



§~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of decision: 10.09.2024*

+

W.P.(C) 10641/2024 & CM.APPL.43774/2024

SONU RAJPUT

.....Petitioner

Through: Mr.Rajesh Chauhan, Advocate

versus

UNION OF INDIA AND ANR

.....Respondents

Through: Mr.Badar Mahmood & Mr.Ammar
Ahmad, Advocates**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MS. JUSTICE SHALINDER KAUR****REKHA PALLI, J (ORAL)**

1. By way of the present petition under Article 226 of the Constitution of India, the petitioner, who is a young mother, aspiring to join the Seema Sashastra Bal (SSB) as a Constable (Washer Man)-Female under the OBC quota, has approached this Court seeking the following reliefs:

“Issue an appropriate writ, order or direction to quash & set aside the medical report dated 11.7.2024 and review the medical report dated 15.7.2024 whereby the petitioner is being declared medically unfit on ground of "Overweight" in selection process to the post of Constable (Washer man)Female in Sashastra Seema Bal (SSB) initiated in the year 2020 and to further direct the respondents that petitioner be subjected for fresh medical examination in an any independent medical institution and if fit (found weight within normal range) then to appoint the petitioner as Constable (Washer Man)-Female (as per merit obtained in



present selection process) in Sashastra Seema Bal under 'OBC' category with all consequential benefits including seniority and promotion and pay and allowances.

2. The brief factual matrix as may be necessary for adjudication of present petition may be noted at the outset. Upon an advertisement being issued by the respondents in August 2020 inviting applications *inter alia* for the post of Constable (Washer Man)-Female under the OBC category, the petitioner applied for the said post, and successfully, qualified the Physical Endurance Test (PET) as also the Physical Standard Test (PST) whereafter, she appeared in the written test held on 22.06.2023. When the final result of the selection process was declared on 21.11.2023, the petitioner's name was included in the merit list; consequently, she was required to appear for medical examination before being issued the offer of appointment. However, as she was in a stage of advanced pregnancy at that time, her medical examination was deferred and, she was directed to appear for the same after her delivery. After the petitioner delivered a baby on 24.02.2024, she, as directed, appeared before the Medical Board on 11.07.2024, where she was declared 'unfit' on the ground of being overweight. Upon an appeal being preferred by her, the petitioner was examined by a Review Medical Board (RMB) on 15.07.2024, when she was again declared 'unfit' on the ground of her being overweight as her Body Mass Index (BMI) was found to be 25.3, which was found to be more than the acceptable limit of 25 prescribed for appointment in the Central Armed Police Forces (CAPFs).

3. Being dissatisfied with the findings of the RMB, the petitioner, on the very next day, approached a government hospital at Gwalior namely Jaya



Arogya Hospital (JA Hospital) where, it was found that her weight was 62 kg with a BMI of 24.8. Armed with this medical fitness certificate, the petitioner submitted a representation dated 18.07.2024 to the respondents requesting that she be appointed, on the basis of the medical certificate issued by the JA Hospital, Gwalior. As no action was taken by the respondents on her representation, the petitioner, by way of the present petition, has approached this Court.

4. In support of the petition, learned counsel for the petitioner submits that the findings of both the initial Medical Board as also the Review Medical Board which had examined the petitioner and opined that she was overweight or that her BMI was more than 25, are erroneous. By placing reliance on the report dated 16.07.2024 from JA Hospital, Gwalior, which had examined the petitioner just one day after the Review Medical Board proceedings, he submits that the petitioner's BMI was found to be 24.8, which is within the prescribed limit of 25.

5. Further, he contends that even otherwise taking into account that the petitioner had delivered a baby barely four months before the date of her medical examination, she ought to have been granted reasonable time by the respondents to enable her to lose the weight gained by her during her pregnancy instead of declaring her medically 'unfit' on account of the weight gained by her during pregnancy.

6. He, therefore, prays that the respondents be directed to get the petitioner examined by an independent Medical Board and, in case, she is found fit, appoint her as a Constable (Washer Man) -Female along with all consequential benefits.

