

DEEPAK KUMAR Petitioner
 Through : Mr. Prakash Kumar and
 Mr. A. Lal, Advs.
 versus

UNION OF INDIA AND ORS Respondents
 Through : Mr. Anil Gautam, Adv.

CORAM :-**HON'BLE MS. JUSTICE GITA MITTAL****HON'BLE MR. JUSTICE J.R. MIDHA**

- | | | |
|----|---|-----------|
| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | NO |
| 2. | To be referred to the Reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

GITA MITTAL, J. (Oral)

1. The petitioner challenges the rejection of his candidature for appointment to the post of Assistant Commandant with the Central Police Force in the selection process initiated by the respondents in the year 2006. The petitioner contends that he satisfied the prescribed medical standards for the required corrected vision which were declared by the respondents and notified in the notification dated 6th May, 2006. The rules were laid down for the purpose of filling up vacancies of Assistant Commandant in the Central Police Force stand laid down in the said notification dated 6th May, 2006. The petitioner is

aggrieved by his rejection on the 27th June, 2007 by the single medical expert and on 24th March, 2009 by the review medical board conducted pursuant to the order dated 12th February, 2009 passed in the petitioner's earlier writ petition bearing WPC(C)No.9364/2007 are illegal and untenable.

2. The preliminary ground of challenge to the declaration of the petitioner's unfitness is premised on the submission that the respondents cannot change the selection process once the same has commenced.

The respondents have placed reliance on the OM No.F7(1)-28/52-M II dated 7th April, 1953 issued by the then Ministry of Health as well as hand book on medical examination issued by the Ministry of Health and Family Planning of the Government of India, (Second edition published in 1977) which has been placed before us.

3. We have heard learned counsel for the parties. So far as the factual narration is concerned, it remains undisputed. The respondents had invited applications by public advertisement issued in the year 2006 for appointment to the post of Assistant Commandant in the Central Police Forces. This advertisement has been placed before us and clearly stipulates that the candidates *"must be in good mental and bodily health and free from physical defect likely to interfere with the efficient performance of the duties"*

4. The petitioner successfully qualified the written test as well as physical test whereafter he was called upon to appear

for a medical examination as per the prescribed procedure. The petitioner was medically examined on 28th June, 2007 the specialist found him unfit on account of “*high myopia (power of glasses are -6.0 diopter BE)*”.

5. The petitioner places reliance on an evaluation of his eyes conducted at the O.P.D. of the Ram Manohar Lohia Hospital on 3rd October, 2007 wherein it was followed:

“नाम/Name Mr. Deepak Kumar

	दायें/RIGHT					बाएं/LEFT				
	SPH	CYL	AXIS	PRISM	AXIS	SPH	CYL	AXIS	PRISM	AXIS
दूर से पढ़ने के लिए DISTANCE OR CONSTANT	-5.50	-1.00	P.O°	---	6/6	5.5	-1.00	P.O°	---	6/6
नजदीक से READING			---						---	

शीशा/Lenses.....Frame.....shape.....
B.N.....P.D.....F.B.....Sides.....Bridge.....
तारीख/Date 3.x.07”

6. Aggrieved by the declaration of medial unfitness by the respondents, the petitioner filed WP(C)No.9364/2007. This writ petition was disposed of by an order passed on 12th February, 2009 directing the respondents to conduct a review medical board of the petitioner taking into consideration the medical certificate of the petitioner which had been issued by the Ram Manohar Lohia Hospital.

7. It is undisputed that the review medical board was conducted by three specialists on 24th March, 2009, as directed. The review medical board however has again recorded that “*as his total amount of myopia (including the cylinder) exceeds the permitted power - 4.0D, he is considered*

‘unfit’ for services.”

