

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 10th January, 2022
Date of Decision: 18th January, 2022

+ **W.P.(C) 6595/2021**

GAURAV DALAL Petitioner
Through Mr.Joby P.Varghese, Adv.

versus

UNION OF INDIA, MINISTRY OF HOME AFFAIRS &
ANR. Respondents

Through Mr.Ranvir Singh and
Mr.Shoumendu Mukherji,
Advs.
Dr.Pranjal Dubey, Specialist
M.O/DC (Surgeon) CH Delhi.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J.

This petition has been heard by way of video conferencing.

1. This petition has been filed by the petitioner praying for a direction to the respondents to set aside the result of the Detailed Medical Examination (in short, 'DME') dated 30.07.2019 as well as the decision of the Review Medical Board (in short, 'RMB') dated 08.12.2020, by virtue of which the petitioner was declared medically unfit for appointment as Constable (GD) in the Central Armed Police

Forces (in short, 'CAPFs') on the ground of '*undescended testis*'. In the alternative, the petitioner prays that Clauses 5(p), 6(28) and (XIII)(3)(e) of the 'Guidelines for Recruitment Medical Examination in Central Armed Police Forces and Assam Rifles: Revised Guidelines as on May 2015' (hereinafter referred to as the 'Guidelines'), to the extent that they disqualify a candidate with '*undescended testis*', be declared unconstitutional as being violative of Article 14, 19(1)(g) and 21 of the Constitution of India.

2. It is the case of the petitioner that pursuant to the advertisement for appointment to the post of Constable (GD) under the Sports Quota in the respondent no. 2, the petitioner preferred an application for being considered for the said post. The petitioner is a national-level Kabaddi player and has participated in several National, State and Zonal-level Kabaddi events.

3. At the DME stage, vide order dated 30.07.2019, the petitioner was declared medically unfit on the ground of '*undescended testis*'. The petitioner preferred an appeal against the finding of the DME and underwent an examination before the RMB. The RMB, vide report dated 08.12.2020, found the petitioner to be medically unfit on the ground of '*left sided undescended testes*'. The conclusion of the undescended testis was arrived on the basis of the following observation made by the RMB:

"c. *Left testis not present in scrotum*
d. *Left testis not clinically palpable in left Inguinal region/Abdomen.*"

4. The learned counsel for the petitioner submits that the case of the petitioner is not one of '*undescended testis*' but, in fact, of no testis. He submits that the left testis of the petitioner was not found in either the inguinal canal or in the abdomen. In this regard, he places reliance on the report dated 25.03.2021 from the PGI, Chandigarh. The learned counsel for the petitioner places reliance on an article by the Boston Children's Hospital to submit that undescended testis is a medical condition where even though the testicle has been formed, it has not moved into the proper position. He submits that in the case of the petitioner, as was corroborated by the examination report of PGI, Chandigarh dated 25.03.2021, the petitioner's left testis was not visualised in the left scrotal sac, inguinal canal and lower abdomen. The left spermatic cord of the petitioner was not visualised as well. Therefore, the case of the petitioner was of '*no left testis*' and not of '*undescended testis*'. He submits that therefore, the report of the DME and RMB are incorrect.

5. The learned counsel for the petitioner submits that the Guidelines in Clauses 5(p), 6(28) and Clause 3(e) of Part XIII prescribe only '*undescended testis*' as a disqualification for appointment to CAPFs and a case of '*no testis*' is not a disqualification. He submits that therefore; the petitioner has been wrongly declared as disqualified for appointment.

6. The learned counsel for the petitioner submits that in the alternative, Clauses 5(p), 6(28) and (XIII)(3)(e) of the Guidelines be declared unconstitutional as they have become archaic, obsolete and completely arbitrary. The learned counsel for the petitioner submits that persons with '*undescended testis*' are otherwise medically and physically fit and completely efficient to discharge their training as well as duty, but are debarred from joining the services due to the aforementioned clauses; making the said Clauses of the Guidelines violative of Articles 14, 19 and 21 of the Constitution of India.

7. The learned counsel for the petitioner submits that the petitioner is a national-level Kabbadi player and is fully fit for appointment in the CAPFs.

