



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 6931/2024

Arvind Kumar S/o Bal Ram, Aged About 27 Years, Village And
Post Rojari, Tehsil Gharsana, District Sri Ganganagar, Rajasthan.

-----Petitioner

Versus

1. The Union Of India, Ministry Of Defence, Through The
Defence Secretary, Border Road Organisation (Bro),
G.r.e.f. Government Of India, 109-B, South Block, New
Delhi-1100005.
2. The Director General Of Border Road Organisation,
General Reserve Engineering Service (G.r.e.f.), Hqs
Director General B.r.o., Seema Sadak Bhawan Ring
Road, Naraina Delhi Cantt. New Delhi-110010.
3. The Commandant, Bro School And Centre, Digi Camp,
Pune- 411015, Maharashtra.

-----Respondents

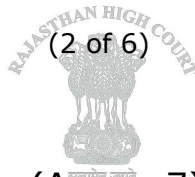
For Petitioner(s)	:	Mr. S.P. Sharma
For Respondent(s)	:	Mr. Mukesh Rajpurohit Ms. Aditi Sharma and Mr. Prakash Raika

HON'BLE MR. JUSTICE ARUN MONGA

Order (Oral)

17/12/2024

1. Petitioner, an aspirant for the post of mason in Boarder Road
Organization, is before this Court seeking issuance of an
appropriate writ, direction and/or any other order, commanding
the respondents to consider his candidature in the OBC Category
and grant him benefit of his performance.
2. Relevant facts, shorn of unnecessary details, are that
petitioner participated in the selection process as per the



advertisement. Merit list (Annex.7) was declared and the petitioner's name appears at S.No. 161. However, in the primary medical examination little finger of his left hand was found short due to amputation. He was thus declared unfit vide letter dated 29.08.2023 (Annex.9).

2.1. The petitioner was also called for a review medical examination vide letter dated 30.08.2023, but even there he was orally informed that since his little finger of the left hand is short, he cannot be declared fit.

2.2 The petitioner approached the respondents seeking the report of the review medical board. However, no satisfactory response was given to him. The petitioner's case is that the defect in the last finger of his left hand does not reduce his efficiency at work in any manner. He cannot thus be disqualified for the post of MSW (Mason). Hence, this petition.

3. In defense, the respondents have filed a joint reply and the stand taken therein is that they have followed the procedure as per law. Rejection of the candidature of the petitioner is not unreasonable and/or discriminatory.

4. In the aforesaid backdrop, I have heard the rival contentions and perused the case file and supporting material appended therewith.

5. After filing of reply by the respondents, the petitioner got hold of some additional factual information and to bring the same on record filed an additional affidavit dated 14.07.2024 wherein (para 3 thereof) he inter alia deposed as under:-

"3. That, it is further respectfully submitted that, my little finger of left hand is short by 3 mm only, due to amputation, which cannot lower down my efficiency in any manner, for teh

post of MSW (Mason), in respondent BRO. I have a confirmed information that, one Ashish Kumar of SC category, shown at serial number 16 in upgraded waiting list (Annexure-12), who was called for medical examination and who is having imputation of half finger of his right hand, has been declared medically fit, who was personally known and to me and I have personally seen amputation of his first finger in right hand, but still he has been declared medically fit and has been now sent for training, whereas I am having defect of 3 mm short in my last finger of left hand, but still I have been declared medically unfit for same post, to which said Ashish Kumar has been selected, which is discriminatory."

6. Before proceeding with the merits of the case, it would be apposite to reproduce two interim orders passed by this Court; one by a coordinate Bench which was seized of the matter and the other by this very Bench, i.e. 15.07.2024 and 04.11.2024, which are as below:-

"15.07.2024

Mr. Mukesh Rajpurohit, Deputy Solicitor General of India, seeks four weeks' time to file reply/additional affidavit on behalf of the respondents.

Time prayed for is allowed.

List the matter on 13.08.2024.

In the meanwhile and till the next date of hearing, one post of Multi Skilled Worker (MSW) (Mason) advertised through undated notification No.4/2022 shall be kept vacant.

04.11.2024

1. On being pointed out as to why specific averment contained in para 3 of the additional affidavit dated 14.07.2024 filed by the petitioner has not been dealt with in the counter-affidavit dated 27.09.2024, learned counsel for the respondents seeks short accommodation to file additional affidavit. In the proposed affidavit to be filed, two things be clarified specifically i.e. one, whether the candidate named Ashish Kumar is left-handed or right-handed; two, whether indeed his index finger of the right hand is amputated.

