

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Spl. Appl. Writ No. 414/2024

1. Union of India, Through Secretary, Ministry of Home Affairs, Govt. of India, New Delhi.
2. The Director General, Crpf (Recruitment Branch), East Block- 07, Level-4, Sector 01, R.k. Puram, New Delhi.
3. The Staff Selection Commission, Through Its Regional Director (Northern Region), Block No. 12, Cgo Complex, Lodhi Road, New Delhi.
4. Review Medical Board, Ch-Bsf Jodhpur, Served To Be Through Po/cmo (Sg) Composite Hospital Mandore Road, Jodhpur.

----Appellants

Versus

Sanyogita D/o Shri Sushil Kumar, Aged About 27 Years, Resident Of Ward No. 2 Chak 3 Bgwm, Ballar Dantaur, Tehsil Khajuwala, District Bikaner, (Raj.).

----Respondent

For Appellant(s) : Mr. Mukesh Rajpurohit, Dy.S.G.
For Respondent(s) : Mr. N.R. Budania.

**HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE MUNNURI LAXMAN**

Order

Reportable

07/05/2024

Heard.

2. This appeal is directed against the order dated 28.11.2023 passed by the learned Single Judge by which the respondent's petition has been allowed, declaring the decision of the appellants in rejecting the candidature of the respondent as illegal.
3. Learned Deputy Solicitor General of India referred to the provisions contained in sub-clause (3) of Clause 11 of the Uniform Guidelines for Recruitment Medical Examination for Recruitment of



GOs and NGOs in CAPFs and AR dated 20.05.2015, in support of his submission by elaborating that tattoo marks are ordinarily attributes of medical unfitness unless they are found on permissible part of the body with permissible content and size. Learned counsel would argue that in disciplined force, the standard of medical fitness is higher than the medical fitness required in other services, because such issues have bearing on the performance and duties in a disciplined force. He would submit that the learned Single Judge while allowing the writ petition, ignored and failed to appreciate that the spirit of the provisions, referred to above, required the writ petitioner to be free from any kind of tattoo inscribe or scar of removed tattoo on the inner aspect of right forearm. He would further submit that the scar, which has a permanent imprint, would be a ground for medical unfitness. The decision taken by the body of experts including review medical board, in absence of there being any violation of the provisions of law or binding guidelines, could not be interfered with by the Court in exercise of its writ jurisdiction, as the scope of judicial review against the opinion of the medical board/medical expert is extremely limited and it is not permissible under the law to substitute the opinion through judicial process. He would further submit that the learned Single Judge also did not properly appreciate the facts and circumstances, distinguishing features of the case of Shridhar Mahadeo Pakhare Vs. Union of India & Ors (Writ Petition No.10026 of 2017) decided by the Bombay High Court.

4. On the other hand, learned counsel for the respondents, on advance copy, supporting the order passed by the learned Single

Judge submits that the learned Single Judge, after taking into consideration that the scar mark of removed tattoo, by itself, could not be made a basis to hold a candidate medically unfit in terms of the qualifying provisions contained in sub-cause (3) of clause 11 of the Guidelines, allowed petition.

5. Having heard learned counsel for the parties any having gone through the impugned order of the learned Single Judge, we do not find any ground to interfere with the order of the learned Single Judge for the reasons which are stated infra.

6. Admittedly the only ground on which the respondent-petitioner was declared medically unfit is that she was having scar mark on the inner aspect of her right forearm.

7. The relevant provisions contained in the guidelines, which have been referred to by the appellants and also analyzed by the learned Single Judge and are relevant for our purposes in this case, read as below:

“3) **Tattoo** : The practice of engraving / tattooing in India is prevalent since time immemorial, but has been limited to depict the name or a religious figure, invariably on inner aspect of forearm and usually on left side. On the other hand the present young generation is considerably under the influence of western culture and thus the number of potential recruits bearing **skin art** had grown enormously over the years, which is not only distasteful but distract from good order and discipline in the force. Following criteria are to be used to determine permissibility of tattoo:

b) Content-being a secular country, the religious sentiments of our countrymen are to be respected and thus tattoos depicting religious symbol or figure and the name, as followed in Indian army, are to be permitted.

a) **Location**- tattoos marked on traditional sites of the body like inner aspect of forearm, but only **LEFT** forearm, being non saluting limb or dorsum of the hands are to be allowed.

b) **Size**- size must be less than $\frac{1}{4}$ of the particular part (Elbow or Hand) of the body.”

8. A bare perusal of the aforesaid provision would reveal that what could be made a ground for disqualification of a candidate would be existence of tattoo mark. The background in which the tattoo mark has been treated to be a ground for medical unfitness has been stated in the first part of the provisions. It is stated that such tattoo marks are not only distasteful but also distract from good order and discipline in the force. However, there is no absolute prohibition in having a tattoo mark. The provisions carve out exception that a candidate despite having tattoo mark, would not be held to be medically unfit.

9. Firstly, the tattoo depicting religious symbol or figure and the name are to be permitted. This is being allowed in the CRPF consistent with the practice which has been followed in the Indian Army. This fact has been clearly stated in the provisions itself. Thus there is no absolute prohibition in having tattoo mark.

10. Secondly, other provisions deal with location and size, which may render a candidate medically unfit. The tattoo marked on traditional sites of the body like inner aspect of forearm but only left forearm, being non saluting limb or dorsum of the hands, are permissible. Further it has been stated that the size must be less than 1/4 of the particular part (elbow or hand) of the body. Therefore, tattoo inscribe is a ground of medical unfitness only in certain conditions. In all other cases, it is not a ground to declare a candidate medically unfit.

11. We would thus find that mere existence of tattoo by itself is not a disqualification on the ground of medical fitness but the size and the place of the body where it is inscribed is relevant for deciding whether it is a case of medical unfitness or not. In any

case if the tattoo mark has already been removed leaving behind a scar, in our opinion, it will not be within the teeth of the disqualification clause, as referred to hereinabove. Merely because the scar happens to be on the inner right forearm, that by itself cannot be treated to be a case of medical unfitness for the simple reason that existence of scar as such is not a ground for medical unfitness. In other words, the scar of removed tattoo and the scar for any other reason like injury etc. cannot be treated differently. In the absence of there being any ground of medical unfitness only on the ground of there being scar on the inner aspect of right forearm, disqualifying a candidate on the ground of there being by a scar of removed tattoo, will result in hostile discrimination as classification is not based on any rational criteria and such discrimination would render it unconstitutional being violative of Articles 14 and 16 of the Constitution of India.

12. Therefore, for the reasons stated by the learned Single Judge as also the additional reasons which are stated by us, we are of the view that the action of the appellants in rejecting the candidature of the respondent on the ground of medical unfitness suffers from the vice of arbitrariness and has rightly been struck down by the learned Single Judge by the impugned order.

13. The appeal has no merit and the same is dismissed.

(MUNNURI LAXMAN),J

(MANINDRA MOHAN SHRIVASTAVA),CJ