

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 22nd May, 2020

+ W.P.(C) No.3237/2020, CM No.11266/2020 (u/S 151 CPC for ad-interim ex-parte directions)

DHIRAJ MILIND DHURVE PETITIONER

Through: Mr. Anupam Dwivedi, Adv.

Versus

**UNION PUBLIC SERVICE
COMMISSION & ANR.** ...RESPONDENTS

Through: Mr. Naresh Kaushik, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

CM No.11267/2020 & CM No.11268/2020 (both for exemption)

1. Allowed, subject to just exceptions and as per relevant rules.
2. The applications are disposed of.

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3. The petitioner, an engineering graduate and a candidate in the examination process held by respondent no.1 Union Public Service Commission (UPSC) for the post of Assistant Commandants in Central Armed Police Forces (CAPF) and having cleared the written examination and the Physical Efficiency Test / Physical Standards Test and having failed the Medical Standards Test for the reason of being overweight, has filed this petition seeking a direction to the respondents to conduct medical re-

examination of the petitioner by measuring weight of the petitioner with a properly calibrated weighing machine and to call the petitioner for interview / personality test, if found successful in such medical re-examination.

4. The advertisement dated 24th April, 2019, published by UPSC, inviting applications for appearing in the Central Armed Police Forces (Assistant Commandants) Examination, 2019 and pursuant to which the petitioner applied and started participating in the examination process, provides (i) under the head “IMPORTANT”, that the candidates applying for the examination should ensure that they fulfill all eligibility conditions for admission to the examination and clarified that their admission at all the stages of the examination will be purely provisional and subject to satisfying the prescribed eligibility conditions; (ii) in Appendix-I, that Medical Standards Test to check the standards specified in Appendix-VI, will be conducted only in respect of candidates who are qualified in the Physical Efficiency Test and that the Medical Standards Test will be conducted under the supervision of a Nodal Authority to be appointed by the Ministry of Home Affairs and that appeal will be entertained only against the Medical Standards Test and will have to be made, within a period of fifteen days from the date of declaration of the Medical Standards Test, to the Appellate Authority designated by the Ministry of Home Affairs; (iii) in Appendix-V titled “Physical and Medical Standards for the Candidates for the Post of Assistant Commandants in the Central Armed Police Forces”, the minimum requirements *inter alia* of weight and that the weight should be as per the height and age as mentioned in Appendix-II(B) [sic for V(B)] and that the candidate must be in good mental and bodily health and free from any physical defect likely to interfere with the efficient performance of the

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duties; and, (iv) in Appendix-V(B), the average body weights in kilograms for different age groups and heights and the manner of computation thereof.

5. The petitioner, in the Medical Standards Test undertaken by him on 27th December, 2019 at “G.C. CRPF, Pune”, was found ‘unfit’ for the reason of “overweight by 16.5 Kg.”.

6. The said Medical Standards Test undertaken by the petitioner and / or findings thereof were not challenged by the petitioner, at the contemporaneous time and are not challenged in this petition either.

7. The petitioner, in accordance with the Scheme of the examination, preferred an appeal against the finding of the Medical Standards Test, by applying for Review Medical Examination, after obtaining necessary medical certificate from a specialist medical practitioner of concerned field as per proforma provided. Along with the said appeal, the petitioner attached the Medical Fitness Certificate dated 3rd January, 2020 of one Dr. Ashwani Patil of Lotus Hospital, Borivali West, Mumbai, certifying that he had examined the petitioner after knowing that the petitioner had been declared medically unfit for the post of Assistant Commandant in CAPF Examination 2019 due to being overweight by 16.5 Kg and declaring the petitioner medically fit for the said post. Though the said Dr. Ashwani Patil so declared the petitioner medically fit after knowing that the petitioner had been found unfit due to being overweight but strangely, in the certificate issued by Dr. Ashwani Patil, the weight as on 3rd January, 2020 of the petitioner is not mentioned and the certificate is also not supported by any medical record or document, though required to be so accompanied. The petitioner also in his appeal, while certifying that he had been medically

examined by Dr. Ashwani Patil, a specialist medical officer of the concerned field (Internal Medicine), did not mention his weight as on 3rd January, 2020. In the writ petition also the weight of the petitioner as on 3rd January, 2020 is not pleaded.

8. The petitioner, as Annexure P-10 to this writ petition, has appended report dated 26th February, 2020 of Review Medical Examination-conducted by Dr. Raj Kamal, Dr. Chakraborty and Dr. Rahul Roy, again finding the petitioner to be unfit on account of being overweight and certifying the then weight of the petitioner to be 84 Kg. instead of the acceptable range of 58.5 – 71.5 Kg.plus/minus 10% and the maximum permissible weight of 78.65 Kg. and further certifying the Body Mass Index (BMI) of the petitioner as 27.27 Kg. / m² and which has been reported to be not acceptable.

