

Before Mahesh Grover and Lalit Batra, JJ.

SATISH KUMAR—Appellant

versus

UNION OF INDIA & OTHERS—Respondents

LPA No.277 of 2017

May 29, 2019

Letters Patent—Clause X—Constitution of India, 1950—Art. 226—Recruitment—Congenial malformation—Medical fitness—Recruitment as Constable rejected—Gynaecomastia both sides—No rational nexus with objective—Held, cured Gynaecomastia—Could not impair duties—Appeal allowed.

Held that, meaning of the expression congenital malformation in the standards appointed by the respondents cannot be interpreted generally or so broadly so as to include even such minor defects that do not impact functional efficiency in any manner. The same have to be of such a nature so as to impair the normal expected functioning of an individual. There are occasions when a man may develop female like breasts known as gynaecomastia and may undergo surgical correction. In such a situation, authorities concerned would not assess such a man as medically unfit for recruitment.

(Para 6)

Further held that, conclusions of the respondents therefore do not satisfy the test of any nexus let alone a rational nexus to the objective sought to be achieved. Thus, there is no material at all to arrive at a conclusion that gynaecomastia ailment, which has already cured, would have rendered the appellant incapable of performing the assigned duties.

(Para 10)

Ganesh Kumar Sharma, Advocate
for the appellant.

P. S. Sidhu, Advocate for UOI.
Indresh Goel, Advocate
for respondent No.2.

Samarth Sagar, Advocate, Amicus Curiae.

LALIT BATRA, J.

(1) This letters patent appeal has been preferred by appellant (petitioner) impugning the legality of judgment dated 28.11.2016 rendered by learned Single Judge in CWP No.24395 of 2016 titled “Satish Kumar Vs. Union of India & others”, in terms of which, claim of appellant for his medical fitness and direction to the respondents to consider his claim for recruitment as Constable (General Duty) in CAPFs/NIA/SSF and Rifleman (GD) in Assam Rifles, has been dismissed.

(2) Appellant's case in brief is that respondents had issued an advertisement for recruitment of Constables (General Duty) in CAPFs/NIA/SSF and Rifleman(GD) in Assam Rifles wherein total number of vacancies were 62,390. Appellant being eligible and having requisite qualifications applied for the same under OBC category. Appellant's application was found in order and he was issued Roll No.221406018298. Appellant appeared for physical test and he was declared successful/qualified in the said test on 14.07.2015, as is evident from Annexure P-2. Thereafter, appellant appeared in written examination, which was held on 04.10.2015 and he qualified said test as well. Appellant was called for medical examination on 07.06.2016 and he appeared before Medical Board where vide Annexure P-4 dated 08.06.2016, he was declared medically unfit due to the following reason:-

“GYNAECOMASTIA BOTH SIDES”

(3) Having detected above said ailment, appellant was operated for *gynaecomastia* on 17.06.2016 at Vinayak Hospital and Research Centre, Hisar. He further appeared before Medical Board of Civil Hospital, Hisar and he was declared medically fit. Appellant had filed appeal against his medical unfitness before the Commandant, 22 GN BSF, Chhawala Camp, New Delhi, which appeal is still pending. However, appellant was called for review medical examination on 02.09.2016 at Signal Training School, BSF, New Delhi and on examination vide report dated 06.09.2016 (Annexure P- 8), he was declared unfit for the following reasons:-

“On examination B/L GYNAECOMASTIA optd USG breast presently normal but individual has female type body structure. Serum Estradiol level is 72.8 Rg/ML (Normal 11.6-41.2) for male.”

(4) Appellant again reported to Civil Hospital, Hisar, from

where he was referred to PGIMS, Rohtak, for specialist opinion. After examination, appellant was declared medically fit by the specialist of PGIMS Rohtak, wherein, estradiol level was found 39.4 RG/ML, which is normal for male. Appellant again approached the respondents and produced all the documents and asked for reconsideration of his case but to no avail. Ultimately appellant got served legal notice dated 25.09.2016 calling upon the respondents to reconsider his case for recruitment as a Constable (General Duty) as he was medically fit but got no response from the quarter concerned. Feeling aggrieved, appellant had filed CWP No.24395 of 2016, as detailed above, but the same was dismissed in *limine* by the learned Single Judge, vide judgment dated 28.11.2016. Though learned Single Judge has observed that review medical authorities have travelled beyond the scope of review medical examination but despite said findings writ petition was dismissed. Learned Single Judge has also failed to appreciate that at the first instance, Medical Board had declared appellant medically unfit on the sole ground “GYNAECOMASTIA BOTH SIDES” and despite the fact that appellant got himself operated in respect of above said ailment before his examination by Review Medical Board, other aspects of deficiencies were revealed by the Medical Board to declare him medically unfit, which shows that decision of respondents is self contradictory. In case deficiencies as mentioned in the review medical examination had been pointed out in the initial medical examination, appellant possibly could have got treated those deficiencies as well. Since appellant is physically fit having cleared the physical and written tests, above said remarks made by Review Medical Board that appellant has female type body structure does not create any hurdle in the discharge of work and as a matter of fact it cannot be termed as functional incapacity. Thus, for these reasons, appellant has asked for reversal of impugned judgment dated 28.11.2016, as detailed above, and for acceptance of his claim.

