

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8698 of 2020

Bineeta Kumari Wife of Ajit Kumar, Resident of Village-Kabla, Post Office-
Budhauri, Police Station-Pakribarawan, District-Nawadah.

... .. Petitioner/s

Versus

1. The Staff Selection Commission through its Director Having its Office at Block No.12, CGO Complex, Lodhi Road, New Delhi.
2. The Regional Director, Central Region, (Bihar and U.P.), Staff Selection Commission, 21-23 Luther Road, Allahabad (U.P.)
3. The Directorate General C.R.P.F. (Recruitment Board), R.K. Puram, New Delhi.
4. The Deputy Inspector General, Group Centre, C.R.P.F. Jhapan, Muzaffarpur, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Arun Kumar, Advocate
For the Union of India	:	Mr. K.N.Singh ASG
		Mr. Kumar Sachin CGC
For the S.S.C.	:	Mr. Rajesh Kumar Verma ASG

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 01-12-2020

As of now, the Courts have not resumed normal physical hearing. The matter has been listed today for consideration through Video Conferencing.

Learned counsel are appearing and making submissions from their residence. The Court master and Secretary are also



part of this virtual Court proceedings with the aid of audio visual technology.

Heard learned counsel for the petitioner, learned A.S.G assisted by the learned C.G.C. as well as the learned counsel representing respondent Nos. 1 and 2.

The brief factual background is that in the process of selection for Constables the petitioner (applicant) has not been selected on account of medical unfitness. The admitted position is that till the PET test the petitioner had qualified. At the detailed Medical Examination, conducted on 23.01.2020, the Medical Board declared her unfit on account of four reasons:-

- (i) Overweight
- (ii) DOV-N-8
- (iii) Pes cavus
- (iv) Xray- Broncho vascular markings (+)nt.

The assessment of the petitioner, being unfit was communicated to her by Annexure-6, dated 24.01.2020. In the said memorandum declaring her unfit, it was clearly informed to the petitioner that if she prefers to file an appeal against the findings of the Medical Examination, she should apply for Review Medical in the enclosed Form No.2 of Constable (G.D.) Exam-2018 along with the demand draft for the requisite fee. The application was to be made after obtaining necessary Medical Certificate from the Medical Practitioner (Specialist



Medical Officer of Government District Hospital and above) as per Form No. 3 of the Constable (G.D.) Exam-2018. The same was to be sent within a specified time frame. It was clearly stipulated in this memorandum that if the same is not signed by the candidate and/or if the Medical Fitness Certificate is not signed by the Doctor, the appeal will be summarily rejected. The Form No.-3 clearly stipulates that the same is to be signed with name and seal of Specialist Medical Officer of concerned field. The same also prescribes a column for filling up by the Medical Practitioner with his designation, his name and address of the Government District Hospital or above.

The counsel for the petitioner has filed his appeal in the aforesaid background and after considering the aforesaid stipulations which were duly communicated to her or which she had the opportunity of seeing at the time she was submitting her appeal. The appeal of the petitioner has not been accepted and she has not been considered for selection. It is, in these circumstances, that she has filed the writ petition seeking a direction upon the respondent authorities to consider the claim of the petitioner for Review Medical since the same has been rejected on technical grounds. The rejection of the petitioner's claim for Review Medical is by assigning the following



reasons:-

“Due to certificate of concerned field (Eye) specialist opinion not attached”

The counsel for the petitioner submits that in the entire guidelines or general directions issued, pursuant to which, the petitioner had applied, there is no specific requirement that the Medical Certificate forming the basis of an application for an appeal is to be issued by a Specialist. It is, in these circumstances, that the petitioner had got a Medical Certificate from the Deputy Superintendent-cum-Assistant Additional Chief Medical Officer, Nawada. The requirement of Specialist opinion for the first time has come in the order of rejection. Since there was no such requirement, the rejection on ground of Certificate not being issued by Specialist is unsustainable. The other submission is that the deficiency of vision DOV-N-8 has for the first time been specified at a later date in the counter affidavit filed in the instant proceedings. DOV-N-8 has not been specified in the memorandum showing her to be unfit. In the memorandum, the Deficiency Of Vision (DOV) has been shown as DOV-N-0. In Annexure-9 to the rejoinder, the petitioner has got an opinion from the Doctor (Eye Surgeon at Sadar Hospital, Nawada) which says DOV-N-0 is not related to eye. Since DOV-N-0 was not related to eye there was no question of



