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

% **Date of Decision: 17th December, 2020**

+ **W.P.(C) 10543/2020**

JYOTI THAKUR **..... Petitioner**

Through: Mr.Ram Lal Roy, Advocate

versus

UNION OF INDIA & ORS. **..... Respondents**

Through: Mr.Harish Vaidyanathan Shankar,
and Ms. Nidhi Raman, CGSCs
with Mr.Varun Kishore and
Ms.Kinjal Shrivastava, Advocates
for respondent/UOI

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE ASHA MENON

1. The petitioner has filed the present petition under Article 226 of the Constitution of India claiming violation of Articles 14 and 16 and seeking the issuance of writ of mandamus or for writ or direction seeking the recall of the order of termination dated 9th/10th May, 2019 passed by the Deputy Inspector General, Central Industrial Security Force (CISF), National Industrial Security

Academy (NISA), Hyderabad and the order dated 16th July, 2019 passed by the Director/Inspector General, CISF, NISA, Hyderabad and the order dated 11th December, 2019 passed by Assistant Directorate General, CISF, Ministry of Home, New Delhi with a further direction for re-appointment of the petitioner to the post of Sub-Inspector (SI) in the CISF.

2. The facts, as are relevant for the disposal of this case, are briefly, that the petitioner had applied for selection to the post of SI in the Delhi Police, CAPFs and Assistant Sub-Inspector (ASI) in CISF through a common examination held in the year 2016. She successfully cleared the Written Examination held on 6th June, 2016 and also the Physical Endurance Test (PET) on 23rd September, 2016 and a physical fitness certificate was issued to her on 23rd September, 2016. After clearing the PET, she was allowed by the respondents to appear in the Tier-II examination in December, 2016 and which exam she cleared in January 2017.

3. The petitioner's further case is that she was called for the medical examination test on 2nd May, 2017 and she was declared medically fit in all respects except that she was found with a *"pregnancy of 5 1/2 months old and Brochymetatarsia (both sides)"*. On the advice of a doctor, she got herself medically examined on 4th May, 2017 by a specialist in the field, i.e. Dr. O.P. Meena and Dr. Geetanjali Natiyal, who are Orthopaedics and Gynaecology specialists respectively, at the Dr. Ram Manohar Lohia Hospital in New Delhi. According to the petitioner, she was found fit by both the specialists, and that the *"Brochymetatarsia"* did not create any

problem for her in running/walking/wearing shoes. The petitioner applied for a review medical examination and vide letter dated 24th June, 2017, the respondents directed her to appear before the Review Medical Board on 27th July, 2017 at Referral Hospital, ITBP, Greater Noida Referral Hospital/CAPFs, CISF Campus, Surajpur, Greater Noida, Uttar Pradesh. The petitioner accordingly appeared for the review medical examination on 27th July, 2017 at the said Referral Hospital where she was medically examined by the doctors who found her to have no functional disability from “*Brochymetatarsia*”. However, the doctors declared her medically unfit on account of 8 months’ pregnancy at that time.

4. Post her delivery, the petitioner approached the respondents for her fresh medical examination by the Staff Selection Commission. She was directed to the office of the CISF, being told that her selection had been to the post of SI in CISF. The respondents issued to her a letter dated 19th January, 2018 for fresh review medical examination and for verification of documents. The fresh review medical examination was conducted on 7th February, 2018 at NHCC, CISF campus, Mahipalpur, New Delhi. She was subjected to extensive tests, including eye-test, and was declared medically fit by the Review Medical Board.

5. The petitioner was issued the appointment letter on 20th September, 2018 and was asked to report to the NISA, Hakimpet, Hyderabad by 29th October, 2018 with all the documents and duly filled up forms and duly attested by the concerned authorities. The petitioner reported to the Director, NISA, Hakimpet, Hyderabad on

29th October, 2018 and once again, after due verification of the documents, she joined the post of SI in CISF on 29th October, 2018 and began performing her duties as such.

