

Court No. - 34

Case :- WRIT - A No. - 18177 of 2023

Petitioner :- Dharmendra

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Rishabh Kesarwani, Vinod Kumar Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar, J.

1. Heard learned counsel for the parties.
2. Petitioner has been declared unfit for being underheight in the physical standard test held by the respondents in connection with the recruitment and selection process for the post of Sub Inspector, Civil Police.
3. Petitioner's claim is that he got his height examined at State Medical College, Kaushambi where his height was found to be 168.1 cm and, therefore, he deserved selection.
4. Learned Standing Counsel for the State submits that no fresh consideration now can be accorded as petitioner had the opportunity to lodge protest on the same day when the physical standard test was held as per rules. He having not done so, now he cannot be permitted to move any representation for consideration afresh on the basis of some height examination held at a place other than the prescribed one.
5. Upon a pointed query being made, learned counsel for the petitioner could not disclose as to whether the petitioner ever protested on 06.05.2022 when the physical standard test was held. Even otherwise Court is of the view that whether it is a Medical Board or physical standard test to be held by the Recruitment Board. a body of experts is constituted which holds the test. No third party physical standard test can be set up as an example for the Board so constituted by the recruitment authority to review its decision nor, this Court can encroach upon the power of recruitment authority to direct for consideration of such applications.
6. Law is well settled that "*the opinion of the Medical Board or Review Medical Board is erroneous or capricious or*

vague and smacks of malafide, the Court should refrain from interfering with the opinion of Medical Board and Review Medical Board which is a body constituted of experts to assess the fitness of candidate as per the norms and standards prescribed in respect of fitness of a candidate who is supposed to work in the police force." [**Union of India v. Parul Punia, 2016 (2) ADJ 14**]. This judgment has been followed by a coordinate bench in the case of **Ankit Kumar v. State of U.P. & Ors (Writ - A No. 5668 of 2021**, decided on 03.08.2001). Recently in the case of **Shahbaj Khan v. Union of India & Ors (Writ - A No. 15248 of 2023)** decided on 13.07.2023, I have referred to another later judgment of Division Bench in the case of **Vivek Kumar v. State of U.P. & Ors** passed in **Special Appeal (Defective) No. 117 of 2020**, wherein it had been observed that "*In a case where a recruitment process has been carried out as per prescribed statutory rules whereunder a procedure has been prescribed for testing the medical fitness of candidates by a duly constituted Medical Board, the report of the Medical Board is not to be normally interfered with, and that too, solely on the basis of a claim sought to be set up by a candidate on the basis of some subsequent report(s) procured by him from a private practitioner(s). It is not the case of the petitioner that the decision of the Medical Board was arbitrary, capricious or not in accordance with the procedure under the relevant statutory recruitment rules.*" Even I have followed this legal view recently in the case of **Miss Neha v. State of U.P. & 4 Ors (Writ - A No. 10905 of 2023)**.

7. Thus petition lacks merit and is, accordingly, ***dismissed***.

Order Date :- 30.10.2023

Deepika