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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.No.19344 OF 2011

L/Ct.N.Reka

...Petitioner

Vs.

1. The Union Of India
Rep By Its Secretary To The Govt.
Dept. Of Home Affairs New Delhi
- 2 The Director General
Central Industrial Security Force
CGO Complex, New Delhi
- 3 The Inspector General
Central Industrial Security Force
Ns Head Quarters, Saket, New Delhi
- 4 The Deputy Inspector General
(Personnel) Central Industrial Security
Force, CGO Complex New Delhi
- 5 The Deputy Inspector General
CISF Ministry Of Home Affairs
D Block
Rajaji Salai Besant Nagar Chennai 90
- 6 The Deputy Inspector General
Central Industrial Security Force, RTC
Arakkonam
- 7 The Deputy Commandant/Adm
Central Industrial Security Force
Training Sector, Hyderabad

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating order passed by the 7th respondent in his letter No. E-32017/CISF/RTC (A)/Adm/SI(LDCE)/II/2549 dt 9.7.2011 and quash the same and to direct the respondents to conduct the medical examination for the post of SI/Exe in the LDCE-2010 and issue appointment order to the petitioner.



For Petitioner : Mr.R.Thiyagarajan

For Respondents : Mr.B.Ramaratnam, ACGSC

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O R D E R

Petitioner was appointed as a Constable in August 2000 under the control of 4th respondent. Notification dated 18.01.2010 was issued inviting application for eligible department candidates for filling up 576 vacancies of Sub Inspector (Executive) in CISF through Limited Department Competitive Examination (LDCE) 2010. She passed the written examination and was sent for medical examination wherein, she was found unfit by the board. Thereafter, she went and checked herself in Government hospital, Madurai, wherein the Doctor has certified that she is absolutely fit for the post. Thereafter, she asked for a review medical examination which was rejected, hence the petitioner has approached this Court.

2. The respondents filed a detailed counter stating that the petitioner was subjected to medical examination and found not in shape I by the Medical Officer CISF-RTC hospital, but however on the request of Chief Medical officer RTC, Arakonam she was sent to a cardiologist at Government Stanley hospital, Chennai for opinion, wherein it was opined that unduly prolonged and strenuous physical exercise may be avoided. On the basis of the report she was found unfit. Thereafter, she obtained a medical certificate from an Assistant Professor, Department of Cardiology, Government Rajaji hospital, Madurai on 29.11.2010 wherein she was declared fit and that left ventricular function is 78% and her blood count is normal. Petitioner made a representation on 07.12.2010 to the 3rd respondent, wherein she was directed to appear for a review medical examination on 07.03.2011. She appeared before Review medical examination on 11.03.2011 and was found unfit for

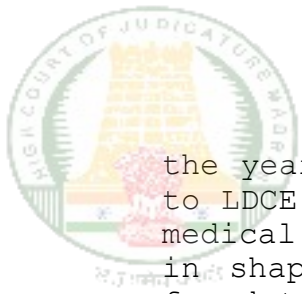
1. over weight

2. congenital bicuspid aortic valve with mild aortic stenosis.

3. Thereafter, the petitioner has applied review medical examination which was rejected on 09.07.2011. Since the petitioner request was rejected for review medical examination, she was declared unfit and she is not eligible to be appointed as sub Inspector of Police. Therefore, the claim of the petitioner is not maintainable.

4. I considered the rival submissions.

5. Admittedly, the petitioner was appointed as constable in



the year 2000 and continued as such till the date of application to LDCE to the post of Sub Inspector in the year 2010. The final medical examination for the year 2010 and she was declared to be in shape I. But even though her left ventricular function is found to be regular by a Assistant Professor, Government medical college, Madurai, but twice the respondents found her unfit to the post of sub Inspector. In fact in the selection through LDCE, it is specifically stated that physical standard as applicable for Sub Inspector direct entry. In that view of the matter, the petitioner is not medically fit to be appointed to the post of sub Inspector. However, in a similar circumstance, the High court of Delhi, W.P(C).No.1398 of 2011 in the case of Ajay Panday Vs Union of India dated 28.07.2012 has considered an identical case. Wherein, the candidate was medically found unfit in his vision test. The certificate obtained from modern hospitals declared him fit having normal vision and whereas the medical examination conducted by the respondent declared him unfit. While considering the issue it is observed by the Court that recruitment rules for guidelines of appointment through limited Department competitive examination would have to be those which are applicable to recruitment by promotion and not those which are applicable for direct recruitment, which reads as under:

"

13. The next question which arises is whether different medical standards have been prescribed by the Respondents for those selected through LDCE and those promoted to the rank of Sub Inspector from the feeder cadre in the same organization. Ms. Rekha Palli, learned counsel for the Petitioner contends that the same rules would apply to the existing force personnel who are elevated to a higher post regardless of the fact whether it was by promotion in due course or by fast track promotion by participating in the LDCE examination. She further contends that applying one yardstick to those who are promoted in the said post in due course from the post of Constable and a different yardstick to the candidates appointed through LDCE would yield absurd results. To illustrate her point, she submits that if any personnel is rendered unfit for promotion by the LDCE in which he has successfully participated on the ground of more stringent standards, the said personnel would, after a period of time and in due course become eligible for promotion in the regular course of events on account of less stringent standards applicable to appointment by promotion. Thus, the very same personnel at an older age would become



eligible for promotion in due course to the same post for which he has been earlier declared unfit after clearing LDCE and despite his being medically unfit.

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14. Ms. Rekha Palli, learned counsel for the Petitioners heavily relied upon a Division Bench judgment of this Court in WP(C) No.5077/2008 titled "Sudesh Kumar and Ors. Vs. Union of India and Ors." as well as the connected writ petitions to substantiate her contentions. The relevant extracts of the judgment are as follows:

"2. Sudesh Kumar, the writ petitioner of WP (C) 5077/2008 joined service as a Constable (General Duty) with the Central Industrial Security Force on 19.4.2003. Indisputably, he was medically examined at the time of his initial entry in the service and was found fit. He was not detected with any colour blindness. At each annual medical examination he was found fully fit. Responding to an advertisement dated 19.3.2007 he sought career progression when he offered his candidature for being appointed as a Sub-Inspector (Executive) through a Limited Departmental Competitive Examination proposed to be conducted by the Department. He successfully cleared the written examination held on 27.5.2007 as also the physical examination conducted on 2.6.2007 as also the interview held on 29.6.2007. Required to undergo another medical examination, he was medically examined at the CISF Hospital, Saket, New Delhi on 5.7.2007 and on 6.7.2007 was communicated a rejection on ground of being "unfit". The medical unfitness detected was: "Defective Colour Vision". He had a right to seek a Review Medical Board and for which he was supposed to file an Appeal annexing therewith an opinion of a competent doctor to the contrary. Since by July 2007, the Unit to which the petitioner was attached was transferred Thalchar (Orissa), he got himself medically examined from an Eye-Specialist at Angul (Orissa) and obtained a certificate as per which it was certified that he had normal colour vision. He also got himself examined from the District Hospital, Moradabad where it was certified that his colour vision was normal. Armed with the 2 certificates he preferred an appeal to the Inspector General CISF and grievance raised in the writ petition is that his Appeal was not being disposed of. During



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arguments of the writ petition filed by him, counsel stated that directions may be issued to CISF to convene a Review Medical Board with a panel of 3 doctors; all of whom should be Ophthalmologist with further direction that latest techniques available to detect colour blindness should be considered by the Board and applied at the medical examination. The response of CISF, as per counter affidavit filed, is that the Appeal filed has been rejected inasmuch as Sudesh Kumar has not complied with the requirements of filing the Appeal. Though not stated with clarity in the counter affidavit filed as to what was not complied with by Sudesh Kumar, during arguments, Dr.Ashwani Bhardwaj Advocate, stated that the requirement to be complied with was to have it recorded in the certificates obtained by Sudesh Kumar from the Civil Hospitals that he had informed the doctors concerned of being detected with colour blindness by the doctors of CISF, and since the certificates did not so record, the Appeal was rejected. It is asserted that this fact was communicated to Sudesh Kumar on 7.9.2007."

x x x x

"41.

