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**(2009) 08 GAU CK 0022**

**Gauhati High Court**

**Case No:** Writ Petition (C) No. 3018 of 2008

Bhupinder Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision:** Aug. 6, 2009

**Citation:** (2010) 1 GLR 5 : (2009) 5 GLT 150

**Hon'ble Judges:** Amitava Roy, J

**Bench:** Single Bench

**Advocate:** R. Mazumdar and H. Bezbaruah, for the Appellant; J. Huda, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Amitava Roy, J.

The petitioner, a contender for the post of Constable/Driver in the Central Reserve Police Force (hereafter referred to as "the Force") having been rejected for recruitment on the medical ground seeks the intervention of this Court for redress.

2. I have heard Mr. R. Mazumdar, Learned Counsel for the petitioner and Ms. J. Huda, learned Central Government Standing Counsel for the respondents.

3. Shortly put, the facts leading to the filing of the instant petition are that, pursuant to an advertisement issued in the month of September, 2007 by the concerned authority of the Force inviting applications for the post of Constable Driver/Constable Fitter, the petitioner offered his candidature. After subjecting him to the physical measurement exercise and efficiency test, he was permitted to take the related written examination. He also participated in the driving test and the interview that followed. At the final stage, the petitioner, in course of his medical examination was rejected on the ground that he had been suffering from (1) Hyperextension of inter phalangeal joints and (2) External piles i.e., Haemorrhoids.

4. Being rejected, the petitioner got himself medically examined by the doctors of the Gauhati Medical College Hospital (hereafter referred to as "GMCH"), to be specific, Assistant Professor of Surgery for the External piles and a Orthopedic

surgeon for the other condition. Both the doctors having certified that he was medically fit on the said counts, the petitioner in terms of Clause 12 of the advertisement submitted an appeal requesting for medical re-examination. Along with the aforementioned appeal, the petitioner appended the medical certificates issued the re-examination was held by the Medical Board constituted by the Force on 11.2.2008 which however, reiterated the opinion expressed earlier. The Medical Board therefore construed him to be unfit for being recruited to the Force.

5. Mr. Mazumdar has urged that as the certificates issued by the experts of the GMCH in unequivocal terms demonstrate that the petitioner does not suffer from the ailments for which he had been purportedly declared to be medically unfit, the opinion of the Medical Board on his re-examination ought to be rejected. Without prejudice to the above, the Learned Counsel has contended that as, the Medical Board constituted by the Force did not comprise of any expert on either of the disciplines involved, in the interest of justice, another medical examination of the petitioner ought to be ordered by a Board comprising of such specialists. In support of his submission, Mr. Mazumdar has inter alia placed reliance on a decision of this Court rendered in WP (C) No. 511/2009, Baikuntha Rajbongshi v. The Union of India and Ors.

6. Strongly refuting the above, Ms. Huda has submitted that as the petitioner has been assessed to be medically unfit on the same count repeatedly by the doctors of the Force, the grievance of the petitioner is misplaced and therefore, the petition ought to be rejected in limine. In support of her submission, Ms. Huda has produced the records in original containing the proceedings of the re-examination of the petitioner.

7. Having regard to the limited scope of scrutiny, this Court has considered it expedient to confine its attention to the proceedings of the re-examination of the petitioner as is evidenced by the original records produced on behalf of the respondents. Noticeably, in terms of Clause 12 of the advertisement, proof of a candidate's fitness in the form of a medical certificate is a necessary precondition for entertaining the prayer for re-examination. There is no wrangle at the bar that the appeal petition of the petitioner was accompanied by two certificates issued by the aforementioned doctors of the GMCH certifying his fitness on both the counts on which he had been declared unfit by the Force.

8. A bare perusal of the proceedings of the re-medical examination Board that was held on 11.2.2008 does not disclose that either the certificates issued by the doctors of the GMCH were taken note of by the Medical Board or was accorded any weightage in arriving at the final conclusion of unfitness of the petitioner on the same ground on which he had been earlier adjudged to be unfit. The decision of the Medical Board as its proceedings reflect is summed up as "Unfit due to the above stated reasons namely, (1) Hyperextension of inter phalangeal joints and (2) external piles, i.e., Hemorrhoids".

9. The respondents have not claimed that the Medical Board is constituted of experts on the disciplines relatable to two segments of the medical conditions for which the petitioner had been regarded as unfit for the Force. Be that as it may, as the proceedings of the Medical board on re-medical examination per se do not reflect any consideration of the certificates issued by the experts of the GMCH and produced by the petitioner, endorsing his fitness, in the opinion of this Court, having regard to the necessary pre-condition mandated by Clause 12 of the advertisement, the assessment made by it (Medical board) as is gatherable from its proceedings dated 11.2.2008 does not commend for acceptance. In the estimate of this Court, the respondents having made it imperative for the petitioner to submit a medical certificate of his fitness, for the entertainment of his prayer of medical re-examination the Medical Board conducting the same ought to have taken note thereof and accorded due weightage thereto. Though the certificates produced by the petitioners were per se not binding and final vis-a-vis the Medical Board, it ought to have taken note of these and differed if need be, by recording reasons. This not having done in the instant case, the assessment of unfitness of the petitioner appears to be incomplete and therefore untenable in law. The affidavit filed by the respondents also does not disclose consideration of such certificates by the Board at the time of conducting the medical re-examination of the petitioner.

10. In that view of the matter, on this limited ground, this petition has to be allowed. Ordered accordingly. The assessment of the Medical Board adjudging the petitioner to be unfit is therefore interfered with. The matter stands remitted to the respondents for being placed before a duly constituted Medical board for medical re-examination of the petitioner. The respondents would take due care to ensure that the medical re-examination of the petitioner is conducted in a manner so as to obviate failings of the above nature and instead demonstrate a complete and credible evaluation of his physical condition as required.

11. The. petition stands allowed in the above terms. No costs.