obtaining any Specialist opinion in respect thereof. The last submission is that only one Form No.3 was made available to the petitioner, though she has been found and declared unfit due to four alleged deficiencies. Therefore, the requirements of Certificate by Specialist in respect of four physical deficiencies is untenable and not capable of being complied. It is, in these circumstances, that she seeks a direction upon the respondent authorities for a Review Medical Board.

The learned A.S.G. appearing for the Union of India , referring to the general guidelines (Annexure-8 to the counter affidavit) specifically Clause-9 E thereof, submits that the Review Medical Examination was available to the candidates only if a Medical Certificate is produced suggesting the possibility of an error of judgment in the decision of the initial Medical Board/recruiting Medical Officer, who had examined the candidate at the first instance in absence of such an evidence the appeal was not to be accepted in terms of the guidelines. The fact that certificate had to be issued by Specialist had been made known to all the candidates who had been declared unfit by the memorandum which communicated such deficiencies, in the instant case Annexure-6, dated 24.01.2020, which clearly specifies that the Certificate was to be issued from the Medical



Practitioner which has been explained in a bracket immediately thereafter as Specialist Medical Officer of Government District Hospital and above, as per Form No.3 constable (GD) Exam-2018. Form No.-3 was also made available to the petitioner which has been submitted by her duly signed seeking Review Medical. The column meant for signature of the Doctor also clearly specifies the requirements of Specialist of the concerned field. The exact wordings from Form No.3 are being extracted and reproduced herein for ease of reference:-

“Signature & Name with seal of Specialist Medical officer of concerned field (emphasis mine)
Registration No. 22820
(MCI/State Medical Council)
Designation ACOMO Nawada
Name & Address of Govt. Hospital
(District Hospital and above)
Sadar Hospital Nawada”

It does not lie in the mouth of the petitioner to contend that there was any doubt that the Medical Certificate could have been issued by a Doctor other than Specialist Medical Officer of the concerned field. This was a clear requirement. The Doctor, who has signed the Form No.3, in support of the petitioner’s claim for Review Medical has must also have read these requirements. In spite of such clear stipulation, the Medical Fitness Certificate in support of petitioner’s claim for appeal has been submitted by a Doctor who is a Deputy Superintendent-



cum- Assistant Additional Chief Medical Officer at Nawada, without specifying that he is Specialist in any of the deficiencies with which the petitioner's candidature suffered at the P.E.T. He further draws attention of the Court towards column No.3 of the Form No.3 submitted by the petitioner in support of her claim for appeal. The same requires the opinion of the Doctor due to which he has found an error of judgment in the initial Medical assessment of the petitioner by the Board. In the said column meant for recording his opinion, the doctor has written "NIL". The certificate, therefore, is not only issued by an incompetent Authority as admittedly it is not signed by Specialist of any of the four concerned fields forming the basis of petitioner's declaration as being Medical unfit, but the same also does not record the reasons/opinion for which an error of judgment of the initial Medical Board has been opined by the Doctor giving the Certificate.

In respect of other submissions advanced by the petitioner's counsel, it is submitted that the same are an afterthought and clearly untenable based on the records. Prior to the filing of the counter affidavit, there is no correspondence by the petitioner claiming that the deficiency of vision with which she has been found to be suffering is DOV-N-0 and that



the same does not constitute a deficiency of vision. Neither she has written any correspondence in this regard nor the doctor who has issued the Medical fitness Certificate on Form No.3 has stated anything to this extent. The petitioner was all along aware and conscious that she was found to be suffering from DOV-N-8. Therefore, without raising any issue on this ground she has proceeded to submit a Medical Fitness Certificate by the Doctor on Form No.3, trying to meet this deficiency of DOV-N-8. It is only in these proceedings that the petitioner has for the first time raised the issue alleging that at the initial Medical Board the deficiency alleged was DOV-N-0, and that the same does not constitute an eye/vision deficiency. In so far only one Form being made available, it is also submitted that the same is clearly untenable as nowhere in the writ petition the petitioner has stated that she was prevented from giving Certificate issued by Specialist Medical Officer of concerned field for want of sufficient number of Form No.3 Apart from that, there is nothing on record to suggest that she ever raised this issue before the Authority or that she ever demanded any other Form No.3 for submitting separate Certificates in respect of the four deficiencies.

