

# Veena vs The Secretary Ministry Of Home Affairs ... on 28 February, 2019

**Author: S. Muralidhar**

**Bench: S.Muralidhar, Sanjeev Narula**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ W.P.(C) 8013/2018  
VEENA ..... Petitioner  
Through: Mr. M.K.Bhardwaj, Advocate  
versus  
THE SECRETARY MINISTRY OF HOME AFFAIRS AND ORS.  
..... Respondents  
Through: Ms. Prema Priyadarshini, Advocate  
CORAM:  
JUSTICE S.MURALIDHAR  
JUSTICE SANJEEV NARULA  
ORDER

% 28.02.2019

1. The Petitioner has approached this Court seeking a mandamus to the Respondents for appointment to the post of Head Constable (HC) (CM) on compassionate grounds. She has sought the setting aside of an order dated 6th April, 2018 and the corresponding communication dated 29th May, 2018 issued by the Respondents denying her the relief.

2. The background facts are that the Petitioner's husband who was serving as Constable (Driver) in the 12th Battalion of the Indo Tibetan Border Police (ITBP) died 12th July, 2010 while discharging his official duties. The Petitioner, having two minor children, applied for compassionate appointment. Since she had applied for the post of HC (CM), which is a ministerial post, she had to qualify the typing test. She participated in the skill and typing tests which were conducted between 11th and 15th December, 2017 at the 39th Battalion ITBP Greater Noida.

3. After the Petitioner qualified in the skill test, a Detailed Medical Examination (DME) was carried out on 15th December, 2017 as per the Revised Uniform Guidelines for Recruitment Medical Examination of GOs and NGOs in CAPFs & Assam Rifles, issued by the Ministry of Home Affairs on 20th May, 2015 (hereafter the „Guidelines“). However, she was declared unfit in the DME on account of „Situs Inversus (Dextrocardia)“ on the basis of a Chest X-ray and the opinion of the specialist radiologist. This condition „Dextrocardia“ is where the heart is on the right side of the person instead of the left side.

4. Learned counsel for the Respondent referred to para 6 of the Guidelines titled „General grounds of rejection“ where at Sl. No. 20 is mentioned: "any congenital abnormality, so as to impede

efficient discharge of training/duties." The record of the DME only notices that the Petitioner has the said condition namely „Dextrocardia but does not opine that the said condition would impede the efficient discharge of duties by her in the ministerial post for which she was seeking appointment.

5. Para 6 (20) of the Guidelines has to be strictly construed. Unless, the medical the congenital abnormality is to such a degree that it impedes the efficient discharge of duties it will not be considered to be a ground for rejection. In the present case, the DME only records the existence of the medical condition but not on the possible effect it would have on the efficient discharge by the Petitioner of her duties in the ministerial post. Here again, it must be observed that the parameters that will have to be considered might differ depending on the kind of post and the nature of duties. For instance, what holds good for a combat of general duty post may not be the same for a ministerial post.

6. In the present case, in the absence of such determination, it was not justified on part of the Respondents to reject the candidature of the Petitioner only because she is found to be having „Dextrocardia .

7. Learned counsel for the Respondent submitted that although the post is ministerial one the Petitioner might be attached to combat unit which may be required to serve in difficult conditions and it is possible that she may not be able to cope with such conditions. These are not matters for non-medical experts to form an opinion about. These are matters on which only an expert medical body can opine. The medical opinion in the present case does not state that the condition detected would actually impede the efficient discharge of duties by the Petitioner.

8. Learned counsel for the Petitioner has drawn the attention of the Court to a decision dated 23rd August, 2013 of the learned Single Judge of the Rajasthan High Court in S.B. Civil Writ Petition No.7719/2012 (Gurvinder Singh v. Union of India). The Petitioner in that case was seeking appointment as CT (Lab Assistant) in the Shasatra Seema Bal („SSB ). The Petitioner there also was found to have „Dextrocardia . In that case also, as in the present case, the Petitioner qualified in the Physical Measurement (PM) and Physical Efficiency Test (PET). Thereafter he appeared in the written examination in which he qualified. He also completed a one mile race, a 11 feet long jump and 3.5 feet high jump. The High Court noted that „for all purposes, the Petitioner is medically fit but only for the reason that his heart is situated on the right side of the body she has been denied unfit. The High Court found that once a candidate is physically tested and his physical efficiency was also tested then obviously it „cannot be said that the appointment can be denied the Petitioner on the ground that his heart is situated in the right side of the body . In that case also the Respondents were unable to give a satisfactory answer to the query of the Court whether "as per the medical jurisprudence the said Dextrocardia condition is coming in the way of performing duties as CT (Lab Assistant)." In the present case too the Respondents have not been able to state that the medical condition of the Petitioner would come in the way of the efficient discharge of her duties as HC (CM).

9. For the aforementioned reasons, the Court sets aside the impugned letter dated 9th May, 2018 of the Respondents rejecting the Petitioner's request for compassionate appointment. A direction is issued to the Respondents to issue the Petitioner a letter appointing her as HC (CM) within a period of eight weeks from today.

10. The petition is allowed in the above terms but with no orders as to costs.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 28, 2019 mw