8. We have considered the submissions made by the learned counsel for the petitioner, however, find no merit in the same.

9. Clause(s) 5(p), 6(28) and (XIII)(3)(e) of the Guidelines are reproduced herein below:-

“5. GENERAL EXAMINATION

While examining the candidates (he/she) principal points which need careful attention are as under

xxxx

p) Both the testes are in the scrotum and of normal size.

6. GENERAL GROUNDS FOR REJECTION

xxxx

28) *Undescended testis, atrophic testis, marked varicocele, testicular swellings*

XIII. EXAMINATION OF INGUINAL REGION AND GENITALS:

3. *Look for-*

xxxx

(e) **Scrotum:** *Look if both the testes are in the scrotal sac and of normal size. The scrotum should be examined for Hydrocele, Varicocele and abnormality of testis. Grade I Varicocele is acceptable. Undescended testis/ectopic testis and atrophic/hypotrophic testis are considered as qualification.”*

10. A bare reading of the above clauses of the Guidelines show that much emphasis has been laid in the Guidelines on the presence of both testes in the scrotal sac of their being of normal size.

11. This Court, by its order dated 17.09.2021, had directed the learned counsel for the respondent to place the medical records of the petitioner on record. A perusal of the medical records shows that though an Ultrasound report from one Parvesh Clinic opined that ‘*Left testis present slightly upward in inguinal canal*’, the RMB findings were that ‘*Left testis not present in scrotum*’ and ‘*Left testis not clinically palpable in left Inguinal region/Abdomen.*’

12. Dr. Pranjal Dubey, Splt. M.O (Gr-II)(SS)/DC (Surgeon), who was one of the members of the RMB, was also present in the court proceedings by video conferencing on 10.01.2022. He explained that ‘*undescended testis*’, which is a ground for medical unfitness under the Guidelines, is a broad diagnosis. It incorporates ectopic testis,

intra-abdominal testis, atrophic testis and absent testis. He stated that the case of 'no testis', therefore, falls within the scope of 'undescended testis'. He further explained that the complications which may be caused due to 'undescended testis' are malignancy (seminoma), delayed fertility, social stigma leading to mental depression and hormonal imbalance leading to hypogonadism. He submits that the case of 'no testis' is, therefore, also considered as a medical disqualification for appointment to CAPFs.

13. Dr. Dubey was also directed to file a short-written note of his opinion. In compliance with the direction, Dr. Dubey had emailed his opinion dated 11.01.2022, the relevant extract whereof is as under:

*"The candidate was declared UNFIT for recruitment on medical grounds. He was found to have **Left Undescended Testis** which as per Revised Guidelines for Recruitment manual, page no.35, XIII-3e is ground for rejection of the candidate.*

The argument which was presented during e-hearing mainly emphasized that the case be considered as absent or no testis and not undescended testis.

I would like to mention at this point that the term Undescended Testis is a broad diagnosis meaning simply that the testis has not descended from the abdomen to scrotum. This condition incorporates ectopic testis, intra abdominal testes, atrophic testes and absent testes. Hence no testis or absent testis comes within the gambit of Undescended testis.

The Ultrasound report which has been presented in the supporting document has not been issued by any certified radiologist. The report has been signed by an MBBS doctor.

The complications of Undescended testis are Malignancy (seminoma), delayed infertility, social stigma leading to mental depression. There are also chances of hormonal imbalance leading to hypogonadism.

Hence ,the medical examination of the candidate was carried out meticulously and the clinical findings were noted . The declaration of unfitness was taken in accordance of the Revised guidelines of Recruitment Manual 2015 CAPF and AR, Ministry of Home Affairs.”

14. In fact, even the article from Boston Children’s Hospital submitted by the petitioner along with the petition describes the problems associated with an undescended testicle as under:-

“What are the problems associated with an undescended testicle?

Undescended testicles can increase the risk of infertility. Normally, when the testicles are in the scrotum, they’re about three to five degrees cooler than they would be if they remained inside the body's abdominal cavity. The warmer temperatures inside the body may impair the development of the testicles and may affect the production of healthy sperm when the boy is older.

