

Subham Kumar Vs Union Of India And Ors

Court: Patna High Court

Date of Decision: Feb. 17, 2021

Hon'ble Judges: Madhuresh Prasad, J

Bench: Single Bench

Advocate: Vinod Kumar, Dr. K.N. Singh, Rajesh Kumar Verma

Final Decision: Disposed Of

Judgement

1. The matter has been listed today for consideration through video conferencing.

2. The petitioner is an applicant for appointment as Constable (GD) in the respondent-Central Reserve Police Force. He was found unfit at the

Detailed Medical Examination (DME). The cause of unfitness was stated as "distant vision, defective colour vision and cubitus valgus". In terms

of the process of selection, the petitioner made his application for review medical examination. The same was accompanied along with a fitness

certificate, issued by the Chief Medical Officer, Sadar Hospital, Jehanabad (Bihar). The appeal along with such certificate was only seeking a review

medical examination, which has been rejected by a communication dated 24.03.2020, issued by the Respondent No.6-Deputy Inspector General of

Police, Group Centre, CRPF as the fitness certificate of concerned field Specialist was not attached. The authority has insisted upon the fitness

certificate being issued by a Specialist of the concerned field in which the physical unfitness has been reported at the Detailed Medical Examination,

as the same was a requisite in terms of the process of selection.

3. It is not disputed by learned counsel representing the Union of India and the Staff Selection Commission (Respondents No. 1 and 2) that the same

controversy which this application involved, was involved in CWJC No. 8370 of 2020 (Vikash Kumar vs. The Union of India & Ors.). The said writ

application has been disposed of by an order of this Court dated 13.01.2021, a copy of which has been presented at the time of hearing of this case. It

appears from the aforesaid order that arising out of the same selection process, which is the subject-matter of present proceeding, a writ application

was filed before Allahabad High Court giving rise to Writ-A No. 5049 of 2020 (Rupesh Kumar vs. Union of India) in which following order was

passed :-

“The submission of learned counsel for the Union of India that Dr. Syed Naushad Ahmad, Deputy Superintendent, Government Hospital,

Jamui who certified that two of the petitioners were not suffering from High BP/Hypertension was not competent to issue the same as he is

not a cardiologist, has also no force. The qualifications of Dr. Syed Naushad Ahmad are not in dispute. He has done Masters in Surgery

and being a general surgeon in a government hospital, he was competent enough to examine the petitioners and certify that they were not

suffering from hypertension. Under the recruitment scheme, as noted above, the only evidentiary value of his certificate is in formation of

prima facie opinion that there could be an error of judgment on part of the medical officer who examined the candidate in the first instance

to warrant acceptance of the appeal for review medical examination of the petitioners. In the review medical examination, the petitioners

will be subjected to medical examination by expert doctors. In case the petitioners were really not suffering from the ailments/ shortcomings

pointed out during the initial medical examination, they would succeed. On the other hand, if they do suffer from the ailments/shortcomings,

they would be discarded. There is no right of further appeal against the decision of the review medical board. In case the certificates

furnished by the petitioners are relied upon at this stage, the respondents would not suffer except that they shall have to hold a review

medical examination. On the other hand, if the petitioners really do not suffer from any ailment/shortcoming, as alleged, but their appeal for

review medical examination is rejected at the very threshold on the above ground, they would suffer irreparable loss and injury. In all

events, therefore, the appeals preferred by the petitioners for a review medical examination should not be dismissed in the manner as has

been done by the respondents.”

4. Taking into account the fact that the decision of the Allahabad High Court in Rupesh Kumar (supra) arose out of the same selection process, the

coordinate Bench of this Court disposed of the writ application vide order dated 13.01.2021 (Vikash Kumar) (supra) in following terms :-

“14. Having distinguished the instant case with that of CWJC No 8698 of 2020, this Court would allow the relief to the petitioner for the

reason that similar relief to candidates in the same process of recruitment has been allowed by the Allahabad High Court in the case of

Rupesh Kumar (supra), which has not been assailed by the respondent authorities before the higher Court and pursuant to which, the

respondent Authorities themselves are allowing the same relief to the candidate in another State.

15. Rejection of the petitioner's appeal for Review Medical Exam communicated under order dated 20.03.2019 by the respondent No 6 is

quashed.

16. The writ petition is allowed.

17. The respondents are directed to constitute a Review Medical Board for re-examination of the petitioner within a period of one (01) week

from the date of receipt/production of a copy of this order.

5. Following the said decision in the case of Vikas Kumar (supra), at least five more cases have been decided on the same lines, details of such cases

are as follows :

(i) CWJC No.8126 of 2020 (Shashi Ranjan Prakash @ Shashi Ranjan v. The Union of India & Ors.) disposed of on 12.02.2021.

(ii) CWJC No.8256 of 2020 (Shashikant Kumar v. The Union of India & Ors.) disposed of on 12.02.2021.

(iii) CWJC No.8918 of 2020 (Amarjeet Yadav v. The Union of India & Ors.) disposed of on 12.02.2021.

(iv) CWJC No.8919 of 2020 (Ravi Kumar v. The Union of India & Ors.) disposed of on 12.02.2021.

(v) CWJC No.8587 of 2020 (Jay Prakash Kumar v. The Union of India & Ors.) disposed of on 03.02.2021.

6. This writ application is accordingly disposed of with the same directions and observations as made in case of Vikash Kumar (supra). Consequently,

the impugned decision, whereby the petitioner's appeal for review medical board has been rejected, stands quashed.