(5) Respondent No.1 in its counter affidavit has categorically contended that in the medical examination appellant was found unfit and further in the review medical examination, he was again found unfit. Since requirement to paramilitary forces like CRPF, highest standards of physical fitness are required and for this Medical Authorities of Para-Medical Forces are the best judge to examine the medical fitness of a candidate. Further, it is contended that opinions rendered by Government Civil Doctors are not relevant keeping in view the trying and toughest circumstances, which the forces encounter everyday in real life in unfriendly terrain. In this manner, respondents

have sought dismissal of instant appeal.

(6) We have heard learned counsel for the parties as well as learned amicus curiae and have carefully gone through the record of the case.

(7) Before proceeding further, a careful study of relevant provisions of Chapter-X pertaining to physical and medical examination for recruitment, is quite relevant and the said provisions read as under:-

“10.3 IMPORTANT POINTS FOR MEDICAL EXAMINATION OF RECRUITS

- (a) That the recruit is sufficiently intelligent.
- (b) That his hearing is good and that there is no sign of ear disease.
- (c) That his vision with either eye is up to the required standard.
- (d) That his speech is without impediment.
- (e) That he has no glandular swelling.
- (f) That his chest is well formed and that his heart and lungs are sound.
- (g) That he has no fracture of any degree or form.
- (h) That his limbs are well formed and fully developed.
- (i) That there is free and perfect action of all the joints.
- (j) That his feet and toes are well formed.
- (k) That he has no congenital malformation or defect.
- (l) That he does not bear traces of previous disease pointing to an impaired constitution.
- (m) That he possesses a sufficient number of sound teeth for efficient mastication.
- (n) That he has no disease of the genitourinary tract.

In the case of re-enrolment, great care must be taken to ascertain from the man's past history whether he has ever been wounded or has suffered from any disease, which might be the possible causes of unfitness in the future. A

Note to this effect should be made in the enrolment form at the time of enrolment.

10.4. GENERAL GROUNDS FOR REJECTION: The man presenting with any of the following conditions will be rejected:-

- (a) General Impaired Constitution.
- (b) Abnormal Gait.
- (c) Abnormal posture and abnormal curvature of spine.
- (d) Gross physical deformity of chest, joints (knock knee, bow legs, flat feet etc.)
- (e) Defective intelligence.
- (f) Deafness.
- (g) Pronounced Stammering.
- (h) Mental and nervous instability includes Coarse Digital Tremors, Hyperhydrosis and Tachycardia.
- (i) Sexually Transmitted Diseases.
- (j) Any degree of squint.
- (k) Low Standard of vision and visual correction by any kind refractive surgery is not permitted even by Lasik.
- (l) Corneal Opacities.
- (m) Perforation of Tympanic membrane.
- (n) Chronic Supportive Otitis Media.
- (o) Loss or decay of teeth interfering with proper mastication.
- (p) Chronic Bronchial, Laryngeal, Lung diseases.
- (q) Endocrinal Disorder.
- (r) Any chronic disease like Tuberculosis, Syphilis or other venereal disease, rheumatoid/any type of Arthritis, hypertension & diabetes.
- (s) Valvular or other disease of the heart.

- (t) Any type of hernia or hydrocele.
- (u) Marked varicocele, Testicular swelling, Atrophic Testis & Undescended testis.
- (v) Chronic skin diseases like leucoderma, Leprosy, SLE, Eczema, Chronic fungal dermatitis.
- (w) Anal Fistula, Hemorrhoids.
- (x) Deformity of feet like Flat Foot, Club Foot, Planter warts etc.,
- (y) Epilepsy, Nystagmus/ Progressive Pterygium, generalized neurofibromatosis
- (z) Varicose veins, The diagnosis of varicose vein should be made on the basis of dilatation and tortuosity of veins. Only prominence of veins should not be criteria for rejection. Operated cases of varicose veins should not be accepted.

