

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

% **Date of Decision: 19th November, 2020.**

+ **W.P.(C) 2355/2020**

DEEPAK KUMAR **..... Petitioner**

Through: Mr. Ajay Verma, Advocate.

Versus

UNION OF INDIA AND ANR. **..... Respondents**

Through: Mr. Piyush Beriwal, Mr. Neeraj, Mr. Ankit Raj, Mr. Sahaj Garg, Ms. Vandana Dewan, Advocates for R-1 & 2.
Md. Abhus Salam, Asst. Commandant, CISF, Mr. Amrit Pal, Inspector Mr. Mithilesh Kumar, SI and Mr. Rakesh Kumar Baitha, SI, CISF.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

1. The petitioner, a candidate for recruitment to the post of Constable/Driver and Constable/Driver-cum-Pump Operator (Driver for Fire Services), pursuant to the advertisement published between 10th and 16th February, 2018 inviting applications for the said posts in the respondents CISF, has filed this petition impugning the order dated 17th May, 2019 of the Medical Board and the order dated 4th July, 2019 of the Review Medical

Board, declaring the petitioner 'unfit' and seeks mandamus directing the respondents CISF to consider the candidature of the petitioner for the aforesaid posts.

2. The petition came up first before this court on 3rd March, 2020 i.e. after nearly nine months of the date when the petitioner appeared before the Review Medical Board and was declared 'unfit'. However since the Division Bench before which the petition was listed did not assemble on 3rd March, 2020, the petition was adjourned to 16th March, 2020 and on which date, owing to prevalent pandemic the petition was adjourned to 5th May, 2020. Thereafter the petition was being adjourned from time to time, again owing to the prevalent pandemic and the petitioner did not take any steps for having the petition listed.

3. The petitioner ultimately filed CM No.24510/2020 for early hearing and which came up before this Court on 1st October, 2020 and finding that the petitioner himself in the application had stated that the training of the recruited candidates was scheduled to commence in 2020, it was felt that the recruitment process was over. We accordingly enquired from the counsel for the respondents, who informed that the recruitment process inviting applications aforesaid for the year 2017 was long since over.

4. The counsel for the petitioner, on 1st October, 2020 contended that though the petition was filed first on 14th February, 2020 but was under objection and owing where to could not be listed till 3rd March, 2020. However on 3rd March, 2020 also the counsel for the petitioner sought adjournment to argue the petition on merits. Directing the respondents CISF to file a short affidavit disclosing the date when the recruitment process initiated vide the advertisement aforesaid came to a close and further

directing personal presence of the personnel/officer of the CISF in the know of facts along with the records of medical examination carried out by the Medical Board, the petition was adjourned to 6th November, 2020. On 6th November, 2020, the counsel for the respondents CISF on the basis of the affidavit filed stated that the recruitment process was concluded for 447 candidates as far back as on 2nd September, 2019. However, the counsel for the petitioner on that date drew our attention to letter dated 11th September, 2020 filed along with CM No.24510/2020 *inter alia* to the effect that a list of 44 Constables/Driver and 28 Constables/DCPO was prepared and their training was to commence in the month of December, 2020. The counsel for the respondents CISF appearing on that date was unable to respond to the aforesaid and the hearing was adjourned to today.

5. The counsel for the respondents CISF today informs that though the recruitment process for 447 candidates was concluded on 2nd September, 2019 but 72 vacancies remained and pursuant to direction in another writ petition filed in this Court, the said 72 vacancies were directed to be filled and in pursuance thereto, the letter dated 11th September, 2020 was issued. On further enquiry, it is informed that the Medical Board for filling up of the additional seats has already concluded but the Review Medical Examination is to be conducted shortly.

6. The aforesaid indicates that the recruitment process is still on and if any error was to be found in the opinion of the Medical Board and the Review Medical Board, a direction for examination of the petitioner can also be issued. We have thus asked the counsel for the petitioner to argue, what is wrong with the opinion of the Medical Board and the Review Medical Board.

7. The counsel for the petitioner, instead of arguing, has contended that as evident from order dated 10th May, 2011 in W.P(C) 3125/2011 titled ***Naresh Kumar Vs. Union of India***, over 88% of the opinions of the Medical Boards/Review Medical Boards were found erroneous on further examination ordered by the Court and on that ground alone, the petitioner should be given a chance for examination by the Research and Referral Hospital, to determine his medical fitness.

8. In spite of our repeated asking, the counsel for the petitioner has not argued what is wrong with the opinion of the Medical Board and the Review Medical Board and is unable to tell even the ground on which the petitioner was found to be unfit.

9. Merely because in the order aforesaid it has observed that in 88% of the cases which had then come up before the Court the opinion of the Medical Board, on further examination, was not accepted, is not a ground for every candidate rejected on the ground of medical unfitness to be ordered to be examined by Research and Referral Hospital at New Delhi. If it were to be so, an order for winding up the Medical Examination by the Medical Board and the Review Medical Board might be as well be passed and the medical fitness for recruitment be directed to be conducted by the Research and Referral Hospital alone. The said state of affairs cannot be permitted.

10. We have in ***Priti Yadav Vs. Union of India*** 2020 SCC OnLine Del 951, ***Jonu Tiwari Vs. Union of India*** MANU/DE/1524/2020, ***Vani Viswanathan Vs. Union of India*** MANU/DE/1678/2020 and ***Shravan Kumar Vs. Union of India*** 2020 SCC OnLine Del 924 held that for a petitioner to succeed in impugning the opinion of the Medical Board and the

Review Medical Board, the petitioner has to make out a case for this Court to doubt the correctness of the opinion and merely at the asking, a third opinion cannot be directed to be taken. Having exhaustively dealt with the said aspect, need to elaborate further is not felt.

11. Since the counsel for the petitioner has not even argued why there is error in the opinion of the Medical Board and the Review Medical Board, though the need to record why the petitioner has been found unfit is not felt but we may state that the Medical Board found the petitioner to be unfit for two reasons i.e. (a) Anaemia having a haemoglobin count of 12.5 as against the required range of 13 to 17; and, (b) Glanular Hypospadias. It appears that the petitioner thereafter worked on his haemoglobin count, which can easily be improved, in as much as the Appeal Medical Board, as per the petitioner, found the petitioner to be medically unfit on account of Glanular Hypospadias only. The petitioner has filed this petition on the basis of Medical Certificates of Sawai Man Singh Hospital, Jaipur, Rajasthan opining that though the petitioner has slight Glanular Hypospadias but no intervention is required because of adequate size and because of not having any complaint. Once the medical opinion obtained by the petitioner from the medical expert of his own choice has also opined the petitioner to be suffering from Glanular Hypospadias and has further opined that no corrective surgery is required because the petitioner does not have complaint, no case for doubting the opinion of the Medical Board and the Appeal Medical Board, is made out. Rather, we have enquired from the counsel for the petitioner, whether has studied the Medical Manual as per which the Board and the Review Medical Board evaluate the candidates. The answer is in the negative. In certain other cases coming up before us,

we had occasion to examine the said Manual and found the same to be providing that a candidate for recruitment would not be considered medically fit for a period of six months also after undertaking corrective surgery for Glanular Hypospadias. Once the doctor of the trust of the petitioner also has found the petitioner to be suffering from Glanular Hypospadias and the difference between his opinion and the opinions under challenge is only of degree, no case for interference in writ jurisdiction is made out.

12. There is no merit in the petition.

13. Dismissed.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

NOVEMBER 19, 2020
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