In the aforesaid circumstances, it is submitted that the



writ petition is nothing but a desperate attempt of a candidate who has been duly considered in a selection process and assessed to be unfit in a procedure which is conducted by various persons on a uniform standard, and as such, the petitioner would not be entitled to any relief.

The learned counsel for the respondent Nos. 1 and 2 has adopted submissions advanced by the learned A.S.G. It is his submission that the process of selection was conducted by uniform selection standards. The petitioner's candidature was found to be medically unfit, and as such, there is no merit in the writ application.

Having considered the rival submissions, the submissions of the learned ASG finds favour with this Court. From perusal of Form No.3 on which the Certificate in support of the appeal was submitted by the petitioner, the requirement of the Certificate being issued by "Specialist Medical Officer of concerned field" is clear and explicit. Prior to that the memorandum showing the petitioner to be unfit (Annexure-6) dated 24.01.2020, also clearly specifies that the Medical Certificate from the Medical Practitioner was to be obtained from the "Specialist Medical Officer of Government District Hospital and above". Admittedly, the certificate in support of the



appeal has not been submitted by “Specialist Medical Officer of the concerned field”. The petitioner, therefore, was conscious of the requirement of Certificate from “Specialist of concerned field”, but has not submitted one, as per the said requirement in support of her appeal. The Certificate, which has been submitted, also does not contain opinion of the Doctor due to which, the petitioner disputes or alleges an error of judgment in the initial Medical assessment by the Board. The column for providing the opinion for finding fault with the initial Medical assessment has been filled up as “NIL”. This is clearly evident from bare perusal of Certificate (Annexure-7). On this score alone, the appeal of the petitioner was not fit to be accepted; for non-compliance of these procedural requirements clearly stipulated and communicated to the petitioner. The learned ASG is also right in submitting that the plea of the petitioner in the instant proceedings regarding the ‘Deficiency Of Vision’ being specified as ‘DOV-N-0’ in the memorandum communicating reasons for which the petitioner was declared unfit, is clearly an afterthought. In the Medical Certificate issued in support of her appeal, this aspect has not been mentioned. In fact, as taken note of above, the error of judgment of the initial Medical Board has not been found to be erroneous by recording any opinion by the



Doctor who has submitted the Certificate based on which the petitioner has filed the appeal. In the column meant for opinion he has recorded "NIL". It is only in these proceedings and that also by way of rejoinder that the petitioner has placed on record an opinion of a Doctor dated 26.11.2020 that DOV-N-0 is not related to Eye. Prior to this document the petitioner has disputed the Deficiency Of Vision considering the same to be DOV-N-8, which was duly communicated to her in the memorandum dated 24.01.2020 (Annexure-6). The last submission of the petitioner's counsel also regarding only one Form being supplied is nothing but a desperate attempt. The petitioner has never demanded any more Forms at the time of disputing the findings of the initial Medical Board, and submitting her appeal. This plea also has been taken for the first time.

In view of the findings above, this Court does not find any merit in the writ petition so as to require issuing of any direction for a Review Medical Board as clearly the petitioner has been found unfit on four counts. The appeal filed by the petitioner also has rightly not been accepted as the same was not as per procedure and without a competent and valid Medical Certificate, as per requirement. This Court would only observe that physical unfitness has to be viewed in the background of



the fact that she is seeking appointment in a Central Armed Police Force, the call of duty for which requires serving under severe and very demanding circumstances.

The writ petition is dismissed.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	7/12/2020
Transmission Date	

