

\$~20.

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

+ W.P.(C) 7673/2017 and CM APPL. 31727/2017

KESHAW DIWAKAR

..... Petitioner

Through: Mr. Rajesh Kumar, Mr. R.K. Chaurasia
and Mr. Navin Kumar, Advocates

versus

THE CHAIRMAN, STAFF SELECTION COMMISSION & ANR

..... Respondents

Through: Mr. Anurag Ahluwalia, CGSC with
Mr. Abhigyan, Ms. Tejaswita and Mr. Sidhant,
Advocates with Mr. Feroz Khan, CISF

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

%

16.10.2018

1. The petitioner assails the report of the Review Medical Board dated 19.07.2017, passed by the respondent No.1/SSC, declaring him 'unfit' for recruitment to the post of SI in the Delhi Police, CAPFs and ASI in CISF, on account of suffering from hypertension.
2. Briefly stated, the facts of the case as gathered from the records are that on 09.01.2016, the respondent No.1/SSC had issued an advertisement for recruitment of Sub-Inspectors in the Delhi Police, CAPFs and ASI in the CISF. The petitioner had participated in a written test (Tier-I) on 20.03.2016. On 13.09.2016, the petitioner was called by the respondents to undergo a physical endurance test (PET). On qualifying the said test, the petitioner was called for a Tier-II examination on 18.12.2016. On

13.04.2017, the petitioner was subjected to a medical examination at the Composite Hospital, Gorakhpur, UP and was declared 'unfit' on the ground that he was suffering from "D/V 6/9(R) eyesight" and "hypertension" (Annexure P-6).

3. After appearing before a doctor at the Government Hospital at Patna, who cleared him of any problem relating to the eyesight and hypertension the petitioner submitted a Medical Fitness Certificate dated 21.04.2017. Armed with the said certificate, the petitioner submitted an application to the respondents for a Review Medical Examination, which was conducted at the Composite Hospital, CRPF Camp, Jharoda Kalan on 19.07.2017. As per the report of the Review Medical Board, the petitioner was found fit from the eye side. However, he was declared unfit on the other count, i.e., 'Hypertension'.

4. Counsel for the petitioner submits that the petitioner had got himself examined at the Indira Gandhi Institute of Cardiology, Patna on 21.04.2017 and at the Nalanda Medical College, Patna on 18.08.2017 and both the Govt. Hospitals had given reports in his favour. He refers to the diagnosis of the Doctors as recorded in the Medical Fitness Certificate issued to the petitioner by the Hospital to contend that he had been thoroughly examined and was found fit in all respects. Aggrieved by the report of the Review Medical Board, the petitioner has filed the present petition.

5. Learned counsel for the petitioner submits that in the initial medical examination conducted by the respondents, they had arbitrarily declared the petitioner unfit on two grounds, which were reduced to one ground by the Review Medical Board. He contends that in view of the independent opinions obtained by the petitioner from two Government Hospitals, he

may be permitted to appear before the any Hospital at New Delhi for a re-examination.

6. A counter affidavit in opposition to the present petition has been filed by the respondents. Mr. Anurag Ahluwalia, learned counsel for the respondents opposes the maintainability of the petition on the ground of lack of territorial jurisdiction. He also refers to clause 20 of the advertisement dated 09.01.2016 in this regard. On merits, he submits that the advertisement published by the respondent No.1/SSC in respect of the recruitment had clearly stated in Note 3 that the decision of the Review Medical Board is final and no appeal shall be entertained thereafter. He states that the petitioner has exhausted all the remedies available to him and the respondents cannot be called upon to have him re-examined, particularly, when the Review Medical Board that had re-examined him, comprised of senior and experienced Medical Officers including specialists in their respective fields.

7. We have heard the counsels for the parties and examined the records. Having regard to the fact that the petitioner was subsequently examined by doctors at two Government Hospitals in Patna who had given favourable reports, we are of the opinion that he is entitled to one last opportunity of appearing before a Review Medical Board at the Army R&R Hospital, Delhi. To allay the apprehension expressed by learned counsel for the respondents that the petitioner could be on medication for the treatment of hypertension, which would camouflage the result, we deem it appropriate to direct the respondent No.3/CISF to approach the Army R&R Hospital, New Delhi, with a request to admit the petitioner for a period of one week or any length of time, as may be considered necessary by the Medical Board of the

said Hospital, so that the effect of the medication, if any, for the treatment of hypertension, wears off and a clear picture emerges with regard to his medical condition, in the light of the disability mentioned above.

8. Accordingly, the present petition is allowed and disposed of with directions issued to the respondent No.2/CISF to give a written intimation of the date and time, on which the petitioner shall present himself at the Army R&R Hospital, New Delhi, for being admitted for a period of one week or more/less, as considered necessary. The report of the Army R&R Hospital shall be forwarded directly to the respondent No.2/CISF with a copy marked to the petitioner. The said Report shall be final and binding on both sides. In the event the said report clears the petitioner of the condition for which he has been disqualified by the respondents, then the respondent No.2/CISF shall take immediate steps to process his candidature, subject to any other eligibility conditions as prescribed, with all consequential benefits to which he would be entitled in law.

9. The petition is disposed of alongwith the pending application, with no orders as to costs. We make it clear that the above order has been passed in the peculiar facts and circumstances of the case and shall not be cited as a precedent in the future.

DASTI to the counsel for the respondents.

HIMA KOHLI, J

REKHA PALLI, J

OCTOBER 16, 2018/na