2. Specific affidavit be filed with regard to the aforesaid two questions raised by this Court failing which, adverse inference shall be withdrawn (sic-drawn).

3. *Post it on 13.11.2024 to be shown in the supplementary cause-list."*

7. Apropos, an additional affidavit has been filed on behalf of the respondents, wherein following unambiguous stand has been taken:-

"3. That in pursuance of the directions issued by this Hon'ble Court, the requisite details as has been directed to be produced by this Hon'ble Court, are submitted hereunder:-

(a) Whether the candidate named Ashish Kumar is left-handed or right-handed:

*In this regard, it is respectfully submitted that this fact has not been brought out in the medical examination sheet of Ashish Kumar, however, to corroborate the same, the ibid information has been verified from the concerned field unit where the ibid individual is presently posted [236 PWPL/112 RCC/755 BRTF (P) Himand] and it has been confirmed by them that **Ashish Kumar (GS-205399W MSW Mason) is a right handed person.***

(b) Whether indeed his index finger of the right hand is amputated:

*(i) It is respectfully submitted that remarks in this regard have been endorsed in the Primary Medical Examination report of Shri Ashish Kumar at Sr. No.14 (sight defects not sufficient to cause rejection) by the medical board of Officers for recruitment that there is '**Distal with healed amputation of (Rt) tip Index finger**'. A true and correct copy of the relevant portion of the Primary Medical Examination Report of Shri Ashish Kumar is annexed herewith and marked as **Annexure-R/15.***

*(ii) It is further relevant to submit here that during the Primary Medical Examination, Shri Ashish Kumar was declared temporary unfit for his medical condition of 'Peectus Excavatum" by the medical board of officers for the recruitment. However, the said Shri Ashish Kumar was declared 'FIT' during his review medical examination by the graded specialist of Military Hospital Roorkee on 14.05.2024. A true and correct copy of the relevant portion of the Review Medical Examination report of Shri Ashish Kumar is annexed herewith and marked as **Annexure-R/16.**"*

8. In view of the aforesaid stand taken by the respondents, conceded position which emerges is that counter-part of the

petitioner (also dexterous by right hand) was having his right hand index finger amputated by few centimeters (though exact extent of amputation has not been specified). He was given the benefit of his skill by appointing him as a mason. Whereas, petitioner's case was rejected stating that even though his little finger of his left hand is amputated by few centimeters, but, despite him being right handed, same would interfere in the discharge of his duties as mason. To say the least, the approach adopted by the respondents seems to be lop-sided on the very basic commonsense. Trite it may sound, but the prudence warrants that what is to be seen for right handed person is if he has any unfitness in the same hand, if not, then does the left hand interfere with the skill of right hand.

9. To sum up, the petitioner was subjected to discriminatory treatment compared to another candidate, Ashish Kumar, whose dominant hand was impaired but was declared fit. Despite the petitioner's lesser impairment on his non-dominant hand, the respondents ignored this and have failed to demonstrate how it hindered the required duties of a mason, rendering his rejection arbitrary and unjustified. The lack of transparency in the review medical board process further undermines its fairness. The petitioner, included in the merit list and qualified for the role, was rejected without valid grounds, violating principles of equality under Articles 14 and 16 of the Constitution. Equals must be treated equally and, therefore, the non-grant of the benefit to the petitioner despite his being otherwise eligible and meritorious, does not meet the judicial approval.

10. As an upshot, the petition is allowed. The respondents are directed to take appropriate steps within 30 days of the petitioner approaching them with the web-print of the instant order by issuing him appointment letter, since one post is lying vacant pursuant to the interim orders passed by this Court.

11. Needless to say that direction issued by this Court shall be implemented only if the petitioner is otherwise found eligible and meritorious.

12. In the parting, I may hasten to add here that for the petitioner remained out of service, shall not be entitled to any financial benefit. However, all other notional benefits, including seniority, pay fixation, etc. shall be on parity with the counterparts, who competed pursuant to the same advertisement and have been working.

13. All pending application(s), if any, shall also stand disposed of.

(ARUN MONGA),J

29-skm/-

Whether fit for reporting : Yes / No