

Court No. - 38

Case :- WRIT - A No. - 8063 of 2023

Petitioner :- Himanshu Kumar

Respondent :- Union Of India And 2 Others

Counsel for Petitioner :- Binod Kumar Mishra, Atul Kumar Dubey

Counsel for Respondent :- A.S.G.I.

Hon'ble Saurabh Srivastava, J.

The Ministry of Home Affairs, Government of India on 20.7.2018 issued an advertisement for the recruitment of Head Constables (Radio Operator) and (Radio Mechanic). The petitioner who was qualified for being appointed on the posts in question, had applied and was also declared successful in the result. The petitioner appeared for his 2nd phase examination which is documentation, PST and PET and was declared successful in the result. Thereafter he was required to have his medical examination on 20.2.2023 and had to report for this purpose at 7.30 AM to 18.00 PM. The petitioner, however, was found unfit. Resultantly, he applied for the review medical examination on 20.2.2023, the result of which was declared on the same date i.e, 20.2.2023.

The petitioner was declared unfit on account of the fact that he had a religious tattoo mark on his hand. Although it has been mentioned in the petition by way of annexing a medical certificate of a skin centre which clearly reveals that the Tattoo was removed but the said information has never been provided by the petitioner to the competent authority and as such the prayer for the review medical board was not accepted till today.

The contention of learned counsel for the petitioner is that the petitioner had prayed that if an opportunity was provided, he would have removed the tattoos and thereafter the review medical examination could again be done on the petitioner. Learned counsel for the petitioner relying upon a judgment of this Court passed in **Service Bench No.1129 of 2013 (Vihaan Nagar vs. Union of**

India & Ors.) dated 7.11.2013 has submitted that if tattoo was removed then a review medical could always be done in which the petitioner could be found fit for selection.

Shri A.N. Roy, learned counsel who has appeared for Union of India vehemently opposed the prayer mentioned in the petition on the ground that whatever rules and regulations pertaining to the Indian Army for rejection of the candidature, if any aspirant is having Tattoo on any part of the body the same has been followed by the Border Security Force also and as such the candidature of the petitioner has been rejected. He however, on the basis of instructions which he has received submitted that so far as the removal of tattoos is concerned, the respondents would be bound by the Division Bench judgment of the High Court referred to by learned counsel for the petitioner.

Under such circumstances, a direction is being issued that if the petitioner's tattoo is removed then that particular disability may not be considered as an obstacle for selection on the ministerial post for which the petitioner had applied. However, if the petitioner had any disability which according to the respondents were permanent in nature, then he may not be considered. The review medical board shall complete this exercise within a period of two months.

With these observations, the writ petition stands **partly allowed.**

Order Date :- 16.5.2023

Rakesh