9. The petitioner, in paragraphs 10 to 13 of the petition has pleaded:

“10. That the Petitioner, after being declared unfit, visited Lotus hospital, Boriwali, Mumbai, on 03.01.2020 for his medical check-up as per the guidelines of Respondent no 2, where the Petitioner was declared medically fit. The Petitioner was well aware of the weight range and was continuously endeavoring to reduce his weight. The maximum permissible weight according to the Petitioner’s height is 78.65 kg. A true copy of the fitness certificate issued by the Lotus Hospital is being annexed herewith and marked as ANNEXURE-P7.

11.The Petitioner availed this review, by sending the appeal to the Appellate Authority on 04.01.2020 through Post, as the Petitioner was very well aware that he is capable of shedding his weight in the given period of time, also it is pertinent to mention that the Petitioner regularly attends gym and is physically very fit.....
12.The test was again scheduled to be conducted on 26.02.2020 at CRPF's IG Medical Composite Hospital, New Delhi. The Petitioner, in the meantime, had transformed himself physically and his weight, during that time, was 75.75 Kg which the Petitioner had checked on a property calibrated digital weighing machine.....
13. That the Petitioner on 26.02.2020 promptly reported to the New Delhi Center for getting himself medically examined. During the weight measurement at Delhi, the Petitioner was earlier declared as Fit and the persons conducting the test had marked checked on the "FIT" box but later on, the persons / officials on behalf of Respondent No.2, cut the check-mark made on FIT box and again marked checked on the UNFIT box, which can be clearly seen in the report / result of the review exam dated 26.02.2020. The Petitioner when enquired why such cutting and re-writing was done, he was told that the weighing machine had shown the reading of 84 Kg which was observed by the said persons on behalf of the Respondent No.2 look at the scale reading. The

Petitioner requested the officials / doctor conducting the medical examination to recheck the Petitioner's weight on a digital scale or some other properly calibrated weighing machine as the Petitioner had checked his weight, which was within prescribed limits, before coming to the review examination, but the said official / doctor refused to entertain the request made by the Petitioner. A true copy of the impugned Review Medical Examination Report held on 26.02.2020 at New Delhi center is being annexed herewith and marked as Annexure P-10."

10. Though the petitioner in paragraph 14 of the petition has pleaded that *"the petitioner, when earlier visited a hospital as per instruction of Respondent no.2, was declared fit and his weight was recorded within permissible limits on a digitally and properly calibrated weighing machine"* but no certificate of any other hospital if any visited by the petitioner has been filed by the petitioner, save the certificate aforesaid of Lotus Hospital, which also does not give the weight of the petitioner.

11. This writ petition is filed, contending that (i) the weighing scales, after being bought, are generally never re-calibrated and maintained; (ii) the analog weighing scale works on a small spring which eventually loses its compressive properties and is to be recalibrated from time to time, to have the best possible result; (iii) even where there is an error of 0.1 Kg. in every 1 Kg., the actual weight of 75 Kg. will appear to be 82.5 Kg.; (iv) the error gets amplified in an analog weighing machine; (v) if the error value is as small as 0.08, the person actually weighing 77.77 Kg. will show a weight of

84 Kg. on an analog machine; (vi) the Review Medical Examination has not been conducted in the correct manner; (vii) in Review Medical Examination at Delhi, the petitioner was earlier declared as fit and the persons conducting the test had marked check on the fit box but later on cut the check mark made on the fit box and again marked check on the unfit box; (viii) when the petitioner enquired regarding the cutting and re-writing, he was told that the weighing machine had shown the reading of 84 Kg.;;(ix) the petitioner requested the officials / doctor conducting the medical examination to re-check petitioner's weight on a digital scale or some other properly calibrated weighing machine, as the petitioner had before coming for Review Medical Examination checked his weight but the said official / doctor refused; and, (x) the petitioner was declared fit by the hospital where the weight of the petitioner was measured on a digital weighing machine.

12. A perusal of the Review Medical Certificate dated 26th February, 2020 shows, check mark to have been put against both the following options against the column "Opinion":

“(a) Fit

(b) Unfit on account of”

but the check mark on the option “(a) Fit” to have been crossed out and against option ‘(b)’ the reason for unfitness to have been filled as ‘overweight’ and in front thereof the then weight of the petitioner of 84 Kg. and the acceptable range and maximum permissible weight and BMI found of the petitioner and the same being not acceptable, to have been mentioned.