In this context we seek to highlight a very anomalous situation created by the respondents evidenced by the case of Sudesh Kumar, the writ petitioner of WP(C) No.5077/2008 who joined service as a Constable (General Duty) under CISF on 19.4.2003 and was not detected with colour blindness then nor at any subsequent medical examination, but is being denied the fruits of promotion as a Sub-Inspector (Executive) notwithstanding he having successfully cleared the written and physical examination as also the interview on the ground that on 5.7.2007 he was detected with a defective colour vision. What is the exact extent of the defective colour vision has not been brought out. But what is unexplainable is that as per CISF he can continue to work as a Constable (General Duty), but not earn a promotion as a Sub- Inspector (Executive). We just do not see any rationale in the action taken. We also find absurdity in the stand taken by the CISF of not convening a Review Medical Board on the ground of the deficiency in the language of the certificates obtained by him from civil hospitals. Law is clear. Unless the



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language of a document is statutorily prescribed, as long as there is substantial compliance with the substance of an issue, the language of a document is immaterial. We find no justification for CISF not to subject him to a Review Medical Board, but in the final view which we have taken, there may be no requirement of so doing."

15. We highlight the fact that the same situation as in Sudesh Kumar (supra) prevails in the instant case. A Constable who has undergone a laser surgery and is deemed fit to continue to work as a Constable (and even adjudged to be in Medical Shape-I) cannot be promoted through the LDCE to the post of Sub-Inspector with the same degree of medical fitness. Eventually, such a Constable having defective vision is also liable to be promoted in due course through the regular promotion channel to the post of Sub Inspector again with the same defect of medical fitness. This, to say the least, appears to us to be arbitrary and discriminatory qua those who are promoted through the LDCE.

6. After considering the recruitment rules for the post of Sub Inspector by promotion, the Court has taken note and it reads as under:

Name of the Post	Number of posts	Classification	Scale of pay	Whether selection-cum seniority or selection by merit	Age limit for direct recruits	Whether benefit of added years of service admissible under Rule 30 of CCS (Pension) Rules, 1972.	Educational Qualification and physical standards for direct recruits
1	2	3	4	5	6	7	8



(Executive)

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Medical Standards :
(a) Eye sight :
Distant Vision
Near Vision
Better eye
Worse eye
Corrected vision
Corrected Vision
6/6 6/12
OR
6/9 6/9 J-I J-II
Note: (a)
Candidates for appointment are required to pass colour vision test.
(b) The candidates must not have flat feet or squint in eyes. They must be in good mental and bodily health and free from any physical defect likely to interfere with the efficient performance of the duties.



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Whether age and educational qualification prescribed for direct recruits will apply in the case of promotees	Period of probation if any	Method of recruitment whether by direct recruitment or by deputation / absorption and percentage of the posts to be filled by various methods	In case of recruitment by Promotion/ deputation/ absorption grades from which promotion/ deputation/ absorption to be made	If a Departmental Promotion Committee exists, what is its composition	Circumstances in which Union Public Service Commission is to be consulted in making recruitment
9	10	11	12	13	14



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			(ii) Promotion: From the amongst the Asstt.Sub Inspector (Executive) who have completed five years service in the rank, being in medical category SHAPE-I and have successfully completed promotion cadre course of Sub- Inspector/E xecutive before being declared fit for promotion.	
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The operative portion of the judgment reads as under:

" 19. From the aforesaid extract of the relevant rules, it is amply clear that in case of recruitment by promotion from the post of Assistant Sub Inspector (Executive) to the post of Sub Inspector (Executive), the requirement is that he should have completed five years service in the rank being in Medical Category Shape-I and successfully completed promotion cadre course of Sub Inspector/Executive before being declared fit for promotion. It is also beyond cavil that Sub Inspectors, whether they are appointed by direct recruitment or promoted through promotions in due course or through LDCE perform identical functions and since CISF is a paramilitary force, indubitably the medical standards of personnel employed in the force must be of the highest



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order. This, however, would not afford justification to the Respondents to draw a distinction between those appointed to the post of Sub Inspector through LDCE and those appointed by regular promotion in due course to Sub Inspectors.