10.5 Minor Acceptable Defects

Acceptance of a candidate suffering from trifling defects – candidates presenting with mild degree with the following defects may be accepted:

- (a) Mild Flat Feet – Asymptomatic mobile flat foot should not be considered as a deformity for declaring the candidates as unfit in the Medical examination. The highest point of arch should be more than 1.5 Cm
- (b) Mild knock knee Inter maleolar distance 5 Cms or less.
- (c) Mild bow legs inter condylar distance 7 cms or less.
- (d) Slight degree of Varicocele in the left side uncomplicated and symptoms less should not be bar to acceptance in an otherwise healthy individual.
- (e) Mild Hammer toes with no painful corns or bursae on the dorsum of toes and does not walk on toes, should not be rejected.
- (f) Healed perforation of eardrums.
- (g) Healed Trachoma without residual deformity.
- (h) Slight stammering – if stammering is observed after 4-5 sentences.

(i) Any other slight defects which in the opinion of the Recruiting MO will not interfere with efficiency of candidate as a soldier in future provided candidate conforms to the prescribed standards in other respect.”

(6) In the instant case, vide Medical Board Report dated 08.06.2016 (Annexure P-4), appellant was found medically unfit solely for the reason having “**GYNAECOMASTIA BOTH SIDES**”. It is pertinent to mention here that no other ailment or deficiency of any kind was detected on the person of appellant by the Medical Board on 08.06.2016. *Gynaecomastia* (sometimes referred to as "man boobs") is a common condition that causes boys' and men's breasts to swell and become larger than normal. It is most common in teenage boys and older men. Generally, the swollen breast tissue goes away within two to three weeks after birth. *Gynaecomastia* caused by hormone changes during puberty is relatively common. In most cases, the swollen breast tissue will go away without treatment within six months to two years. Treatment may not be required in some cases of *gynaecomastia*, in other cases treatment focuses on managing the underlying condition. Rarely, medical or surgical treatment is necessary. In this scenario, it can be summed up that *gynaecomastia* though caused by hormone changes, impact thereof diminishes with the passage of time or in case of rare chances medical or surgical intervention is necessary. At this juncture, it is relevant to point out here that Rule 10.3 (k) of above said rules deals with the aspect that candidate for the aspirant of above said post has no congenital malformation or defect. Before proceeding any further, it is essential to understand the meaning and impact of 'congenital malformation' and “congenital abnormality”. 'Congenital malformation' or defect or abnormality is any malformation of the body whether physical, mental or psychological, which is a deviation from the normal and is present at birth. A genetic malformation is an abnormality in the genes and may manifest at birth or later in life or not at all. Congenital malformation could be due to a number of causes which may be genetic, environmental or a combination of both. It is important to note that congenital malformation may be minor, causing little or no impairment. For instance, the same could be in the nature of a port wine stain of the face; an extra nipple on the chest; a short fourth finger; an extra finger or other abnormal facial or bodily features; formation of breasts in a male; formation of male genitalia in a female etc. Some such defects as in the nature of a cleft lip or a cleft palate etc. may be totally correctable. Other defects may cause serious impairments as in the nature of mental retardation, severe physical

abnormalities, increased incidence of cancer etc. It is also important to notice that existence of a particular condition in a candidate would not *ipso facto* render such candidate unfit for discharging the assigned duties in the service. The meaning of the expression “congenital malformation” in the standards appointed by the respondents cannot be interpreted generally or so broadly so as to include even such minor defects that do not impact functional efficiency in any manner. The same have to be of such a nature so as to impair the normal expected functioning of an individual. There are occasions when a man may develop female like breasts known as *gynaecomastia* and may undergo surgical correction. In such a situation, authorities concerned would not assess such a man as medically unfit for recruitment. To this effect reliance can also be placed on case “*Faizan Siddiqui* versus *Sahastra Seema Bal*¹.”

(7) In the instant case, initial medical examination of appellant by the Medical Board, took place on 08.06.2016, wherein *gynaecomastia* on both sides was detected. Immediately thereafter appellant got himself admitted in Vinayak Hospital and Research Centre, Hisar (Haryana) on 17.06.2016 and was operated for said ailment, as the same is evident vide Annexure P-5. For the said reason alone, Medical Board at the time of review medical examination of appellant, which took place on 06.09.2016, has categorically opined that on examination B/L *gynaecomastia* operated USG breast presently normal, as the same is evident vide Annexure P-8. Even otherwise a bare perusal of Rule 10.5 (Minor Acceptable Defects), as detailed above, shows that the respondents have themselves recognized that there may be certain conditions rendering a person temporarily unfit or which may be correctable. The respondents have also recognized that merely existence of a particular condition may not render a person unfit for recruitment. It notes that there may be defects which would not interfere with the efficiency of a candidate as a Constable (General Duty) in the future. *Gynaecomastia*, as detected on the person of appellant, said ailment was cured, thus, deficiency as pointed out in the medical examination conducted on 08.06.2016, has paled into insignificance.