13. We do not find any merit in the plea and the argument of the counsel for the petitioner, of the said Review Medical Examination Report becoming doubtful for the reason of check mark having been put on option '(a) Fit' though subsequently crossed out. The Review Medical Examination Report in the prescribed format, of Dr. Raj Kamal, Dr. Chakraborty and Dr. Rahul Roy, is filled up in hand. While so filling up a prescribed form, it is in normal human conduct, to mistakenly put a check mark on the wrong option. However neither are any *mala fides* against Dr. Raj Kamal, Dr. Chakraborty and Dr. Rahul Roy pleaded by the petitioner nor are any evident from what is otherwise filled up and written in the said Review Medical Examination Report. It is evident that the check mark on option '(a) Fit' was mistakenly put and could not have been correct in view of the findings of weight and BMI of the petitioner. The same alone cannot be a reason for granting the relief sought by the petitioner. Had the petitioner on 26th February, 2020 entertained any doubt as to the correctness of the Review Medical Examination Report, of which it is obvious from the pleadings that he was aware, the natural impulse of the petitioner in the course of normal human conduct would have been to straight thereafter walk into a prominent hospital and obtain a certificate of his correct weight on that date and to immediately represent against the Review Medical Examination Report of the Review Medical Examination Board. Neither is it so pleaded nor, as aforesaid, any certificate of the weight of the petitioner on any date since 3rd January, 2020 when his first Medical Standards Test was carried out has been produced before this Court.

14. Though the petitioner, as obvious from above, has repeatedly pleaded in the writ petition that he had, before going for the Review Medical Examination, also checked his weight, but the conduct of the petitioner, of not filing any report issued by any other medical authority as to the weight of the petitioner on 26th February, 2020 or shortly prior thereto, falsifies the said pleadings. Had any medical authority, a day before 26th February, 2020 certified the weight or BMI of the petitioner to be any different than what has been found by the Review Medical Board on 26th February, 2020, the petitioner or his advocate, in the ordinary course of human conduct, would have produced the same before the Court. We have therefore no doubt whatsoever qua the findings of the Review Medical Board.

15. As far as the contentions of the petitioner with respect to accuracy of the weighing machines and of the digital weighing machine being more accurate than the analog weighing machine are concerned, the same are nothing but an attempt to somehow or the other wrangle yet another opportunity to take the Medical Standards Test and which opportunity is not provided for in the terms and conditions of the examination and subject to which terms and conditions the petitioner participated in the examination process. The petitioner cannot seek a change of the said terms and conditions which were uniformly prescribed for all, after being unsuccessful therein. The principle of “rules of the game cannot be changed after the game has begun” would apply. The same applies to the contention with respect of analog weighing scale and digital weighing scale also. The petitioner, at no earlier point of time before filing the petition, objected to being weighed on an analog weighing scale. It is not the plea of the petitioner that on 27th December, 2019, he was weighed on digital weighing scale and as aforesaid

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there is no challenge to the medical report of that date. Merely by digging out extracts from a subject journal, with respect to possible inaccuracies, opportunity after opportunity cannot be granted.

16. What is most significant in this case is that the petitioner, after failing in the Review Medical Examination on 26th February, 2020, has chosen to file this petition after nearly three months, on 18th May, 2020 and which petition has been got listed first, today. The only reason given is of the prevalent Covid-19 situation and the time taken in finding an advocate at Delhi. However to our queries, whether not the petitioner, after 26th February, 2020 and before the announcement of the national lockdown on 24th March, 2020, had nearly a month and whether not considering the nature of the grievance, the petitioner was required to act immediately after 26th February, 2020, the only response is that the final list of selected candidates has not been announced as yet. However from the entirety of the facts, it appears that the petitioner had no grievance whatsoever with the Review Medical Examination Report and has filed this petition as an afterthought, may be after his efforts in the three months which have elapsed since then, to further reduce his weight, have succeeded. However once the scheme of examination provided the schedule thereof and provided 15 days to prefer a review of the Report of the Medical Standards Test, candidates are not entitled to any further time to meet the medical standards prescribed and the same would also amount to changing the terms and conditions of the examination qua the petitioner only. Rather, it appears that the petitioner though aware that he did not meet the prescribed medical standards, commenced participating in the examination scheme in the hope that he would, by the time of reaching the Medical Standards Test, be able to lose

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enough weight to meet the prescribed standards and after being unsuccessful therein, has preferred this petition.

17. The counsel for the respondents states that W.P.(C) No.11875/2020 preferred by a candidate who was found to be suffering from hypertension has also been dismissed by this Court.

18. No case for interference with the decision of the Competent Authority pertaining to the medical fitness of the petitioner is made out.

Dismissed.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

MAY 22, 2020
‘gsr’..

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