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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgement: 11th September, 2018*

- + W.P.(C) 10399/2017
CONST . KARAN TAMANG Petitioner
Through: Ms Ankita Patnaik, Adv
versus
UNION OF INDIA AND ANR. Respondents
Through: Mr P.S. Singh, Sr Panel Counsel for
UOI with Mr Rajpal Singh, Adv
- + W.P.(C) 10428/2017
CONST. AMAR SINGH Petitioner
Through: Ms Ankita Patnaik, Adv
versus
UNION OF INDIA AND ANR. Respondents
Through: Mr P.S. Singh, Sr Panel Counsel for
UOI with Mr Rajpal Singh, Adv
- + W.P.(C) 10431/2017
CONTS. ANUJ KUMAR Petitioner
Through: Ms Ankita Patnaik, Adv
versus
UNION OF INDIA AND ANR. Respondents
Through: Mr P.S. Singh, Sr Panel Counsel for
UOI with Mr Rajpal Singh, Adv
- + W.P.(C) 416/2018
CONST. KARNJEET KUMAR Petitioner
Through: Ms Ankita Patnaik, Adv
versus
UNION OF INDIA AND ANR. Respondents
Through: Mr Abhay Prakash Sahay, CGSC for
UOI
- + W.P.(C) 418/2018
CONST. KULDEEP UPADHYAY Petitioner
Through: Ms Ankita Patnaik, Adv

3. Some necessary facts which are required to be noticed for disposal of these writ petitions are that the petitioners joined as Constables/General Duty in Central Industrial Security Force (CISF). The following tabulation discloses the date of medical examination and Review Medical Board Order of each of the petitioners and the reasons for declaring them unfit:-

Name	Karan Tamang	Amar Singh	Anuj Kumar	Karnjeet Kumar	Kuldeep Upadhyay
Case No.	W.P.(C) 10399/2017	W.P.(C) 10428/2017	W.P.(C) 10431/2017	W.P.(C) 416/2018	W.P.(C) 418/2018
Joining Date	31.07.2009	28.08.2010	21.08.2010	21.08.2010	23.08.2010
Date of Annual Medical Examination- SHAPE-I	05.07.2017	28.08.2017	20.04.2017	12.07.2017	13.09.2017
Ground for being declared 'Unfit'	Rt. Side Hydrocele	Hydrocele	a) Perforated Tympanic Membrane Left Side b) Haemoglobin	Multiple Lypoma	Undescended left testis
Impugned Medical board Order	08.08.2017	04.08.2017	08.08.2017	03.08.2017	05.08.2017
Impugned Review	07.09.2017	07.09.2017	11.09.2017	12.09.2017	07.09.2017

Medical Board Order					
Date of rectification surgery	18.07.2017 (prior to undergoing medical examination for LDCE)	13.07.2017 (prior to undergoing medical examination for LDCE)	10.08.2017	09.08.2017	-
Post operative period as per MHA guideline for recruitment dated 20.05.2015	3 months	3 months	4 months	-	-
Certificate of Fitness obtained by the District Hospital and Safdarjung Hospital	Safdarjung Hospital- 06.09.2017	District Hospital- 10.08.2017 Safdarjung Hospital- 06.09.2017	District Hospital- 22.08.2017 Safdarjung Hospital- 08.09.2017	District Hospital- 12.08.2017 Safdarjung Hospital- 06.09.2017	

4. The petitioners claim to have an unblemished service record. They applied for the post of Assistant Sub Inspector through Limited Departmental Competitive Examination (LDCE-2016). Petitioners claim

that they all have been placed in the Medical Category Shape – I in the Annual Medical Examination till date and have been carrying out their duties as Const/GD to the satisfaction of their superior officers. The petitioners appeared for the written examination on 26.03.2017. Based on their performance they were called for the medical examination on various dates as shown in foregoing paragraph 3 which was held at the CISF Unit, Special Security Group (SSG), Greater Noida, Uttar Pradesh. By separate orders which we have detailed in foregoing paragraph 3 the petitioners were declared medically unfit. The petitioner in W.P.(C) 10399/2017 was declared unfit on the ground of right side Hydrocele. All petitioners were granted liberty to apply for examination by a Review Medical Board. The Review Medical Board also declared the petitioners unfit. It is the case of the petitioner – Constable Karan Tamang that, before undertaking the medical examination for the purpose of being selected as an ASI through LDCE 2016, he had undergone a rectification surgery on 18.07.2017 in a private hospital. The petitioner also claims that he was examined at Safdaurjung Hospital where he was referred by the respondents and was declared medically fit by a report dated 06.09.2017 which was also ignored on the basis of the guidelines dated 20.05.2015 as per which he should have been declared fit 3 months prior to the medical examination.