6. The learned counsel for the petitioner, Sh. Ram Lal Roy, submitted that under the Rules, the medical examination prior to appointment was valid for an entire year and under no circumstance could the petitioner have been subjected to a fresh medical examination at Hyderabad. Reliance has been placed on the Circular of the Government of India dated 9th December, 2015 in this regard and which is reproduced hereunder for ready reference:

*“ Directorate General
Central Industrial Security Force
(Home Ministry)
Block No.13, CGO Complex,
Lodhi Road, New Dehi-110003*

*No.E-32023(1)/15/Recruitment/...-2013/Vol-3/2013
Dated: 09 Dec. 2015*

To

*DIG RTC MUNDALI
DIG RTC BARWAHA*

*Subject:-Combined recruitment of Constable/GD-2011,
2012 & 2013: Conduct of fresh medical examination on
joining for basic training-reg.*

*1. In continuation to this Directorate letter No.(4479)
dated 19.11.2015 on the above subject*

2. *As per clarification received from MHA vide Endorsement No.1-14014/97/2015/RC-...8 dated 09.10.2015, the revised uniform guidelines for recruitment medical examination will be effective from the date of issue i.e.20.05.2015. Therefore, all candidates of the year 2011, 2012 & 2013 need not to be put for fresh medical examination as per uniform medical guidelines issued by ADG/Medical vide letter dated 20.05.2015.*
3. *However, as per Para -6 of Chapter -24 of Swamy's Establishment and Administration Manual, the validity period of medical examination is one year. Hence all candidates whose medical validity period of one year has been expired except RME fit candidates may be put through fresh medical examination at the Training Center by the Doctor of RTC before allowing them to participate in training.*
4. *As regards fresh medical examination of RME fit candidates, the following guidelines as circulated by MHA vide letter No.1-45023/5/2012 –Pers-II (Part File) dated 09.04.2013 as well as ADG/Medical, CAPFs vide UO dated 22.09.2014 (copies enclosed) are issued for necessary action: -*
 - (i) *Fresh Examination will be conducted in respect of Review Medical Examination fit candidates. This medical examination will be limited to only examination of any new deformity or disability acquired by the candidates after review medical examination already done at the time of initial recruitment process and in which the candidates was declared fit. This Medical Examination will not in any way contradicted or overrule the medical examination*

report of review medical examination in respect of any disability already considered and was declared fit.

(ii) If a temporary illness which can be cured within 6 – 12 weeks is detected during fresh medical examination then the candidate will be declared Temporary unfit and the certificate will be countersigned by Sr. Medical Officer. Such candidate will be reviewed after expiry of the period for the same illness and final result of medical examination may be declared accordingly.

(iii) If during fresh medical examination deformity of permanent nature is detected other than those detected and considered during initial medical examination of RME, then the medical examination will be done by a board of medical officers at composite hospitals of CAPFs.

(iv) Candidate may not be declared unfit/temporary unfit on the same ground on which he was found fit in previous RME at the time of initial recruitment process.

5. *This issues with the approval of the competent authority please.*

Sd/-

(...illegible...)

Assistant Director General, Recruitment

Copy to:-

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|-----------------------------------|--------------------------------------|
| <i>1. All Sector IG</i> | <i>- For kind information please</i> |
| <i>2. All Zonal DIG</i> | <i>- For kind information please</i> |
| <i>3. All scrutiny Units</i> | <i>- For kind information please</i> |
| <i>4. DG Medical, CISF</i> | <i>- For kind information please</i> |
- and further advise, if any please ”*

7. The learned counsel for the petitioner contended that during this unwarranted medical examination, to which the petitioner was subjected to, her eye-tests were taken at the Sarojini Devi Eye Hospital, Government of Telangana, Hyderabad. Subsequent to the said eye-test, she was taken to Delhi for a further detailed eye-test and on 2nd January, 2019, the doctors at CH, CRPF Jharodakalan, Delhi illegally declared the petitioner unfit as having a problem with her '*distal vision*'. It is on the basis of this medical examination and the petitioner not qualifying the standard of eyesight, that she was terminated from service vide order dated 11th December, 2019. The petitioner claims that this was improper and unjust and this order was liable to be set aside. The learned counsel also submitted that she was entitled to be reinstated in service.

