

Court No. - 34

Case :- WRIT - A No. - 19755 of 2023

Petitioner :- Rahul Kapasiya

Respondent :- Union Of India And 5 Others

Counsel for Petitioner :- Hemant Sharma

Counsel for Respondent :- A.S.G.I.

Hon'ble Ajit Kumar,J.

1. Heard learned counsel for the parties.
2. Petitioner who is applicant for the post of Driver was declared unfit in the medical examination held by the Medical Board constituted by the respondents for DNS with airway obstruction in the left nose. He was asked to appear again for review medical on 16.10.2023 in which he has again been declared unfit by the three members' Review Medical Board for the same reason.
3. It is argued by Sri Anupam Kumar, learned counsel on behalf of the respondents that after the candidate has been declared unfit in the medical examination and review medical examination, this Court may not interfere to the decision taken by the Committee constituted under the Rules.
4. Further learned counsel for the petitioner has sought to argue that in view of the medical got conducted by the petitioner in the same department of the Government, he was entitled for review medical. It transpires further from the record that the petitioner got the medical examination done independently on 17.10.2023 whereas the review medical was held on 16.10.2023.
5. A subsequent report may be a third party report in my considered view cannot be a good ground to interfere in review medical done upon the petitioner.
6. Even otherwise, law is well settled that "unless 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. In such above view of the matter, therefore, I decline to interfere with the medical examination by the medical board conducted in the matter as well as review medical examination.

8. Petition lacks merit and is accordingly ***dismissed***.

Order Date :- 29.11.2023

Deepika