5. Ms Patnaik, learned counsel for the petitioners, submits that the orders of the Medical Board and the Review Medical Board are liable to be quashed. Her first submission is that the selection of the petitioners for appointment to a higher post by conducting LDCE is an appointment by promotion and not direct recruitment. She submits that this issue is no

longer *res integra* as three Division Benches of this court have held on the basis of the clarifications of the Department and Ministry of Home Affairs that LDCE is a mode of promotion. She further submits that the aforesaid judgments have attained finality and have even been implemented and thus the respondents would be fully bound by the same. Reliance is placed on ***Ajay Pandey vs UOI And Ors, W.P.(C) 1938/2011.*** The relevant paragraphs 9 and 12 are reproduced below:-

“9. It is urged by Ms. Rekha Palli, learned counsel for the Petitioners before us that the question whether the selection of candidates for appointment to a higher post by conducting “LDCE” is to be considered as selection for appointment by promotion or direct recruitment, has been settled by a Coordinate Bench of this Court in W.P(C) 2887/2012 titled “Man Singh vs. Union of India and Ors.” and W.P(C) 2893/2012 titled “Ajay Tripathi vs. Union of India and Ors.”. The Respondents’ counsel argues to the contrary. We accordingly extract hereinbelow the relevant portion of the said judgment pertaining to this aspect of the matter:-

“17. In support of her first contention, Ms. Rekha Palli, learned counsel for the petitioner has drawn our attention to the stand of the Ministry of Home Affairs (Personnel), New Delhi as well as the Department of Personnel and Training of the Government of India in their records which have been filed in a pending matter before the Supreme Court of India. The first noting (dated 18th November, 2011) is extracted in extenso hereafter and reads as follows:-

*“Department of Personnel & Training
Estt
(res)*

Reference notes of Ministry of Home Affairs on pages 2-3/ante.

2. Regarding clarification whether LDCE is Direct Recruitment or a mode of promotion, the RR Branch of this Department has clarified that the LDCE is a mode of promotion. On the issue of change in category of a person, who has been appointed on the basis of reservation, it is clarified vide this Department's OM dated 11.7.2002 that SC/ST candidates appointed on their own merit (by direct recruitment or promotion) and adjusted against unreserved points will retain their status of SC/ST and will be eligible to get benefit of reservation in future/further promotions, if any.

-sd-

*(Sharad Kumar Srivastava
Under Secretary (Res))”*

(underlining by us)

18. This noting was reiterated by the Ministry of Home Affairs in a noting dated 22nd November, 2011 of Shri R.P. Sati, Under Secretary referring to a writ petition filed in this court. The noting dated 22nd November, 2011 reads as follows:-

***“Ministry of Home Affairs**
Pers – II*

Reference note on pre-pages.

2. This is regarding Writ Petition(C)No.5460/2011 filed by Shri Sundeep Kumar Dubey, Constable (GD) of CRPF in the High Court of Delhi against his non-selection for the post of Sub-Insp(GD)

through Limited Department Competitive Examination (LDCE), 2010.

3. The matter was considered in this Ministry (p-2/n) and DoP&T was requested to clarify the position as mentioned in para – 3(p-2/n). In this connection DoP&T vide their UO dated 18.11.2011 (p-4/n) has clarified the following:-

“Regarding clarification whether LDCE is Direct Recruitment or a mode of promotion, the RR Branch of this Department has clarified that the LDCE is a mode of promotion. On the issue of change in category of a person, who has been appointed on the basis of reservation, it is clarified vide this Department’s OM dated 11.7.2002 that SC/ST candidates appointed on their own merit (by direct recruitment or promotion) and adjusted against unreserved points will retain their status of SC/ST and will be eligible to get benefit of reservation in future/further promotions, if any.”

4. We may convey the above mentioned clarification of DoP&T to CRPF.

Sd-

(R.P. Sati)

Under Secretary

22.11.2011

Director (Pers)/DS(Pers-I)”

(Underlining supplied)

The correctness and authenticity of these notings have not been disputed before us by the respondents.

19. The respondents have urged in the present proceedings that appointments through the LDCE is a mode of fast tracked promotion. In the above notings, the respondents have themselves taken the

position that appointment through the LDCE is a mode of promotion. Given the stand of the respondents in the notings aforesaid and before this Court it is clear that appointment to LDCE is merely an appointment by promotion, albeit fast tracked. It would, therefore, follow that the recruitment rules or guidelines for appointments which would apply to appointments through the LDCE, would have to be those which are applicable to appointment by promotions.”