20. It is the admitted case of the parties that both the Petitioners are in Medical Category Shape-I and have never been found to be medically unfit in their Annual Medical Examination. It is also not in dispute that both have rendered satisfactory service in the force and there is no complaint of any nature pending against them. Both have also performed creditably in the „LDCE“. Adjudged by the parameters of medical fitness laid down for promotion to the post of Sub Inspector (Executive), both are qualified for the post as they have been adjudged to be in Medical Category Shape-I which is the requirement of the recruitment rules. As discussed by us hereinabove, there is no logic or rationale in the prescription of different medical standards for those recruited by regular promotion and those recruited through „LDCE“. Presumably for this reason, no separate medical standards have been laid down for those who are to be recruited through limited departmental examination. Accordingly, in our view, for the existing force personnel who apply for recruitment through the LDCE the medical shape category determined for the visual standard in the case of recruitment by promotion shall apply also to those who apply from the feeder cadre for promotion through competitive examinations. In view of the aforesaid, we hereby quash the findings of the Medical Board held on 06.01.2009 and the Review Medical Board held on 11.01.2011 in the case of W.P.(C) 5421/2011 titled "Ravinder Lamba vs. Union of India and Ors.". We also quash the findings of the Medical Board held on 19.11.2010 and the Review Medical Board held on 14.03.2011 in the case of W.P.(C) 1938/2011 titled "Ajay Pandey vs. Union of India and Ors.". Resultantly, the Petitioners are held entitled to be promoted to the post of Sub Inspector (Executive) through the LDCE".

5. I am also of the considered view that when a person who appear through LDCE to the post of Sub Inspector is forced to



undergo the stringent standards applicable to the direct recruitment, where as the very same person gets promotion in due course by reaching seniority would be appointed without recourse to medical examination. There is no justification for refusing a person through LDCE on medical grounds, when he or she is eligible to be appointed by promotion. There is no rationale having reasonable nexus to the object to be achieved. The standard of qualification in medical fitness applicable to direct recruitment will not apply to promotions. Appointment through LDCE will be a fast track method and it will not change the recruitment process made through promotion. Therefore, I am of the considered opinion that the rejection of the request of the petitioner is not tenable. Therefore, a direction is issued to the respondents to conduct Review medical examination to the petitioner and if she is found to be in shape I without insisting the medical fitness applicable to the direct recruits, the petitioner should be considered for promotion to the post of Sub Inspector through Limited Department Competitive Examination (LDCE) and if she is found fit she will be entitled to all the benefits on notional basis. The respondents are directed to complete the process within a period of eight weeks from the date of receipt of a copy of this order.

Writ petition is ordered accordingly. No costs.

Sd/-

Assistant Registrar(AD I)

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Sub Assistant Registrar

kpr

To

1. The Union Of India
Rep By Its Secretary To The Govt.
Dept. Of Home Affairs New Delhi
2. The Director General
Central Industrial Security Force
CGO Complex, New Delhi
3. The Inspector General
Central Industrial Security Force
Ns Head Quarters, Saket, New Delhi



4. The Deputy Inspector General
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CISF Ministry Of Home Affairs
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6. The Deputy Inspector General
Central Industrial Security Force, RTC,
Arakkonam

7. The Deputy Commandant/Adm
Central Industrial Security Force
Training Sector, Hyderabad

+lcc to Mr.R.Thiyagarajan, Advocate, S.R.No.9691

+lcc to Mr.B.Ramaratnam, Advocate, S.R.No.9831

W.P.No.19344 of 2011

KS (CO)
KKV/13/07/2020