



**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

SWP No. 2108/2016

Reserved on 14.02.2023.

Pronounced on 21.02.2023.

Sunil Kumar

..... petitioner (s)

Through :- Mr P.S.Parmar Advocate.

V/s

Union of India and others

.....Respondent(s)

Through :- Mr. Eishan Dadeechi CGSC.

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGEMENT

1 This writ petition has been filed for the following prayers:

- (i) Quashing the finding of review Medical Examination Board dated 30.08.2016 as the members of the review medical examination Board belong to the branches of Medicine other than dermatology and, therefore, not competent to render opinion in respect of fitness of petitioner for the service;
- (ii) Mandamus directing the respondents to allow the petitioner to join as constable GD in BSF on the basis of medical fitness certificate issued by Dr. Rajesh Sharma, Lecturer, Department of Dermatology, Government Medical College/SMGS, Hospital, Jammu; and,
- (iii) Mandamus directing the respondents to constitute a fresh review medical examination board consisting of members from the department of Dermatology for fresh medical examination of the petitioner at the earliest.

2 In response to an Advertisement Notice dated 24.01.2015 issued by the respondents, the petitioner applied for the post of Constable GD in Border Security Force ['BSF'] under OBC Category and cleared all the examinations. He was, thereafter, called for Medical Examination on

30.05.2016. However, during the course of medical examination, he was declared medically unfit as some tattoo marks were found present on his right and left arms. After the petitioner was declared medically unfit, he was informed that in case he intends to file an appeal against the finding of the medical examination declaring him medically unfit for the post, he shall have to apply for review medical examination after obtaining necessary medical certificate from any Civil Medical practitioner within a period of 15 days. Faced, thus, the petitioner got the tattoos removed and, accordingly, obtained a certificate dated 06.06.2016 from Dr. Rajesh Sharma, Lecturer Department of Dermatology. After obtaining the aforesaid certificate, the petitioner filed an appeal against the findings of medical examination dated 30.05.2016 annexing therewith the aforesaid medical certificate dated 06.06.2016 (supra). The appeal was considered by the Competent Authority and, accordingly, the petitioner was called for Review Medical Examination, however, he was again declared unfit on the ground that there were scar marks of size 06 cm on his right upper arm and 02 cms on dorsal side of his right hand.

3 The impugned action of the respondents has been challenged by the petitioner on the grounds that the tattoos found on the arms of the petitioner had no affect on the working of a Constable GD in BSF; that the tattoo marks were made from ink which were successfully removed; that the Doctors who examined the petitioner in the Review Medical Examination were not specialists in the field of Dermatology; that the Review Medical Board has not considered the certificate issued by the Dr. Rajesh Sharma, Lecturer Department of Dermatology, Government Medical College, SMGS Hospital, Jammu, an expert in the field.

4 On being put on notice, the respondents have filed their objections in which it is submitted that the certificate dated 06.06.2016 obtained by the petitioner from Civil Doctor is general in nature, as according to the said Doctor, the petitioner may be fit to serve in civil Department because of nature of duties to be performed in civil job which are entirely different from the nature of duties of the Armed Forces. It is further submitted that, in the present case, the tattoos marks on right forearm, right upper arm and on dorsal side of right hand were found to be more than the prescribed limit. Moreover, when the right arm is a saluting arm. As per the policy on the subject, tattoos on the right forearm is not permissible and therefore the petitioner was found unfit for the post in question. It is further submitted that the review medical examination of the petitioner was carried out by a duly constituted Review Medical Board and during the aforesaid medical examination the petitioner was again found medically unfit. It is submitted that as per the findings of the Review Medical Board surgical removal of the tattoos may develop keloids i.e an overgrowth of scar tissue that may develop around a wound sometimes producing a lump many times larger than the original scar, as such, the petitioner was declared unfit.

5 Heard learned counsel for the parties and perused the material on record.

6 A bare perusal of the record shows that the petitioner has successfully cleared all the tests. However, his candidature was rejected by the Review Medical Board on the ground that there is a post surgical scar on right hand, right forearm i.e saluting arm and right upper arm of the petitioner. The petitioner had removed his tattoos when he was subjected to review Medical

Board examination and the opinion of the Review Medical Board is that the surgical removal of tattoos may develop keloids.