8. Learned counsel for the parties have placed before us the notification dated 6th May, 2006 notifying the rules for the competitive examination held by the Union Public Service Commission in 2006 for the purpose of filling up the vacancies of Assistant Commandant in the Central Police Force. Clause 15 of these rules clearly provides that the candidates who obtain minimum qualifying marks in the written examination as may be fixed by the commission in their discretion shall be summoned for the physical standards/physical efficiency tests and medical standards tests to check whether they meet the physical and medical standards specified in Appendix-II to these Rules. So far as Appendix-II(ii) is concerned which stipulates inter alia the following physical and medical standards for the candidates for the post of Assistant Commandants in the Central Police Forces:

**“(ii) Medical standards:
(a) Eye-Sight:**

<u>Distant Vision</u>		<u>Near Vision</u>	
Better eye	Worse eye	Better eye	Worse eye
(Corrected vision)		(Corrected vision)	
6/6	6/12		
or			
6/9	6/9	J.I	J.II

(b) The candidates must not have Knock-knees, Flat foot, Varicose veins or squint in eyes and they should possess high colour vision. The candidates will be tested for colour vision by Ishahara’s test as well as Edrich-Green Lantern Test. They must be in good mental and bodily health and free from any physical defect likely to interfere with the efficient performance of the duties.”

9. Learned counsel for the petitioner has urged that the respondents were bound by the vision prescription contained in sub para(a) of para (ii) of the prescribed standards noted above and could not have rejected the petitioner at all upon arriving at a finding that his corrected vision was 6/6 in both eyes.

10. We find, however, that this submission fails to take into consideration the prescription contained in sub para(b) of the prescribed medical standards in Appendix-II(ii) which clearly mandates that the candidate must be in good mental and bodily health and free from any physical defect likely to interfere with the efficient performance of the duties. This stipulation requires that even if the candidate meets the prescribed medical standard and had the corrected vision as prescribed, the medical specialist will require to evaluate and opine that the candidate is in good mental and bodily health and free from any physical defect likely to interfere with the efficient performance of the duties.

11. It is not disputed before us that discretion to so evaluate the candidate was also clearly stipulated in the advertisement which has been issued by the respondents as well.

12. Additionally, a Handbook for Medical Examination stands issued by the concerned Ministry of the Government of India. The extract of the relevant portion of the second edition of the hand book published in 1977 has been placed before this Court. This handbook acts as a reference book and provides the guiding principles to authorities who are required to

conduct medical examinations and standards of physical fitness for employment in the Indian Administrative Service, Indian Police Service, Indian Foreign Service and other Central services, recruitment to which is made by competitive examination through the UPSC as prescribed in the “*Medical Regulations and Medical Report Form for IAS, IPS, IFS and Central Services*” Appendix-I.”

13. The respondents have placed reliance on the instructions contained in para 6(c) and 6(d) of these instructions which reads as follows:-

“6.(c) The following standards are prescribed for distant and near vision with or without glasses for different types of services.

Class of Service	Distant Vision		Near Vision	
	Better eye (Corrected vision)	Worse eye (Corrected vision)	Better eye (Corrected vision)	Worse eye (Corrected vision)
Class I & II				
(i) Technical...	6/6	6/12 or 6/9	J.I	J.II
(ii) Non-technical..	6/9	6/12	J.I	J.II

(d) In every case of myopia, fundus examination should be carried out and the results recorded. In the event of pathological condition being present which is likely to be progressive and affect the efficiency of the candidate, he/she should be declared unfit. In respect of the services mentioned under the category “TECHNICAL” and also for any other services concerned with the safety of public the total amount of myopia (including the cylinder) shall not exceed – 4.00 D. Total amount of Hypermetropia (including the cylinder) shall not exceed +4.00 D:

Provided that in case a candidate in respect of the services classified as “Technical” (other than the Services under the Ministry of Railways) is found unfit on grounds of high

myopia, the matter shall be referred to a special board of three Ophthalmologists to declare whether this myopia is pathological or not. In case it is not pathological, the candidate shall be declared fit, provided he fulfills the visual requirements otherwise.

It is clarified that examination by a special board of three Ophthalmologists is a part of the examination by the medical board and the medical board's report will not be deemed as complete unless it includes the report of the special board. Therefore in such cases where a candidate is found to be having high myopia, the Central Standing Medical Board/State Medical Board should immediately refer the candidates for a special board of three ophthalmologists constituted by the Medical Superintendent of the hospital/AMO, with the head of the Department of Ophthalmology of the hospital or the senior most Ophthalmologist as the Chairman of the Special Board. The examination by the special board should be done on the same day as that of the examination by the medical board. At places where it is not possible to convene the special board of three Ophthalmologists on the day of the medical examination by the Central Standing Medical Board/State Medical Board, the special board may be convened at an earliest possible subsequent date."

