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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WP(C) 7572/2014**

Date of decision: 23rd August, 2017

CT/GD BHAU GOVIND SHINDE Petitioner
Through: Mr.N.L.Bareja, Adv.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr.Kirtiman Singh, CGSC with
Mr.Waize Ali Noor, Mr.Prateek Dhanda, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

Bhau Govind Shinde, Constable (General Duty), had applied for selection as Sub-Inspector (General Duty), (Sub-Inspector (GD) for short), in Central Reserve Police Force through Limited Departmental Competitive Examination 2006-07 LDCE (LDCE for short).

2. The petitioner was successful in the written test, had qualified the physical efficiency test and had satisfied physical measurement standard. He was subjected to detailed medical

examination along with other candidates and declared fit by the medical board.

3. The petitioner was not selected for he had not secured minimum qualifying marks in the interview.

4. Fifty one candidates as per merit list were appointed to the post of Sub-Inspector (GD) on different dates.

5. Some other unsuccessful candidates had filed writ petitions before the Delhi High Court challenging the selection process on different grounds including minimum qualifying marks in the interview. These writ petitions were partly allowed vide common judgment of the Delhi High Court, dated 2nd May 2008, in WP(C) Nos.1510/2007, ***Constable Barot Jignesh Kumar*** vs. ***UoI & Ors.*** and other cases. The authorities were directed to re-examine the stipulation of minimum qualifying marks in the interview, particularly when there was no such requirement for direct recruitment to the same post in the other Central Police Organizations (CPO) under the LDCE. The Authorities were required to take a decision within four months, whether the minimum qualifying marks in the interview should be retained. In

case it was decided to dispense with the said requirement, the writ petitioners would be considered for promotion to the rank of Sub-Inspectors (GD) on the basis of written test /marks obtained by them in LDCE 2006-07. The Court observed that a number of posts had remained unfilled, for against 90 vacancies only 51 candidates had been appointed to the post of Sub-Inspector (GD). Had there been no provision for minimum marks in the interview, several candidates would have been selected.

6. Pursuant to the aforesaid directions, the authorities examined the issue and the petitioner i.e. Bhau Govind Shinde was issued an offer of appointment letter dated 2nd March, 2011 for promotion as Sub-Inspector (GD).

7. The petitioner tendered his technical resignation from the post of Constable(GD) for joining as Sub-Inspector(GD), which vide order dated 16th March, 2011 was accepted with effect from the said date. The petitioner's past service, it was observed, would be counted for all purposes.

8. However, vide office order dated 11th May, 2011, the promotion dated 16th March, 2011 was cancelled reverting the

petitioner to the post of Constable (GD), with the direction to join his earlier unit. The petitioner, it was observed, was found to be unfit for DESO Course due to Low Medical Category as he was suffering from epilepsy.

9. The petitioner made representations and protested.

10. On 8th August, 2011, the petitioner was referred to Civil Hospital, Ahmadabad for medical examination and opinion of Specialists. Petitioner, on examination, was declared medically fit after examination by the Review Medical Board constituted in Civil Hospital, Gandhi Nagar, Gujarat. He was declared to be Shape-I. Necessary endorsement was recorded in the petitioner's health records.

11. The petitioner, along with the report of the Review Medical Board, made representation dated 16.12.2011 requesting for issue of the offer of appointment letter. Correspondence followed and the petitioner was again subjected to medical examination on 16th September, 2013 by the Medical Board at Delhi under the directions of the Director General. The petitioner was declared medically fit in this examination. Opinion of the Medical Board

dated 16th September, 2013 was forwarded to the authorities for appropriate consideration.

12. Notwithstanding the aforesaid medical opinions, the Director General, vide order dated 9th May, 2014 rejected the petitioner's request for appointment as Sub-Inspector(GD) as devoid of merit, for the petitioner was unfit at the time of recruitment /selection and his subsequent upgrade to Shape-I after completion of recruitment process was inconsequential. The petitioner was in Shape-II as per the Annual Medical Examination held on 12th June, 2007, on account of Epilepsy. He was subsequently upgraded to Shape-I on 8th August, 2011. The offer of appointment letter was issued on 15th October, 2010. The validity of the offer of appointment was six months, and therefore, the offer of appointment was rightly cancelled.

13. The petitioner was, as per Annual Medical Examinations, in Shape-II, between 2007 and 8th August, 2011. However, the petitioner was in Shape-I when he had appeared as a candidate in the LDCE 2006-07. The petitioner was declared fit by the Medical Board who had examined candidates who had qualified and had

cleared the written examination, physical measurements and physical efficiency test in June, 2006. As noted by us above, the petitioner was upgraded to Shape-I in the Annual Medical Examination which was conducted on 8th August, 2011.