8. On the other hand, Sh. Harish Vaidyanathan Shankar, CGSC submitted that in the true sense, the first medical examination of the petitioner post-recruitment was taken only at Hyderabad and this examination was as per Rules. The learned counsel also explained that this '*distal*' vision entailed an inability to identify uniforms. Therefore, there was an inherent risk in inducting the petitioner into service as without being able to identify uniforms, she may make a very critical error in distinguishing friend from foe.

9. We have in several decisions observed that the standard of physical fitness for the Armed Forces and the Police Forces is more stringent than for civilian employment. We have, in ***Priti Yadav Vs. Union of India*** 2020 SCC OnLine Del 951; ***Jonu Tiwari Vs. Union***

of India 2020 SCC OnLine Del 855; *Nishant Kumar Vs. Union of India* 2020 SCC OnLine Del 808 and *Sharvan Kumar Rai Vs. Union of India* 2020 SCC OnLine Del 924, held that once no *mala fides* are attributed and the doctors of the Forces who are well aware of the demands of duties of the Forces in the terrain in which the recruited personnel are required to work, have formed an opinion that a candidate is not medically fit for recruitment, opinion of private or other government doctors to the contrary cannot be accepted inasmuch as the recruited personnel are required to work for the Forces and not for the private doctors or the government hospitals and which medical professionals are unaware of the demands of the duties in the Forces.

10. The Circular dated 9th December, 2015 provides for the conduct of fresh medical examination on joining for basic training. It nowhere declares that the pre-recruitment medical examination is valid for one year. In para 3, it only notes that since as per Para 6 of Chapter-24 of Swamy's Establishment and Administration Manual, the validity period of medical examination is one year for all those whose medical examination had been conducted prior to a year, hence the validity of the medical examination would have expired and therefore, all of them have to be subjected to a fresh medical examination at the Training Center. Candidates covered by "RME" were excluded. This does not mean that the petitioner was excluded from a fresh medical examination prior to being allowed to participate in training.

11. It must be noted that the petitioner's pre-recruitment medical examination was conducted under the description as 'review medical examination'. However, that was her first detailed medical examination, which she should have undergone at the time of her recruitment. Since she was pregnant, she could not join the service. Even otherwise, the so-called first medical examination, which she claims she had attended, was in June, 2017 and the so-called 'review medical examination' was also on 27th July, 2017. She joined only on 29th October, 2018 i.e. more than a year from the dates of her medical examinations. Seen in this light also, the medical examination of the petitioner at Hyderabad was as per the provisions of this very Circular. Furthermore, the respondents had adhered to this Circular when as per para 4(i), the fresh medical examination was conducted limited to only examination for any new deformity or disability and she was found with a deformity in her sight. She was then re-examined by a Board at Delhi. That the petitioner was suffering from 'distal vision' was confirmed by the Board. Thus, no grievance on the basis of this Circular can be raised by the petitioner.

12. No doubt everyone values employment opportunities. But where certain eligibility criteria have been prescribed, it would be wrong for courts to meddle with those standards and water them down, because costs would have to be paid by the country subsequently. No candidate who does not fulfil the medical standards can be inducted, as it would be detrimental to the discipline in the Forces as such persons would be placed in 'low

medical category’ and posted in ‘soft areas and duty’, whereas the burden on others to serve at hard stations and posts would increase disproportionately.

13. We are unable to grant any relief to the petitioner. As rightly pointed out by the learned counsel for the respondents, she was on probation and therefore, her termination with nothing more, cannot be faulted.

14. The petition is accordingly dismissed.

ASHA MENON, J.

RAJIV SAHAI ENDLAW, J.

DECEMBER 17, 2020

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