7 So far as the Guidelines for recruitment medical examination in CAPF and Assam Rifles, revised as on May 2015 are concerned, Chapter-XII thereof deals with examination for skin diseases and leprosy. Amongst various conditions, which are to be considered for rejection of a candidate on medical grounds, is congenital or acquired anomalies of skin such as nevi or vascular tumors that interfere with function, or are exposed to constant irritation. History of Dysplastic Nevus Syndron is disqualifying. Similarly, Keloid formation, if the tendency is marked or interferes with proper wearing of combatised equipment, is disqualifying.

8 Sub-clause (3) of Clause 11 of Chapter-XII deals directly with tattoo, what it provides is reproduced hereunder:

“3.Tattoo: The practice of engraving/tattooing in India is prevalent since time immemorial, but has been limited to depict the name or a religious figure, invariably on inner aspect of forearm and usually on left side. On the other hand the present young generation is considerably under the influence of western culture and thus the number of potential recruits bearing skin art had grown enormously over the years, which is not only distasteful but distract from good order and discipline in the force.

Following criteria are to be used to determine permissibility of tattoo:

(a) Content-being a secular country, the religious sentiments of our countrymen are to be respected and thus tattoos depicting religious symbol or figure and the same, as followed in Indian Army, are to be permitted.

(b) Location- tattoos marked on traditional sites of the body like inner aspect of forearm, but only left forearm, being non saluting limb or dorsum of the hands are to be allowed.

(c) Size-size must be less than ¼ of the particular part (elbow or hand) of the body”.

Sub-clause (4) of Clause 11 of Chapter XII deals with Post-operative cases (duration of fitness) which too is reproduced hereunder:

“4.Post operative cases (Duration for fitness)-

- (a) Body surface swelling, DNS, Tonsillectomy and nasal polypectomy-01 month;
- (b) Hydrocele-03 months;
- (c) Tympanoplasty-04 months; and,
- (d) Abdominal”

This is all prescribed in the revised Guidelines of 2015 which are relevant for determining the issue on hand.

09 From a perusal of the opinion given by the Civil Medical Practitioner, who is a Dermatologist, there was no evidence of tattoo at the examined site. However, abraded lumen were found present on the right and left forearm. The opinion of the Medical Practitioner, who is a specialist in Dermatology/skin diseases, is that the petitioner is medically fit for the post of a Constable GD.

10 It is in the light of the aforesaid opinion given by the Civil Dermatologist working as Lecturer in the Government Medical College Hospital, Jammu, the Review Medical Board was constituted and the petitioner was examined. Even in the review medical examination conducted by the Review Medical Board, only abraded lesions over right hand and right forearm were found by the examining Doctors and the petitioner was declared unfit

without giving any reason as to how abraded lesions over the right hand and right forearm are likely to interfere in the performances of duties of Constable GD. I am aware that the tattoo beyond the prescribed size on the impermissible areas do render a candidate unfit to be appointed as Constable GD in CAPF, as is evident from the revised Guidelines of 2015. However, I am at a loss to understand as to how mere abraded lesions on the hand or forearm would, in any way, interfere in the performances of duties of a Constable GD. It is not the case of the respondents, nor is there any expert opinion that the Review Medical Board has detected any congenital or acquired anomalies of the skin which have the effect of interfering with the functions of a Constable GD. Even keloid formation would be disqualifying if it has the tendency to interfere with the proper wearing of combatised equipment.

11 Indisputably, tattoos stand removed and, therefore, the case of the petitioner was required to be reviewed in terms of sub-clause (4) reproduced above.

12 From the opinion rendered by the Review Medical Board, it is evident that the Doctors, who examined the petitioner in the Review Medical Board, have not found any of the conditions laid down in sub-clause (4). Mere abraded lesions on the hand and forearm, which does not have any potentiality to interfere with the working of a Constable GD, cannot be made a ground to declare a candidate unfit for service in CAPF.

13 For all these reasons, I find merit in this petition. Accordingly, the petition is allowed and a direction is issued to the respondents to convene a revised Medical Board and re-examine the petitioner and if he is found to be fit to perform the duties of a Constable GD in terms of the revised Guidelines of

2015, and the observations made above, he be offered appointment. Let the entire exercise be completed within a period of two months from the date a certified copy of this judgment is served upon them.

(SANJEEV KUMAR)
JUDGE

Jammu
21. 02.2023
Sanjeev

Whether order is speaking: Yes

Whether order is reportable: Yes/No

