issued by the respondent specified that a candidate had to be in Shape-I Medical Category



and no ailments/deformities should exist. He submits that the Delhi High Court had examined a similar issue of categorization Shape-I requirement and the challenge to the said requirement was dismissed by the Division Bench of Delhi High Court in ***Writ Petition (Civil) No. 2076 of 2021*** titled as ***“Ishwar Singh versus Union of India and others”***. The relevant extract thereof reads thus: -

“7. The counsel for the petitioner then contends, that the petitioner is an Ex-Serviceman and has served in the Indian Army for 16 years and has always maintained SHAPE-I Medical Category in his tenure in the Indian Army and he cannot be held to be medically unfit. It is argued that the standards of medical fitness required in the Indian Army are much more stringent than those required in the CAPFs/Police.

8. Though merit is found in the aforesaid contention, but Mr. Vinod Kumar, Deputy Commandant, BSF, draws attention to the Advertisement dated 3rd March, 2018 issued by the Staff Selection Commission, pursuant to which the petitioner had applied, and which Advertisement, though in Note II to Clause 11(D) titled "Medical Standard (for all posts)" provides, that "Ex-Servicemen applying for the posts are not required to undergo PET (Physical Endurance Test) but proceeds to further provide that "However, all Ex-Servicemen are required to pass the written test and fulfil the physical standards prescribed for direct recruits for recruitment of Sub- Inspector/Assistant Sub-Inspector, as the case may be. They should also pass the medical standards prescribed for direct recruits".



9. In view of the aforesaid, there is no ambiguity whatsoever, neither in the Advertisement for recruitment pursuant to which the petitioner applied, nor in the Medical Manual in accordance wherewith the petitioner was to be medically examined, and no fault can be found with the opinion of the Medical Board or Review Medical Board, finding the petitioner unfit on account of admittedly having implants in situ in his body.”

10. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents appended along with the present writ petition as well as the judgments cited by the Counsel for the respondents.

11. The undisputed facts that emerge from perusal of the above are that the petitioner had been selected for appointment to the post of Constable/GD in ITBP. Pursuant thereto, he also joined the Battalion, however, at the time of taking the finger print samples, the said defect was noticed by the respondents whereupon intimation was sent to the competent authority, a Review Medical Board was constituted on 04.07.2000 and the petitioner amongst others was duly examined on 13.09.2000. The order of termination of the petitioner was passed on 18.09.2000 against which the instant writ petition has been filed. The specific stand of the respondents is that the petitioner suffered from following disabilities: -

- i) He was short heighted i.e. as against the required height of 170 cm, he is only 169 cm;
- ii) He had a vision of 6/36 which is less than the required vision;
- iii) He was suffering from colour blindness;



- iv) He was suffering from pathological flat foot.
 - v) He was suffering from knock-knees.
 - vi) There was an amputation of the terminal phalanx of left little finger.
12. All these aforesaid defects were noticed as per which the petitioner was held to be physically unsuitable for employment in the ITBP. After the instant writ petition had been filed, the petitioner was referred to the Board of doctors of the PGIMER, Chandigarh for medical examination. A report dated 02.06.2010 was submitted by the Medical Board as per which, so far as the noticed physical defects i.e. the pathological flat foot; the vision and colour blindness are concerned qua the same, the opinion of the doctors of PGIMER, Chandigarh was contrary to the opinion as recorded by the Review Medical Board. However, even though the direction was to examine the petitioner on all the parameters on the basis whereof he had been held to be physically unsuitable for the appointment, however, no report was submitted by the PGIMER, Chandigarh as regards the height objection raised by the Review Medical Board noticing the petitioner to be short by 1 cm. Further, there was no specific report as regards the petitioner suffering from knock-knees and the factum of amputation of the tip of the left little finger had already been acknowledged. It is thus evident that out of the six deformities or physical sub-standards noticed by the Medical Board of ITBP, three are not even disputed by the Medical Board of the PGIMER, Chandigarh.



13. The reply in the instant case was filed by the respondent ITBP in the year 2001 and no replication or rejoinder controverting the facts raised therein have been filed by the petitioner.

14. The petitioner also never moved any application for seeking a second opinion from the PGIMER about the remaining defects pointed out by the Review Medical Board even though a period of nearly 14 years elapsed between submission of the report by the PGIMER and the final decision of the case. Thus, the petitioner would be assumed to have no dispute against the final finding recorded by the PGIMER.

15. Besides, non-suitability of a person on failing to meet the physical standards is not on the basis of a minimum number or percentage of disabilities, rather any one of the defects may also be sufficient unto itself to hold a person ineligible.

16. The principle 'falsus in uno, falsus in omnibus' cannot be applied to the reports of Medical Boards and it cannot be assumed that merely because the report of PGIMER contradicts the report of the Review Medical Board on certain counts, hence, the report of the Review Medical Board should be disregarded entirely. In matters of physical standards, each deficiency may be independent of the other and non-existence of one may have no bearing on the other.

17. There is thus no evidence available with this Court on the basis whereof it may hold that the petitioner fulfilled all the requisite parameters of physical standards and Shape-I as prescribed in the advertisement. Further, the contention of the petitioner being discriminated as against



Shakeel Ahmad Gujjar, who had an amputation of a phalanx has also been distinguished by the respondents by contending that the physical disability suffered by the latter was during the course of his employment and was not for pre-existing deformities. The said factual claim by the respondents has remained uncontroverted.

18. In view of the position in law relied upon by the Counsel for the respondents and in the absence of any cogent evidence to counter the case of respondents, the conclusions drawn by the Review Medical Board are not to be ordinarily interfered with. No evidence/document has been placed on record by the Counsel for the petitioner to establish that the findings recorded by the Review Medical Board are palpably wrong. Even though the same have been found to be defective on three counts but the principles of *falsus in uno, falsus in omnibus* not being applicable and the remaining three deficiencies have not been disputed or denied even by the petitioner by referring to any other medical evidence or record, hence, it would not be appropriate for this Court to sit as an expert over the findings recorded by the Review Medical Board and to hold the petitioner physically suitable.

19. Further, this Court notices that the order of termination was passed way back in the year 2000 and a period of 25 years has elapsed since then. Even on the said score, it may not be appropriate at this juncture to enter into the said arena and to interfere with an order that had been passed long ago.



20. Be that as it may, finding that there is no illegality or perversity in the order passed by the respondents and the same is based on reasonable physical deformities and lack of physical suitability noticed by the respondents, I hold that the said order of discharge of the petitioner during the period of his probation and within a period of 08 months of his employment in service does not warrant interference at this stage.

The instant writ petition is accordingly dismissed.

(VINOD S. BHARDWAJ)

JUDGE

MARCH 17, 2025

Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No