7. Controverting the aforementioned submissions of the petitioner,



learned counsel for the respondents submits that the petitioner was, at all stages of the selection process, found to be overweight and, was therefore, declared medically 'unfit'. During the Physical Standard Test (PST) itself, which was conducted even before the written examination, the petitioner's weight was found to be 64 kg with her BMI being more than 25. However, since overweight is not considered as a disqualifying criterion at the time of PST, the petitioner was, despite her excessive weight permitted to appear in the written examination, wherein she qualified. However, again during the initial Medical Examination conducted on 11.07.2024, as also the Review Medical Examination held on 15.07.2024, her BMI was found to be exceeding 25. The SSB, he submits, is an Armed Force where Force personnel are required to work under hostile working conditions and, therefore, at the time of their induction in the SSB, medical fitness of the candidates is given utmost importance. He, therefore, prays that in the light of concurrent findings of the PST as also the two Medical Boards that the petitioner's BMI was more than 25, the writ petition be dismissed.

8. Having considered the submissions of the learned counsel for the parties and perused the record, we may begin by noting that both parties are *ad idem* that as per the Guidelines of Recruitment Medical Examination in Central Armed Police Forces and Assam Rifles (Guidelines), candidates having BMI upto 25 are considered to be medically fit for appointment in the CAPFs. While the petitioner has, by relying on the medical fitness certificate issued by the JA Hospital, Gwalior, urged that her BMI was 24.8, the respondents have by relying on the findings in the PST and the two Medical Boards, contended otherwise and have claimed that the petitioner's BMI was always found to be more than 25. Even though we have no reason



to doubt the respondents' averment that the petitioner's BMI was found to be more than 25 during the selection process, we are of the considered view that taking into account the admitted position that the petitioner had delivered a baby barely four months before she was medically examined, she deserves to be granted another opportunity to be examined by a fresh Medical Board as she is reported to having achieved a BMI of less than 25 as per the certificate issued by JA Hospital, a government hospital in Gwalior.

9. Even though we are of the view that, in a case like the present, the petitioner ought to have been granted some reasonable time to attain her optimum weight after her delivery, we are not delving into this issue since we find that as per the JA Hospital on 16.07.2024, her BMI was under 25. In these circumstances, an error of judgment on the part of the Medical Board and Review Medical Board cannot be ruled out.

10. For the aforesaid reasons, we allow the writ petition and instead of directing the respondents to get the petitioner examined by an independent Medical Board, we direct that the petitioner be examined within one week by a fresh Medical Board in the MI Room, SSB, R.K. Puram, New Delhi as suggested by the respondents themselves. In case, the petitioner's BMI is found to be less than 25, she will be appointed as a Constable (Washer Man) –Female, within a period of four weeks, and be granted retrospective seniority and notional pay fixation with effect from the date, other candidates were selected pursuant to the same advertisement to the said post. It is, however, made clear that the petitioner will be entitled to receive actual wages only from the date when she is appointed.

11. Before we conclude, we may note that upon a query as regarding the



time granted to female candidates who are pregnant at the time of medical examination to achieve the requisite medical fitness, learned counsel for the respondents has submitted that in all cases of pregnancy, six weeks' time is granted to the candidates to attain medical fitness. In this regard, our attention has been drawn to para 5.3 of the guidelines which read as under:-

“5.3 If urine test for pregnancy is positive, the candidate will be declared temporary unfit and will be re-examined 6 weeks after the pregnancy is over, either naturally or artificially, subject to the production of a medical certificate of fitness from a registered medical practitioner.”

12. This period of six weeks envisaged under the Guidelines to enable a female candidate to regain her medical fitness after going through a pregnancy, in our considered opinion, is extremely short as it may not always be possible for a female candidate, who has undergone a pregnancy, to regain her complete medical fitness and lose the weight within six weeks which she may have gained during nine months of her pregnancy as, even under the Maternity Benefit Act, 1961, a much longer period of absence from duty has been envisaged. We, therefore, direct the respondents to examine this provision of the Guidelines in consultation with the concerned medical specialists to consider providing a reasonable time within which a female candidate is required to regain her medical fitness after her pregnancy. The matter, be therefore, placed before the Additional Director General (Medical), Central Armed Police Forces, for this purpose.

13. At this stage, learned counsel for the petitioner points out that despite the respondents inviting applications from female candidates for various



posts which were earlier earmarked only for male candidates, are continuing to use the terms Constable (Washer Man) instead of using a gender neutral nomenclature . Even though, we find that the petitioner is justified in raising this grievance, we are refraining from commenting on this aspect but we hope that the respondents will, themselves, look into this aspect and, suitably amend the nomenclature of such posts which are open to female candidates as well.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

SEPTEMBER 10, 2024
SV/SY