

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.929 of 2022

Sri Piklu Banik, S/O- Sri Gopal Banik, of North Maheshpur, Sepahijala,
Tripura, Pin-799131

.....Petitioner(s)

Versus

1. The Union of India, Represented by the Ministry of Home Affairs,
Government of India.
2. The Under Secretary, Staff Selection Commission, Block No.12, CGO
Complex, Lodhi Road, Near JLN Stadium, New Delhi, Delhi-110091
3. Staff Selection Commission represented by Chairman, Block No.12,
CGO Complex, Lodhi Road, Near JLN Stadium, New Delhi, Delhi-
110091
4. North Eastern Regional Office, Staff Selection Commission, Gauhati,
represented by Regional Director, Housefed Complex, West End Block,
Last Gate- Basistha Road, P.O.- Assam Sachivalaya, Dispur, Gauhati-
781006
5. Director General, CRPF (Central Reserve Police Force) (Recruitment
Branch) East Block-07, Level-4, Sector-01, R.K. Puram, New Delhi-
110066 (Ministry of Home Affairs)
6. Review Medical Examination Board, represented by the Presiding
Officer RME Centre, CH Shillong, Umpling, Mawarliang, Shillong,
Meghalaya, Pin-793006.

.....Respondent(s).

For Petitioner(s)	: Mr. Rajib Saha, Advocate, Ms. R. Purkayastha, Advocate.
-------------------	--

For Respondent(s)	: Mr. Bidyut Majumder, Deputy SGI.
-------------------	------------------------------------

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

28/06/2023

Heard Mr. Rajib Saha, learned counsel for petitioner and Mr. Bidyut Majumder, learned Deputy SGI for the respondents.

2. Petitioner appeared in a selection process for appointment to the post of Constable (GD) in Central Armed Police Forces (CAPFs). His name appeared in the final selection list. He was asked to undergo medical test. In the medical test, the doctors under respondents-Union of India found him “*Unfit on account of Right Tympanic Membrane Perforation*”. Petitioner took reports of an opinion of the doctors of Indira Gandhi Memorial Hospital, Government of Tripura, Agartala where the doctors examined him and found that “*Tympanic Membrane in both ears appear normal*”.

3. Since appointment was denied to the petitioner, he approached this Court in the present writ petition. By order dated 03.11.2022, notices were issued and respondents were directed not to fill up one post of Constable (GD), CAPF till decision of this writ petition. After filing of Counter Affidavit, the matter was taken up on 16.05.2023 when the following order was passed:

“Petitioner's candidature for the post of Constable (GD) in Central Armed Police Forces was rejected on grounds of medical unfitness. The Review Medical Board held on 28.09.2022 overruled two out of three defects found by the Detailed Medical Examination (DME, for short) held on 20.09.2022 but accepted the defect about Tympanic Membrane Perforation. The defects relating to fissure in anus and defective distant visual acuity were, however, not found by the Review Medical Board. Petitioner had got himself examined in two Government hospitals of Tripura, i.e. Indira Gandhi Memorial Hospital, Agartala, West Tripura on 14.10.2022 and in AGMC & GBP Hospital, Agartala, West Tripura on 20.10.2022, (both Annexure-H to the writ petition) where no such defect was noticed.

Ms. R. Purkayastha, learned counsel for the petitioner, has relied upon clause 6(d) of the office memorandum dated 31.05.2021 which, according to her, lays down that the Review Medical Board may obtain opinion of concerned specialists or super specialists of Govt. Medical College and Hospital in case of any doubt. Therefore, in cases of rejection in review medical examination, clinical findings should be corroborated with confirmatory tests/investigations/opinion of specialists/super specialists of Govt. Hospitals/Medical Colleges/Govt. approved private medical centres, whichever and wherever applicable (Annexure-I).

It is the case of the petitioner that no such opinion of specialists/super specialists of any Govt. Medical College and Hospital was taken into consideration before rejecting the candidature of the petitioner by the Review Medical Board on the aforesaid medical defect, i.e. Tympanic Membrane Perforation.

Mr. Bidyut Majumder, learned Deputy S.G.I. appearing for the respondents, has pointed out that the standards of examination in the DME or in the Review Medical Board are different from that of the Government hospitals. As such, such opinions obtained from Government Medical College and Hospital are not worthy of rejecting the opinion of the Review Medical Board which comprises of three doctors, one of them being a specialist. As such, this Court may in exercise of writ jurisdiction not examine the opinion of the experts which are

undertaken on a prescribed set of medical standards for recruitment.

