

Court No. - 40

Case :- SPECIAL APPEAL No. - 214 of 2024

Appellant :- Rajesh Kumar And Another

Respondent :- Union Of India And 3 Others

Counsel for Appellant :- Atul Kumar Dubey

Counsel for Respondent :- A.S.G.I.,Pradeep Shankar Pandey

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Syed Qamar Hasan Rizvi,J.

1. This special appeal arises out of an order passed by learned Single Judge in Writ-A No.21108 of 2023 whereby the appellants' grievance in respect of their candidature having been overlooked on account of a medical ailment has been rejected.

2. Learned Single Judge has noticed the facts of the case as per which the appellants applied for the post of Constable Driver in the Central Police Organization-SSB. They were found suffering from small hydrocele. The Rules of recruitment permitted conduct of review medical examination, wherein also the appellants were non-suited. Aggrieved by the rejection of their candidature, the appellants approached writ Court. Learned Single Judge has observed that the respondents fairly treated the appellants in the matter of recruitment and the conduct of medical examination as well as the review medical examination was found in accordance with the procedure laid down for recruitment.

3. It is not in issue that the physical examination of the candidate provisionally selected for appointment in Central Police Organization has to be undertaken in accordance with the guidelines issued by the Ministry of Home Affairs, Government of India. Detailed guidelines were earlier issued on 20.5.2015, which have been partially modified on 21.5.2021. The guidelines have been produced before us. The manner of conduct of examination has been specified in the guidelines. Clause 6 contains various physical ailments/deformity on account of which the candidature of a candidate could be rejected. Clause 25 which deals with large and small hydrocele reads as under:-

"25. Large hydrocele, even if curable by operation. Small hydrocele (if operated upon and no bad scar is left after operation may be accepted)."

4. With reference to the above clause, learned counsel for the appellants submits that in case of small hydrocele the guidelines permits a candidate to be selected even in a case where the candidate is operated upon and no bad scar is left after operation. With reference to the above provisions, it is urged before us that the respondents ought to have given a reasonable opportunity to the appellant to get him operated upon and thereafter the candidature ought to have been considered afresh. Learned counsel submits that the purpose of holding a review medical test is to allow opportunity to the candidate to get such operation performed so that the candidature is not discarded on a ground which otherwise could be overlooked.

5. Submission in that regard is opposed by Sri Pradeep Shankar Pandey, learned counsel for the respondents.

6. We have considered the respective submissions raised at the bar. The interpretation which is sought to be suggested by the appellants does not appeal to us. Clause 25 categorically provides that in case of large hydrocele, even if it is curable by operation, the candidate would be rejected for selection. In the case of small hydrocele the candidate could still be selected even if it is found that he has been operated upon and no bad scar is left after operation. The clause, in our understanding, would indicate that in the eventuality where a candidate prior to his medical examination by the board undergoes operation, and no scar is left after such procedure is performed, the candidate can be selected. Clause 25 cannot be construed as giving an opportunity to the candidate after his rejection on medical ground to avail the remedy of operation and, thereafter claim a right of fresh consideration by the medical board. In the event such contention is accepted, every candidate who is found suffering with small hydrocele will be conceded a right to get himself operated and thereafter appear afresh, for medical examination. That does not appear to be the intent of the guidelines.

7. The limited issue which has to be examined by the medical board is as to whether on the date of medical examination the candidate was medically fit or unfit. Whether the candidate was accorded consideration in terms of the policy/rules for medical examination would be the issue. It is only the correctness of such opinion by the medical board which can be examined in the review medical board. Judicial review of such administrative action would not involve recognition of a right in a candidate to get himself operated upon, even after he has been validly found unfit on a particular medical exigency so as to get himself operated and

thereafter apply for fresh consideration of his candidature. The scope of judicial review in such matters is otherwise extremely limited and unless it is shown that the department has acted arbitrarily or has violated the guidelines made for conduct of medical examination, this Court would not be justified in interfering in such matters.

8. In view of the discussions and deliberations held above, we find that the learned Single Judge has correctly examined the issue and the appellant cannot assert a right under the applicable policy to avail the remedy of medical procedure after he is declared medically unfit and seek fresh medical examination.

9. The special appeal lacks merit and is, consequently, dismissed.

Order Date :- 11.3.2024

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