14. We may notice that the medical standard prescribed as para 2(a) of the notification dated 6th May, 2006 is identical to the prescription contained in para 6(c) of the handbook which is set out hereinabove.

15. The respondents have explained that myopia is an error of refraction of the eye. It is further submitted that there are three diseases for which an individual has to wear glasses for correction of the eye which includes the following:-

"(a) Myopia – In which Concave Glasses are used for correction of vision (by which petitioner is suffering).

- (b) Hypermetropia – That is a disease in which convex lenses are used to correct the vision.
- (c) Astigmatism – In which different line of axis has different number to correct the vision.”

It has been pointed out that in all three above noticed conditions, the individual has to wear glasses for vision correction.

16. So far as the advertisement is concerned, it is not possible to enumerate and detail every condition which would require to be considered for assessing physical fitness of the candidate including the fitness of his eye functioning which could interfere in the efficient discharge of duties or otherwise. For this reason, the various diseases which could impact the efficiency or functioning of a candidate and an officer of the force cannot be set out in the advertisement. It is only the bare minimum prescription which is contained therein whereas the various factors which would require to be considered by the doctors have been provided in the handbook noted above.

17. In addition thereto, the respondents have placed before this court the fact that the manner in which the examination was required to be conducted and that the Ministry of Health of the Government of India had issued an office memorandum No.F7(1)-28/52-M II dated 7th April, 1953 prescribing that -4 diopter would be the upper limit of the power of glasses if all other parts of eyes are normal except the power of glasses is

-4D, +4D or including total power of cylindrical glasses for appointment to the posts with the Central Government. The respondents have explained that in case the changes in the disease is such that it brings the vision to less than 6.9 in both eyes, then it would not be accepted, even if the power of the corrective glasses is less than - 4 diopter.

18. So far as the duties to be performed by the Assistant Commandant and the personnel of the Combined Police Forces are concerned, we find that they are concerned with the safety of the public. The respondents have stated that these are combatant forces where officers are required to lead from front are armed with weapons and carry out operations in day as well as night time and hostile difficult terrain also. In that view of the matter, any condition which could interfere with efficient discharge of duties would not only imperil the safety of the candidate but could result in drastic consequences in the discharge of functions, and compromise public safety.

19. So far as the medical examination of the petitioner on 24th March, 2009 has been conducted by the review medical board of medical officers consisting of three ophthalmologists which had declared the petitioner unfit finding the petitioner with the total amount of myopia (including the cylinder exceeding the permitted power -4.0 diopter) Even if we were to accept the contentions of the petitioner that he satisfied minimum standards of corrective vision as prescribed in the notification dated 6th May, 2006, the respondents cannot be

precluded from the assessment of the ability of the petitioner to efficiently discharge his duties. The experts have opined that given his medical conditions, he would not have been able to efficiently discharge the functions which the petitioner would be required to perform if he was appointed as an Assistant Commandant. The respondents have further submitted that the person who suffers from “high myopia” and is utilizing glasses having a power of -6 diopter in both eyes it would have a problem of depth perception as well as vision problems. It has been submitted that such a person would have difficulty in seeing targets so as to effectively aim and shoot.

20. Given the stipulation in the advertisement as well as in the notification dated 6th May, 2006 that the candidates must be in good mental and bodily health and free from physical defect likely to interfere with the efficient performance of the duties, we are unable to agree with learned counsel for the petitioner on his contention that the respondents have at all changed the selection process or medical standards the mid way after commencement of the selection process.

21. It has been contended on behalf of the petitioner that the respondents have not followed the prescription of para 6 (d) of the handbook of Medical Examination (2nd Edition), 1977 noticed hereinabove. In this regard, we may observe that the petitioner did not seek any review medical examination nor sought constitution of the review medical board. While considering the petitioner’s challenge by the order passed on

12th February, 2009, this court had directed that the petitioner be examined by the review medical board. We find that the respondents have got the review medical board conducted by three specialists. Even otherwise, the petitioner does not dispute the finding so far as his vision parameters are concerned. It is his contention that despite the assessment of his corrected vision, the respondents could not have found him unfit for appointment. This submission is also, therefore, devoid of merit and is rejected.

22. In this view of the matter, we find no merit in this writ petition which is hereby dismissed.

GITA MITTAL, J

J.R. MIDHA, J

SEPTEMBER 23, 2010
mk