(emphasis supplied)

12. Having heard learned counsel for the parties and perused the notings of the Ministry of Home Affairs (Personnel), New Delhi as well as the Department of Personnel and Training of the Government of India in their records (reproduced hereinabove), we have no hesitation in coming to the conclusion that appointments through the LDCE would fall in the category of appointments by promotion being in a manner of speaking accelerated promotions effected **departmentally though through competitive examinations**. It has been so clarified in the aforesaid notings and relying upon the same a Coordinate Bench, as noted by us hereinabove, has already ruled that appointments through the LDCE is a mode of fast track promotion. The Respondents have themselves taken the position that appointments through the LDCE is a mode of promotion. The necessary corollary, to our mind, is that the recruitment rules or guidelines for appointments which would apply to appointments through the LDCE, would have to be those which are applicable to appointment by promotions and not those which are applicable to appointment of direct recruit candidates.”

6. Ms. Patnaik further submits that this issue would be relevant as it is closely connected to her second submission which is that the Recruitment Rules, 2010 for promotion would apply to the facts of the present case. She relies on column 12 which is extracted below:-

Promotion: Head Constable (General Duty) and Head Constable (Driver) who have completed five years regular service in the rank being in medical category SHAPE-1 and have successfully completed promotion cadre course of Assistant Sub-Inspector (Executive) prescribed by the Central Government from time to time.”

7. The counsel for petitioners contends that as per the Recruitment Rules, 2010 Head Constable/General Duty and a Head Constable-Driver who have completed 5 years of regular service in the rank being in Medical Category Shape-I and who have successfully completed Promotion Cadre Course of Assistant Sub Inspector (Executive) would be eligible. She further contends that all the petitioners fulfill the eligibility for the promotion.

8. Learned counsels for the respondents have placed reliance on guidelines dated 20.05.2015 in support of their submission that the judgment relied upon by the counsel for the petitioners were prior to the guidelines of 20.05.2015 and the aforesaid judgments would not be applicable to the facts of the present case. Additionally, the learned counsels for the respondents have relied upon para 4 of O.M dated 20.05.2015 and para V of Selection Procedure enumerated in the advertisement dated 18.11.2016, which we reproduce below:-

Para 4 of O.M. dated 20.05.2015 reads as under:

“Post –operative cases (duration for fitness)-

- a) Body surface swelling, DNS, tonsillectomy and nasal polypectomy-01 month
- b) Hydrocele-03 months.
- c) Tympanoplasty-04 months.
- d) Abdominal/pelvic surgeries involving opening of peritoneum, repairs of Herniel, varicocele surgeries, surgery for fistula-in-ano etc-06 months.

Para (v) of advertisement dated 18.11.2016 reads as under:

Stage-V - Detailed Medical Examination -Detailed medical examination of those candidates who come out successfully in the Written Examination & PET will be conducted as per existing instructions and guidelines issued vide MHA UO No.A-VI-1/2014-Rectt/(SSB) dated 20.05.2016. Each candidate will be declared either “Fit” or “Unfit”, and no one will be categorized “Temporary Unfit”.

9. We have heard the learned counsels for the parties and carefully considered the rival submissions so made.

10. We find force in the submission made by the learned counsel for the petitioners that the appointment to a higher post by conducting the LDCE is to be considered as selection for appointment by promotion. In view of the judgments we have referred to and the relevant paragraphs which we have extracted hereinabove, this aspect gains importance as in case the appointment is by promotion then the Recruitment Rules 2010 would apply and according to these Rules the eligibility is:

“(i) Head Constable (General Duty) and Head Constable (Driver) who have completed 5 years of regular service and (ii) are in the Medical Category of Shape – I”.

11. It is not in dispute that all the petitioners have completed 5 years of service and are in Medical Category Shape-I. As far as the submission of learned counsels for respondents is concerned regarding the applicability of O.M dated 20.05.2015, we are of the view that firstly, the guidelines cannot overrule the recruitment rules; (see *Paluru Ramakrishnaiah & Ors ETC vs Union of India & Anr : 1990 AIR 166, DDA & Ors vs Joginder S. Monga & Ors: C.A. Nos. 1781-82/2000, Vijay Singh & Ors vs State of Uttar*

Pradesh & Ors : 2005 (2) AWC 1191, P.D. Aggarwal & Ors vs State of U.P. & Ors : 1987 AIR 1676) and secondly, the reading of O.M. dated 20.05.2015 suggests that the same are guidelines for recruitment medical examination in Central Armed Police Forces and Assam Rifles. The present case is not a case of recruitment but a case of promotion.

12. For the reasons aforesaid, the order of the Medical Board and the Review Medical Board are liable to be quashed. The petitioners would be considered for promotion in accordance with law. It would be open for the respondents to conduct fresh medical examination of all the petitioners in terms of the recruitment rules for promotion to the post of ASI.

13. With these directions all the writ petitions are disposed of.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 11, 2018
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