*On consideration of the rival submissions of the parties and the fact that the Review Medical Board has overruled two defects out of three pointed out in the DME and that petitioner has been found fit by the doctors of two Government hospitals, i.e. Indira Gandhi Memorial Hospital, Agartala, West Tripura and AGMC & GBP Hospital, Agartala, West Tripura subsequently on 14.10.2022 and 20.10.2022 and it is also apparent that the Review Medical Board had not obtained opinion of any concerned specialist or super specialist of Government Medical College and Hospital in the background that out of three defects, two had itself been overruled by the Review Medical Board, this Court is of the view that the petitioner should be subjected to medical examination by the specialized hospital under the respondent-BSF. As informed, such hospital is at Shillong named "Composite Hospital (CH), CAPF, BSF, Shillong". As such, let the petitioner appear before the Superintendent, Composite Hospital (CH), CAPF, BSF, Shillong on **31.05.2023** at 10.30 a.m. The authorities, i.e. the DIG (MED), at the Composite Hospital (CH), CAPF, BSF, Shillong shall conduct a detailed medical examination of the petitioner to satisfy whether the petitioner suffers from the defect of Tympanic Membrane Perforation as found by the Review Medical Board. One of the doctors should be the specialist in ENT Department. Needless to say, the medical board should be comprised of doctors/specialists other than those who conducted the Review Medical Board. Let the report be submitted on the next date by the learned Deputy S.G.I."*

4. Petitioner has, thereafter, been subjected to Review Medical Examination before the Composite Hospital (CH), CAPF, BSF, Shillong on 31.05.2023. The Review Medical Examination report has been furnished in a sealed cover by letter dated 03.06.2023 and has been placed before the Court by learned Deputy SGI. The sealed cover has been opened in Court and perused. Learned counsel for both the parties have

also perused the same. The opinion of the Review Medical Board comprising 4(four) Medical Officers, one of them being an ENT Specialist is extracted hereunder:

**"BORDER SECURITY FORCE
FOR RECRUITMENT OF CT(GD)IN CAPFS, NIA, SSF AND
RIFLE MAN IN AR 2021**

**FORM NO-4
RESULT OF REVIEW MEDICAL EXAMINATION
(OF UNFIT CANDIDATES IN DME)**

PHOTO

Roll No. : 5601008783
Name of the candidate : PIKLU BANIK
Gender : MALE
Father's/Husband's name : GOPAL BANIK

Identification Marks

- (i) BLACK MOLE ON LEFT SIDE UPPER PART OF NECK
- (ii) BLACK MOLE ON DORSUM OF RIGHT HAND

Candidate's Signature (In presence of the Board) – Sd/- Illegible

1. Reasons for Medical Unfitness:- PERFORATION OF RIGHT TYMPANIC MEMBRANE.
2. Brief of Review Medical Examination & finding thereof:- The board having examined the hide autoscapy conducted for both tympanic membrane and it was intact (No perforation found). Rinnes test – Positive (both ear), Weber's test- centralized (both ear). No visible scar around the ear seen, photograph of both TM attached.
3. Final opinion :
 - (a) FIT : FIT
 - (b) Unfit on account of : X

Place : CAPF, CH-BSF, SHILLONG
Date : 31.05.2023

P.O. Sd/- Illegible
Dr. Kaushal Kishore
Chief Medical Officer (SG)
CAPF & CH BSF Patgaon

Member-1Sd/- Illegible
(Dr. Dameshwa Paslein), AC (MO)
193 Bn BSF (With Seal)

Member-2 Sd/- Illegible
Dr. Valera Pasi, AC (MO),
110 Bn BSF (With Seal)

Co-opted Member-1 Sd/- Illegible
(Dr. Argya Jyoti Ghosh),
Contractual/(ENT Specialist)
172 Bn BSF (With Seal)

Result of review medical examination received

Sd/- Illegible
Signature of the candidate

NOTE: The decision of the Review Medical Board will be final. No appeal will be entertained against the findings of the Review Medical Board in Review Medical Examination."

5. The report, unequivocally and unanimously opines that both tympanic membranes of the petitioner were found intact and no perforation was found. Petitioner has been declared medically fit by the Review Medical Board. Having regard to the opinion furnished by the Review Medical Board pursuant to the order dated 16.05.2023, the issue has been resolved.

6. Mr. Rajib Saha, learned counsel for the petitioner, submits that the respondents may be directed to consider the case of the petitioner and appoint him on the post of Constable (GD) in the Central Armed Police Forces as one post had been directed to be kept vacant till decision of this case vide order dated 03.11.2022. Mr. Bidyut Majumder, learned Deputy SGI for the respondents, submits that writ petition may be disposed of in the light of the opinion of the Review Medical Board finding the petitioner medically fit with suitable directions upon the respondent authorities to appoint him on the post of Constable (GD) against the vacant sanctioned post.

7. Having regard to the aforesaid facts and circumstances and that the petitioner has been found medically fit by the Review Medical Board which was the only reason for his non-selection, the claim of the

petitioner succeeds. Respondents are directed to offer him appointment after due verification of his essential credentials and other norms under the CAPF against the post kept vacant pursuant to the order dated 03.11.2022 passed by this Court within a period of 6(six) weeks from the date of receipt of copy of this order.

8. Writ petition is allowed in the manner and to the extent indicated hereinabove. Let the report of the Review Medical Board be kept along with the record.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

Pijush