14. A short question which arises in the aforesaid factual matrix is whether the petitioner who was not in Shape-I from 2007 onwards till Annual Medical Examination held on 8th August, 2011, was disqualified and ineligible.

15. The answer to this question depends upon the Standing Orders and what is mandated and stipulated thereunder. Standing Order No. 01/2010 stipulates that the candidates should be in medical category Shape-I. Temporary unfit are not eligible and stand disqualified.

16. The petitioner was in Shape-I on the date of the application. The petitioner satisfies the said condition of the Standing Order No. 1/2010.

17. The Standing Order No.01/2010 also postulates medical examination at stage V i.e. the candidates who have been successful

in the written exam and PET. The candidates have to undergo a detailed medical examination, to be declared either fit or unfit. No candidate can be categorized as “temporarily unfit”. The petitioner was subjected to the stage V medical examination in June, 2006 and was declared fit. The petitioner, therefore, satisfies the second requirement of the said Standing order.

18. In the present case, extraordinary and peculiar situation had arisen as the offer of appointment was issued after nearly 5 years i.e. on 02.03.2011, though the LDC examination and medical examination was held in 2006.

19. The petitioner was de-categorized and downgraded in the Annual Medical Examination on 12.06.2007, albeit the petitioner claims and asserts that he had recovered. He was upgraded to Shape-I as is clear, when the Annual Medical Examination was held on 8th August, 2011. The petitioner submits that he was in Shape - I when the offer of appointment letter dated 02.03.2011 was issued.

20. As there was a considerable time gap between 2006 and 2011, it would have been appropriate and just for the respondents to

have subjected the petitioner to fresh medical examination as there was doubt as to his medical category. The last medical examination of the petitioner was held two years back on 4th May, 2009. At that time, the petitioner was categorized as in Shape-II, on account of epilepsy. The petitioner then on regular medication/treatment. No Annual Medical Examination was held in 2010. Thus, it was necessary for the respondents to ensure that the petitioner was given a fair and proper chance for promotion, as the earlier Annual Medical Examination was in 2009. The failure of the respondents coupled with the fact that the petitioner declared to be in Shape-I in the Annual Medical Review held on 8th August, 2011 and since then, the petitioner has been in Shape-I throughout, we feel, it would be unfair and unjust to treat him as medically disqualified and unfit.

21. The respondents have submitted and raised the plea of delay and laches. The contention is fallacious and unattainable. The respondents had twice subjected the petitioner to medical examination by two different boards. On each occasion, the petitioner was declared fit. The final rejection order was passed on

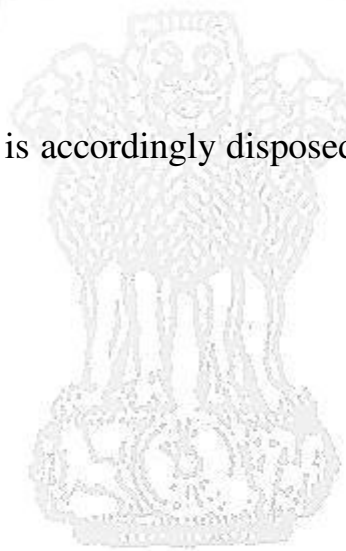
9th May, 2014. Till then the matter/issue of appointment was pending consideration of the respondents. The present writ petition was filed in October, 2014.

22. The last issue relates to the date from which the petitioner should be treated as having joined the post of Sub-Inspector (GD). By order dated 3rd September, 2015, the respondents were asked to submit details of 39 candidates who were appointed to the post of Sub-Inspector(GD) pursuant to the decision of the Delhi High Court in ***Constable Barot Jignesh Kumar*** (supra). The respondents have filed an affidavit enclosing details of appointments. Twenty four candidates were appointed between 2009 to 2012. The petitioner herein would be ranked as the junior most and below them. In case these candidates have been given benefit from an earlier date, the petitioner would be given benefit from the earlier date subject to the condition that he would rank at the bottom. The counsel for the petitioner has consented and agreed that the petitioner should be ranked junior most in the hierarchy of the candidates who were appointed at the rank Sub-Inspector(GD) in 2009-2012. The petitioner would not be entitled to back wages.

However, while fixing the pay scale, the petitioner will be given the benefit of the notional date of appointment i.e. he would be given the benefit of increments without payment of back wages.

23. The respondents would accordingly issue a letter of appointment to the petitioner for the post of Sub-Inspector (GD) within a period of four months from the date a copy of this order is received.

24. Writ petition is accordingly disposed of, without any order as to costs.



SANJIV KHANNA, J

NAVIN CHAWLA, J

AUGUST 23, 2017
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