(8) Regarding aspect of remarks that “individual has female type body structure” made by Medical Board in the review medical examination of appellant, which took place on 06.09.2016 is concerned,

¹ 2011(19) SCT 531 (Delhi High Court)

it is observed that no such observation regarding physical structure of appellant was ever pin-pointed by the Medical Board, who conducted medical examination of appellant on 08.06.2016. Once appellant had appeared before Medical Board on 08.06.2016, members of said Board were well aware of all the pros and cons of physical structure of said individual and at that time they did not mention above said so-called infirmity. It appears that members of Medical Board when examined the appellant on 08.06.2016, they did not deem it proper to consider so-called physical structure of appellant to be any kind of infirmity. Even otherwise scope of review is quite limited as while reviewing a matter, concentration is required to be given on the aspect which was previously detected/dealt with. Having considered by Medical Board in the course of review medical examination, as ailment of *gynaecomastia* has already diminished, then there was no scope for the Reviewing Medical Board to come out with a new version of other deficiencies. It appears that remarks of “individual has female type body structure” made by Reviewing Medical Board at the time of review medical examination, are too vague and do not bring the case of appellant under the provisions of Rule 10.4 (general grounds for rejection), as detailed above, to make out any case for rejection of appellant on medical ground.

(9) Regarding aspect of increase in estradiol level (72.8 RG/ML) in the body of appellant at the time of review medical examination, it is observed that after having detected said level increased, appellant got himself examined from PGIMS Rohtak, where on prescription estradiol level was got checked afresh and it was found within permissible limits i.e. 39.04 RG/ML, as the same is evident from Annexure P-10.

(10) In view of above, it has to be considered as to whether the respondents' decision to reject the appellant's candidature based on above said deficiencies was actually connected to the objective of medical fitness for service and therefore was not discriminatory or arbitrary. It needs no elaboration that there can be no compromise in the standards of medical fitness inasmuch as national security has to be placed on much higher pedestal than any interest of the individual seeking recruitment. There can be no dispute at all that the respondents have the right to prescribe recruitment criteria which would be motivated by interests of national security. Constable (General Duty) performs arduous tasks which can be fulfilled only by physically and mentally fit personnel. Thus, so far as the intendment of the criteria is concerned, it cannot be disputed that the same is a valid and a clearly

intelligible motive. The question which the appellant agitates is as to whether the rejection of his candidature on the ground of medical unfitness had any rational connection to the objective of recruiting fit personnel who were able to withstand the rigors of service and that the decision was not arbitrary. The respondents are therefore required to show that it had taken a rational decision in concluding that the appellant's disorder would interfere with the duties assigned to a Constable (General Duty). Medical standards needed for the performance of specific jobs need to be rationally read and interpreted. Reasonable medical standards help carrying out the required job functions with ease. Insisting on or interpreting a medical condition or standard in a manner that has no relationship with the level of medical fitness required to perform the stated job description is really not necessary and may even be discriminatory. The record placed before this Court also shows that initially respondents have noted "GYNAECOMASTIA BOTH SIDES" that is sole ground for rejecting the appellant's candidature but the said ailment was cured well before the review medical examination. It is pertinent to mention here that though during the course of review medical examination of appellant, Reviewing Medical Board gave remarks that appellant has female type body structure and increased estradiol level but in a given set of facts so-called infirmities/deficiencies have no footing to stand. In fact, it is an admitted position that the appellant has successfully completed the physical efficiency and written tests. The respondents thus clearly do not conclude that person affected with *gynaecomastia*, which is already cured, is unable to perform the typical duties entrusted to Constable (General Duty) which would have been the relevant consideration for rejecting the appellant's candidature. The conclusions of the respondents therefore do not satisfy the test of any nexus let alone a rational nexus to the objective sought to be achieved. Thus, there is no material at all to arrive at a conclusion that *gynaecomastia* ailment, which has already cured, would have rendered the appellant incapable of performing the assigned duties.

(11) As a sequel to above said findings, since learned Single Judge did not consider the entire matter in above discussed settled perspective, we allow instant letters patent appeal preferred by appellant (petitioner). Impugned judgment dated 28.11.2016 rendered by learned Single Judge in CWP No. 24395 of 2016 titled "Satish Kumar Vs. Union of India and others" is set aside. Consequently, rejection of appellant's candidature for the post of Constable (General Duty) in CAPFs/NIA/SSF and Rifleman (GD) in Assam Rifles on the

grounds of medical unfitness in the medical examinations conducted on 08.06.2016 and review medical examination conducted on 06.09.2016 are arbitrary, irrational and illegal and hereby quashed. Appellant (petitioner) is held entitled to forthwith recruitment as Constable (General Duty) in above said force. The writ petition is allowed in above terms.

Shubreet Kaur