Boys born with undescended testicles are also slightly more prone to testicular cancer, even after corrective surgery. The advantage of surgery, however, is that it moves the testes into a place that allows for routine self-examination, which could lead to early detection of any abnormalities later in life.”

15. In view of the above report as well, it cannot be said that Clauses 5(p), 6(28) and (XIII)(3)(e) of the Guidelines are in any manner arbitrary or violative of Article 14, 19(1)(g) or 21 of the Constitution.

16. As far as the difference between a case of ‘*undescended testis*’ and ‘*no testis*’ contended by the learned counsel for the petitioner is concerned, in the face of the opinion of Dr. Dubey; and in the absence of no other material to the contrary being placed on record by the petitioner, we find no merit.

17. In *Km. Priyanka v. Union of India & Ors.*, W.P.(C) 10783/2020, this 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 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.”

18. The Guidelines also emphasize that they have been formed with the aim that medically ‘fit’ personnel are recruited to the CAPFs. The aim of the Guidelines is stated in the following words:-

“1. AIMS

The purpose of medical standards is to ensure that medically FIT personnel, accepted into the central armed police forces of the union of India, are:

- (a) Free of contagious diseases which are likely to endanger the health of other personnel.*
- (b) Free of medical conditions or physical defects/infirmity that would lead to loss man-hours on the ground of medical unfitness, necessary treatment of hospitalization etc.*
- (c) Medically and physically capable of satisfactorily completing required training. Besides he may be asked to undergo strenuous concourse like commando, jungle warfare etc.*
- (d) Adaptable to the combatised environment without the necessarily of geographical area limitations as he may be required to serve in high mountains, air, sea or desert etc.*
- (e) Capable of performing duties without aggravation of existing physical defects or medical conditions.*
- (f) Free from physical defects/infirmity causing any hindrance in proper wearing of uniform combatised footwear or protective gears etc.*
- (g) Able to render continuous effective service, so that the force does not have to pay early pension or payments in case of premature death.”*

19. The Guidelines also state as it is not the sole repository of all ailments and that the recruiting medical officer needs to use his clinical acumen, to the best of his knowledge and keeping in view the best interests of the Forces. Clause 2(h) of the Guidelines is reproduced hereinbelow:-

“GENERAL INSTRUCTIONS FOR RECRUITMENT BOARD

xxxx

h) Human body may contain so many defects/deformities that it is not possible to list all causes of unfitness in the medical recruitment instructions that may militate against efficient discharge of service. Neither is it possible to list all trifling cases where the candidate may be accepted/rejected. Therefore, the recruiting medical officer needs to use his clinical acumen, to the beset of his knowledge and keeping in view the best interests of the forces. If the cause of rejection is not mentioned in these instructions, it has to be co-related to an infirmity with reference to either known medical literature on the subject or a parameter set out. In case of unfitness, where no known references are available the defect/infirmity may be elaborately justified with reference to service requirement for which the candidate is being rejected.”

20. Recently, this Court, in its judgment dated 04.01.2022 in ***Milash Arrol Noronha vs. Union of India***, W.P. (C) 13904/2021, had emphasized that the Guidelines cannot be said to be laying down all the complex ailments/grounds that would make a candidate unfit for appointment to Armed Forces. It was held as under:-

“14. As far as the submission of the petitioner that only the lower limit of Haemoglobin was

prescribed in the Medical Manual and not the higher ceiling limit, we are of the opinion that the Medical Manual cannot be stated to be the sole repository of all ailments that may make a person medically unfit for appointment in the Armed Forces. The doctors conducting the medical examination are the best judge to understand the complexity of the human body and the myriad of ailments that it may suffer from and the repercussions thereof. Medical Manual cannot lay down all the complex ailments/grounds that would make a candidate unfit for appointment to Armed Forces, whose demands are most extracting with the personnel being posted to extreme weather conditions.”

21. In view of the above, the purported difference in the case of ‘*undescended testis*’ and ‘*no testis*’ argued by the learned counsel of the petitioner is of no assistance to the petitioner and cannot be accepted.

22. In view of the above stated reasons, we find no merit in the present petition. The same is dismissed. There shall be no order as to cost.

NAVIN CHAWLA, J

MANMOHAN, J

JANUARY 18 , 2022/AB